Board of Behavioral Sciences

1625 North Market Blvd., Suite S-200, Sacramento, CA 95834
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Arnold Schwarzenegger, *Governor*
State of California
State and Consumer Services Agency
Department of Consumer Affairs

MEETING NOTICE

Policy and Advocacy Committee
April 9, 2010

Hotel Adagio
550 Geary Street
San Francisco, CA 94103

8:30 a.m. – 4:00 p.m.

I. Introductions

II. Review and Approval of the March 22, 2010 Policy and Advocacy Committee Meeting Minutes

III. Discussion and Possible Action Regarding Pending Legislation Including:

A. Assembly Bill 612 (Beall)
B. Assembly Bill 1310 (Hernandez)
C. Assembly Bill 1737 (Eng)
D. Assembly Bill 2028 (Hernandez)
E. Assembly Bill 2086 (Coto)
F. Assembly Bill 2167 (Nava)
G. Assembly Bill 2229 (Brownley)
H. Assembly Bill 2339 (Smyth)
I. Assembly Bill 2380 (Lowenthal)
J. Assembly Bill 2435 (Lowenthal)
K. Senate Bill 389 (Negrete McLeod)
L. Senate Bill 543 (Leno)
M. Senate Bill 1282 (Steinberg)

IV. Discussion and Possible Rulemaking Action Regarding Implementation of SB 788 (Wyland) Chapter 619, Statutes of 2009 Establishing Licensed Professional Clinical Counselors

V. Discussion and Possible Legislative Action Regarding Amendments to AB 2191 (Emmerson) Related to Retired License Status

VI. Discussion and Possible Legislative Action Regarding Amendments to SB 1489 (Committee on Business, Professions and Economic Development)

VII. Budget Update

VIII. Rulemaking Update

IX. Suggestions for Future Agenda Items

X. Public Comment for Items Not on the Agenda

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

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Marsha Gove at the Board of Behavioral Sciences, 1625 N. Market Boulevard, Suite S-200, Sacramento, CA 95834,or by phone at 916-574-7861,no later than one week prior to the meeting. If you have any questions, please contact the Board at (916) 574-7830.

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Policy and Advocacy Committee Meeting Minutes
March 22, 2010
DRAFT

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd.
2nd Floor North, Room 220
Sacramento, CA 95834

Members Present
Gordonna DiGiorgio, Chair, Public Member
Renee Lonner, LCSW Member
Michael Webb, MFT Member

Staff Present
Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
James Maynard, Legal Counsel
Marsha Gove, Examination Analyst
Elina Taylor, Administrative Analyst

Members Absent
Samara Ashley, Public Member

Guest List
On file

Gordonna DiGiorgio called the meeting to order at 10:07 a.m. Marsha Gove called roll, and a quorum was established.

I. Introductions

Committee members, staff and audience introduced themselves.

II. Discussion and Possible Action Regarding Registrants Paying for Supervision

James Maynard, Legal Counsel, stated that this issue has been before the Board on two previous occasions. He noted that since the last Board Meeting, both he and Kim Madsen, Executive Officer, had been in contact with the Division of Labor Standards Enforcement. A representative from that agency was invited to attend the Committee meeting, but was unavailable. Ms. Madsen directed meeting participants to two opinion letters by the Chief Counsel, Division of Labor Standards Enforcement, pertaining to the subject, as well as a memo from Mr. Maynard regarding laws prohibiting payment by intern to employer. Ms. DiGiorgio summarized Mr. Maynard's memo for meeting participants and audience.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), stated that the issue of supervision had been raised several years previously. She provided a brief history of the subject, and noted that research and hearings were conducted at that time, but resulted in no changes. It remained permissible for interns to pay for supervision, with the exception of the private practice setting. Ms. Riemersma added that more recently, the request was made of the Board to remove the prohibition pertaining to paying for supervision in private practice. Legislation was sought and the prohibition was removed.

Ms. Riemersma provided additional comment about the various laws that seemingly impact the issue, including those cited by Mr. Maynard. She stated that clarity is being sought by CAMFT with the hope of maintaining the status quo in recent years, specifically, that it is acceptable for registrants to pay for supervision. She added that steps CAMFT has taken to discuss the issue with the Department of Labor have to date been unsuccessful. She thanked the Board for conducting a meeting to gain information from stakeholders and attempt to reach a point where all interested parties have the same understanding of the requirements in the area of supervision.

Ms. DiGiorgio expressed appreciation for the information provided by Ms. Riemersma. She noted her agreement with the importance of clarifying for the stakeholders what the Board's responsibility is with respect to required hours of supervision.

Geri Esposito, California Society for Clinical Social Work (CSCSW), clarified that clinical social workers who are contemplating supervising a registrant for hours of experience are encouraged to not consider payment from the supervisee to be an option. Ms. Riemersma indicated that MFTs are given the same advice, when speaking about the private practice setting.

Mr. Maynard provided additional clarification regarding the labor laws.

Discussion continued, with Board and audience members commenting on the various facets of supervision. Perspective was provided from interns, licensees, and educators, all of whom expressed concern with the current system. Input was also provided from the employer perspective. Ms. DiGiorgio asked what the Board's responsibility is in this area. Mr. Maynard indicated that the Board's licensing laws include specific provisions regarding how the services of an intern or trainee may be used. He stated that if a Board licensee were found to be misusing a registrant or trainee, the licensee could be subject to disciplinary action by the Board. Mr. Maynard added that the Board does not have considerable responsibility regarding enforcement of labor or employment laws.

Ms. Riemersma restated the concern that requirements surrounding the gaining of hours of supervision should not present hurdles to registrants accruing those hours. Ms. Madsen responded that it is not the Board's intent to impede that process.

Conversation continued regarding problems related to supervision. Steven Pomerantz, University of San Francisco – Sacramento Campus, asked how other states address the issue. Ben Caldwell, Alliant International University, AAMFT, reported that there is not a consistent manner of dealing with the subject from state to state. However, it appears that most of the regulatory agencies view paying for supervision as a bad idea, in large part due to dual relationship concerns.

Mr. Maynard provided clarification that paying for supervision, either directly or indirectly, would be considered illegal in California.

The committee recessed for a break, and reconvened at 11:25 a.m.

III. Discussion and Possible Action to Clarify the Term Associate Clinical Social Worker

Janlee Wong, NASW, reported that in 1960, NASW established the Academy of Certified Social Worker (ACSW) credential. He described and provided a brief history about the credential. The Board of Behavioral Sciences' subsequent establishment of the title Associate Clinical Social Worker (ACSW) has resulted in some confusion between the NASW credential and the Board's registration title.

Mr. Wong and NASW asked the Board to consider amending the licensing law to eliminate the misunderstanding regarding the two titles. Mr. Wong offered two options to remedy the problem. He suggested that the Board either change the title "Associate Clinical Social Worker" to "Associate Social Worker" in statute, or designate in statute that the abbreviation "ASW" be used to reflect the title "Associate Clinical Social Worker."

Ben Caldwell, Alliant International University, supported taking steps to eliminate confusion between the two designations, but voiced concern about removing the word "clinical" from the title. He suggested use of a name that includes the word clinical, such as "CSWA" (Clinical Social Work Associate).

Ms. Madsen noted that the title "Associate Clinical Social Worker" is reflected in at least one California statute other than the Business and Professions Code. As such, change to the designation would likely necessitate amendment of statutes other than the Board's licensing law.

Geri Esposito, CSCSW, expressed her support for use of the name Clinical Social Work Associate.

Tracy Rhine, Assistant Executive Officer, questioned whether the issue might be resolved through amendments to the Board's Advertising Guidelines. A brief discussion followed. Ms. Rhine noted that discussion regarding revisions to the guidelines was pending. She suggested including further dialogue about changes to the "Associate Clinical Social Worker" designation when the Committee revisited the Advertising Guidelines at a future meeting. Mr. Wong and other interested parties agreed with Ms. Rhine's suggestion.

X. Suggestions for Future Agenda Items

Ben Caldwell, Alliant International University, reported that university faculty had recently voted to submit a request to the Board to consider adding a new degree title, "Couple and Family Therapy," to the list of acceptable degree titles for MFT licensure. He briefly explained the basis for the request, and asked the Committee to include the issue on a future meeting agenda. Ms. Madsen noted that the issue might also be appropriately discussed by the Board's Licensing and Examination Committee.

Geri Esposito, CSCSW, asked for a status report regarding the analysis of the LCSW and MFT licenses compared to the Licensed Professional Clinical Counselor (LPCC) license. Ms. Madsen indicated that the subject should be for discussion by the Licensing and

Examination Committee. She noted that the occupational analysis for the national LPCC examination had been received by the Board and was being evaluated by test specialists. Ms. Rhine indicated that the subject was scheduled for discussion at the next Licensing and Examination Committee meeting on April 12, 2010. In response to a question by Ms. Riemersma, Ms. Madsen indicated that the conversation was expected to cover various aspects of LPCC licensure, and the Board's progress to date in this area.

Ms. Madsen announced that the next Policy and Advocacy Committee meeting is scheduled April 9, 2010 in San Francisco.

XI. Public Comment for Items Not on the Agenda

No public comments were made.

The Committee adjourned at 11:40 a.m.

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Memo

To: Policy and Advocacy Committee

Date: April 7, 2010

From: Tracy Rhine
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: **Legislative Bill Review**

The following bills may have some affect on the Board, or individuals under its jurisdiction, and therefore have been analyzed and brought before the Committee for discussion.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 612** **VERSION:** **AMENDED JUNE 28, 2009**

AUTHOR: **BEALL** **SPONSOR:** **CENTER FOR JUDICIAL EXCELLENCE AND CALIFORNIA PROTECTIVE PARENTS ASSOCIATION**

RECOMMENDED POSITION: **OPPOSE**

SUBJECT: **CHILD CUSTODY INVESTIGATIONS**

Existing Law:

1) Requires a mental examination to be performed only by a licensed physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. (Civil Code of Procedures § 2032.020(c))

2) States that health, safety, and welfare of children is the court's primary concern when determining the best interests of children in child custody and visitation orders. (Family Code § 3020)

3) Permits the court, in a contested custody or visitation proceeding where the court determines it is in the best interests of the child, to appoint a child custody evaluator to conduct a child custody evaluation. (FC § 3111)

4) Requires court connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. (FC § 1816)

5) Requires the Judicial Council to adopt standards for child custody evaluations. (FC § 3117)

This Bill:

1) Requires allegations of physical or sexual abuse against a child to be investigated using methods for data collection and analysis consistent with requirements in current provisions of Rule of Court (FC §3027.3(a))

2) Requires the rules of evidence applicable in criminal proceeding as shall apply whenever the court considers an allegation of physical or sexual abuse against a child custody proceeding. (FC §3027(b))

3) States that unproven, nonscientific theories, including, but not limited to, alienation theories that assume that a child's report of physical or sexual abuse by one parent is influenced or fabricated by the other parent, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. (FC § 3027(c))

4) Prohibits a court, in any contested proceeding involving child custody or visitation rights, from relying upon an unproven, unscientific theory by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is the basis for that finding. (FC §3027.3(c))

5) States that nothing in this bill shall limit the consideration of actual evidence, behaviors, statements, or conduct by either parent or by the child. (FC § 3027.3(d))

6) Requires the Judicial Counsel to provide training consistent with this legislation. (FC §3027.3(e))

Comment:

1) **Author's Intent.** According to the author, this bill would correct instances where child custody evaluations were conducted improperly by using unscientific and unvalidated methods.

2) **Nonscientific Theories.** This bill prohibits the use of "unproven, nonscientific theories" in making a determination related a child custody proceeding. There is no definition of "unproven, nonscientific theory" as used in this bill, other than this theory includes "alienation theories that assume that a child's report of physical or sexual abuse by one parent is influenced or fabricated by the other parent." Parental alienation syndrome (PAS) and similar terms have been used over the past approximately twenty years to describe a child who has been "brainwashed" by one parent against another parent with little or no justification, and includes "the child's own contributions to the vilification of the target parent." It is described as "a disorder that arises primarily in the context of child custody disputes" and does not include true cases of parental abuse/neglect.[1]

   Articles on the topic have appeared in a number of peer-reviewed journals, including the American Journal of Family Therapy and the American Journal of Forensic Psychiatry. Additionally PAS has been recognized in the following court cases:

   - Coursey v. Superior Court, 194 Cal.App.3d 147,239 Cal.Rptr. 365 (Cal.App. 3 Dist., Aug 18, 1987.
   - John W. v. Phillip W., 41 Cal.App.4th 961, 48 Cal.Rptr.2d 899; 1996.
   - Valerie Edlund v. Gregory Hales, 66 Cal. App 4th 1454; 78 Cal. Rptr. 2d 671.

   Despite a growing body of literature, there are controversies regarding PAS, especially by mental health professionals. As stated in the American Journal of Forensic Psychiatry[2], "Critics of PAS argue that it:

   - Oversimplifies the causes of alienation
   - Leads to confusion in clinical work with alienated children
   - Lacks an adequate scientific foundation to be a syndrome."

   Additionally, the exclusion of a nonscientific label or diagnosis is consistent with basic California rule for admission of scientific evidence that the scientific basis and reliability must be generally accepted by recognized authorities in the relevant scientific field (People v. Kelly, 17 Cal. 3d 24, 31 (1976)). This is sometimes called the "Kelley/Frye" test. In August of 1999 the California Supreme Court reiterated the basic criteria of the Kelly/Frye test and

[1] *Basic Facts About Parental Alienation Syndrome*, Richard Gardner, May 31, 2001,
[2] *Current Controversies Regarding Parental Alienation Syndrome*. American Journal of Forensic Psychology, Vol. 19, No. 3, 2001, P. 29-59. Richard A. Warshak, Ph.D.

went on to state that courts may consider whether scientists "significant in number and expertise" publicly denounce the technique or theory as unreliable in evaluating the submitted evidence. (People v. Soto, 21 Cal.4th 512, 981 P.2d 958, 88 Cal. Rptr.2d 34 (Ca. 1999))

3) **Limiting Court's Discretion.** California employs the Kelly/Frye test (see discussion above) which provides a mechanism within the court system to address the concerns of this bill's proponents. The language in this bill would remove court discretion and it is unclear if, for instance, the court would be allowed to consider an opinion of an evaluator that a child was coached to make false allegations of abuse, even if that evaluator's opinion was based on an interview with the child in which the child discloses such influence explicitly. It is unclear how a court would determine whether the expert opinion is based solely on the child's statements or the parent's behavior, and not based in part upon a prohibited theory. .

4) **Previous Legislation and Board Action.** AB 612 (Ruskin) of 2007 was considered by this Committee and the Board. The Committee did not make a recommendation to the Board, and the full Board did not take a formal position on the legislation. In 2009, the Committee reviewed and discussed this bill, AB 612 (Beall) and made a recommendation to the Board to oppose this legislation. However, this bill was amended on May 5, 2009, removing content that affected Board jurisdiction, and therefore, the full Board did not take a position on the bill.

5) **Support and Opposition. (As of July 14, 2009)**

Support: Center for Judicial Excellence (Sponsor)
California Protective Parents Association (sponsor)

Opposition: Judicial Counsel
California Judges Association
Family Law Section of the State Bar
Association of Certified Family Law Specialists
Family Law Section of the Los Angeles County Bar Association
Association of Family Conciliation Courts
California Psychological Association
California Association of Marriage and Family Therapists

6) **History**

2009

July 14 In committee: Set, first hearing. Hearing canceled at the request of author.
July 6 In committee: Hearing postponed by committee.
June 28 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 11 Referred to Com. on JUD.
May 28 In Senate. Read first time. To Com. on RLS. for assignment.
May 28 Read third time, passed, and to Senate. (Ayes 80. Noes 0. Page 1739.)
May 26 Read second time. To third reading.
May 21 From committee: Do pass. (Ayes 15. Noes 0.) (May 20).
May 6 Re-referred to Com. on APPR.
May 5 Read second time and amended.
May 4 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 28).

Apr. 23 Re-referred to Com. on JUD.
Apr. 22 From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
Mar. 31 In committee: Hearing postponed by committee.
Mar. 16 Referred to Com. on JUD.
Feb. 26 From printer. May be heard in committee March 28.
Feb. 25 Read first time. To print.

ATTACHMENTS

A. Basic Facts About Parental Alienation Syndrome, Richard Gardner, May 31, 2001
B. Current Controversies Regarding Parental Alienation Syndrome. American Journal of Forensic Psychology, Vol. 19, No. 3, 2001, P. 29-59. Richard A. Warshak, Ph.D

Basic Facts About The Parental Alienation Syndrome

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DEFINITION OF THE PARENTAL ALIENATION SYNDROME

In association with this burgeoning of child-custody litigation, we have witnessed a dramatic increase in the frequency of a disorder rarely seen previously, a disorder that I refer to as the *parental alienation syndrome* (PAS). In this disorder we see not only programming ("brainwashing") of the child by one parent to denigrate the other parent, but self-created contributions by the child in support of the alienating parent's campaign of denigration against the alienated parent. Because of the child's contribution I did not consider the terms *brainwashing, programming,* or other equivalent words to be sufficient. Furthermore, I observed a cluster of symptoms that typically appear together, a cluster that warranted the designation *syndrome*. Accordingly, I introduced the term *parental alienation syndrome* to encompass the *combination* of these two contributing factors that contributed to the development of the syndrome (Gardner, 1985). In accordance with this use of the term I suggest this definition of the parental alienation syndrome:

> *The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.*

In the PAS, the alienating parent programs into the child's brain circuitry ideas and attitudes that are directly at variance with the child's previous experiences. In addition, PAS children frequently add their own scenarios to the campaign of denigration, from the recognition that their complementary contributions are desired by the programmer. The child's contributions are welcomed and reinforced by the programmer, resulting in even further contributions by the child. The result is an upwardly spiraling campaign of denigration. In mild cases the child is taught to disrespect, disagree with, and even act out antagonistically against the targeted parent. As the disorder progresses from mild to moderate to severe, this antagonism becomes converted and expanded into a campaign of denigration. The PAS diagnosis is based on the symptoms of the child, but the problem is clearly a family problem in that in each case there is one parent who is a programmer, another parent who is the alienated parent, and one or more children who exhibit the symptomatology. PAS children respond to the programming in

such a way that it appears that they have become completely amnesic for any and all positive and loving experiences they may have had previously with the targeted parent.

The term *PAS* is applicable *only* when the target parent has *not* exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the children. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the *exaggeration* of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child's responding alienation is warranted and the PAS diagnosis is *not* applicable. The term *parental alienation* would be applicable in such cases and justifiably so. However, without specifying the particular cause of the alienation the term is not particularly informative.

PARENTAL ALIENATION

Parental Alienation (PA) refers to the wide variety of symptoms that may result from or be associated with a child's alienation from a parent. Children may become alienated from a parent because of physical abuse, with or without sexual abuse. Children's alienation may be the result of parental emotional abuse, which may be overt in the form of verbal abuse or more covert in the form of neglect. (As will be described below PAS, as a form of emotional abuse, is also a type of parental alienation.) Children may become alienated as the result of parental abandonment. Ongoing parental acrimony, especially when associated with physical violence, may cause children to become alienated. Children may become alienated because of behavior exhibited by a parent that would be alienating to most people, e.g., narcissism, alcoholism, and antisocial behavior. Impaired parenting can also bring about children's alienation. A child may be angry at the parent who initiated the divorce, believing that that parent is solely to blame for the separation. These and many other parental behaviors can produce children's alienation, but none of them can justifiably be considered PAS.

IS PAS A TRUE SYNDROME ?

Some who prefer to use the term *parental alienation* (PA) claim that the PAS is not really a syndrome. This position is especially seen in courts of law in the context of child-custody disputes. A syndrome, by medical definition, is a cluster of symptoms, occurring together, that characterize a specific disease. The symptoms, although seemingly disparate, warrant being grouped together because of a common etiology or basic underlying cause. Furthermore, there is a consistency with regard to such a cluster in that most (if not all) of the symptoms appear together. The term *syndrome* is more specific than the related term *disease*. A disease is usually a more general term because there can be many causes of a particular disease. For example, pneumonia is a disease, but there are many types of pneumonia—e.g., pneumococcal pneumonia and bronchopneumonia—each of which has more

specific symptoms, and each of which could reasonably be considered a syndrome (although common usage may not utilize the term).

The syndrome has a purity because most (if not all) of the symptoms in the cluster predictably manifest themselves together as a group. Often, the symptoms appear to be unrelated, but they actually are because they usually have a common etiology. An example would be Down's Syndrome, which includes a host of seemingly disparate symptoms that do not appear to have a common link. These include mental retardation, mongoloid facies, drooping lips, slanting eyes, short fifth finger, and atypical creases in the palms of the hands. Down's Syndrome patients often look very much alike and most typically exhibit all these symptoms. The common etiology of these disparate symptoms relates to a specific chromosomal abnormality. It is this genetic factor that is responsible for linking together these seemingly disparate symptoms. There is then a primary, basic cause of Down's Syndrome: a genetic abnormality.

Similarly, the PAS is characterized by a cluster of symptoms that usually appear together in the child, especially in the moderate and severe types. These include:

1. A campaign of denigration

2. Weak, absurd, or frivolous rationalizations for the deprecation

3. Lack of ambivalence

4. The "independent-thinker" phenomenon

5. Reflexive support of the alienating parent in the parental conflict

6. Absence of guilt over cruelty to and/or exploitation of the alienated parent

7. The presence of borrowed scenarios

8. Spread of the animosity to the friends and/or extended family of the alienated parent

Typically, children who suffer with PAS will exhibit most (if not all) of these symptoms. However, in the mild cases one might not see all eight symptoms. When mild cases progress to moderate or severe, it is highly likely that most (if not all) of the symptoms will be present. This consistency results in PAS children resembling one another. It is because of these considerations that the PAS is a relatively "pure" diagnosis that can easily be made. Because of this purity, the PAS lends itself well to research studies because the population to be studied can usually be easily identified. Furthermore, I am confident that this purity will be verified by future interrater reliability studies. In contrast, children subsumed under the rubric PA are not likely to lend

themselves well to research studies because of the wide variety of disorders to which it can refer, e.g., physical abuse, sexual abuse, neglect, and defective parenting. As is true of other syndromes, there is in the PAS a specific underlying cause: programming by an alienating parent in conjunction with additional contributions by the programmed child. It is for these reasons that PAS is indeed a syndrome, and it is a syndrome by the best medical definition of the term.

In contrast, PA is not a syndrome, has no specific underlying cause, and the proponents of the term do not claim it is. Actually, PA can be viewed as a group of syndromes, which share in common the phenomenon of the child's alienation from a parent. To refer to PA as a group of syndromes would, by necessity, lead to the conclusion that the PAS is one of the syndromes subsumed under the PA rubric and would thereby weaken the argument of those who claim that PAS is not a syndrome.

THE PARENTAL ALIENATION SYNDROME AND "PARENTAL ALIENATION"

There are some who use the term *parental alienation* instead of *parental alienation syndrome*. Generally, these are individuals who know of the existence of the parental alienation syndrome but want to avoid using it because it may be considered in some circles to be "politically incorrect." But they are basically describing the same clinical entity. There are others who will use the term *parental alienation syndrome* but strictly avoid mentioning my name in association with it, lest they be somehow tainted. Unfortunately, the substitution of the term *parental alienation* for *parental alienation syndrome* can only result in confusion. *Parental alienation* is a more general term, whereas the *parental alienation syndrome* is a very specific subtype of parental alienation. Parental alienation has many causes, e.g., parental neglect, abuse (physical, emotional, and sexual), abandonment, and other alienating parental behaviors. All of these behaviors on the part of a parent can produce alienation in the children. The parental alienation syndrome is a specific subcategory of parental alienation that results from a combination of parental programming and the child's own contributions, and it is almost exclusively seen in the context of child-custody disputes. It is this particular combination that warrants the designation *parental alienation syndrome*. Changing the name of an entity because of political and other unreasonable considerations generally does more harm than good.

THE PARENTAL ALIENATION SYNDROME IS *NOT* THE SAME AS PROGRAMMING BRAINWASHING

It has come as a surprise to me from reports in both the legal and mental health literature that the definition of the PAS is often misinterpreted. Specifically, there are many who use the term as synonymous with parental brainwashing or programming. No reference is made to the child's own contributions to the victimization of the targeted parent. Those who do this have missed an extremely important point regarding the etiology,

manifestations, and even the treatment of the PAS. The term *PAS* refers *only* to the situation in which the parental programming is *combined with* the child's own scenarios of disparagement of the vilified parent. Were we to be dealing here simply with parental indoctrination, I would have simply retained and utilized the terms *brainwashing* and/or *programming*. Because the campaign of denigration involves the aforementioned *combination,* I decided a new term was warranted, a term that would encompass *both* contributory factors. Furthermore, it was the child's contribution that led me to my concept of the etiology and pathogenesis of this disorder. The understanding of the child's contribution is of importance in implementing the therapeutic guidelines described in this book.

THE RELATIONSHIP BETWEEN THE PARENTAL ALIENATION SYNDROME AND BONA FIDE ABUSE AND/OR NEGLECT

Unfortunately, the term *parental alienation syndrome* is often used to refer to the animosity that a child may harbor against a parent who has *actually* abused the child, especially over an extended period. The term has been used to apply to the major categories of parental abuse: physical, sexual, and emotional. Such application indicates a misunderstanding of the PAS. The term *PAS* is applicable *only* when the target parent has *not* exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the child. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the *exaggeration* of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child's responding alienation is warranted and the PAS diagnosis is *not* applicable.

Programming parents who are accused of inducing a PAS in their children will sometimes claim that the children's campaign of denigration is warranted because of bona fide abuse and/or neglect perpetrated by the denigrated parent. Such indoctrinating parents may claim that the counteraccusation by the target parent of PAS induction by the programming parent is merely a "cover-up," a diversionary maneuver, and indicates attempts by the vilified parent to throw a smoke screen over the abuses and/or neglect that have justified the children's acrimony. There are some genuinely abusing and/or neglectful parents who will indeed deny their abuses and rationalize the children's animosity as simply programming by the other parent. This does not preclude the existence of truly innocent parents who are indeed being victimized by an unjustifiable PAS campaign of denigration. When such cross-accusations occur—namely, bona fide abuse and/or neglect versus a true PAS—it behooves the examiner to conduct a detailed inquiry in order to ascertain the category in which the children's accusations lie, i.e., true PAS or true abuse and/or neglect. In some situations, this differentiation may not be easy, especially when there has been some abuse and/or neglect and the PAS has been superimposed upon it, resulting thereby in much more deprecation than would be justified in this situation. It is for this reason that

detailed inquiry is often crucial if one is to make a proper diagnosis. Joint interviews, with all parties in all possible combinations, will generally help uncover "The Truth" in such situations.

THE PARENTAL ALIENATION SYNDROME AS A FORM OF CHILD ABUSE

It is important for examiners to appreciate that a parent who inculcates a PAS in a child is indeed perpetrating a form of *emotional abuse* in that such programming may not only produce lifelong alienation from a loving parent, but lifelong psychiatric disturbance in the child. A parent who systematically programs a child into a state of ongoing denigration and rejection of a loving and devoted parent is exhibiting complete disregard of the alienated parent's role in the child's upbringing. Such an alienating parent is bringing about a disruption of a psychological bond that could, in the vast majority of cases, prove of great value to the child—the separated and divorced status of the parents notwithstanding. Such alienating parents exhibit a serious parenting deficit, a deficit that should be given serious consideration by courts when deciding primary custodial status. Physical and/or sexual abuse of a child would quickly be viewed by the court as a reason for assigning primary custody to the nonabusing parent. Emotional abuse is much more difficult to assess objectively, especially because many forms of emotional abuse are subtle and difficult to verify in a court of law. The PAS, however, is most often readily identified, and courts would do well to consider its presence a manifestation of emotional abuse by the programming parent.

Accordingly, courts do well to consider the PAS programming parent to be exhibiting a serious parental deficit when weighing the pros and cons of custodial transfer. I am not suggesting that a PAS-inducing parent should automatically be deprived of primary custody, only that such induction should be considered a serious deficit in parenting capacity—a form of emotional abuse—and that it be given serious consideration when weighing the custody decision. In this book, I provide specific guidelines regarding the situations when such transfer is not only desirable, but even crucial, if the children are to be protected from lifelong alienation from the targeted parent.

"THE PARENTAL ALIENATION SYNDROME DOES NOT EXIST BECAUSE IT IS NOT IN DSM-IV"

There are some, especially adversaries in child-custody disputes, who claim that there is no such entity as the PAS, that it is only a theory, or that it is "Gardner's theory." Some claim that I invented the PAS, with the implication that it is merely a figment of my imagination. The main argument given to justify this position is that it does not appear in DSM-IV. The DSM committees justifiably are quite conservative with regard to the inclusion of newly described clinical phenomena and require many years of research and publications before considering inclusion of a disorder, and this is as it should be. The PAS exists! Any lawyer involved in child-custody disputes will attest to that fact. Mental health and legal professionals involved in such disputes must

be observing it. They may not wish to recognize it. They may give it another name (like "parental alienation"). But that does not preclude its existence. A tree exists as a tree regardless of the reactions of those looking at it. A tree still exists even though some might give it another name. If a dictionary selectively decides to omit the word *tree* from its compilation of words, that does not mean that the tree does not exist. It only means that the people who wrote that book decided not to include that particular word. Similarly, for someone to look at a tree and say that the tree does not exist does not cause the tree to evaporate. It only indicates that the viewer, for whatever reason, does not wish to see what is right in front of him (her). To refer to the PAS as "a theory" or "Gardner's theory" implies the nonexistence of the disorder. It implies that it is a figment of my imagination and has no basis in reality. To say that PAS does not exist because it is not listed in DSM-IV is like saying in 1980 that AIDS does not exist because it is not listed in standard diagnostic medical textbooks. The PAS is not a theory, it is a fact. My ideas about its etiology and psychodynamics might very well be called theory. The crucial question then is whether my theory regarding the etiology and psychodynamics of the PAS is reasonable, and whether my ideas fit in with the facts. This is something for the readers of this book to decide.

But why this controversy in the first place? With regard to whether PAS exists, we generally do not see such controversy regarding most other clinical entities in psychiatry. Examiners may have different opinions regarding the etiology and treatment of a particular psychiatric disorder, but there is usually some consensus about its existence. And this should especially be the case for a relatively "pure" disorder such as the PAS, a disorder that is easily diagnosable because of the similarity of the children's symptoms when one compares one family with another. Over the years, I have received many letters from people who have essentially said: "Your PAS book is uncanny. You don't know me and yet I felt that I was reading my own family's biography. You wrote your book before all this trouble started in my family. It's almost like you predicted what would happen." Why, then, should there be such controversy over whether or not PAS exists?

One explanation lies in the situation in which the PAS emerges and in which the diagnosis is made: vicious child-custody litigation. Once an issue is brought before a court of law—in the context of adversarial proceedings—it behooves one side to take just the opposite position from the other, if one is to prevail in that forum. A parent accused of inducing a PAS in a child is likely to engage the services of a lawyer who may invoke the argument that there is no such thing as a PAS. And if this lawyer can demonstrate that the PAS is not listed in DSM-IV, then the position is considered "proven." The only thing this proves to me is that DSM-IV has not yet listed the PAS. It also proves the low levels to which members of the legal profession will stoop in order to zealously support their client's position, no matter how ludicrous their arguments and how destructive they are to the children.

An important factor operative in the PAS not being listed in DSM-IV relates to political issues. Things that are "hot" and "controversial" are not likely to get the consensus that more neutral issues enjoy. As I will elaborate upon below,

the PAS has been dragged into the political-sexual arena, and those who would support its inclusion in DSM-IV are likely to find themselves embroiled in vicious controversy and the object of scorn, rejection, and derision. The easier path, then, is to avoid involving oneself in such inflammatory conflicts, even if it means omitting from DSM one of the more common childhood disorders.

The PAS is a relatively discrete disorder and is more easily diagnosed than many of the other disorders in DSM-IV. At this point, articles are coming forth and it is being increasingly cited in court rulings. Articles about PAS in the scientific literature will be cited throughout the course of this book. Court rulings in which the PAS is cited are also appearing with increasing frequency. I continue to list these on my website as they appear (http://www.rgardner.com/refs). My hope is that by the time committees are formed for the preparation of DSM-V, the committee(s) evaluating for inclusion will see fit to include the PAS and have the courage to withstand those holdouts who, for whatever reason, need to deny the reality of the world. It may interest the reader to note that if PAS is ultimately included in the DSM, its name will be changed to include the term *disorder,* the current label utilized for psychiatric illnesses that warrant inclusion. It might very well have its name changed to *parental alienation disorder*.

"PEOPLE WHO DIAGNOSE PARENTAL ALIENATION SYNDROME ARE SEXIST"

Another reason for the controversy regarding the existence of the PAS relates to the fact that in the vast majority of families it is the mother who is likely to be the primary programmer and the father the victim of the children's campaign of denigration. My own observations since the early 1980s, when I first began to see this disorder, has been that in 85–90 percent of all the cases in which I have been involved, the mother has been the alienating parent and the father has been the alienated parent. For simplicity of presentation, then, I have often used the term *mother* to refer to the alienator, and the term *father* to refer to the alienated parent. I recently conducted an informal survey among approximately 50 mental health and legal professionals whom I knew were aware of the PAS and deal with such families in the course of their work. I asked one simple question: What is the ratio of mothers to fathers who are successful programmers of a PAS? The responses ranged from mothers being the primary alienators in 60 percent of the cases to mothers as primary alienators in 90 percent of the cases. Only one person claimed it was 50/50, and no one claimed it was 100 percent mothers. In the 1998 edition of my book *The Parental Alienation Syndrome* (especially Chapter Five) I discuss this gender difference in greater detail and provide references in the scientific literature confirming the preponderance of mothers over fathers in inducing successfully a PAS in their children.

In recent years it has become "politically risky" and even "politically incorrect" to describe gender differences. Such differentiations are acceptable for such disorders as breast cancer and diseases of the uterus and ovaries. But once

one moves into the realm of personality patterns and psychiatric disturbances, one is likely to be quickly branded a "sexist" (regardless of one's sex). And this is especially the case if it is a man who is claiming that a specific psychiatric disorder is more likely to be prevalent in women. My observations that PAS inducers are much more likely to be women than men has subjected me to this criticism. The fact that most other professionals involved in child-custody disputes have had the same observation still does not protect me from the criticism that this is a sexist observation. The fact that I recommend that most mothers who are inducing a PAS should still be designated the primary custodial parent does not seem to protect me from this criticism.

My basic position regarding custodial preference has always been that the primary consideration in making a custodial recommendation is that the children should be preferentially assigned to that parent with whom they have the stronger, healthier psychological bond. Because the mother has most often been the primary caretaker, and because the mother is more often available to the children than the father (I am making no comments as to whether this is good or bad, only that this is what *is*), she is most often designated the preferable primary custodial parent by courts of law. Somehow this position has been converted by some critics into sexism *against* women.

THE PARENTAL ALIENATION SYNDROME AND SEX-ABUSE ACCUSATIONS

A false sex-abuse accusation is sometimes seen as a derivative or spin-off of the PAS. Such an accusation may serve as an extremely effective weapon in a child-custody dispute. Obviously, the presence of such false accusations does not preclude the existence of bona fide sex abuse, even in the context of a PAS.

In recent years, some examiners have been using the term PAS to refer to a false sex-abuse accusation in the context of a child-custody dispute. In some cases the terms are used synonymously. This is a significant misperception of the PAS. In the majority of cases in which a PAS is present, the sex-abuse accusation is not promulgated. In some cases, however, especially after other exclusionary maneuvers have failed, the sex-abuse accusation will emerge. The sex-abuse accusation, then, is often a spin-off, or derivative, of the PAS but is certainly not synonymous with it. Furthermore, there are divorce situations in which the sex-abuse accusation may arise without a preexisting PAS. Under such circumstances, of course, one must give serious consideration to the possibility that true sex abuse has occurred, especially if the accusation antedated the marital separation.

Another factor operative in the need to deny the existence of the PAS, and relegate it to the level of being only a "theory," is its relationship to sex-abuse accusations. I mention frequently throughout the course of this book that a sex-abuse accusation is a possible spin-off or derivative of the PAS. My experience has been that the sex-abuse accusation does not appear in the vast majority of PAS cases. There are some, however, who equate the PAS

with a sex-abuse accusation, or a false sex-abuse accusation. My experience has been that when a sex-abuse accusation emerges in the context of a PAS—especially after the failure of a series of exclusionary maneuvers—the accusation is far more likely to be false than true. Claiming that a sex-abuse accusation may be false also has potentially been politically risky in recent years and not "politically correct." Those of us who have stood up and made such claims, both within and outside of the realm of the PAS, have subjected ourselves to enormous criticism—often impassioned and irrational. My experience has been that sex-abuse accusations that arise within the context of PAS situations are more likely to be directed toward men than women. Accordingly, in sex-abuse cases *in the context of custody disputes* I am more likely to testify in support of the man. This somehow proves me "sexist." The fact that I have most often testified in support of women to be designated the primary custodial parent—even when there has been a sex-abuse accusation—does not seem to dispel this myth.

RECOGNITION OF PAS IN COURTS OF LAW

Some who hesitate to use the term PAS claim that it has not been accepted in courts of law. This is not so. Although there are certainly judges who have not recognized the PAS, there is no question that courts of law with increasing rapidity are recognizing the disorder. My website (www.rgardner.com/refs) currently cites 51 cases in which the PAS has been recognized. By the time this article is published, the number of citations will certainly be greater. Furthermore, I am certain that there are other citations that have not been brought to my attention.

It is important to note that on January 30, 2001, after a two-day hearing devoted to whether the PAS satisfied Frye Test criteria for admissibility in a court of law, a Tampa, Florida court ruled that the PAS had gained enough acceptance in the scientific community to be admissible in a court of law (Kilgore v. Boyd, 2001). This ruling was subsequently affirmed by the District Court of Appeals (February 6, 2001). In the course of those two days of testimony, I brought to the court’s attention the more than 100 peer-reviewed articles (there are 106 at the time of this writing) by approximately 100 other authors and over 40 court rulings (there are 50 at the time of this writing) in which the PAS had been recognized (www.rgardner.com/refs). I am certain that these publications played an important role in the judge’s decision. This case will clearly serve as a precedent and facilitate the admission of the PAS in other cases—not only in Florida, but elsewhere.

Whereas there are some courts of law that have not recognized PAS, there are far fewer courts that have not recognized PA. This is one of the important arguments given by those who prefer the term PA. They do not risk an opposing attorney claiming that PA does not exist or that courts of law have not recognized it. There are some evaluators who recognize that children are indeed suffering with a PAS, but studiously avoid using the term in their reports and courtroom, because they fear that their testimony will not be

admissible. Accordingly, they use PA, which is much safer, because they are protected from the criticisms so commonly directed at those who use PAS. Later in this article I will detail the reasons why I consider this position injudicious.

Many of those who espouse PA claim not to be concerned with the fact that their more general construct will be less useful in courts of law. Their primary interest, they profess, is the expansion of knowledge about children's alienation from parents. Considering the fact that the PAS is primarily (if not exclusively) a product of the adversary system, and considering the fact that PAS symptoms are directly proportionate to the intensity of the parental litigation, and considering the fact that it is the court that has more power than the therapist to alleviate and even cure the disorder, PA proponents who claim unconcern for the long-term legal implications of their position is injudicious and, I suspect, specious.

WHICH TERM TO USE IN THE COURTROOM: PA OR PAS?

Many examiners, then, even those who recognize the existence of the PAS, may consciously and deliberately choose to use the term parental alienation in the courtroom. Their argument may go along these lines: "I fully recognize that there is such a disease as the PAS. I have seen many such cases and it is a widespread phenomenon. However, if I mention PAS in my report, I expose myself to criticism in the courtroom such as, 'It doesn't exist,' 'It's not in DSM-IV' etc. Therefore, I just use PA, and no one denies that." I can recognize the attractiveness of this argument, but I have serious reservations about this way of dealing with the controversy-especially in a court of law.

As mentioned earlier, there are many causes of parental alienation, e.g., physical abuse, emotional abuse, sexual abuse, neglect, and a wide variety of other parental behaviors that will justifiably alienate children. But there is another reason why children can become alienated from a parent, namely, being programmed into a campaign of denigration by an alienating parent. The disorder so produced, parental alienation syndrome, is also a form of parental alienation. In short, the PAS is one subtype of parental alienation. To call PAS PA cannot but produce confusion because it equates a pure clinical entity (PAS) with a generic term (PA) under which is subsumed a wide variety of clinical entities. One reason why medicine has progressed is that we have become ever more discriminating regarding the various subtypes that exist for any particular disease. One of the reasons why Hippocrates is known as "The Father of Medicine" is that he was one of the first to make such differentiations. Prior to his time people suffered with "fits." It was he who recognized that there were different kinds of fits, each requiring a different form of treatment. One form of fits he referred to as epilepsy. Another he referred to as hysteria. His group was astute enough to recognize the differences between these different kinds of fits and provided different kinds of treatment. Three hundred years ago people suffered with "heart disease." Now, we know that there are many different kinds of heart disease, each

requiring its own form of treatment. One would not want to go to a doctor today who makes the diagnosis of fits and heart disease and does not go any further. We want specifics. Similarly, saying that a child has "parental alienation" gives very little information. Anyone can observe that-the clients, the mother, the father, both lawyers, the guardian ad litem, and the judge. We want to define specifically the type of the alienation, and PAS is just one possible type. We are then in a far better position to provide specific treatment. Those who eschew the term PAS, for whatever reason, but embrace the term PA, are equivalent to those who would diagnose fits and heart disease without identifying the specific subtype with which the patient is suffering. Accordingly, using PA does not represent progression, it represents regression.

Using the term PAS identifies a specific programmer. In contrast, using PA clearly indicates that the children are alienated and that either parent could have exhibited behavior that could have resulted in the alienation. The term, then, removes the court's focus away from the alienator and redirects attention to what might be only minor parental deficiencies exhibited by the alienated parent. Substituting PA for PAS is, therefore, a disservice to the targeted parent. If the examiner is a mental health professional (most often the case), then the utilization of PA under these circumstances is an abrogation of one's professional responsibilities to do what is best for the patient or client. Using PA is basically a terrible disservice to the PAS family because the cause of the children's alienation is not properly identified. It is also a compromise in one's obligation to the court, which is to provide accurate and useful information so that the court will be in the best position to make a proper ruling. Using PA is an abrogation of this responsibility; using PAS is in the service of fulfilling this obligation.

Furthermore, evaluators who use PA instead of PAS are losing sight of the fact that they are impeding the general acceptance of the term in the courtroom. This is a disservice to the legal system, because it deprives the legal network of the more specific PAS diagnosis that could be more helpful to courts for dealing with such families. Moreover, using the PA term is shortsighted because it lessens the likelihood that some future edition of DSM will recognize the subtype of PA that we call PAS. This not only has diagnostic implications, but even more importantly, therapeutic implications. The diagnoses included in the DSM serve as a foundation for treatment. The symptoms listed therein serve as guidelines for therapeutic interventions and goals. Insurance companies (who are always quick to look for reasons to deny coverage) strictly refrain from providing coverage for any disorder not listed in the DSM. Accordingly, PAS families cannot expect to be covered for treatment. Elsewhere (Gardner, 1998) I describe additional diagnoses that are applicable to the PAS, diagnoses that justify requests for insurance coverage. Examiners in both the mental health and legal professions who genuinely recognize the PAS, but who refrain from using the term until it appears in DSM, are lessening the likelihood that it will ultimately be included because widespread utilization is one of the criteria that DSM committees consider. Such restraint, therefore, is an abrogation of their responsibility to contribute to the enhancement of knowledge in their professions. The PAS manifests the

kind of specificity that is one of the hallmarks of the expansion of knowledge and progression. PA clouds specificity, which is one of the hallmarks of intellectual stagnation and even regression.

There is, however, a compromise. I use PAS in all those reports in which I consider the diagnosis justified. I also use the PAS term throughout my testimony. However, I sometimes make comments along these lines, both in my reports and in my testimony:

"Although I have used the term PAS, the important questions for the court are: Are these children alienated? What is the cause of the alienation? and What can we then do about it? So if one wants to just use the term PA, one has learned something. But we haven't really learned very much, because everyone involved in this case knows well that the children have been alienated. The question is what is the cause of the children's alienation? In this case the alienation is caused by the mother's (father's) programming and something must be done about protecting the children from the programming. That is the central issue for this court in this case, and it is more important than whether one is going to call the disorder PA or PAS, even though I strongly prefer the PAS term for the reasons already given."

I wish to emphasize that I do not routinely include this compromise, because whenever I do so I recognize that I am providing support for those who are injudiciously eschewing the term and compromising thereby their professional obligations to their clients and the court.

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May 31, 2001

American Journal of Forensic Psychology, Volume 19, No. 3, 2001, p. 29-59

CURRENT CONTROVERSIES REGARDING PARENTAL ALIENATION SYNDROME

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Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters. This article draws on the relevant literature to examine the main controversies surrounding the use of the term PAS by mental health professionals. The focus is on controversies regarding the conceptualization of the problem of alienated children, the reliability and validity of PAS, and the treatment of PAS. Some attention is given to issues relevant to the admissibility of expert testimony on PAS, such as the use of the term "syndrome," the question of whether PAS has passed peer review, and whether PAS enjoys general acceptance in the relevant professional community.

Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters (1, 2). Proponents of the term believe it: 1) accurately describes a subset of children whose unreasonable alienation from a parent results, in large measure, from the influence of the other parent; 2) assists in recognizing, understanding, and treating this group of children; and 3) describes a cluster of behaviors displayed by these children which warrants the designation “syndrome.” They regard the term as helpful to courts in deciding the best interests of children and believe that testimony regarding PAS should be admissible.

Critics of PAS argue that it: 1) oversimplifies the causes of alienation, 2) leads to confusion in clinical work with alienated children, and 3) lacks an adequate scientific foundation to be considered a syndrome. They argue that the term is misused in court and that testimony regarding this diagnosis, its course, and its treatment should be inadmissible.

This article examines the main controversies surrounding the use of the term PAS by mental health professionals. It focuses on controversies in the mental health profession, including conceptualization, empirical research, and treatment issues. The article gives some attention to certain issues relevant to the admissibility of expert testimony on PAS, such as the use of the term “syndrome” and the issues of peer review and general acceptance among clinicians, but this article does not purport to provide a comprehensive treatment of this area.

WHAT IS PARENTAL ALIENATION SYNDROME?

Parental alienation syndrome refers to a disturbance whose primary manifestation is a child’s unjustified campaign of denigration against, or rejection of, one parent, due to the influence of the other parent combined with the child’s own contributions (3, 4). Note three essential elements in this definition: 1) rejection or denigration of a parent that reaches the level of a campaign, i.e., it is persistent and not merely an occasional episode; 2) the rejection is unjustified, i.e., the alienation is not a reasonable response to the alienated parent’s behavior; and 3) it is a partial result of the non-alienated parent’s influence. If either of these three elements is absent, the term PAS is not applicable.

Some of the controversy over PAS results from the failure to consider the second and third elements as integral aspects of the concept. Attorneys, therapists, and parents may falsely

conclude that a child suffers from PAS based only on the first element—the child's negative behavior. This reflects an inadequate understanding of the concept. Some critics of PAS make the same mistake (5-8; see 9 for Gardner's rebuttal). They equate PAS with only the first element, attack this straw man concept, and conclude that PAS leads to confusion and misuse when they are themselves confused about the concept. Before concluding that PAS is present, in addition to the child's alienation, it must be established that the alienation is irrational, and is influenced by the favored parent. Properly understood, a clinician using the term PAS does not automatically assume that the favored parent has influenced a child's alienation from the other parent. Rather, the term PAS is used to describe only those children who are 1) alienated, 2) irrationally, 3) under the influence of the favored parent. PAS does not apply in the absence of evidence for all three elements.

Child psychiatrist Richard A. Gardner, M.D. introduced the term in 1985, but he was not the first to describe this phenomenon (10). In 1949, psychoanalyst Wilhelm Reich wrote about parents who seek "revenge on the partner through robbing him or her of the pleasure in the child" (11; p. 265). And in 1980, Wallerstein and Kelly described children in their research project who "were particularly vulnerable to being swept up into the anger of one parent against the other. They were faithful and valuable battle allies in efforts to hurt the other parent. Not infrequently, they turned on the parent they had loved and been very close to prior to the marital separation" (12; p.77).

Despite these earlier descriptions, it was Gardner's detailed account of the origin, course, and manifestations of the phenomenon, along with his guidelines for intervention by courts and therapists, that captured the attention of the mental health and legal professions and stimulated the growing literature on the topic (for a review see 1, 2, 13; for a comprehensive list of publications see 14). Along with the study and elucidation of PAS, controversy remains about how to conceptualize, label, and treat this phenomenon.

CONCEPTUALIZING PAS

To establish a new diagnostic category, we must establish that: 1) the phenomenon exists; 2) it is a disturbance or deviation from the norm; and 3) its symptoms warrant a separate diagnosis and cannot more reasonably be subsumed under a previously existing category.

Most mental health and legal professionals agree that some children whose parents divorce develop extreme animosity toward one parent that is not justified by that parent's behavior and, to some extent, is promulgated or supported by the other parent. That such children exist is not a point of contention in the social science literature. At issue is whether we should regard this type of disturbance as abnormal, and if so, whether a separate diagnosis for these children provides significant benefits beyond already existing labels, and whether PAS is the best way to conceptualize and label this disturbance.

Is a Child's Unreasonable Alienation Normal?

Though it might seem an obvious point, not everyone agrees that a child's unreasonable denigration and rejection of a parent should be considered an abnormal development worthy of professional attention. One author believes it is possible that parental alienation is a normal part of growing up (15). She argued that we have no basis for regarding parental alienation as abnormal because we lack normative data from intact and low-conflict divorced families, i.e., we lack research on the prevalence of this phenomenon.

The position that it might be normal for children to be alienated from their parents is inconsistent

with the scientific literature. It overlooks research on children's adjustment in divorced families and on healthy parent-child relations in intact families.

The literature on the effects of parent conflict on children documents the harm to children who are caught in the middle of the conflict, as in situations where they are encouraged to side with one parent against the other (16). Studies of children's attitudes about their parents' divorce consistently reveal that most children long for more time with each parent and wish their parents would reunite (12, 17-19). One study, for example, reported that regardless of custodial status, 84% of children longed for their divorced parents' reconciliation (17; p. 41). The desire to be with a parent is normative, not the desire to avoid a parent.

Regarding intact families, the research is clear that the type of denigration, hatred and fear characteristic of PAS is foreign to most intact families and would be considered a symptom worthy of treatment (20). Even in clinical samples with children who are enmeshed with one parent, usually the mother, the children still tolerate their father. I am unaware of any reports in the literature, nor any therapeutic programs, in which a parent in an intact family, who is not guilty of child abuse or gross mistreatment, is advised to cut off contact with the children in response to conflicted parent-child relationships. Instead, articles and books on treatment suggest strategies for helping the family understand and heal ruptured parent-child relationships.

Alternative Models of the Problem of Alienated Children

The consensus that a child's unreasonable alienation from a parent is a problem does not extend to the issue of how to conceptualize the problem. Wallerstein finds the term PAS unnecessary and believes that the problem is subsumed under her concept of "overburdened children" who must attend to the needs of disturbed parents at the expense of their own psychological development (2, 21). She does, however, introduce the term "Medea Syndrome" to refer to vindictive parents who destroy their child's relationship with the ex-spouse (21). Other authors conceptualize the phenomenon as a vulnerable child's maladaptive reaction to a high conflict divorce (22). This "high conflict model" accepts the utility of a separate classification for alienated children. It uses terms such as "unholy alliances" and "extreme forms of parent alienation" in place of PAS (23; pp. 174, 202). The high conflict model differs from Gardner's conceptualization in that greater emphasis is placed on the child's psychological vulnerabilities and the contributions of the entire family system to the child's alienation. By contrast, some authors place greater emphasis on the behavior of alienating parents and distinguish their destructive behavior (labeled "parent alienation") from PAS which is one possible outcome of such behavior (24).

Kelly and Johnston expressed concern that PAS oversimplifies the causes of alienation and that Gardner's formulation leads to confusion and misuse in litigation (25). To remedy these flaws, they drew on their considerable clinical and mediation experience with divorced families to propose a reformulation of PAS which they call "the alienated child" (hereinafter referred to as the AC model).

The AC model defines an alienated child as one who "expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent" (25). This definition retains two of the three essential elements in the concept of PAS. The free and persistent expression of negative feelings corresponds to the campaign of denigration. And the unreasonableness of the feelings corresponds to the alienation being unjustified. The third element of PAS, the influence of the alienating parent, is not part of the definition of an alienated child. The omission is deliberate. The AC model notes that the manipulations of one parent are

insufficient to explain alienation because some children resist attempts to undermine their affection for a parent. Thus, other factors must play a role, and this model emphasizes the importance of multiple interrelated factors in the etiology of alienation. The AC model organizes these "alienating processes" into background factors that directly or indirectly affect the child, and intervening variables that influence the child's response to the background factors. Examples of background factors are a history of the parents involving the children in severe marital conflict, the circumstances surrounding the separation and divorce, and the child's cognitive capacity and temperament. Examples of intervening variables are each parent's behavior, sibling relationships, and the child's vulnerabilities.

Comparison of Parental Alienation Syndrome and the Alienated Child Model

In their critique, Kelly and Johnston characterize PAS as focusing almost exclusively on the alienating parent as the cause of the child's alienation. This characterization is not entirely accurate. Even the definition of PAS refers to the influence of the other parent combined with the child's own contributions. Gardner discusses several factors within children that lead to their joining with one parent in denigrating the other. To a lesser extent he discusses why some children are able to resist an alienating parent's influence and maintain affection for both parents.

In addition to the contributions of the child, the literature on PAS has repeatedly and clearly identified contributions of people in addition to the alienating parent, including the alienated parent, new partners, therapists, custody evaluators, and relatives (2, 3, 26-32). Particularly in his earlier work, though, Gardner did give less emphasis to the role of the alienated parent. His recent work elaborates on the contributing behaviors of alienated parents, particularly in terms of their passivity, but he continues to regard alienating parents' contributions as primary (33). In some respects, Gardner, who is a physician, has cast PAS in a medical model. By contrast, Kelly, a psychologist, and Johnston, a sociologist, prefer a family systems approach which gives more detailed attention to a wider range of factors without labeling any as primary.

The reformulation of PAS was also a response to its misuse in litigation. Specific concerns are that children are diagnosed with PAS who are not truly alienated or whose alienation is warranted by the history of their relationship to the alienated parent (3; pp. xx, xxviii, 13, 25, 30, 34, 35).

In some cases alienation is confused with situations in which a child prefers, or feels more comfortable with, one parent, or is significantly aligned with one parent, but still seeks to maintain a relationship with the other (25). In other cases a child may resist spending time with a parent, but is neither alienated nor acting under the influence of the other parent (13, 30, 34, 35). Such a child may exhibit hostility and apparent rejection of a parent that: 1) is temporary and short-lived rather than chronic, 2) is occasional rather than frequent; 3) occurs only in certain situations, 4) coexists with expressions of genuine love and affection, and 5) is directed at both parents (35). Situations that meet these criteria include some 'normal reactions to divorce, developmentally normal separation anxiety, the behavior of difficult or troubled children, attempts to avoid exchanges that occur in an explosive climate, a concern about a parent's emotional state when left alone, and situation specific reactions, such as a teenager who refuses to be around a new stepparent (34, 35).

Alienation may be justified in cases where a child is physically or sexually abused; witnesses domestic violence, frightening displays of rage, or the aftermath of violence; or suffers severe emotional abuse, neglect, abandonment, or very poor treatment by a chronically angry, rigidly punitive, extremely self-centered, or substance-abusing parent (25, 34, 35).

Gardner is clear that such situations do not constitute PAS, and he has expressed concern about the misuse of PAS (3). He gives considerable attention to distinguishing between PAS and alienation that is a response to parental abuse or neglect (36). And, without going into detail, he recognizes that children resist contact with a parent for a variety of reasons other than PAS, and that PAS is not the same as the situation where a child aligns with one parent without participating in a campaign of denigration against the other parent. The AC model gives much more specific attention to these categories than does Gardner, although articles by other authors working within the PAS framework have addressed these categories (13, 30, 34).

The AC model provides a detailed and organized description of behaviors which clarifies the distinction between alienated children and non-alienated children who show an affinity for, or strongly align with, one parent, while still maintaining a relationship with the other parent (25). In addition, the AC model gives examples of factors that can lead children to develop such affinities and alignments. By introducing specific terms to denote the categories of behavior that resemble and may be mistaken for PAS, and delineating the behaviors of children in each of these categories, the AC model may facilitate a welcome reduction in the incidence of PAS misdiagnosis and misuse. This would represent a substantial contribution that results in wiser clinical and judicial decisions.

What is unclear, however, is whether the term “alienated child” provides significant advantages over PAS. Until Gardner’s initial work on PAS, the divorce research literature made only occasional mention of children alienated from, or rejecting, a parent. The term, PAS, has proved useful in facilitating communication among clinicians and fostering numerous publications in peer-review journals. At last count there were 108 publications that focused significantly or exclusively on PAS and alienated children. Most of these were in peer-review journals, some were book chapters, and a very few were by authors who have subsequently withdrawn their support for the term PAS. Because of space considerations; the reader is referred elsewhere for a list of PAS reference citations in addition to those cited in this article (1, 2, 14).

It is possible to adopt a family systems theory of PAS, and to differentiate the various reasons for children’s rejection of parents, while retaining the familiar term PAS to denote children whose denigration and rejection goes beyond “alignment” and is not a reasonable response to the rejected parent’s behavior (30, 34).

Dropping the term “syndrome” when referring to irrationally alienated children, and limiting oneself to behavioral descriptions, does avoid legal issues surrounding the admissibility of expert testimony on PAS. But it is not clear how changing the term from PAS to “alienated child” would lead to fewer misidentifications of children who are unreasonably alienated from a parent. As with PAS, the term “alienated child” can be misapplied to children who are not alienated, or whose alienation is warranted.

In one respect, the terms proposed in the AC model may result in more confusion. Kelly and Johnston use the term “estrangement” to refer to alienation that is a realistic response to parental behavior, such as occurs in cases of parental abuse. They contrast this with “alienation” that is not a realistic response. This may be confusing because the terms “estrange” and “alienate” are synonyms.

The first definition in the dictionary under the entry “alienate” is “to make indifferent or averse; estrange” and the entry offers this sentence as an illustration: “He has alienated his entire family” (37; p. 37). The dictionary entry for “alienation of affections” is: “Law, the estrangement by a third person of one spouse from the other” (37; p.37). The first entry for “estrange” is “to turn away in feeling or affection; alienate the affections of” (37; p. 488). And the definition of

"estranged" is "displaying or evincing a feeling of alienation; alienated" (37; p. 488). The use of synonyms to describe these two distinct types of alienation (reasonable versus unreasonable) invites confusion, particularly as the concepts leave the arena of mental health professionals and are used in legal circles and the popular press. Though intended to draw a clear distinction, the synonymous terms may inadvertently obscure the difference. It would be useful to have a label to refer to children whose alienation from a parent is reasonable, but "estranged" is probably not the best candidate.

Before leaving this discussion, it should be noted that neither Gardner nor Kelly and Johnston have proposed a term to refer to children whose severe alienation is not warranted by the rejected parent's behavior, but who have come to be alienated in the absence of manipulations by the favored parent. Some aligned parents of alienated children agree that the other parent has done nothing to warrant the child's extreme rejection, but they also deny having contributed to the alienation and profess great concern over their child's disturbed behavior toward the rejected parent. For the sake of conceptual clarity, it makes sense to designate a term to describe this phenomenon. A possible candidate is the phrase "child-driven alienation" which has been used to describe children whose unreasonable rejection of a parent is a misguided way of coping with difficult feelings (35). The absence of a separate term for these children may be less of a problem for the AC model because it would apparently categorize such a child as alienated, with no particular assumption about the contributing factors. According to the definition of PAS, however, without the contributions of the alienating parent such a child would not fit the category of PAS.

On balance, the two formulations appear more similar than different. Both agree that some children become alienated without adequate justification, and both regard this phenomenon as a disturbance rather than a type of normal development. Both agree on how to recognize this disturbance and on how to distinguish it from alienation that is a realistic response to parental mistreatment.

Despite using different terms, both agree on the behaviors which characterize aligned parents and pathologically alienated children. In fact, the list of symptoms is nearly identical. They differ on the name given to the phenomenon, and on the relative contributions of the aligned parent. The AC model sees a greater role played by the alienated parent and the child, while recognizing the contributions of the aligned parent. According to Kelly (personal communication, 2000), this model does not regard the behavior of an alienating parent as necessary to create an alienated child, although it recognizes that it is often present. The PAS formulation sees a greater role played by the parent who is fostering the alienation, while recognizing the contributions of the child and, to a much lesser extent, the alienated parent. Both formulations rule out pathological alienation when the contributions of the rejected parent are substantial enough to warrant the child's alienation. Overall, I believe the difference between the models is one of emphasis, and not a fundamental distinction, although this is open to dispute. Kelly (personal communication, 2000) indicated that the final version of her article with Johnston (25) will sharpen the distinctions between their model and PAS.

Both models are based on clinical experience. Both find support in the literature for some aspects of their formulation, while neither has large-scale empirical research to validate its conceptual superiority. There are substantial differences in the treatment approaches each advocates, but diagnostic terms are independent of the discovery or proposal of new treatments.

An advantage of the AC formulation is that it provides a differentiated view of the processes, factors, and behaviors in the entire family system which result in a child's unreasonable alienation from a parent. Also, it clarifies the distinction between what is and is not alienation. An

advantage of PAS is that the concept is widely known and has stimulated a clinical literature that has elucidated and refined our understanding of this disturbance. Abandoning the term would impede integration of the existing literature with future work. Also, the term PAS has the virtue of parsimony: It clearly denotes a circumscribed group of alienated children—those whose alienation is not warranted by the history of the child's relationship with the rejected parent. By contrast, the phrase "alienated child" is ambiguous with respect to the reasonableness of the alienation, and thus requires additional descriptors (e.g.,"pathological") to distinguish it from what the AC model calls "estrangement."

A final caveat: Kelly (personal communication, 2000) indicated that the manuscript in press was being edited and that the final version would include revisions and refinements which address some of the points raised in the present article. Also scheduled for publication in the same journal issue (edited by Johnston and Kelly) are three articles elaborating this model's approach to case management, custody evaluations, and therapeutic interventions. The reader is encouraged to consult these articles for the most complete and recent statement of this model.

Future work will undoubtedly result in further refinements of the AC model as well as PAS. It remains to be seen whether the AC reformulation will gain general acceptance among clinicians working with divorced families and among experts witnesses, and replace PAS, or whether future additions to the literature will support, or be compatible with, the retention and utility of the concept PAS.

RELIABILITY

The misidentification and misuse of PAS raises the issue of its reliability. Reliability, in the social sciences, means something different than legal reliability. For scientists, reliability refers to the degree to which a statistical measurement, test result, or diagnosis, is consistent on repeated trials or among different observers. A proposed syndrome, such as PAS, has high reliability if different clinicians, examining the same children, reach a high rate of agreement on which children do or do not have the syndrome. Naturally, it is not necessary for clinicians to reach one hundred percent agreement in order to qualify as having reached a scientifically acceptable level of reliability. Two doctors often disagree on a diagnosis; that is why we get second opinions. But, if the symptoms of the proposed diagnosis are too imprecise and ambiguous, or require an excessively high degree of inference on the part of the observer, the rates of disagreement may be unacceptably high. In such cases, the proposed syndrome should undergo further refinement (such as more precise definitions of symptoms) before it gains general acceptance.

The description of PAS symptoms (3), and the description of the behaviors seen in the alienated child (25), appear on the surface to be clear-cut and intelligible. We await empirical research, however, which tests the ability of clinicians to apply these symptoms to case material and agree on whether or not a particular symptom is present in a particular child. For example, Gardner lists "weak, absurd, or frivolous rationalizations for the deprecation" of a parent as one symptom of PAS. Kelly and Johnston list "trivial or false reasons used to justify hatred" as a behavior seen in an alienated child (note the close similarity between the two models). Can different observers agree on what constitutes frivolous or trivial justifications? Or is this symptom so inherently ambiguous that, after examining the same children, clinicians will disagree to a significant extent on which children's reasons for rejecting a parent are reasonable and which should be dismissed as trivial?

To date, no study has directly measured the extent to which different examiners, with the same data, can agree on the presence or absence of PAS (or, for that matter, alienation in a child). Until a sufficiently high rate of agreement on the presence or absence of PAS is established

through systematic research, the diagnosis will not attain the empirical support which is probably necessary to achieve acceptance on a par with the disorders recognized in the American Psychiatric Association's official description of diagnoses (38). And, until such data exist, the reliability of PAS cannot be supported by reference to scientific literature. This does not mean that the diagnosis lacks reliability, any more than it meant that the diagnosis of AIDS lacked reliability prior to the publication of empirical research on the syndrome.

VALIDITY

The validity of the concept PAS is a more complex issue than reliability. It relates to some of the issues explored in the earlier discussion of conceptualization. The central question is whether PAS accurately, adequately, and usefully describes a disturbance suffered by some children.

As is true of most, if not all, newly proposed syndromes, Gardner based his identification and description of PAS on his clinical experience. The same is true of all existing formulations of the problem of alienated children. To establish the validity of PAS, the scientific literature must demonstrate that the clinical observations that formed the basis for the initial formulation are representative of a wider population of children. There are generally two stages in this process. First, other clinicians report on their experiences related to the phenomenon, supplementing and refining the initial proposal. These reports are either anecdotal accounts of a few cases, or reports of a larger volume of cases, organized and analyzed in some systematic fashion. Second, empirical research with larger samples of subjects, standardized and systematic measures, and appropriate scientific controls tests hypotheses drawn from the clinical reports in the literature. The field of PAS study is just beginning to enter the second stage with studies in progress.

The descriptions of PAS in the clinical literature have struck a chord of recognition among divorcing parents, attorneys and mental health professionals. As we have seen, even alternative formulations of the phenomenon agree that unjustified parental alienation sometimes accompanies custody battles and that the favored parent sometimes contributes to this alienation. The concept of PAS has served to organize a volume of articles on the appropriate identification and treatment of a child suffering with this problem (1, 2). The frequency of reports in the clinical literature, and the close similarity of reported cases to Gardner's descriptions, lends support to the validity of PAS. Reality is not determined by popular vote, but the burgeoning literature is evidence of the utility of the PAS concept, at least as experienced by practitioners in the field. As discussed below, this is relevant to the admissibility of PAS testimony.

Kopetski published two reports on severe PAS in a sample of 413 court-ordered custody evaluations conducted by the Family and Children's Evaluation Team in Colorado (39, 40). Prior to learning of Gardner's work, the team identified 84 cases of severe alienation that led them "independently to conclusions that were remarkably similar to Gardner's conclusions regarding the characteristics of the syndrome." Independent identification of the same cluster of symptoms would generally be considered strong support for the validity of a newly proposed syndrome.

Dunne and Hedrick found Gardner's criteria useful in differentiating 16 cases of severe PAS from other cases with other post-divorce disturbances (41). Other clinicians have also found the PAS concept useful in organizing their impressions of alienated children (30-32, 42-45). Common experience and clinical cases, however, must be corroborated by systematic empirical investigations.

A 12-year study of 700 divorce families, commissioned by the American Bar Association Section on Family Law, is the one large-scale study which has delineated the phenomenon in which divorced and divorcing parents program and manipulate their children to turn against the other

parent (29). This study provides some empirical support for the validity of PAS. As an early study in the field, it is heavily descriptive and the description of procedures does not make clear exactly how the data were analyzed and what procedures were used to ensure the reliability of the results. Nevertheless, because of the wealth of experience reflected in the large number of families studied, and the detailed and sophisticated analysis of the problem, this study's observations and conclusions merit significant weight. Gold-Bikin offers this view: 'This treatise is based on years of experience counseling families in divorce and evaluating children during custody litigation. It should provide guidance to the bar, bench, and mental health professionals in ascertaining whether a child has been intentionally brainwashed or alienated from one parent by the other parent..." (46; p. ix).

There is considerable scientific research which supports the conclusions of the ABA-sponsored study and validates key facets of PAS. Chief among these are the bodies of literature on children exposed to parental conflict (16), on programming and brainwashing (47, 48), and on children's suggestibility (49). Numerous methodologically sophisticated studies have established that children are susceptible to accepting suggestions that an innocent adult did harmful or illegal things and then repeating these suggestions as if they were true (49). Children will even provide elaborate details of events that never occurred. Research findings on programming, brainwashing, stereotype induction, and children's suggestibility help to explain how one parent could exert enough influence over a child to cause that child to lose affection and respect for the other parent.

Systematic empirical research is lacking when it comes to validating the specific cluster of symptoms that characterizes PAS. There is, as yet, no specification of which symptoms and how many are necessary for the diagnosis. It should be noted, however, that many of the diagnoses in DSM-IV also lack research which empirically verifies the appropriate number of symptoms necessary to make the diagnosis (50).

As discussed earlier, some clinicians believe that Gardner's formulation of the causes of PAS oversimplifies the situation and places undue emphasis on the alienating parent. This is explored in a later section. If this criticism is correct, it may modify our understanding of the etiology of PAS, but may not undermine the validity of the PAS phenomenon itself. Gardner himself expects that the concept of PAS will be refined and elaborated by future investigators (3).

PAS AS A SYNDROME

The use of the term "syndrome" in reference to alienated children has sparked heated debate. A syndrome is "a grouping of signs and symptoms based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection." This seems descriptive of PAS.

Some have argued that PAS does not qualify as a syndrome because not every child who is exposed to alienating behavior by one parent develops the same distinct disorder (25). This reasoning is not compelling. In medicine, including psychiatry, it is well-recognized that the same pathological agent can produce different outcomes in different individuals. This generally does not invalidate the syndrome or disorder. For example, rape may, but does not always, result in a posttraumatic stress disorder (PTSD—originally termed a syndrome). The fact that some victims survive traumas without developing PTSD does not disqualify PTSD as a proper diagnostic entity. Another example is adjustment disorder. Two children may experience the death of a parent or a divorce. One develops an adjustment disorder and the other escapes any diagnosable mental disorder. The American Psychiatric Association, which acknowledges that most of its official diagnostic categories are syndromes, specifically assumes that some disorders will "result

mainly from an interplay of psychological, social, and biological factors" (51; p. xxiii). This seems to allow for a multi-factored approach to understanding. PAS, while retaining the term "syndrome."

A greater concern is that the medical designation "syndrome" conveys an established stature and legitimacy that may be more appropriate following more rigorous empirical research. In court, the term "syndrome" may strengthen confidence in the scientific basis of the witness' testimony and, by implication, in the value and reliability of that testimony.

An additional concern about syndrome evidence is that expert witnesses sometimes offer a collection of symptoms as a test to prove the existence of one particular causal agent, even in the absence of independent verification of the cause. In the case of PAS this would mean that, after determining that a child has the behaviors characteristic of alienated children, the expert assumes that the existence of alienation supports a claim that the favored parent must have fostered the alienation. This is clearly a misuse of PAS; by definition, the manipulations of the favored parent must be identified in order to diagnose PAS.

Mosteller has proposed that the purpose for which syndrome evidence is used should govern its admissibility (52). When an expert proffers syndrome evidence as a test of whether certain conduct has occurred, such as child sexual abuse, "the science must be of the highest quality and should satisfy the standards set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc*." (52; p. 468). Mosteller argues that less exacting scientific standards should apply when the expert relies on syndrome evidence "to correct human misunderstandings of the apparently unusual and therefore suspicious reactions of a trial participant" (52; p. 467).

Although PAS testimony should not be used as a test of whether the aligned parent promulgated the child's alienation, it can provide the court with an alternative explanation of a child's negative or fearful conduct and attitudes. Also, PAS testimony can assist the court in evaluating a child's ability to perceive, recollect, or communicate. When PAS has been misdiagnosed, as in the case of children who are not alienated, or whose alienation is justified by the rejected parent's behavior, expert testimony on PAS may be proffered in rebuttal.

Testimony by an expert knowledgeable about the strategies that parents use to promulgate and support alienation, the extent to which children can be manipulated to reject and denigrate a parent, the extent to which children are suggestible, the mechanics of stereotype induction, and the psychological damage associated with involving children in parental hostilities, may assist the court in determining the proper amount of weight to give a child's explicitly stated preferences and statements regarding each parent. The expert can demonstrate that a child's statement of preference, even when executed in an affidavit, does not necessarily reflect the history of that child's relationship with the non-preferred parent, particularly when the child totally rejects the non-preferred parent.

Lund regards this as one of the most important benefits of PAS (30). In their study, Clawar and Rivlin determined that 80 percent of the children in their sample wanted the brainwashing detected and terminated, and there was often a substantial difference between children's expressed opinions and their real desires, needs and behaviors (29).

PAS UNDER DAUBERT

The U.S. Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (53) provided a non-exclusive list of criteria for federal courts to consider in judging the admissibility of scientific expert testimony. Subsequent decisions, such as the Supreme Court cases of *General*

Electric Co. v. Joiner (54) and *Kuhmo Tire Co. v. Carmichael* (55), and the Texas Supreme Court cases of *E.L du Pont Nemours and Co. v. Robinson* (56) and *Gammill v. Jack Williams Chevrolet, Inc.* (57) have built upon the principles of the *Daubert* analysis.

The application and significance of *Daubert*to mental health expert testimony is the subject of considerable speculation. Some commentators suggest that the *Daubert* decision spells the end of psychological and psychiatric testimony (58). This has not occurred. Slobogin sees little impact of *Daubert* on psychological testimony in criminal cases, including the admissibility of battered women and rape trauma syndrome evidence (59). In custody cases it is not clear whether trial court judges are using *Daubert*criteria to evaluate expert testimony on the best interest of a particular child (60).

Shuman and Sales note the difficulty of applying *Daubert'*spragmatic considerations, developed for scientific testimony, to clinical testimony (61). These authors suggest that when clinically based testimony is proffered, courts "are limited to judging the qualifications of the experts and the acceptability of that testimony to other similar practitioners, resulting in nearly identical pre- and post-*Daubert* admissibility decisions" (61; p. 10). General acceptance in the relevant scientific community is one of the *Daubert* factors and is the familiar criterion originated in *Frye v. United States*for science- based testimony (62). Many courts, though, exempt psychological syndrome testimony from a *Frye*analysis (59). With respect to syndrome testimony in criminal trials, Slobogin argues for a formulation of the *Frye* test that would admit testimony "that a sizeable group of professionals find plausible, based on their specialized knowledge" (59; p. 113). PAS would pass this test. Indeed, it already has (63). There is another index of the general acceptance of PAS in addition to the growing professional literature on PAS in peer-review journals. The American Psychological Association concludes its Guidelines for Child Custody Evaluations in Divorce Proceedings with a highly selective reference section titled "Pertinent Literature" (64). Three of the 39 references are books by Gardner; one is titled "The Parental Alienation Syndrome" and the other two include discussions about PAS. This could be taken to imply APA recognition of PAS as pertinent to child custody proceedings.

Zervopoulos draws on post-*Daubert* decisions to offer two guides for assessing the reliability of testimony that does not seem to fit the *Daubert* criteria (65). His analysis may be applicable to syndrome testimony. The first guide he refers to as "the applicable professional standards test" citing the decision in *Gammill*, which in turn quotes from *Watkins v. Telmith, Inc.*(66): "The court should assure that the opinion comports with applicable professional standards outside the courtroom and that it 'will have a reliable basis in the knowledge and experience of [the] discipline'" (57; pp. 725-726). Proffering PAS testimony under the "applicable professional standards test" might involve introducing the wide body of clinical literature regarding alienated children, and the similar observations noted in the various clinical reports.

The second guide is "the analytical gap test," drawing on the *Joiner* decision: "(N)othing in either *Daubert* or the *Federal Rules of Evidence*requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit*of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered" (54; p. 146). Zervopoulos explains how the "analytical gap test" might apply to syndrome testimony: "If elements of the proposed syndrome can be supported by research, those elements should pass muster under a *Daubert/Robinson/Gammill* analysis" (65). A similar approach is suggested by Shuman and Sales, "*Kuhmo Tire*and *Daubert*probably will raise the level of scrutiny given to the proffers of clinical information to determine if there is science that could have been used by the clinician" (61; p. 10).

Applying this type of analysis to PAS, one could bridge the "analytic gap" with the literature on

stereotype induction and on children's suggestibility (49). An element of PAS is the persuasive influence of the alienating parent which results in a child forming an unwarranted negative opinion of the other parent. This element is supported by the literature on stereotype induction which demonstrates how children can be manipulated to form negative stereotypes and will subsequently confabulate stories about bad things the target person has done (49). Gould makes a similar point: "If parent-child verbal exchanges in alienating families can be construed as a form of suggestive interviewing, then the evaluator may attempt to identify how the parent has used specific suggestive interview techniques to alter the child's perception of his or her father or mother" (67; p. 173).

PAS AND PEER REVIEW

One of the *Daubert* factors, and a key means of satisfying *Frye*'s general acceptance test, is whether the science has been subjected to peer review. The meaning and legal significance of peer review of clinical publications is debatable (61). But, it would seem fairly straightforward to determine whether or not PAS passes this criterion. Not so. Some critics imply that PAS has not passed standards of peer review because Gardner's books on parental alienation are published by his own press (5, 6, 8). These critics also discount the peer-review status of some of Gardner's published articles on the subject and imply that none of his work on PAS has passed peer review. These same critics omit from their analyses the many peer-reviewed publications on PAS by authors other than Gardner. An examination of the entire literature on PAS fails to support the contention that PAS has not passed peer review, and in fact strongly supports the opposite conclusion.

Although Gardner's books are not peer-reviewed, neither are most books. He has had eleven articles on PAS pass the peer-review process in social science publications (10, 36, 68-76), two articles in legal journals (77, 78), and one invited chapter in a prestigious psychiatric reference volume whose board of editors includes many of the world's leading experts in child psychiatry (79). Critics have tried to discount Gardner's publications in The Academy Forum, arguing mistakenly that it does not rely on peer review (6, 8); the status of his other peer-reviewed publications has not been disputed.

In addition to Gardner's work on PAS, there are currently 94 publications that focus significantly or exclusively on PAS and alienated children (14). Though some may question the value of peer review, or of the *Frye* test, as an index of the admissibility of syndrome research, there are no reasonable grounds for maintaining that PAS has not passed peer review

DOES THE PAS CONCEPT UNFAIRLY BLAME ONE PARENT FOR FAMILY DYSFUNCTION?

According to Gardner's formulation, alienated parents are innocent of any behavior that justifies their children's total alienation from them. If a parent's behavior does warrant the children's alienation, this is not a case of PAS.

When a child suffers from PAS, Gardner holds the alienating parent and the child primarily responsible. Similarly, although Kelly has clearly revised her thinking on this topic, her earlier work emphasized the contributions of the aligned parent, "The most extreme identification with the parent's cause we have called an 'alignment'- a divorce-specific relationship that occurs when a parent and one or more children join in a vigorous attack on the other parent. It is the embattled parent, often the one who opposes the divorce in the first place, who initiates and fuels the alignment" (12; p. 77).

Some critics argue that Gardner's position on the etiology of PAS is incomplete, simplistic, and perhaps erroneous (6-8, 23, 25, 31). Such critics believe that the concept of PAS overemphasizes the pathological contributions of the alienating parent while overlooking other possible causes of the child's denigration and rejection of a parent. In some cases, when the author faults Gardner for not recognizing that genuine abuse, neglect, or violent behavior can cause behavior identified as PAS, the criticism clearly reflects an inadequate understanding of Gardner's formulation (6-9). Gardner recognizes that poor parental behavior can cause a child's alienation; but he reserves the label PAS for the type of alienation that is not warranted by the parent's behavior and which results from the combination of the alienating parent's influence and the child's own contributions.

As discussed earlier, other clinicians believe that Gardner's formulation overlooks the importance of family dysfunction in which neither parent can be said to be psychologically healthier than the other. Lund captures this opinion: "The PAS cases that end up in therapists' offices after a court hearing usually do not have one parent who is much more psychologically healthy than the other. From a 'Family Systems' perspective, the blame for PAS lies less with psychopathology of one parent than it does with the usually very high conflict between both parents and both parents' psychopathology" (30; p. 309). Other authors concur, "Usually, PAS is not just the work of the alienating parent.. ..It is a family dynamic in which all of the family members play a role, have their own motives, and have their own reasons for resisting the efforts of others at correction" (31).

Johnston and Roseby believe that a particular type of family dynamic is responsible for certain severe alienation cases: "Rather than seeing this syndrome as being induced in the child by an alienating parent, as Gardner does, we propose that these 'unholy alliances' are a later manifestation of the failed separation-individuation process [the process by which a child develops psychological independence from the parents] in especially vulnerable children who have been exposed to disturbed family relationships during their early years" (23; p. 202). These authors regard the child's vulnerability to the alienating parent as the most important aspect of some of these cases, rather than "conscious, pernicious brainwashing" by an angry parent.

In contrast, mental health professionals working with families involved in custody litigation often report clear evidence that the alienating parent is deliberately and knowingly manipulating the child (1, 2, 28, 29). Even when the manipulation is subtle, or outside the immediate awareness of the parent doing the manipulating, because of the power imbalance between parent and child. Clawar and Rivlin view the process as driven by the alienating parent (29). Kopetski's research supports this and she regards PAS as parental exploitation of the child (39, 40). Although Kelly and Johnston do not regard the behavior of the favored parent as necessary to create the child's irrational alienation, when such behavior is present, they too regard it as emotional abuse of the child regardless of whether the alienator consciously intends to negatively influence the child (25).

Garbarino and Scott also regard PAS as a form of psychological mistreatment of children and believe that all mistreatment of children is more likely to occur in families where the atmosphere is one of stress, tension, and aggression (80). Nicholas surveyed custody evaluators "and found significant correlations between symptoms of alienation and behaviors on the part of the alienating parent, but few links between the child's alienation and the target parent's behavior. This lends support to the position that the core problem in PAS is between the alienating parent and the child. This study, however, was merely exploratory and has a number of methodological limitations including a small sample of 21 completed surveys (81). Other studies report that target parents tend to be less disturbed than alienating parents, but these studies all relied on populations in which false accusations of sex abuse were present; these results may not

generalize to the majority of PAS cases which do not include such allegations (82-85).

A central issue in assigning responsibility for a child's unwarranted alienation is whether, absent the support of the favored parent, the child would have become alienated. If, for example, the flaws of the rejected parent would not normally result in the child's total estrangement, then it may be more accurate to describe these flaws as having played a role in the child's ambivalence rather than having caused the alienation (35). If PAS symptoms arise only after the favored parent begins to manipulate his children's affections, and the rejected parent has not altered her treatment of the children in any significant way, this increases the likelihood that the manipulations have played a key role in the alienation; other explanations, though, are possible, such as the child exhibiting a maladaptive reaction to the divorce.

Several authors have identified how other parties, such as relatives and professionals, contribute to the alienation (2, 3, 22, 25-32). These authors have drawn attention to the damage caused by psychotherapists and custody evaluators whose intervention and recommendations reflect an inadequate understanding of PAS. Such professionals may accept as valid the children's criticisms of the target parent, and thus the professional may perpetuate and foster PAS.

Different opinions about PAS etiology lead to different treatment recommendations. Some support the idea of conducting psychotherapy while allowing children to live with an alienating parent to whom they are pathologically tied (22). Others recommend placing the child with the parent who has the best potential for fostering the child's healthy psychological development (3, 33, 39, 40).

Future research should help clarify which explanation gives a better account of the genesis of unreasonable parental alienation: an emphasis on the aligned parent's behavior, or an approach which considers multiple interrelated factors without assigning priority to the behavior of any one person in the system. As our understanding of these phenomena expands, we will probably find that no one explanation can best account for every case; in some cases the contributions of the aligned parent will be paramount, while in other cases a sufficient understanding of the disturbance will require an analysis of the complex interplay of the behavior of the child, the alienated parent, and the aligned parent, along with the contributions of other people (such, a new partners, other family members, and therapists) and circumstances.

SHOULD CHILDREN BE FORCED TO SPEND TIME WITH THE TARGET PARENT?

By far the most controversial issue in the PAS literature is the recommendation of enforced access between children and their alienated parents and reduction of access between the children and the parent promulgating the alienation.

In the majority of cases of moderate PAS, Gardner recommends that the court award primary custody to the alienating parent, appoint a therapist for the family, and enforce the child's contact with the target parent through the threat and imposition (if necessary) of sanctions applied to the alienating parent (33). Such sanctions are similar to those the court would use against a parent who is in contempt for failure to pay court-ordered alimony or child support. The sanctions include a continuum from requiring the posting of a bond, fines, community service, probation, house arrest, to short-term incarceration. Some states grant courts the power to suspend a contemnor's driver's license or order public service duty. Turkat notes that the absence of such sanctions has allowed parents to interfere with visitation and flaunt court orders with impunity (86).

The goals of therapy with children suffering from moderate PAS are to foster healthy contact

with the target parent and to assist children in developing and maintaining differentiated views of their parents as opposed to polarized views of one parent as all good and the other as all bad. One way to get children involved with the rejected parent is to take the decision about contact out of the children's hands, reminding them of the possible sanctions against the preferred parent for resisting court-ordered contact, and thereby giving them an excuse to spend time with the target. The therapist also tries to help the children appreciate that their animosity has been influenced by programming which has undermined their ability to reach conclusions on the basis of their own direct experiences with the target. Some authors compare this aspect of treatment with the "deprogramming" that is used with cult victims to help counteract the effects of indoctrination (29, 33).

In some cases of moderate PAS, when the parent is more intensively programming the children and there is a high risk of the alienation becoming more severe, Gardner recommends a different legal approach. In such cases he recommends that courts consider awarding primary custody to the alienated parent and extremely restricted contact between the alienating parent and child, in order to prevent further indoctrination. Similarly, in the most severe cases of PAS (which, in Gardner's experience, comprise about 5-10 percent of all PAS cases), Gardner recommends that the court remove the children from the home of the alienating parent.

Because children with severe PAS will not generally comply with court orders, and the programming parent cannot be relied upon to facilitate contact with the target parent, and because courts are reluctant to place children with a parent they appear frightened of, Gardner recommends temporary placement of the children in a transitional site before reintegrating the children in the home of the target parent. Possible transitional sites range from least restrictive to most restrictive, depending on the amount of control necessary to ensure the children's cooperation and the alienating parent's compliance with court orders. Such sites include the home of a relative or friend, a foster home, a community shelter, or a hospital. Gardner makes a good case for the transitional program, but he has had little direct experience with it, mainly due to courts' general hesitance to implement it (3). Rand, however, describes some success with it (2).

In addition to serving as transitional sites, the threat of temporary placement in a foster home, community shelter, or juvenile detention center may induce children to cooperate with court-ordered visitation. With older children (ages 11-16) who refuse visits with the alienated parent, Gardner suggests the possibility of finding the child in contempt of court (4). This recommendation has met with the most opposition.

One author who objects to enforced visitation argued that a contempt finding for a child who refuses visitation is strictly punitive in nature and counterproductive (87). The concern is that such actions will reinforce the child's hatred of the alienated parent. Instead, this author recommends that the court examine why a child resists contact with a parent and rely on family counseling and supervised visitation as a first step in repairing the child's relationship with the alienated parent: "Instead of punishing them for their feelings, we need to work with them to help them understand the value of a relationship with their parent" (87; p. 95). Gardner, on the other hand, warns against unnecessary indulging of children's visitation refusal (3). He believes that the best way to reverse alienation is to provide a child with direct experiences which can counteract negative programming and correct the child's distorted perceptions of the target parent.

One problem with supervised visitation is the message it can send to a child: It can suggest that the child's fears of the target parent are rational and that the court agrees that the child needs some sort of protection from the alienated parent. Thus, rather than increase the child's security around that parent, it may reinforce the child's uneasiness. The AC model makes a similar point

(25).

The importance of separating the child from the alienating parent, and ensuring the child's exposure to the target parent, is consistent with treatment methods for victims of brainwashing, including prisoners of war and members of cults. Clawar and Rivlin report on the similarities between the methods used by cult leaders to control their followers and the manipulations of alienating parents (29). Brainwashing scholars have identified the victim's dependence on the programmer and isolation from the target as critical conditions for successful indoctrination. These conditions must be removed for effective deprogramming to take place.

The results of the ABA-sponsored study support a firmer approach to enforcing parent-child contact. The study reported, "One of the most powerful tools the courts have is the threat and implementation of environmental modification. Of the approximately four hundred cases we have seen where the courts have increased the contact with the target parent (and in half of these, over the objection of the children), there has been positive change in 90 percent of the relationships between the child and the target parent, including the elimination or reduction of many social-psychological, educational, and physical problems that the child presented prior to the modification" (29; p. 150).

Gardner's recent follow-up study of 99 children diagnosed with PAS found a strong association between environmental modification and reduction in PAS symptoms (76). In 22 instances, the alienated child's contact with the rejected parent was increased and contact with the alienating parent was decreased. In all 22 cases, PAS symptoms were reduced or eliminated. By contrast, only 9% of the children (7 out of 77) whose contact with the rejected parent was not increased by the court, showed a reduction in PAS symptoms. This study also provides a beginning understanding of the factors that lead alienated children to initiate their own reconciliation with the rejected parent. Further study along these lines may assist decision-makers in determining which children might not require environmental modification in order to recover from PAS. The large sample and the statistical test of significance allowed by this size sample make this an important study. Nevertheless, its limitations must be noted, chiefly that the children were not interviewed, the only informant for the follow-up was the rejected parent, and the interviews were conducted by a clinician who had formulated the hypothesis being tested.

Other treatment approaches to severe PAS have been reported in the clinical literature, but in general such approaches have met with failure. Dunne and Hedrick published a clinical study of 16 severe PAS cases (41). The court ordered a custody change and/or strict limitation of contact between the alienating parent and the children in only three of these cases. In all three cases PAS was eliminated. The other 13 cases were treated with various, less restrictive interventions, ranging from individual or conjoint therapy for the parents, therapy for the children with either the alienating parent or target parent, or the assignment of a Guardian Ad Litem. In none of these cases was the PAS eliminated. Two cases showed "some" or "minimal" improvement, nine showed no improvement, and two were worse after the interventions.

This study has significant limitations. The sample size is small. Details are not provided about the methods used to analyze clinical case material. As is typical in clinical research with small samples, no statistical analyses were conducted to document that the findings were not due to chance. Nevertheless, the 100% correspondence between elimination of severe PAS and transfer of custody does provide some evidence in support of this intervention.

Lampel analyzed clinical case studies on 18 families, out of which seven children were described as rejecting a father who had no objectively noted parental dysfunction (48). Such children could be classified as moderately to severely alienated. The therapists conceptualized the children's

rejection of the father as a phobia with hysterical features and tried two different approaches commonly used to treat phobias.

The first approach, used with six children, included individual therapy sessions with the child followed by gradually increasing times with the father both in and out of the therapist's office. Sessions were also held for the mother, both individually and jointly with the child, for the father, and for both parents and child jointly. This approach is similar to Gardner's recommended treatment for moderate PAS cases.

The second approach, used with one child, is similar to Gardner's recommendation for severe PAS. The child was placed with the father for six to eight weeks while the therapist provided individual therapy sessions for the child and parents, and joint sessions with the child and father. This child was the only one of the seven children whose symptoms reduced markedly. The children whose treatment did not include placement with the rejected father experienced results varying from minor improvement to deterioration. In three cases the treatment was regarded as a clear failure. Lampel attributed the failures to the mothers' "collusive involvement" with their children. Again, although this is a very small sample, the results support the effectiveness of placing the child with the alienated parent.

Naturally, treatment approaches to PAS will benefit from more and higher quality research. Given the limitations in the available studies, some might dismiss the current professional literature as too inadequate to serve as an authoritative guide to decisions for alienated children. But no study is free of limitations. The issue is whether the limitations render the study useless. The peer review process, though no guarantee of a study's lasting value, is designed to weed out studies whose flaws outweigh their contributions.

Courts and clinicians face decisions about alienated children on a daily basis. These decisions can draw on the best available information, while duly noting its limitations, and thereby benefit from the experience of the families reflected in the published reports. Or the decisions can ignore this information. At this point in time, all the published findings on treatment outcomes support the effectiveness of enforcing contact between the child and alienated parent and no findings oppose this policy. When all available studies point to the same conclusion, it makes sense to pay attention to that conclusion, while allowing for the possibility that the circumstances of any single case may dictate an alternative treatment approach. Indeed, an emerging consensus among mental health professionals supports the idea that "court orders for continued contact are the cornerstone for treatment" of PAS cases (30; p. 309). Similarly, Stahl refers to "general agreement" that recommendations should include "forced consistent time between the child and the alienated parent" (88; p. 6).

But no consensus has been reached on the proposal for courts to consider a transfer of custody (as opposed to enforced contact) in severe PAS cases. Some have expressed the concern that alienated children are ill-equipped to cope with the change in custody, and that they could be seriously harmed (23). Although this possibility must be entertained, if this were a likely outcome, one would expect to see reports in the professional literature; to date there is no published documentation of such harm. Some allegations that harm has resulted from custody transfer may actually be misrepresentations promulgated by embittered litigants. Nevertheless, some clinicians advise parents of severely alienated children to accept the loss of their children while maintaining hope for future reconciliation (88).

Based on their ABA-sponsored study, Clawar and Rivlin conclude, "Caution must be exercised in judging that the point of no return has been reached. We have seen numerous cases where children have been successfully deprogrammed by making radical changes in their living

arrangements—often with appropriate legal interventions" (29; p. 144). As they explain it, "There are risks incumbent in any process; however, *a decision has to be made as to what is the greater risk*. It is usually more damaging socially, psychologically, educationally, and/or physically for children to maintain beliefs, values, thoughts, and behaviors that disconnect them from one of their parents (or from telling the truth, as in a criminal case) compared to getting rid of the distortions or false statements" [emphasis in the original] (29; p. 141).

Large scale, objectively measured, long-term outcome studies on the effectiveness of different interventions with PAS have not yet been conducted. Until such scientific evidence is available, controversy will probably continue concerning the proper treatment of children and parents when PAS is present. And until more courts implement the proposed treatment recommendations, it is not likely that investigators will have large enough samples to conduct large-scale outcome studies.

CONCLUSION

The concept of parental alienation syndrome has received much attention in the professional literature, including articles appearing in peer-review journals which elaborate on Gardner's original formulations. Mental health professionals and courts agree that children can suffer estrangement from a parent following divorce that is not warranted by the history of the parent-child relationship. This observation can be useful to courts dealing with a child's visitation refusal or determining how much weight to assign a child's stated preferences regarding custody. Although empirical research is at an early stage, the available published studies support the importance of enforcing contact between a child and an alienated parent, when the child's alienation is not justified by that parent's behavior.

Controversy exists, however, in conceptualizing the problem of alienated children and in using the term PAS. Those favoring the term believe it assists in understanding and treating a well-recognized phenomenon. Those opposing the term believe that it lacks an adequate scientific foundation to be considered a syndrome and that courts should not admit testimony on PAS. Critics argue that PAS is either an unnecessary or potentially damaging label for normal divorce-related behavior, that it oversimplifies the etiology of the symptoms it subsumes, and that it may result in custody decisions which fail to promote children's welfare.

Given the volume of published references to PAS, we can expect that it will continue to be raised in custody and access litigation. Future empirical research should help resolve some of the current controversies by providing data on the reliability and validity of PAS, the effectiveness of various interventions, and the long-term course of parental alienation.

Topics for study include: 1) the ability of clinicians to reach agreement on the presence or absence of each PAS symptom and the presence or absence of PAS; 2) the factors that enable children to resist or to recover from alienation; 3) the psychological attributes of favored and rejected parents; 4) prospective studies of children who have been exposed to systematic attempts to undermine their relationship with a parent; 5) the link between unwarranted alienation and the personality and behavior of the rejected parent; 6) the incidence of unwarranted alienation in the absence of documented attempts by the favored parent to alienate; 7) comparisons of different treatment methods using adequate scientific controls, such as samples initially matched on relevant variables, raters who are kept unaware of which treatment the children received, and statistical analyses of results.

The results of such studies will yield information that should help refine and enhance our understanding of how best to help families with alienated children.

REFERENCES

1. Rand DC: The spectrum of parental alienation syndrome (part I). *Am J Forensic Psychology* 1997; 15:3:23-51

2. Rand DC: The spectrum of parental alienation syndrome (part II). *Am J Forensic Psychology* 1997; 15:4:39-92

3. Gardner RA: *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals (2nd ed.)*. Cresskill, NJ, Creative Therapeutics, 1998

4. Gardner RA: *Addendum to The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals (2nd ed.)*. Cresskill, NJ, Creative Therapeutics, 2000. www.rgardner.com/refs/addendum2.html

5. Ackerman MJ, Lane AW: *Psychological Experts in Divorce Actions, 3rd Edition*. New York, Aspen Law and Business, 1998

6. Dallam SJ: The evidence for parental alienation syndrome: an examination of Gardner's theories and opinions. *Treating Abuse Today*1998; 8:2:25-34

7. Faller KC: The parental alienation syndrome: what is it and what data support it? *Child Maltreatment* 1998; 3:100-115

8. Poliacoff JH: Parental alienation syndrome: testing Gardner's theory in the family courts. *FL. Bar Family. L. Section Commentator*, June 1999; 25:19-33

9. Gardner RA: Rebuttal to Faller. *Child Maltreatment* 1998; 3:309-312

10. Gardner RA: Recent trends in divorce and custody litigation. *Academy Forum* 1985:2:3-7

11. Reich W: *Character Analysis*. New York, Farrar, Straus and Giroux, 1949

12. Wallerstein JS, Kelly, JB: *Surviving the Breakup*. New York, Basic Books, 1980

13. Warshak RA: Psychological syndromes: parental alienation syndrome, in *Expert Witness Manual*. Edited by Orsinger RA. Austin, Texas, State Bar of Texas, 1999

14. Gardner RA: Articles in peer-review journals on the parental alienation syndrome, 2001. www.rgardner.com/refs/pas_peerreviewarticles.html

15. Roseby V: *Symposium on child custody evaluations*. Assoc. Family and Conciliation Courts, 1997

16. Kelly JB: Children's adjustment in conflicted marriage and divorce: a decade review of research. *J Child and Adolescent Psychiatry* 2000; 39:8:963-973

17. Warshak RA: The impact of divorce in father-custody and mother-custody homes: the child's perspective, in *Children and Divorce*. Edited by Kurdek LA. San Francisco, Jossey-Bass, 1983

18. Fabricius WV, Hall JA: Young adults' perspectives on divorce: living arrangements. *Family and Conciliation Courts Rev* 2000; 38:4:446-461

19. Rosen, R: Some crucial issues concerning children of divorce. *J Divorce*1979; 3:19-25

20. Lewis JM, Beavers WR, Gosett JT, Phillips VA: *No Single Thread: Psychological Health in Family Systems*. New York, Bruner/Mazel, 1976

21. Wallerstein JS, Blakeslee S: *Second Chances: Men, Women, and Children a Decade After Divorce*. New York, Ticknor and Fields, 1989

22. Johnston JR, Campbell, LE: *Impasses of Divorce: The Dynamics and Resolution of Family Conflict*. New York, Free Press, 1988

23. Johnston JR, Roseby V: *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce*. New York, Free Press, 1997

24. Darnall, D: Parental alienation: not in the best interest of the children. *ND L Rev* 1999.; 75:2:323-364

25. Kelly JB, Johnston JR: The alienated child: a reformulation of parental alienation syndrome. *Family Ct Rev*(2001); 39, in press. An earlier version of the article was presented at the Assoc. Family and Conciliation Courts Conference, New Orleans, May 31,2000

26. Bone JM, Walsh MR: Parental alienation syndrome: how to detect it and what to do about it. *The Florida Bar J* 1999; 73:44-48

27. Campbell TW: False allegations of sexual abuse and their apparent credibility. *Am J Forensic Psychology* 1992; 10:21-35

28. Campbell TW: *Smoke and Mirrors: The Devastating Effect of False Sexual Abuse Claims*. New York, Insight Books, 1998

29. Clawar SS, Rivlin BV: *Children Held Hostage: Dealing with Programmed and Brainwashed Children*. Chicago, American Bar Association, 1991

30. Lund M: A therapist's view of parental alienation syndrome. *Family and Conciliation Courts Rev* 1995; 33:3:308-316

31. Waldron KH, Joanis DE: Understanding and collaboratively treating parental alienation syndrome. *Am J Family Law* 1996; 10:121-133

32. Warshak RA: Remarriage as a trigger of parental alienation syndrome. *Am J Family Therapy* 2000; 28:3:229-242

33. Gardner RA: *Therapeutic Interventions for Children with Parental Alienation Syndrome*. Cresskill, NJ, Creative Therapeutics, 2001

34. Garber BD: Alternatives to parental alienation: acknowledging the broader scope of children's emotional difficulties during parental separation and divorce. *NH Bar J*, March 1996; 51-54

35. Warshak RA: *Divorce Poison: Protecting the Parent-Child Bond From a Vindictive Ex*. New York, Regan Books, 2001

36. Gardner RA: Differentiating between the parental alienation syndrome and bona fide abuse/neglect. *Am J Family Therapy* 1999; 27:2:97-107

37. *The Random House Dictionary of the English Language*. Edited by Stein J. New York, Random House, 1967

38. *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*. Washington, DC, American Psychiatric Association, 1994

39. Kopetski LM: Identifying cases of parental alienation syndrome—part I. *The Colorado Lawyer* 1998; 29:2:65-68. www.fact.on.ca/Info/pas/kopet98a.htm

40. Kopetski LM: Identifying cases of parental alienation syndrome—part II. *The Colorado Lawyer* 1998; 29:3:63-66; www.fact.on.ca/Info/pas/kopet98b.htm

41. Dunne J, Hedrick M: The parental alienation syndrome: an analysis of sixteen selected cases. *J Divorce and Remarriage* 1994; 21:3/4:21-38

42. Cartwright GF: Expanding the parameters of parental alienation syndrome. *Am J Family Therapy* 1993, 21:205-215

43. Price JL, Pioske KS: Parental alienation syndrome: a developmental analysis of a vulnerable population. *J Psychosocial Nursing* 1994; 32:9-12

44. Rogers M: Delusional disorder and the evolution of mistaken sexual allegations in child custody cases. *Am J Forensic Psychology* 1992; 10:47-69

45. Stahl P: *Conducting Child Custody Evaluations*. Thousand Oaks, CA, Sage Publications, 1994

46. Gold-Biken LZ: The need for the study of programming and brainwashing, in *Children Held Hostage*. Edited by Clawar SS, Rivlin BV. Chicago, American Bar Association, 1991

47. Lifton RJ: *Thought Reform and the Psychology of Totalism*. New York, W.W. Norton and Company, 1961

48. Tobias ML, Lalich J: *Captive Hearts Captive Minds*. Alameda, CA, Hunter House, 1994

49. Ceci SJ, Bruck M: Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony. Washington, DC, American Psychological Association, 1995

50. Frances A, First MB, Pincus HA: *DSM-IV Guidebook*. Washington, DC, American Psychiatric Association, 1995

51. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised*. Washington, DC, American Psychiatric Association, 1987

52. Mosteller RP: Syndromes and politics in criminal trials and evidence law. *Duke Law* 11996; 46:461- 468

53. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)

54. *General Electric Co. v. Joiner*, 522 U.S. 13 6 (1997)

55. *Kuhmo Tire Co. v. Carmichael*, 119 S.Ct. 1167 (1999)

56. *E.I. du Pont de Nemours and Co. v. Robinson*, 923 S.W. 2d 549 (Tex. 1995)

57. *Gammill v. Jack Williams Chevrolet*, 972 S.W. 2d 713 (Tex. 1998)

58. Gottesman MJ: Admissibility of expert testimony after Daubert: the "prestige" factor. *Emory Law* 1 1996; 43:867-876

59. Slobogin C: The admissibility of behavioral science information in criminal trials: from primitivism to Daubert to voice. *Psychology, Public Policy, and Law* 1999; 5:1:100-119

60. Krauss DA, Sales BD: The problem of "helpfulness" in applying Daubert to expert testimony: child custody determinations in family law as an exemplar. *Psychology, Public Policy, and Law* 1999; 5:1:78-99

61. Shuman OW, Sales BD: The impact of Daubert and its progeny on the admissibility of behavioral and social science evidence. *Psychology, Public Policy, and Law* 1999; 5:13-15

62. *Frye v. United States*, 293 F. 1013 (1923)

63. *Kilgore v. Boyd*, 13th Circuit Court, Hillsborough County, No. 94-7573 (Fla. Nov. 22, 2000)

64. American Psychological Association: Guidelines for child custody evaluations in divorce proceedings. *American Psychologist* 1994; 49:7:677-680

65. Zervopoulos JA: Robinson/Daubert and mental health testimony: the sky is not falling. *Texas Bar J* 2001; in press

66. *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 991 (5th Cir., 1997)

67. Gould JW: *Conducting Scientifically Crafted Child Custody Evaluations*. Thousand Oaks, CA, Sage Publications, 1998

68. Gardner RA: The detrimental effects on women of the misguided gender egalitarianism of child custody dispute resolution guidelines. *The Academy Forum* 1994; 38:1/2:10-13

69. Gardner RA: Recommendations for dealing with parents who induce a parental alienation syndrome in their children. *Issues in Child Abuse Accusations* 1997; 8:3:174-178

70. Gardner RA: Recommendations for dealing with parents who induce a parental alienation syndrome in their children. *J Divorce and Remarriage* 1998; 28:3/4:1- 23

71. Gardner RA: Family therapy of the moderate type of parental alienation syndrome. *Am J Family Therapy* 1999; 27:3:195-212

72. Gardner RA: Guidelines for assessing parental preference in child-custody disputes. *J Divorce and Remarriage* 2000; 30:1/2:1-9

73. Gardner RA: The recent gender shift in PAS indoctrinators. *Women in Psychiatry*, in press

74. Gardner RA: The parental alienation syndrome: sixteen years later. *The Academy Forum* 2001, in press

75. Gardner RA: The empowerment of children in the development of parental alienation syndrome. *Am J Forensic Psychology* 2001; in press

76. Gardner RA: Should courts order PAS children to visit/reside with the alienated parent? A

follow-up study. *Am J Forensic Psychology* 2001; 19:3:61-106

77. Gardner RA: Judges interviewing children in custody/visitation litigation. *New Jersey Fam Lawyer* 1987; 7:2:26ff

78. Gardner RA: Legal and psychotherapeutic approaches to the three types of parental alienation syndrome families: when psychiatry and the law join forces. *Court Review* 1991; 28:1:14-21

79. Gardner RA: Child custody, in *Basic Handbook of Child Psychiatry*. Edited by Noshpitz J. New York, Basic Books, 1987

80. Garbarino J, Scott FM: *What Children Can Tell Us: Eliciting, Interpreting, and Evaluating Critical information from Children*. San Francisco, Jossey-Bass Publishers, 1992

81. Nicholas L: Does parental alienation exist? Preliminary empirical study of the phenomenon in custody and visitation disputes. Presented at the 13th Annual Symposium in Forensic Psychology of the American College of Forensic Psychology, Vancouver, British Columbia, 1997

82. Blush GJ, Ross KL: Sexual allegation in divorce: the SAID syndrome. *Family and Conciliation Courts Rev* 1987; 25:1-11

83. Blush GJ, Ross KL: Sexual abuse validity discriminators in the divorced or divorcing family. *Issues in Child Abuse Accusations* 1990; 2:1-6

84. Blush GJ, Ross K.L: investigation and case management issues and strategies. *Issues in Child Abuse Accusations* 1990; 2:152-160

86. Wakefield H, Underwager R: Personality characteristics of parents making false accusations of sexual abuse in custody disputes. *Issues in Child Abuse Accusations* 1990; 2:121-136

87. Turkat ID: Child visitation interference in divorce. *Clinical Psychology Review* 1994; 14:732 742

88. Murray K: When children refuse to visit parents: is prison an appropriate remedy? *Family and Conciliation Courts Rev* 1999; 37:1:83-98

89. Stahl PM: *Complex Issues in Child Custody Evaluations*. Thousand Oaks, CA, Sage Publications, 1999

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AMENDED IN SENATE JUNE 28, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 612

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

February 25, 2009

An act to add Section 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 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~~ *allegations of physical or sexual abuse against a child are to be investigated using specified methods of data collection and analysis. The bill would provide that the rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a custody proceeding. The bill would also provide that unproven, nonscientific theories, including, but not limited to, alienation theories, as specified, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The bill would prohibit a court from relying upon an unproven, unscientific theory and from accepting into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding. The bill would require the Judicial Council to provide training consistent with these provisions*. 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:

SECTION 1. It is the intent of the Legislature that courts strive to protect the safety of children by ensuring that abuse allegations are investigated appropriately and that protecting children from physical and sexual abuse is the highest priority in custody and visitation decisions.

SEC. 2. Section 3027.3 is added to the Family Code, to read:

3027.3. (a) Allegations of physical or sexual abuse against a child are to be investigated using methods of data collection and analysis consistent with the requirements of Section 3118, as further clarified in paragraph (2) of subdivision (e) of Rule of Court 5.220, as it read on January 1, 2009.

(b) The rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a proceeding pursuant to this division.

(c) Unproven, nonscientific theories, including, but not limited to, alienation theories that assume that a child's report of physical or sexual abuse by one parent is influenced or fabricated by the other parent, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The court may not rely upon an unproven, unscientific theory and the court may not accept into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding.

(d) Nothing in this section shall limit the consideration of actual evidence, behaviors, statements, or conduct by either parent or by the child.

(e) The Judicial Council shall provide training consistent with this section.

~~SECTION 1. It is the intent of the Legislature that courts strive to protect the safety and best interest of children in custody matters by ensuring that allegations of physical and sexual abuse are investigated appropriately or referrals are made to the child welfare services agency.~~

~~SEC. 2. Section 3027.3 is added to the Family Code, to read:~~

~~3027.3. (a) A child's expression of significant hostility toward a parent may, in the discretion of the court, be admitted as possible corroborating evidence that the parent has abused the child. The court may not conclude 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.~~

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

O

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 1310** **VERSION:** **AMENDED: JUNE 29, 2009**

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

RECOMMENDED POSITION: **SUPPORT**

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

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 collect the following information from persons licensed, certified, registered, or otherwise subject to the regulation of the Board:

a) 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.
b) Birth date and place of birth.
c) Sex.
d) Race and ethnicity.
e) Location of high school.
f) Number of hours per week spent at primary practice location, if applicable.
g) Description of primary practice setting, if applicable.
h) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.
i) 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. Provides that personally identifiable information collected pursuant to the provisions of this bill shall be confidential and not subject to public inspection. (BPC §857(c))

3. States that the collection of information required by this bill shall not be a condition of license renewal and no adverse affects shall be taken against a licensee for failure to report information. (BPC §857(d))

4. Requires the Board to collect information pursuant to the provisions of this bill in a manner that minimizes any fiscal impact. (BPC §857(e))

5. Requires OSHPD in consultation with the Healthcare Workforce Development Division, to select a database to store the information and transfer the data collected to that database. (Health and safety Code Section 128051.5(a))

6. 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. (Health and safety Code Section 128051.5(b))

7. The following boards would be subject to the previsions 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
    r. Board of Behavioral Sciences (§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.

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) **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.

4) **Overlap with Current Procedures:** The BBS already tracks some of the proposed mandatory fields:
   - First name, middle name, and last name.
   - 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

5) **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.
   - 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.

6) **Cost Concerns:** If required to significantly change or update current technology to capture the mandatory fields, the BBS may incur substantial cost.

7) **Previously Suggested Amendments and Board Action:** At its May 22, 2009 meeting the Board voted to support the bill if the following amendments were taken by the author's office::

1. 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.

2. 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.

3. 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.

All the above changes were made to this bill.

8) **Support and Opposition.**
Support: None on file.
Opposition: None on file.

9) **History**

2009

Aug. 27	In committee: Held under submission.
Aug. 17	In committee: Placed on Appropriations suspense file.
July 20	In committee: Hearing postponed by committee.
July 7	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 1.) (July 6).
June 29	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B., P. & E.D.
June 18	Referred to Com. on B., P. & E.D.
June 3	In Senate. Read first time. To Com. on RLS. for assignment.
June 2	Read second time and amended. Ordered returned to second reading. Read third time, passed, and to Senate. (Ayes 78. Noes 0. Page 1981.)
June 1	From committee: Amend, and do pass as amended. (Ayes 17. Noes 0.) (May 28).
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.

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY JUNE 2, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1310

Introduced by Assembly Member Hernandez

February 27, 2009

An act to add Section 857 to the Business and Professions Code, *and to add Section 128051.5 to the Health and Safety 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 Medical Board of California and the Board of Registered Nursing~~ *certain 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~~ *collect specified information from their licensees and would require those boards and the Department of Consumer Affairs to, as much as practicable, work with OSHPD to transfer that data to the Health Care Workforce Clearinghouse*. The bill would *further* require ~~the department~~ *OSHPD*, in consultation with the division and the ~~clearinghouse~~ *department*, to select a database and to *also* add ~~some of~~ the *collected* 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) ~~Each~~ *Every* healing arts board specified in subdivision ~~(c) shall add and label as "mandatory" the following fields on an application for initial licensure or renewal 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.~~ *(f) shall, in a manner deemed appropriate by the board, collect the following information from persons licensed, certified, registered, or otherwise subject to regulation by that board:*

~~(4)~~

(1) 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)~~

(2) Birth date and place of birth.

~~(6)~~

(3) Sex.

~~(7)~~

(4) Race and ethnicity.

~~(8)~~

(5) Location of high school.

~~(9) Mailing address of primary practice, if applicable.~~

~~(10)~~

(6) Number of hours per week spent at primary practice location, if applicable.

~~(11)~~

(7) Description of primary practice setting, if applicable.

~~(12)~~

(8) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.

~~(13)~~

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

~~(b) The department, 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 Medical Board of California.~~

~~(2) The Board of Registered Nursing.~~

~~(d) (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.~~

(b) The information collected pursuant to this section shall be used for the purpose of measuring and evaluating the state's health care workforce development needs. For this purpose, the department and the boards specified in subdivision (f) shall, as much as practicable, work with the Office of Statewide Health Planning and Development to transfer the data collected pursuant to this section to the Health Care Workforce Clearinghouse.

(c) Personally identifiable information collected pursuant to this section shall be confidential and not subject to public inspection.

(d) A board that collects information pursuant to this section shall state in a conspicuous manner that reporting the information is not a condition of license renewal, and that no adverse action will be taken against any licensee that does not report any information.

(e) A board that collects information pursuant to this section shall do so in a manner that minimizes any fiscal impact, which may include, but is not limited to, sending the request for information in a renewal notice, a regular newsletter, via electronic mail, or posting the request on the board's Internet Web site, and by allowing licensees to provide the information to the board electronically.

(f) The following boards are subject to this section:

(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.

(18) The Board of Behavioral Sciences.

SEC. 2. Section 128051.5 is added to the Health and Safety Code, to read:

128051.5. (a) The Office of Statewide Health Planning and Development shall, in consultation with the Healthcare Workforce

Development Division and the Department of Consumer Affairs, select a database and shall add the data collected pursuant to Section 857 of the Business and Professions Code to that database.

(b) 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.

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AB 1737 (Eng)

As currently written, the Board is not subject to the provisions of this bill. A copy of the bill is provided for reference.

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1737

Introduced by Assembly ~~Member Eng~~ *Members Eng and Lieu*

February 4, 2010

An act to amend Section 8310.5 of, and to add Section 8310.7 to, the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1737, as amended, Eng. State agencies: collection of demographic data.

Existing law requires any state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians to use separate collection categories and tabulations for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian.

This bill would require specified state agencies to use additional separate collection categories and tabulations for other major Asian groups and Native Hawaiians and other Pacific Islander groups, including Bangladeshi, Fijian, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, Thai, and Tongan. This bill would also require that these specified state agencies update their data collection categories to match those used by the United States Census Bureau. This bill would further require a state agency, board, or commission that directly or by contract collects demographic data, include data on specified collection categories and tabulations in any demographic report on ancestry or ethnic origins of Californians that it publishes or releases on or after July 1, 2011. This bill would further require a state agency, board, or

commission to make the collected data available to the public, in accordance with state and federal law, except for personal identifying information, which shall be deemed confidential.

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. The Legislature hereby finds and declares all of the following:

(a) More than one-third of the nation's Asians and Pacific Islanders live in California, making the state home to more Asians and Pacific Islanders than any other state in the nation.

(b) Asians and Pacific Islanders represent 14 percent of the state's population, and grew by 52 percent from 1990 to 2000.

(c) Asians and Pacific Islanders are an incredibly diverse group. Due to this diversity, the federal Office of Management and Budget's Statistical Policy Directive No. 15, entitled Race and Ethnic Standards for Federal Statistics and Administrative Reporting, separated the "Asian and Pacific Islander" category into two distinct and separate categories, now called "Asians" and "Native Hawaiians or Other Pacific Islanders," and these two distinct categories were used in the 2000 United States Census. The United States Census Bureau currently reports data for more than 20 different ethnicities within these two categories.

(d) While Asians and Pacific Islanders are often misrepresented as a homogeneous group, they actually represent dozens of different cultures, languages, and ethnic groups and have a wide range of economic, educational, and social needs.

(e) Existing state law requires state demographic data to be divided into some Asian and some Native Hawaiian and Pacific Islander ethnic groups. However, additional groups reported by the United States Census Bureau are not included in state demographic data.

(f) Given the diversity of languages and cultures, separating data for additional Asian and additional Native Hawaiian and Pacific Islander ethnic groups is critical for enhancing our state's understanding of the needs and experiences of these different communities.

SEC. 2. Section 8310.5 of the Government Code is amended to read:

8310.5. (a) Any state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians shall use separate collection categories and tabulations for each major Asian group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Laotian, and Cambodian, and each major Native Hawaiian and Pacific Islander group, including, but not limited to, Native Hawaiian, Guamanian (also known as Chamorro), and Samoan.

(b) The data collected pursuant to the different collection categories and tabulations described in subdivision (a) shall be included in any demographic report on ancestry or ethnic origins of Californians by a state agency, board, or commission published or released on or after July 1, 2011. The data shall be made available to the public in accordance with state and federal law, except for personal identifying information, which shall be deemed confidential.

SEC. 3. Section 8310.7 is added to the Government Code, to read:

8310.7. (a) In addition to the duties imposed under Section 8310.5, the following state agencies, in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, shall collect and tabulate data for additional major Asian groups, including, but not limited to, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, and Thai, and additional major Native Hawaiian and Pacific Islander groups, including, but not limited to, Fijian and Tongan:

(1) The State Department of Health Care Services.

(2) The State Department of Public Health.

(3) The State Department of Social Services.

(4) The Employment Development Department.

(5) The Department of Industrial Relations.

(6) The State Personnel Board.

(7) The Department of Fair Employment and Housing.

(8) The State Department of Education.

(b) During the normal process of reporting demographic data, the state agencies *identified in subdivision (a)* shall report the collected data according to each Asian group and each Native

Hawaiian and Pacific Islander group specified in subdivision (a) and make that data available to the public in accordance with state and federal law, except for personal identifying information, which shall be deemed confidential.

(c) The state agencies set forth in subdivision (a) shall comply as early as possible, but no later than July 1, 2011.

(d) Notwithstanding subdivision (c), the state agencies pursuant to subdivision (a) shall, within 18 months after the United States Census is released to the public, update their data collection to reflect the additional Asian groups and additional Native Hawaiian and Pacific Islander groups as they are reported by the United States Census Bureau.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2028** **VERSION:** **AMENDED MARCH 10, 2010**

AUTHOR: **HERNANDEZ** **SPONSOR:** **CALIFORNIA ASSOCIATION FOR MARRIAGE AND FAMILY THERAPISTS**

RECOMMENDED POSITION: **SUPPORT**

SUBJECT: **CONFIDENTIALITY OF MEDICAL INFORMATION: CHILD ABUSE REPORTING EXEMPTION**

Existing Law:

1) Prohibits, with specified exemptions, 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) Exempts a psychotherapist from the written request provision and allows that psychotherapist to provide information requested by law enforcement or by the target of a threat subsequent to disclosure, if that additional information is clearly necessary to prevent that serious and imminent threat disclosed originally. (Civil Code § 56.104(e)(2))

4) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act (Act) and as such, he or she must submit a report to law enforcement whenever, in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and §11166(a))

5) Makes the failure to report an incident of known or reasonably suspected child abuse or neglect by a mandated reporter a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both that imprisonment and fine. (PC §111666(c))

This Bill: Allows a psychotherapist to disclose information relevant to an incident of child abuse or neglect, without complying with the written request provision specified in current law.

Comment:

1) **Author's Intent.** According to the author, this bill will clarify in the Confidentiality of Medical Information Act (CMIA) that psychotherapists and other health care providers who report suspected child abuse or neglect are allowed to provide information to those who are investigating the report. Additionally, this bill provides an exemption for this type of information disclosure from the written request requirements specified in law, in order to expedite the sharing of information in child abuse or neglect investigations.

2) **Mandated Reporting of Child Abuse or Neglect.** Licensees of the Board are required to submit a report to law enforcement whenever, in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. The sponsors of this bill believes it is important to clarify that a mandated reporter of child abuse is permitted, without the prior written authorization of the patient, to cooperate with the investigator of the reported suspect or known child abuser. The Act requires practitioners to report child abuse or neglect but does not require that psychotherapists subject to the Act to comply with the Civil Code provisions requiring prior written authorization. Additionally, it appears that requiring prior written authorization to report child abuse or neglect would be in direct conflict with the intent of the Act. Failure to report suspected child abuse or neglect by a mandated reporter is a misdemeanor.

3) **Previous Related Legislation.**
AB 681, Chapter 464, Statutes of 2009, permitted a health care provider to release otherwise confidential medical information about a patient's participation in outpatient treatment with a psychotherapist when the psychotherapist has disclosed otherwise confidential medical information pursuant to an existing exception relating to preventing or lessening a serious imminent threat to the health and safety of a reasonably foreseeable victim or victims and when clearly necessary to prevent serious and imminent harm. This disclosure must be pursuant to a request for information from law enforcement or the target of the threat subsequent to the disclosure. The Board took a support position on this 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.

4) **Support and Opposition.**
Support: CAMFT (sponsor)
California Probation Parole and Correctional Association
California State Sheriff's Association

Opposition: None on file

5) **History**

2010

Mar. 24	From committee: Do pass, and re-refer to Com. on JUD. Re-referred. (Ayes 17. Noes 0.) (March 23).
Mar. 11	Re-referred to Com. on HEALTH.
Mar. 10	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Mar. 4	Referred to Coms. on HEALTH and JUD.
Feb. 18	From printer. May be heard in committee March 20.
Feb. 17	Read first time. To print.

AMENDED IN ASSEMBLY MARCH 10, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2028

Introduced by Assembly Member Hernandez

February 17, 2010

An act to amend Sections 56.10 and 56.104 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Hernandez. Confidentiality of medical information: disclosure.

Existing law specifies certain agencies to which mandated reports of suspected child abuse or neglect shall be made. Existing law authorizes information relevant to the incident of child abuse or neglect to be given to an investigator from an agency that is investigating the case, as provided.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect that may be given to an investigator from an agency investigating the case, including the investigation report and other pertinent materials that may be given to the licensing agency. By changing the definition of a crime, the bill would impose a state-mandated local program.

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 or that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

This bill would also except from these provisions disclosures that are specifically authorized by law, including, but not limited to disclosures made to the federal Food and Drug Administration of adverse events related to drug products or medical devices or disclosures that authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect in the report that may be given to an investigator from an agency investigating the case.

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:

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or

other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in

reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and

"tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. This paragraph does not require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the

purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, 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.

(20) The information may be disclosed as described in Section 56.103.

(21) (A) The information may be disclosed to an employee welfare benefit plan, as defined under Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)), which is formed under Section 302(c)(5) of the Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare benefit plan provides medical care, and may also be disclosed to an entity contracting with the employee welfare benefit plan for billing, claims management, medical data processing, or other administrative services related to the provision of medical care to persons enrolled in the employee welfare benefit plan for health care coverage, if all of the following conditions are met:

(i) The disclosure is for the purpose of determining eligibility, coordinating benefits, or allowing the employee welfare benefit plan, or the contracting entity, to advocate on the behalf of a patient or enrollee with a provider, a health care service plan, or a state or federal regulatory agency.

(ii) The request for the information is accompanied by a written authorization for the release of the information submitted in a manner consistent with subdivision (a) and Section 56.11.

(iii) The disclosure is authorized by and made in a manner consistent with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(iv) Any information disclosed is not further used or disclosed by the recipient in any way that would directly or indirectly violate

this part or the restrictions imposed by Part 164 of Title 45 of the Code of Federal Regulations, including the manipulation of the information in any way that might reveal individually identifiable medical information.

(B) For purposes of this paragraph, Section 1374.8 of the Health and Safety Code shall not apply.

(d) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing, or otherwise use medical information for a purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a contractor or corporation and its subsidiaries and affiliates shall not further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to a person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, except as provided in subdivision (e), no provider of health care, health care service plan, or contractor may release medical information to persons or entities who have requested that information and who are authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

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

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

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

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

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

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (i) of Section 56.05.

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

(e) This section shall not apply to either of the following:

(1) Information authorized to be disclosed pursuant to paragraph (1) of subdivision (c) of Section 56.10.

(2) Information requested by law enforcement or by the target of the threat subsequent to a disclosure authorized by paragraph (19) of subdivision (c) of Section 56.10, in which the additional

information is clearly necessary to prevent the serious and imminent threat disclosed under that paragraph.

(3) Information *relevant to an incident of child abuse or neglect* authorized to be disclosed by a psychotherapist pursuant to paragraph (14) of subdivision (c) of Section 56.10.

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2086** **VERSION:** **INTRODUCED FEBRUARY 18, 2010**

AUTHOR: **COTO** **SPONSOR:** **EDVOICE**

RECOMMENDED POSITION: **NONE**

SUBJECT: **PUBLICATION OF PROFESSIONAL LICENSURE EXAMINATION PASSAGE RATES**

Existing Law:

1) Establishes a master plan for public postsecondary education in the Donahoe Higher Education Act. (Education Code §§22500 -22705)

2) Vests the trustees of the California State University, the Regents of the University of California, the Board of Governors of the California Community Colleges and the Governors of the California Maritime Academy with all the power and authority to perform all acts necessary to receive the benefits and to expend the funds provided by Congress. (EC §67003)

This Bill: requires each institution of higher education to certify annually to the Legislature and the Governor that an internet address has been conspicuously published on all hard copy and online applications for enrollment where perspective students will find rates of passage on specified professional licensure examinations by students of the institution or program. (EC §67003(b))

Comment:

1) **Purpose of this Bill.** According to the author's office this bill will "make the effectiveness of postsecondary professional preparation programs more transparent to students, parents, policy makers and employers so that all the customers will know how well the schools are preparing graduates for success on professional licensure examinations and in the workplace."

2) **Suggested Amendments.** In order to add clarity, the author may want to specify exactly which professional licensure examinations rates are subject to this bill. Additionally, the bill does not provide for sharing of information between entities administering exams or licensing entities and the higher education institutions. This bill mandates that institutions post the specified information, but does not either mandate that information is provided by licensing entities or allow schools to only post information as made available. Without first, specifying who is responsible for providing the examination passage rate information, and second, requiring that entity to provide that information it is unclear if the actual implementation of this bill would be successful. Staff suggests that state licensing agency be mandated to make such information available to each school. Alternatively, a link to this information, provided by the Board, may be listed on an institution's website.

Several other technical issues pose problems for this bill and may impede its implementation. Staff suggests clarifying all requirements of the bill.

3) **Board Disclosed Information Regarding Passage Rates.** Currently the Board posts licensure examination passage rates, by institution and exam form, on its website. This legislation, as currently written, would not require any increased workload for Board staff.

4) Support and Opposition.
None on file

5) History
2010

Mar. 4	Referred to Com. on HIGHER ED.
Feb. 19	From printer. May be heard in committee March 21.
Feb. 18	Read first time. To print.

ASSEMBLY BILL No. 2086

Introduced by Assembly Member Coto

February 18, 2010

An act to amend Section 67003 of the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as introduced, Coto. Public postsecondary education: federal assistance: publication of professional licensure examination passage rates.

Existing law, known as the Donahoe Higher Education Act, establishes the segments of the public postsecondary education system in the state, including the University of California administered by the Regents of the University of California, the California State University administered by the Trustees of the California State University, and the California Community Colleges administered by the Board of Governors of the California Community Colleges. Existing law also establishes the California Maritime Academy, under the administration of the trustees and a specified governing board, as a specialized institution within the California State University. The provisions of the act apply to the University of California only to the extent that the Regents of the University of California, by appropriate resolution, make them applicable.

A provision of the act vests the regents, the trustees, and the boards of governors of the California Community Colleges and the California Maritime Academy, on behalf of each of their respective segments, with the authority to perform all acts necessary to receive the benefits and expend funds provided by specified federal laws. The act designates

the California Postsecondary Education Commission as the state agency to carry out the purposes of those federal laws. The act designates the Treasurer as the custodian of all funds received by the state from the federal government under specified federal law and requires the Treasurer to pay out those funds to carry out the purposes of that federal law.

This bill would require the governing boards of each of the public postsecondary educational institutions to certify annually to the Legislature and the Governor that an Internet address for professional licensure examination passage rates has been published on all applications for enrollment, and would condition the authority of those governing boards to receive and expend specified federal funds upon making that annual certification.

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 67003 of the Education Code is amended to read:

67003. ~~The~~ *(a) Subject to making the certification of transparency pursuant to subdivision (b), the* Trustees of the California State University on behalf of the California State University, the Regents of the University of California on behalf of the university, the Board of Governors of the California Community Colleges on behalf of the community colleges, and the Board of Governors of the California Maritime Academy on behalf of the California Maritime Academy, are vested with all power and authority to perform all acts necessary to receive the benefits and to expend the funds provided by the act of Congress described in Section 67000 and with all necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, and with the California Postsecondary Education Commission for the purpose of receiving the benefits and expending the funds provided by the act of Congress, in accordance with the act, or any rules or regulations adopted thereunder, or any state plan or rules or regulations of the California Postsecondary Education Commission adopted in accordance with the act of Congress. Whenever necessary to secure the full benefits of the act of Congress for loans or grants for

academic facilities, the trustees, regents, or boards of governors may give any required security and may comply with any conditions imposed by the federal government.

(b) Each institution of higher education shall certify annually to the Legislature and the Governor that an Internet address has been conspicuously published on all hard copy and online applications for enrollment where prospective students will find rates of passage on specified professional licensure examinations by students of the institution or program.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2167** **VERSION:** **INTRODUCED FEBRUARY 18, 2010**

AUTHOR: **NAVA** **SPONSOR:** **NATIONAL ASSOCIATION OF SOCIAL WORKERS, CALIFORNIA CHAPTER**

RECOMMENDED POSITION: **OPPOSE**

SUBJECT: **CLINICAL SOCIAL WORKER LICENSURE EXAMINATION**

Existing Law:

1) Requires applicants for licensure as a clinical social work (LCSW) to meet specified qualifications in order to be eligible to sit for licensure examination. (Business and Professions Code section 4992.1(a))

2) Requires every applicant issued a clinical social worker license to be examined by the Board. (BPC §4992.1(b))

3) Provides that the written examinations required for licensure as clinical social worker are a standard written examination and a written clinical vignette (CV) examination. (Section 1877 of Title 16, California Code of regulations.

4) Prohibits the Board from denying any applicant for licensure as a clinical social worker admission to the standard written examination or postpone the standard written examination or delay informing the candidate of results of the standard written examination solely upon the receipt by the Board of a complaint alleging acts or conduct that would constitute grounds to deny licensure. (BPC §4992.1(d)

5) States that no applicant shall be eligible to participate in the CV exam if his or her passing score on the standard written examination occurred more than seven years ago. (BPC §4992.1(g)

6) Allows the Board to issue a clinical social worker license to an applicant that holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the applicant passes the Board administered standard written and CV examinations. (BPC §4996.17(b))

7) Allows a applicant who fails the standard written or CV examination to retake that exam within one year from the notification date of failure without further application.(BPC §4996.4)

8) Requires an LCSW applicant to pay a fee of one hundred fifty dollars ($150) for the standard written examination. (BPC §4996.3(a)(4))

9) Requires an LCSW applicant to pay a fee of one hundred dollars ($100) for CV examination. (BPC §4996.3(a)(4))

This Bill:

1) Removes the requirement for LCSW licensure that an applicant take a standard written examination and CV examination and instead, requires those applicants to pass both of the following: (BPC §4996.1(a))

   a) The Association of Social Work Boards Clinical Level Exam administered by the Association of Social Work Boards (ASWB).

   b) A California jurisprudence and ethics examination incorporated or developed and administered by the Board.

2) Makes the provisions of this bill effective January 1, 2014.

Comments:

1) **Author's Intent.** California is the only state that develops and administers its own standard written exam. All other states use a version of an exam administered by ASWB. According to the sponsors of this bill, NASW – California Chapter, this bill is needed to address the following issues:

   a) The US Health Resources and Services Administration (HRSA) does not consider current LCSWs to have license portability since California uses its own exam.
   b) Lack of access to Federal Loan Repayment Programs. Currently LCSW are ineligible for the federal HRSA National Health Services Corps loan repayment program because California uses its own licensing exam.
   c) Reduce state expenditures by having social workers take a exam administered by ASWB instead of an examination developed and administered by the State.

2) **Past Use of the ASWB by California.** The Board was a member of ASWB from October 1991 through March 1999, and required the ASWB Clinical level examination, along with a state-constructed oral examination for licensure of clinical social workers. However, around 1998, the Board and the Department of Consumer Affairs, Office of Examination Resources (OER) began having concerns regarding the ASWB examination. These concerns included:

   a) The practice analysis conducted by ASWB did not include a representative number of licensees in California, just 16 participants.
   b) The sampling of participants in the practice analysis did not include demographics representative of California's population.
   c) The pass rate for California's first-time examination participants was very high at 89%.

   Based on these concerns, and the results of a new California occupational analysis, the Board determined that there was a need for a state-constructed written examination. The new California written examination was administered beginning in late Spring 1999.

3) **Background.** In February 2006, the Board received a letter from Roger A. Kryzanek, MSW, LCSW and President of the ASWB. The purpose of Mr. Kryzanek's letter was to ask the Board to consider rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB's national examination.

   If February of 2007, Mr. Kryzanek made a presentation to the Board and the Board decided to audit the ASWB exam. Subsequently, the board engaged Applied Measurement

Services, LLC to perform a psychometric audit of the ASWB exam for licensure as a clinical social worker and produce a report to the board to assess whether the examination meets California legal requirements for licensure examinations. Board members Renee Lonner and Joan Walmsley were assigned to assist in the audit process. Weather prevented the Board's team from completing its site visit with ASWB's exam vendor in Iowa.

4) **Examination Program Review Committee.** In February of 2008, the Board formed the Examination Program Review Committee (EPRC) to engage in a review of the Board's examination programs for all licensing types. EPRC held its first meeting December 8, 2008. There were five subsequent meetings held in the next year throughout the state. These public meetings included training on examination validation and discussions with stakeholders relating to concerns with current and future examination processes.

   In May 2008, Tracy Montez, PhD, of Applied Measurement Services, LLC, presented her findings based on the audit of the ASWB LCSW exam plan. Dr. Montez outlined strengths and weakness, or issues with the ASWB program in the overall conclusions presented to the Board.

5) **Audit of the ASWB**. The issues identified by Dr. Montez relating to the ASWB examination program were: 1) discrepant information, 2) role of Examination Committee members and Board of Directors, 3) multiple use of test centers, 4) availability and confidentiality of clinical exam data, and 5) differences between the LCSW exam plan and clinical exam content outline. Dr. Montez stated that it would be inappropriate at this time for the Board to use the ASWB exam in California. Based on these findings the Board made the following recommendations:

   a) First, staff should work with ASWB to ensure that a significant sample of California LCSWs participate in the ASWB occupational analysis process.

   b) Second, EPRC should consider the ASWB examination in its work as it relates to licensure for clinical social work.

   c) Third, staff should engage ASWB in discussions regarding the following items identified in the audit report:

      i) Update ASWB materials -- The ASWB should take steps to update association- and examination-related materials to better reflect current policies and practices. These steps should be reasonable given practical and fiscal constraints.

      ii) Use more and diverse subject matter experts -- The ASWB should make every effort to use a variety of subject matter experts as participants in the practice analysis, as item writers, as passing score study participants, members of the examination committee and board of directors. The ASWB should discourage individuals from being too closely tied to all phases of the ASWB examination program (i.e., other than ASWB administrative staff).

      iii) Explore, and implement as needed, additional security strategies at computer-based testing centers -- The ASWB should explore additional security strategies to protect the integrity of the examination process. Strategies determined to be practical and fiscally responsible should be implemented to prevent (or, at the minimum, discourage) both minor and major security breaches.

iv) Development and use of task and knowledge statements -- The ASWB should consider writing task and knowledge statements in greater detail to provide depth and specificity. Further, ASWB should release the knowledge statements as part of the Clinical exam content outline, and the linkage to the task statements. One of the purposes of an examination plan or content outline is to provide information about a profession. Specifically, the purposes of the LCSW examination plan include revising or establishing regulatory policies, assisting with curriculum development, preparing candidates for the examination, and developing the licensure examination. The Board would expect to use the ASWB clinical exam content outline to meet similar purposes.

v) Availability of examination data -- The ASWB should release confidential examination data to the Board upon request, given parameters are established to maintain the confidentiality and security of the data. Examples of requested data would be monthly cumulative examination statistics for California candidates and annual technical reports reviewed by a qualified psychometrician representing the Board.

As directed by the Board, staff has made efforts to work with ASWB. In January 2009, staff provided ASWB with addresses for active clinical social workers licensed with the Board. The Board's understanding is that the list of licensees provided to ASWB would be used to increase the number of California licensees used in the ASWB practice analysis sampling plan.

6) **Board Administered Examination Restructuring**. At its January 23, 2010 meeting the Board adopted the recommendation of the EPRC to move forward with beginning the work of restructuring the Board's exam programs. Staff has begun to work with stakeholders, Ms. Montez and Board examination evaluators to draft an exam restructuring proposal. The first conceptual restructuring framework was presented and discussed at the January 23, 2010 Board meeting. Feedback provided at that meeting is being utilized to retool the current proposal. An amended proposal is scheduled for discussion at the next EPRC meeting to be held on April 12, 2010. The amended framework proposal would require registrants to pass a law and ethics examination and, as a condition of licensure, to also pass a board administered standard written examination. Currently a standard written examination and a clinical vignette examination both have questions relating to law and ethics. By separating out questions related to California jurisprudence and ethics into a standalone examination, the Board creates a base examination structure that will allow the interchange of the board administered standard examination with a national examination, as the second written test does not need to be specific to California practice.

7) Support and Opposition.
None on file

8) History

2010	
Mar. 4	Referred to Com. on B. & P.
Feb. 19	From printer. May be heard in committee March 21.
Feb. 18	Read first time. To print.

<u>Attachments</u>

A. Letter to Assemblymember Nava from Tracy Rhine, Assistant Executive Officer, regarding ASWB examination
B. Response letter from ASWB to Assemblymember Nava
C. Response letter from ASW to Kim Madsen, Executive Officer

Board of Behavioral Sciences

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March 5, 2010

Assemblymember Pedro Nava
California State Capitol, Room 2148
Sacramento, CA 95814

Dear Assemblymember Nava:

This letter is in response to your request for information relating to Licensed Clinical Social Worker (LCSW) licensure examination administered by Board of Behavioral Sciences (Board). Specifically, you have requested that the Board provide your office background on the Board's review of the Association of Social Work Boards (ASWB) examination.

In February 2006, in response to a letter received from Roger A. Kryzanek, MSW, LCSW and President of the ASWB, the Board began a discussion about rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB's national examination.

In February of 2007, Mr. Kryzanek made a presentation to the Board and the Board decided to audit the ASWB exam. Subsequently, the board engaged Applied Measurement Services, LLC to perform a psychometric audit of the ASWB exam for licensure as a clinical social worker and produce a report to the board to assess whether the examination meets California legal requirements for licensure examinations.

In February of 2008, the Board formed the Examination Program Review Committee (EPRC) to engage in a review of the board's examination programs for all licensing types. EPRC held its first meeting December 8, 2008. There were five subsequent meetings held in the next year throughout the state. These public meetings included training on examination validation and discussions with stakeholders relating to concerns with current and future examination processes.

In May 2008, Tracy Montez, PhD, of Applied Measurement Services, LLC, presented her findings based on the audit of the ASWB LCSW exam plan. Dr. Montez outlined strengths and weakness, or issues with the ASWB program in the overall conclusions presented to the Board. The issues identified by Dr. Montez were: 1) discrepant information, 2) role of Examination Committee members and Board of Directors, 3) multiple use of test centers, 4) availability and confidentiality of clinical exam data, and 5) differences between the LCSW exam plan and clinical exam content outline. Dr. Montez stated that it would be inappropriate at this time for the Board to use the ASWB exam in California. Based on these findings the Board made the following recommendations:

Arnold Schwarzenegger
Governor

State of California

State and Consumer Services Agency

Department of Consumer Affairs

First, staff should work with ASWB to ensure that a significant sample of California LCSWs participate in the ASWB occupational analysis process.

Second, EPRC should consider the ASWB examination in its work as it relates to licensure for clinical social work.

Third, staff should engage ASWB in discussions regarding the following items identified in the audit report:

1. Update ASWB materials -- The ASWB should take steps to update association- and examination-related materials to better reflect current policies and practices. These steps should be reasonable given practical and fiscal constraints.

2. Use more and diverse subject matter experts -- The ASWB should make every effort to use a variety of subject matter experts as participants in the practice analysis, as item writers, as passing score study participants, members of the examination committee and board of directors. The ASWB should discourage individuals from being too closely tied to all phases of the ASWB examination program (i.e., other than ASWB administrative staff).

3. Explore, and implement as needed, additional security strategies at computer-based testing centers -- The ASWB should explore additional security strategies to protect the integrity of the examination process. Strategies determined to be practical and fiscally responsible should be implemented to prevent (or, at the minimum, discourage) both minor and major security breaches.

4. Development and use of task and knowledge statements -- The ASWB should consider writing task and knowledge statements in greater detail to provide depth and specificity. Further, ASWB should release the knowledge statements as part of the Clinical exam content outline, and the linkage to the task statements. One of the purposes of an examination plan or content outline is to provide information about a profession. Specifically, the purposes of the LCSW examination plan include revising or establishing regulatory policies, assisting with curriculum development, preparing candidates for the examination, and developing the licensure examination. The Board would expect to use the ASWB clinical exam content outline to meet similar purposes.

5. Availability of examination data -- The ASWB should release confidential examination data to the Board upon request, given parameters are established to maintain the confidentiality and security of the data. Examples of requested data would be monthly cumulative examination statistics for California candidates and annual technical reports reviewed by a qualified psychometrician representing the Board.

As directed by the Board, staff has made efforts to work with ASWB. In January 2009, Staff provided ASWB with addresses for active clinical social workers licensed with the Board. The Board's understanding is that the list of licensees provided to ASWB would be used to increase the number of California licensees used in the ASWB practice analysis sampling plan. The Board contacted Donna DeAngelis, ASWB Executive Director on February 2010 regarding the availability of the practice analysis and to inquire if ASWB had used the licensee information that was provided to them by Board staff. Ms. DeAngelis stated that ASWB has sampled California licensees based on the list provided by the Board in January 2009 and that a preliminary report had been completed, but was not for public viewing.

At its January 23, 2010 meeting the Board adopted the recommendations of the EPRC to move forward with beginning the work of restructuring the Board's exam programs. Staff has begun to work with stakeholders, Ms. Montez and Board examination evaluators to draft an exam restructuring proposal. The first conceptual restructuring framework was presented and discussed at the January 23, 2010 Board meeting. Feedback provided at that meeting is being utilized to retool the current proposal. An amended proposal is scheduled for discussion at the next EPRC meeting to be held on April 12, 2010.

The Board understands the issues surrounding the administration of a state specific licensing examination. Until March of 1999 the Board required the ASWB clinical level examination, along with a state-constructed oral examination for the licensure of clinical social workers. However, concerns regarding the ASWB examination were brought forth by the Office of Examination Resources which lead to the Board creating and administering a California written examination. In order to address issues surrounding portability and eligibility for federal loan repayment, as well as cost to the state, the Board has historically stated that it would be open to rejoining ASWB, if the examination met the standards set by the Board. And, although the concerns of the licensees are valid, the highest priority of the Board by legislative mandate is consumer protection. And, therefore, the Board must ensure that the individual passing the licensing examination has the requisite skills to competently and safely practice in California. Currently, as a result of the findings presented by Dr. Montez, the Board does not feel that the ASWB meets those standards.

The Board and staff are continuing to work on restructuring the exam process of all licensees in anticipation that when a national examination meets the standards outlined previously, the Board can easily make the transition from a state administered examination to a national examination. To that end, the current draft proposal to be introduced into legislation would require registrants to pass a law and ethics examination and, as a condition of licensure, also pass a board administered standard written examination. Currently a standard written examination and a clinical vignette examination both have questions relating to law and ethics. By separating out questions related to California jurisprudence and ethics into a standalone examination, the Board creates a base examination structure that will allow the interchange of the board administered standard examination with a national examination, as the second written test does not need to be specific to California practice.

The Board is committed to protecting the public by ensuring that licensure examinations are valid, defensible, and do not create undue barriers to competent practitioners. The Board is willing to work with ASWB to help address the deficiencies found during the audit of the national exam. Additionally, we are continuing to work with stakeholders to restructure the current examination program structure. However, at this time the Board does not find it appropriate to offer the national examination for licensure of clinical social workers in California.

Please feel free to contact me if you have further questions. I look forward to continuing to work together this legislative session on the issues affecting Board licenses. I understand your office is committed to ensuring that LCSWs become eligible to take a national examination.

Sincerely,

Tracy Rhine
Assistant Executive Officer

Attachment*: A Comprehensive Assessment of the Association of Social Work Boards Clinical Exam*

cc: Luis Portillo, Deputy Director
Division of Legislative and Policy Review
California Department of Consumer Affairs

March 16, 2010

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New Mexico

Executive Director
Donna DeAngelis, LICSW, ACSW

Mr. Pedro Nava
Assemblymember, 35th District
California Legislature
P.O. Box 94249
Sacramento, California 94249-0035

VIA Facsimile and U.S. Mail

Dear Assemblymember Nava:

Thank you for your interest in and support for providing citizens of California with access to professionally trained social workers who meet standards for licensing in the state. It was a pleasure to talk with your staff member, Ms. Jillena Eifer, and representatives from the National Association of Social Workers, California Chapter yesterday about the Association of Social Work Boards (ASWB) Clinical licensing examination and its potential use in California. We have reviewed and discussed the concerns about the ASWB Clinical licensing examination that were outlined in a letter to you from the Board of Behavioral Sciences (BBS), which you forwarded to us with your letter of March 11, 2010.

ASWB is a nonprofit organization made up of social work regulatory boards in 49 states, the District of Columbia, the Virgin Islands, and ten Canadian provinces. Its mission is to support social work licensing boards and promote regulation of social workers according to uniform standards in order to protect the public. ASWB develops and administers four categories of social work licensing examinations used by the jurisdictions to determine whether a social work applicant for licensure has the minimum competence necessary to practice.

In 2008 ASWB cooperated with the BBS to provide extensive information on our Clinical licensing examination to Dr. Tracey Montez, a psychometrician who completed an evaluation for the board. Because ASWB is committed to continually reviewing and monitoring its examination program, in the same year ASWB had an independent evaluation conducted on its entire examination program by Dr. Gregory Cizek, professor and psychometrician at the University of North Carolina, Chapel Hill. Both evaluations found the ASWB licensing examination to be valid and reliable measures of social work knowledge. Many of the findings reported by Dr. Montez and the recommendations made by Dr. Cizek were very similar and ASWB has implemented several changes in its examination program since 2008. The applicable recommended changes were also incorporated in the composition and work of the 2008-2009 Practice Analysis

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www.aswb.org info@aswb.org

Task Force, which developed new content outlines and Knowledge, Skill, and Abilities (KSA) statements that will go into effect in 2011.

As discussed during yesterday's telephone conference, a letter was sent to the BBS addressing the concerns outlined in its letter of March 5th that you forwarded to ASWB, and a copy of the ASWB response letter is enclosed with this correspondence.

We are looking forward to BBS again becoming an ASWB member and we are available to work closely with the board and its staff to make available the ASWB Clinical licensing examination to candidates for Clinical licensure in California.

Please let us know if you have any additional questions, or if we can be of assistance in any other way.

Sincerely,

Donna DeAngelis, LICSW, ACSW
Executive Director

Enclosure

cc: California Board of Behavioral Sciences

Association of Social Work Boards™

March 16, 2010

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New Mexico

Executive Director
Donna DeAngelis, LICSW, ACSW

Ms. Kim Madsen
Executive Officer
Board of Behavioral Sciences
1625 N Market Blvd., Suite S-200
Sacramento, CA 95834

VIA Facsimile and Federal Express

Dear Ms. Madsen:

With your permission, the office of Assemblymember Pedro Nava forwarded to me his March 5 letter from Tracy Rhine of the California Board of Behavioral Sciences (BBS). In her letter, Ms. Rhine outlined a number of recommendations from the BBS related to its 2007-08 review of the Clinical licensure examination for social workers that is developed and administered by the Association of Social Work Boards (ASWB).

Since the review of the exam by the BBS, there have been a number of new developments related to the ASWB exam program.

In June of 2008, Dr. Gregory Cizek, a psychometrician at the University of North Carolina, completed a detailed independent technical review of all areas of the ASWB Examination Program and concluded that the exams "meet or exceed applicable standards of psychometric quality." The ASWB would be pleased to make the report available to your psychometrician for review within parameters that would protect the report's confidentiality.

As a result of the review of the exam program by Dr. Cizek and ongoing discussions of the ASWB Board of Directors regarding potential enhancements that would serve our member jurisdictions, there have been developments regarding each point listed in Ms. Rhine's March 5th letter.

First, with the cooperation of BBS staff, ASWB included a significant sample of California social workers in the 2008-09 practice analysis survey, which will be the foundation for the new exam blueprints that will be implemented in January 2011. Details regarding California's participation in the practice analysis process were provided by ASWB to Dr. Tracy Montez of Applied Measurement Services on September 28, 2009. The report on the 2008-09 practice analysis will be complete within the next few weeks, and we would be pleased to send you a copy of the report at that time.

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Second, developments in the examination program since 2008 have also addressed the five specific items mentioned by Ms. Rhine in her letter summarizing conclusions from the BBS review of the ASWB exam:

1) ASWB reviewed materials related to the exam program to ensure consistency in the presentation of current policies and practices, including Study Guides, Candidate Handbook, and online FAQs.

2) ASWB made significant additions to its broad and diverse pool of subject matter experts who participate in examination development activities, including the recruitment of new item writers, Practice Analysis Task Force members, and Passing Score Panel participants who were not previously involved in exam development activities.

3) ASWB required the implementation of an array of additional exam security strategies by its exam contractor for the upcoming contract period beginning in January 2011, including expanded data forensics procedures and the systematic monitoring of the Internet for the unauthorized exposure of exam content.

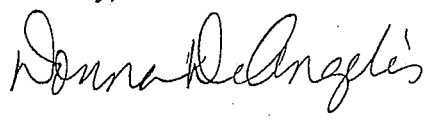
4) At meetings in September and December of 2009, the ASWB Practice Analysis Task Force and Examination Committee completed a systematic review and revision of the Content Outline and Knowledge, Skills, and Abilities statements (KSAs) for the Clinical Examination that was based on the results of the recent practice analysis survey. Moreover, at its meeting in January of 2010, the ASWB Board of Directors voted to release to the public the new KSAs for all exams. The new Content Outlines and KSAs will be included in the Practice Analysis Report that you will soon receive.

5) The ASWB works with all of its member jurisdictions to provide confidential examination data on request within parameters that protect the confidentiality of the data. In the event that BBS should choose to become an ASWB jurisdiction, we would be pleased to work with your Board to set up such a process.

ASWB is committed to continuing to work with the BBS to provide it with additional information regarding the ASWB Examination Program. As you know, I traveled to California during the BBS review of the exam to meet with Tracy Montez and to give her access to confidential materials.

Please do not hesitate to let me know if there is anything else that we could do to be helpful to you and your Board in its ongoing work and discussions.

Sincerely,



Donna DeAngelis, LICSW, ACSW
Executive Director

cc: Pedro Nava, Assemblymember, 35th District

ASSEMBLY BILL No. 2167

Introduced by Assembly Member Nava

February 18, 2010

An act to amend, repeal, and add Sections 4992.1, 4996.1, 4996.3, 4996.4, and 4996.17 of the Business and Professions Code, relating to clinical social workers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2167, as introduced, Nava. Clinical social workers: examination requirements.

Existing law, the Clinical Social Worker Practice Act, provides for the licensure and regulation of social workers by the Board of Behavioral Sciences. Existing law requires the board to issue a license to each applicant meeting specified requirements who successfully passes a board administered standard written or oral examination or both examinations and existing law also provides for a clinical vignette written examination for these applicants. Under existing law, the fee for the standard written examination is $150 and the fee for the clinical vignette written examination is $100.

This bill would, on and after January 1, 2014, instead require the board to issue a license to each applicant meeting specified requirements who successfully passes the Association of Social Work Boards Clinical Level Exam administered by the Association of Social Work Boards and a separate California jurisprudence and ethics examination incorporated or developed and administered by the board. The bill would provide an unspecified fee for the examination. The bill would also make 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:

SECTION 1. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

(b) Every applicant who is issued a clinical social worker license shall be examined by the board.

(c) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(d) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant's standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(e) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(f) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504

of the Government Code, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(g) On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

(h) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 4992.1 is added to the Business and Professions Code, to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

(b) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(c) If an applicant who has passed the examination described in paragraph (1) of subdivision (a) of Section 4996.1 is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the California jurisprudence and ethics examination, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(d) Notwithstanding Section 135, the board may deny any applicant who has previously failed the examination permission to retake the examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(e) This section shall become operative on January 1, 2014.

SEC. 3. Section 4996.1 of the Business and Professions Code is amended to read:

4996.1. *(a)* The board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and

successfully passes a board administered written or oral examination or both examinations. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 4996.1 is added to the Business and Professions Code, to read:

4996.1. (a) The board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and successfully passes both of the following:

(1) The Association of Social Work Boards Clinical Level Exam administered by the Association of Social Work Boards.

(2) A California jurisprudence and ethics examination incorporated or developed and administered by the board.

(b) For the purposes of this chapter, the term "examination" or "examinations" shall include both examinations described in subdivision (a).

(c) This section shall become operative on January 1, 2014.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering

each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 6. Section 4996.3 is added to the Business and Professions Code, to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the California jurisprudence and ethics examination shall be a maximum of ____dollars ($____).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the California jurisprudence and ethics examination fees shall be based on the actual cost to the board of developing, purchasing, and grading that examination and the actual cost to the board of administering each California jurisprudence and ethics examination. The California jurisprudence and ethics examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(6) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(8) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(9) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(10) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(c) This section shall become operative on January 1, 2014.

SEC. 7. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. *(a)* An applicant who fails a standard or clinical vignette written examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all required fees.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 8. Section 4996.4 is added to the Business and Professions Code, to read:

4996.4. (a) An applicant who fails the examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all required fees.

(b) This section shall become operative on January 1, 2014.

SEC. 9. Section 4996.17 of the Business and Professions Code is amended to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 10. Section 4996.17 is added to the Business and Professions Code, to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes or has passed the examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes or has passed the examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(d) This section shall become operative on January 1, 2014.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2229** **INTRODUCED FEBRUARY 18, 2010**

AUTHOR: **BROWNLEY** **SPONSOR:** **AUTHOR**

RECOMMENDED POSITION: **NONE**

SUBJECT: **MANDATED CHILD ABUSE REPORTING**

Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code § 11165.7(a)(21) and 11166(a))

2) Defines a "multidisciplinary personnel team" as any team of three or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse, and may include Board licensees. (Welfare and Institutions Code §18951(d)(1))

3) Allows members of a multidisciplinary team, in the prevention, identification, and treatment of child abuse, to disclose and exchange information in writing to and with one another relating to any incidents of child abuse that may be confidential under state law, if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification or treatment of child abuse. (WIC §830(a))

4) Provides that a positive toxicology screen at the time of delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect, but that any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and the child. (PC §11165.13(a))

This Bill:

1) Allows the disclosure and exchange of information relating to any incidents of child abuse by members of a multidisciplinary team in the prevention, identification and treatment of child abuse, to exchange that information by telephone or electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information. ((WIC §830(b))

5) Defines a "multidisciplinary personnel team" as any team of *two* or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse, and may include Board licensees. (WIC §18951(d)(1))

2) Requires a health practitioner or medical social worker who is making a mandated report relating to child abuse or neglect as a result of maternal substance abuse, to disclose all known health needs of the child, including, but not limited to, a potential exposure to HIV infection. (PC §11165.13(b))

Comment:

1) **Author's Intent.** According to the author's office, **"**the health needs of infants born to drug-addicted mothers and children who have been abused are often neglected because essential information is not being shared with agencies responsible for their welfare. This bill requires specified medical workers to disclose all health conditions of a child, including potential exposure to HIV infection and to facilitate communication in child abuse."

2) **Author's Amendments.** According to the author's office, prior to legislative policy committee, this bill will be amended to delete the provision relating to the reporting of a child's exposure to HIV infection. As the bill is currently written this provision may have the unforeseen consequence of allowing children exposed to HIV infection to be removed from parental care solely on the basis of exposure to HIV infection.

3) **Disclosure Already Permitted.** The disclosure and exchange of information by multidisciplinary personnel team members is already permitted by law, this bill simply expands the method by which that disclosure or exchange can be made. The language, as currently written, requires adequate verification of the identity of the multidisciplinary personnel member involved in the disclosure or exchange of information when that exchange or disclosure happens telephonically or electronically. It is unclear to staff if this is adequate language to ensure information shared through electronic means remains confidential.

4) **Suggested Technical Amendments.** If Penal Code section 11165.13(b) is retained in this legislation, staff suggests that "health care practitioner" be defined for the purposes of this section. Section 11167.5(c) defines health care practitioner to include Board licensees, however, it is not clear if that same definition applies to PC Section 11162.13 as language does not define the scope or purpose of the definition.

5) **Support and Opposition.**
None on file.

6) **History**

2010

Mar. 11	Referred to Com. on PUB. S.
Feb. 19	From printer. May be heard in committee March 21.
Feb. 18	Read first time. To print.

ASSEMBLY BILL No. 2229

Introduced by Assembly Member Brownley

February 18, 2010

An act to amend Section 11165.13 of the Penal Code, and to amend Section 830 of the Welfare and Institutions Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2229, as introduced, Brownley. Mandated child abuse reporting.

The Child Abuse and Neglect Reporting Act requires certain persons specified as "mandated reporters" to report suspected child abuse or child neglect, as specified. The act provides that a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect, but requires any indication of maternal substance abuse to lead to an assessment of the needs of the mother and child pursuant to a specified provision of law, and, if other factors are present that indicate risk to a child, a report is required to be made, as specified.

This bill would require a health practitioner or medical social worker who is making a mandated report pursuant to these provisions relating to maternal substance abuse to disclose all known health needs of the child, including, but not limited to, a potential exposure to human immunodeficiency virus (HIV) infection.

Existing law authorizes members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential

under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. A multidisciplinary personnel team is defined for purposes of this provision to mean any team of 3 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

This bill would additionally authorize the disclosure and exchange of information to occur telephonically and electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information. The bill would revise the definition of a multidisciplinary personnel team for purposes of this provision to mean any team of 2 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

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

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

SECTION 1. Section 11165.13 of the Penal Code is amended to read:

11165.13. *(a)* For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

(b) A health practitioner or medical social worker who is making a mandated report pursuant to this section shall disclose all known health needs of the child, including, but not limited to, a potential exposure to human immunodeficiency virus (HIV) infection.

SEC. 2. Section 830 of the Welfare and Institutions Code is amended to read:

830. *(a)* Notwithstanding any other provision of law, members of a multidisciplinary personnel team engaged in the prevention,

identification, and treatment of child abuse may disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential and, notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding.

~~As~~

(b) Disclosure and exchange of information pursuant to this section may occur telephonically and electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information.

(c) As used in this section, ~~"child~~ *the following definitions shall apply:*

(1) "*Child* abuse" has the same meaning as defined in Section 18951.

~~As used in this section, "multidisciplinary~~

(2) "*Multidisciplinary* personnel team" means any team of ~~three~~ *two* or more persons, as specified in Section 18951, the members of which are trained in the prevention, identification, and treatment of child abuse and are qualified to provide a broad range of services related to child abuse.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2339** **VERSION:** **INTRODUCED FEBRUARY 19, 2010**

AUTHOR: **SMYTH** **SPONSOR:** **CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS**

RECOMMENDED POSITION: **SUPPORT**

SUBJECT: **CHILD ABUSE REPORTING**

Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and 11166(a))

2) Allows any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, to make a report to an to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department.(PC §11166.05)

3) Provides that information relevant to an incident or child abuse or neglect may be given to an investigator from an agency that is investigation the known suspected case of child abuse or neglect. (PC §11167(b))

4) Allows information relevant to an incident of child abuse or neglect, including the investigation report and other pertinent materials to be given to the State Department of Social Services or specified county agencies. . (PC §11167(c))

This Bill:

1) Provides that information relevant to an incident or child abuse or neglect *and* information relevant to a report made relating to a child suffering serious emotional damage, may be given to an investigator from an agency that is investigation the known suspected case of child abuse or neglect. (PC §11167(b))

2) Allows information relevant to an incident of child abuse or neglect, *and* information relevant to a report made relating to a child suffering serious emotional damage, including the investigation report and other pertinent materials to be given to the State Department of Social Services or specified county agencies. . (PC §11167(c))

Comment:

1) **Author's Intent.** According to the author's office, this bill will protect reporters of emotional abuse from threats of liability or discipline by allowing mandated reporters to discuss cases with investigators without fear of violating the law.

   The California Association of Marriage and Family Therapist (CAMFT), sponsor of this bill, explains that several years ago emotional abuse of a child was removed from the Child Abuse and Neglect Reporting Act (Act). Subsequently, Penal Code 11166.05 was added to the Act to again allow "Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage…may make a report to an agency…" as specified. This language makes a report of this nature permissible, but not mandatory. Additionally, because this type of report is not considered a child abuse report, CAMFT argues that a practitioner making this type of report would not be immune to liability when cooperating with an investigator and sharing information regarding the report of emotional abuse.

2) **Suggested Amendments.** A conforming and technical amendment may add clarity to the immunity from liability when cooperating with an agency related to reports of emotional abuse of a child. Staff suggests adding a reference to Penal Code Section 11166.05, consistent with language currently in the bill, to Penal Code Section 11172(b).

   (b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, <u>or a report made pursuant to 11166.05,</u> provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

3) **Support and Opposition.**
   None on file

4) **History**

   2010

Mar. 11	Referred to Com. on PUB. S.
Feb. 22	Read first time.
Feb. 21	From printer. May be heard in committee March 23.
Feb. 19	Introduced. To print.

PENAL CODE
SECTION 11164-11174.3

11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

11165. As used in this article "child" means a person under the age of 18 years.

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

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

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

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

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

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

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

(c) "Sexual exploitation" refers to any of the following:

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

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

11165.2. As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

11165.3. As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is

endangered.

11165.4. As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11165.5. As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11165.6. As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.
(2) An instructional aide.
(3) A teacher's aide or teacher's assistant employed by any public

or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with

training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

11165.11. As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

11165.12. As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report that is determined by the investigator who conducted the investigation to be false, to be

inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

11165.14. The appropriate local law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the

incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

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

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

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

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

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

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

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an

incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

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

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

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

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

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

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

(5) Exhibition of the genitals, pubic, or rectal areas of any

person for the purpose of sexual stimulation of the viewer.

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

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

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

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

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

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

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of

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

11166.01. (a) Except as provided in subdivision (b), any supervisor or administrator who violates paragraph (1) of subdivision (i) of Section 11166 shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Notwithstanding Section 11162 or subdivision (c) of Section 11166, any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, in violation of this article, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

11166.1. (a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

11166.2. In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or

1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a

statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section

11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

11167.5. (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a post mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement

of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

11168. The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser

maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information

regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B),

received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive

parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

11170.5. (a) Notwithstanding paragraph (4) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, information regarding a known or suspected child abuser maintained in the Child Abuse Central Index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.

(b) A licensed adoption agency, to which disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating an application for adoption.

(c) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to subparagraph (C) of paragraph (9) of subdivision (b) of Section 11170.

11171. (a) (1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.

(c) The forms shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the agency or agencies designated by the Director of Finance pursuant to Section 13820 and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.

(e) The forms shall be made accessible for use on the Internet.

11171.2. (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

11171.5. (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent.

Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.

(c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

11172. (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the

knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

11174. The Department of Justice, in cooperation with the State

Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

11174.1. (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

11174.3. (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the

child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

ASSEMBLY BILL No. 2339

Introduced by Assembly Member Smyth

February 19, 2010

An act to amend Section 11167 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2339, as introduced, Smyth. Child abuse reporting.

Existing law requires reports made by mandated reporters of suspected child abuse or neglect to include specified information. Existing law also provides that information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect and to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

This bill would provide, in addition, that information relevant to a report made relating to a child suffering, or in substantial risk of suffering, serious emotional damage may be given to that investigator and licensing agency.

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

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

SECTION 1. Section 11167 of the Penal Code is amended to read:

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name,

business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect *and information relevant to a report made pursuant to Section 11166.05* may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, *and information relevant to a report made pursuant to Section 11166.05* may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency

performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2380** **VERSION:** **AMENDED MARCH 24, 2010**

AUTHOR: **B. LOWENTHAL** **SPONSOR:** **OFFICE OF THE LOS ANGELES ATTORNEY**

RECOMMENDED POSITION: **SUPPORT**

SUBJECT: **CHILD ABUSE REPORTING**

Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and 11166(a))

2) Defines "reasonable suspicion" as it relates to child abuse reporting to mean that it is objectively reasonable for a person to entertain a suspicion, based on facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. (PC §11166(a)(1))

3) Makes the failure to report an incident of known or reasonably suspected child abuse or neglect by a mandated reporter a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both that imprisonment and fine. (PC §111666(c))

This Bill:

1) Clarifies the meaning of reasonable suspicion as it relates to the reporting of child abuse by adding the following language to statute: (PC §111666(a)(1))

   a) Reasonable suspicion does not require certainty that a child abuse or neglect has occurred;

   b) Reasonable suspicion does not require a specific medical indication of child abuse or neglect; any reasonable suspicion is sufficient; and

   c) Reasonable suspicion may be based on any information considered credible by the reporter, including statements from other individuals.

Comment:

1) **Author's Intent.** According to the author's office "The current statute surrounding 'reasonable suspicion' for a mandated reporter is vague and open to interpretation, leading

many mandated reporters to fail to report when they should have."

2) Related Legislation.

AB 2339(Smyth) will protect mandated reports from liability when cooperating with investigators regarding a report of suspected emotion suffering by a child.

AB 2229 (Brownley) allows the disclosure and exchange of information by a multidisciplinary personnel team related to the prevention, identification and treatment of child abuse by telephone or electronic means.

3) Support and Opposition.

None on file

4) History

2010

Mar. 25	Re-referred to Com. on PUB. S.
Mar. 24	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
Mar. 11	Referred to Com. on PUB. S.
Feb. 22	Read first time.
Feb. 21	From printer. May be heard in committee March 23.
Feb. 19	Introduced. To print.

AMENDED IN ASSEMBLY MARCH 24, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2380

Introduced by Assembly Member Bonnie Lowenthal
(Coauthor: Assembly Member Portantino)

February 19, 2010

An act to amend ~~Sections 11166, 11167.5, and 11170~~ *Section 11166* of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2380, as amended, Bonnie Lowenthal. Child abuse ~~prevention.~~ *reporting.*

Existing law identifies specified persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity or within the scope of their employment, they have knowledge of or observe a child who is known or reasonably suspected to have been the victim of child abuse or neglect. Existing law defines the term "reasonable suspicion" for purposes of these child abuse reporting provisions.

This bill would provide that "reasonable suspicion" does not require ~~certain knowledge~~ *certainty* that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect. The bill would also provide that "reasonable suspicion" may be based on any information considered credible by the reporter, including ~~hearsay~~ *statements from other individuals*.

~~Existing law requires the Department of Justice to maintain an index of all reports of child abuse and severe neglect submitted by agencies mandated to make those reports.~~

~~This bill would require the department to make available to certain health care practitioners who have delivered or treated a newborn infant information regarding any known or suspected child abuser maintained on the index concerning any parent or primary care provider of the newborn infant. The bill would provide that the health care practitioner is responsible for obtaining the original investigative report from the reporting agency and for drawing independent conclusions on the evidence for purposes of evaluating the necessity for a child welfare risk assessment. The bill would require the health care practitioner to notify the local child protective services agency if it is determined that a child welfare risk assessment is appropriate.~~

~~Existing law requires a person convicted of any specified sex offenses to register as a sex offender and provide specified information to law enforcement agencies. That information is kept at the location where the offender registered and transmitted to the Department of Justice where it is electronically stored in the Violent Crime Information Network (VCIN), as specified.~~

~~This bill would require the Department of Justice to study the feasibility and value of requiring every person who must register as a sex offender to include in the information provided by the person all e-mail addresses and instant message addresses, all screen names and online pseudonyms, and all Internet protocol addresses he or she uses, or intends to use, to communicate over the Internet. The bill would require the department's study to include a determination of the value and feasibility of incorporating this information in the VCIN, and would require the department to complete and publish its report by December 31, 2011.~~

~~This bill would make technical and conforming changes.~~

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

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

1 SECTION 1. Section 11166 of the Penal Code is amended to
2 read:
3 11166. (a) Except as provided in subdivision (d), and in
4 Section 11166.05, a mandated reporter shall make a report to an
5 agency specified in Section 11165.9 whenever the mandated
6 reporter, in his or her professional capacity or within the scope of
7 his or her employment, has knowledge of or observes a child whom

the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require ~~certain knowledge~~ *certainty* that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. "Reasonable suspicion" may be based on any information considered credible by the reporter, including ~~hearsay~~ *statements from other individuals*. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

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

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

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

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

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

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

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

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

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential

communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

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

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

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

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

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably

possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

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

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

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

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

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

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

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

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

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject

to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

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

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

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have

occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

~~SEC. 2. Section 11167.5 of the Penal Code is amended to read:~~

~~11167.5. (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.~~

~~(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:~~

~~(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.~~

~~(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.~~

~~(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.~~

~~(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.~~

~~(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.~~

~~(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility,~~

~~or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.~~

~~(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.~~

~~(8) Coroners and medical examiners when conducting a post mortem examination of a child.~~

~~(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.~~

~~(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.~~

~~(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (g) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.~~

~~(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and~~

~~date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.~~

~~(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.~~

~~(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.~~

~~(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).~~

~~(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.~~

~~(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.~~

~~SEC. 3. Section 11170 of the Penal Code is amended to read:~~

~~11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.~~

~~(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.~~

~~(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.~~

~~(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported~~

~~as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known or suspected child abuse or severe neglect.~~

~~(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.~~

~~(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.~~

~~(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.~~

~~(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.~~

~~(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.~~

~~(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.~~

~~(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.~~

~~(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a~~

~~background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.~~

~~(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.~~

~~(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in~~

~~providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.~~

~~(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).~~

~~(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.~~

~~(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).~~

~~(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing~~

~~with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.~~

~~If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.~~

~~(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.~~

~~(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive~~

~~parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.~~

~~(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.~~

~~(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).~~

~~(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.~~

~~(f) The department shall make available to any public health nurse, treating physician or agent thereof, or other health care practitioner who has delivered or treated a newborn infant, information regarding any known or suspected child abuser~~

~~maintained pursuant to subdivision (a) concerning any parent or primary care provider of the newborn infant. The public health nurse, treating physician or agent thereof, or other health care practitioner is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for the purpose of making decisions when evaluating the necessity for a child welfare risk assessment. If it is determined that a child welfare risk assessment is appropriate, the public health nurse, treating physician or agent thereof, or other health care practitioner shall notify the local child protective services agency so that a child welfare risk assessment can be conducted.~~

~~(g) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.~~

~~(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.~~

~~(h) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.~~

~~SEC. 4. The Department of Justice shall study the feasibility and value of requiring every person who must register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code) to include in the information provided by the person all e-mail addresses and instant message addresses, all screen names and online~~

~~pseudonyms, and all Internet protocol addresses he or she uses, or intends to use, to communicate over the Internet. The Department of Justice study shall include a determination of the value and feasibility of incorporating this information in the Violent Crime Information Network (VCIN). The Department of Justice shall complete and publish its report by December 31, 2011.~~

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **AB 2435** **VERSION:** **AMENDED MARCH 24, 2010**

AUTHOR: **B. LOWENTHAL** **SPONSOR:** **CALIFORNIA COMMISSION ON AGING**

RECOMMENDED POSITION: **SUPPORT**

SUBJECT: **ELDER AND DEPENDENT ADULT ABUSE**

Existing Law:

1) Requires the Board of Behavioral Sciences (Board) and the Board of Psychology to establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of specified licenses. (Business and Professions Code §28)

2) Outlines the coursework and training requirements for child abuse assessment and reporting education designed to meet the mandated coursework requirement. (BPC §28(a))

3) States that it is the intent of the legislature that there is a need to ensure that professionals of the healing arts who have a demonstrated contact with child abuse victims, potential child abuse victims and child abusers and potential child abusers are provided adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences. (BPC §28)

4) Requires applicants for licensure as marriage and family therapists (MFTs) who begin graduate study before August 1, 2012, and who complete that study before December 31, 2018, to possess a masters or doctor's degree that includes coursework in developmental issues and life events from infancy to old age and their relationship on individuals, couples, and family relationships. (BPC §4980.37(b)(3))

5) Requires applicants for licensure as an MFT who begin graduate study before August 1, 2012, and who complete that study before December 31, 2018 to complete a minimum of 10 contact hours of coursework in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4980.39)

6) Requires an applicant for licensure as a clinical social worker (LCSW), who began graduate study after January 1, 2004, to complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social and psychological aspects of aging. (BPC §4996.25)

7) Requires LCSW applicants, who began graduate study prior to January 1, 2004, to complete a three hour continuing education course in aging and long-term care, which could include, but is not limited to, the biological, social and psychological aspects of aging. (BPC §4996.26)

8) Requires Licensed Professional Clinical Counselor (LPCC) applicants who begin study before August 1, 2012 and complete that study on or before December 31, 2018, to possess a master's or doctor's degree that includes a minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4999.32(e)(7))

9) Requires LPCC applicants who begin study after August 1, 2012 ,or who begin before that date but do not complete study before December 31, 2018, to possess a master's or doctor's degree that includes instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4999.33(d)(10))

This Bill:

1) Requires licensed Psychologists, after January 1, 2012, to receive instruction in the assessment and reporting of, as well as treatment related to, elder and dependent abuse and neglect. (BPC §§2915.5 and 2915.7)

2) Requires an applicant for licensure as an MFT who begins graduate study before August 1, 2012, and who completes that study before December 31, 2018 to possess a masters or doctor's degree that includes coursework in developmental issues and life events from infancy to old age and their relationship on individuals, couples, and family relationships that may include coursework in abuse and neglect of older and dependent adults and geropsychology. (BPC §4980.37(b)(3))

3) Requires an applicant for licensure as an MFT who begins graduate study before August 1, 2012, and completes that study before December 31, 2018 to complete a minimum of 10 contact hours of coursework in aging and long-term care and requires this coursework after January 1, 2012 to also include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect.(BPC §4980.39(a))

4) States that it is anticipated and encouraged that hours of experience required for MFT licensure will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights. (BPC § 4980.43(a)(12)

5) Requires LCSW applicants, who began graduate study after January 1, 2004, to complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC §4996.25(a))

6) Requires LCSW applicants, who began graduate study prior to January 1, 2004, to complete a three hour continuing education course in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC §4996.26(a))

7) Requires LPCC applicants who begin study before August 1, 2012 and complete that study on or before December 31, 2018, to possess a master's or doctor's degree that includes a minimum of 10 contact hours of instruction in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC

§4999.32(e)(7))

8) Requires LPCC applicants who begin study after August 1, 2012,or who begin before that date but do not complete that study before December 31, 2018, to possess a master's or doctor's degree that includes instruction in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect. (BPC §4999.33(d)(10))

Comments:

1) **Purpose of this Bill.** Legislative intent language inserted into Business and Professions Code section 28 by this bill states, "The board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder abuse and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal."

   Although all Board licensees, except Licensed Educational Psychologists, are required to take aging and long-term care coursework either prior to licensure, or during their first license renewal cycle, the law is silent on the inclusion of instruction relating to assessment of elder abuse or neglect. Additionally, current licensure requirements do not address dependent adults as a specific population, though Welfare and Institutions Code Section 15630(a) requires any health practitioner providing care or services to a elder or dependent adult to report an incident of abuse or neglect.

2) **Changes to MFT Curriculum by SB 33.** The Board, by request of, and in consultation with, the California Commission on Aging (CCoA) included elder adult centered education requirements in SB 33 (Correa), Chapter 26, Statutes of 2009. As a result of the passage of SB 33, the following are requirements for MFT licensure applicants who begin graduate study after August 1, 2012, or who begin study before August 1, 2012 but fail to complete that study before December 31, 2018:

   - The qualifying degree must include coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to family therapy and marital family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships. (BPC §4980.36(d)(1))
   - The qualifying degree must include instruction in developmental issues from infancy to old age, including aging and its biological, social cognitive and psychological aspects. (BPC §480.36(d)(2)(B)(iii))
   - The qualifying degree must include instruction in adult abuse assessment and reporting, long-term care, and end of life and grief (BPC §4980.36(d)(2)(C))

3) **Suggested Amendments.** This bill includes changes, related to elder and dependent abuse, to the current licensure requirements for LPCCs (commencing January 1, 2011) as well as corresponding requirement changes for LPCC applicants who begin graduate study after August 1, 2012 or begin before that date but fail to complete the program before December 31, 2018. Amendments to BPC Section 4999.33(d)(10) require that, beginning after January 1,2012, aging and long-term care coursework shall also include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect. The language contained in this subdivision provides for a delayed

implementation (after January 1, 2012) of the new requirement (inclusion of instruction in assessment and reporting). However, this entire section of law has a delayed implementation; this section does not mandate the requirements contained therein unless the applicant begins study after August 1, 2012 or the applicant does not complete study until after December 31, 2018. Therefore the requirements of the section already have a limitation on the applicable population. Additionally, this law will go into effect one year prior to the first individual subject to the January 1, 2012 requirements (instruction in assessment and reporting) enters school or, for those students graduating after 2018, potentially seven years prior to the effective date of the requirements of this subdivision.

Having a provision with a delayed implementation date within a section that already has delayed implementation (and both with different dates: August 1, 2012 and January 1, 2012) would certainly cause confusion not only for students and consumer, but for those Board staff tasked with evaluating licensure applications.

To create consistency and clarity, staff suggests taking out the January 1, 2012 implementation date from this subdivision (4999.33(d)(10)), and make that specified instruction mandatory for anyone subject to this section (those applicants that begins study after August 1, 2012 or those applicants that not complete study until after December 31, 2018).

4) Support and Opposition.
None on file

5) History
2010

Mar. 25	Re-referred to Com. on B. & P.
Mar. 24	From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
Mar. 11	Referred to Com. on B. & P.
Feb. 22	Read first time.
Feb. 21	From printer. May be heard in committee March 23.
Feb. 19	Introduced. To print.

AMENDED IN ASSEMBLY MARCH 24, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2435

Introduced by Assembly Member Bonnie Lowenthal

February 19, 2010

An act to amend Sections 28, *2915.5, 2915.7,* 4980.37, 4980.39, ~~and 4980.43~~ *4980.43, 4996.25, 4996.26, 4999.32, and 4999.33* of the Business and Professions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2435, as amended, Bonnie Lowenthal. Elder and dependent adult abuse.

(1) Existing law provides for the licensing and regulation of psychologists, *professional clinical counselors,* clinical social workers, and marriage and family therapists. Existing law requires a person applying for licensure in these professions to have completed specified coursework or training in child abuse assessment and reporting from certain types of institutions.

This bill~~, on and after January 1, 2012,~~ would ~~expand the required coursework or~~ *encourage the Board of Psychology and the Board of Behavioral Sciences to include in that* training ~~to additionally cover~~ elder and dependent adult abuse assessment and reporting, *and would make legislative findings with regard to that training*.

(2) Existing law, with respect to psychologists, licensed clinical social workers, and licensed professional clinical counselors, requires a licensee to complete, as a condition of licensure and relicensure, specified coursework in aging.

This bill, on and after January 1, 2012, would expand the required coursework to additionally cover elder and dependent adult abuse assessment and reporting.

~~(2)~~

(3) Existing law, with respect to marriage and family therapists, requires an applicant for licensure or registration to possess a doctor's or master's degree in various disciplines, including marriage, family, and child counseling, relative to applicants who begin graduate study before August 1, 2012, and complete that study on or before December 31, ~~2008~~ *2018*.

This bill would ~~instead refer to marriage, family, older adult, and child counseling~~ *authorize the requisite coursework related to developmental issues and life events to include coursework in abuse and neglect of older and dependent adults*.

~~(3)~~

(4) Existing law requires an applicant for licensure as a marriage and family therapist under ~~(2)~~ *(3)* to complete a minimum of 10 contact hours of coursework in aging and long-term care, which may include the biological, social, and psychological aspects of aging.

This bill, *on and after January 1, 2012,* would require the coursework to include instruction on the assessment and reporting of elder and dependent adult abuse and neglect~~,~~ and associated treatment.

~~(4)~~

(5) Existing law requires an applicant for licensure as a marriage and family counselor, prior to applying for a licensure examination, to complete certain *hours of* experience~~, including, among other things, not less than 500 total hours of experience in diagnosing and treating couples, families, and children~~.

This bill would ~~include diagnosing and treating older adults within this~~ *encourage those hours of* experience ~~requirement~~ *to include working with elders and dependent adults*.

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 28 of the Business and Professions Code
2 is amended to read:
3 28. The Legislature finds that there is a need to ensure that
4 professionals of the healing arts who have demonstrable contact

with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse which will ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the ~~above-referenced areas of~~ *area of child abuse* assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal. ~~With respect to elder and dependent adult abuse, the requirement for training shall apply on and after January 1, 2012.~~

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in the ~~above-referenced areas of~~ *child abuse* assessment and reporting that meets the requirements of this section, including detailed knowledge of ~~Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code. With respect to elder and dependent adult abuse, the requirement shall apply on and after January 1, 2012.~~ *Section 11165 of the Penal Code.* The training shall meet all of the following requirements:

(a) Be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, and 4996.18, including extension courses offered by those institutions.

(2) A continuing education provider approved by the responsible board.

(3) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

(b) Have a minimum of seven contact hours.

(c) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury,

and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for ~~the needs of a child, elder, or dependent adult~~ *a child's needs* after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(d) An applicant shall provide the appropriate board with documentation of completion of the required child~~, elder, and dependent adult~~ abuse training.

The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the board that there would be no need for the training in his or her practice because of the nature of that practice.

It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, or marriage and family therapist have minimal but appropriate training in the areas of child, elder, and dependent adult abuse assessment and reporting. It is not intended that by solely complying with the requirements of this section, a practitioner is fully trained in the subject of treatment of child, elder, and dependent adult abuse victims and abusers.

The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.

SEC. 2. Section 2915.5 of the Business and Professions Code is amended to read:

2915.5. (a) Any applicant for licensure as a psychologist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate

course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 3. Section 2915.7 of the Business and Professions Code is amended to read:

2915.7. (a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of that course.

(b) The course should include, but is not limited to, the biological, social, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) A licensee whose practice does not include the direct provision of mental health services may apply to the board for an exception to the requirements of this section.

~~(f) This section shall become operative on January 1, 2005.~~

~~SEC. 2.~~

SEC. 4. Section 4980.37 of the Business and Professions Code is amended to read:

4980.37. (a) This section shall apply to applicants for licensure or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4980.36.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree in marriage, family, ~~older adult,~~ and child counseling, marriage and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by a regional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families,

stepparenting, abuse and neglect of older and dependent adults, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(c) (1) In addition to the 12 semester or 18 quarter units of coursework specified in subdivision (b), the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic technique, assessments, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(d) As an alternative to meeting the qualifications specified in subdivision (b), the board shall accept as equivalent degrees those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(e) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program that meets the educational qualifications for licensure or registration under this section shall do all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(f) Educational institutions are encouraged to design the practicum required by this section to include marriage and family therapy experience in low-income and multicultural mental health settings.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

~~SEC. 3.~~

SEC. 5. Section 4980.39 of the Business and Professions Code is amended to read:

4980.39. (a) An applicant for licensure whose education qualifies him or her under Section 4980.37 shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. ~~This~~ *On and after January 1, 2012, this* coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the

applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

~~SEC. 4.~~

SEC. 6. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (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 completing the master's or doctor's degree.

(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 examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,250 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:

(i) 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. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(C) Client centered advocacy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, ~~older adults,~~ and children. For the first 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

(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 is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(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) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(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.

SEC. 7. Section 4996.25 of the Business and Professions Code is amended to read:

4996.25. (a) Any applicant for licensure as a licensed clinical social worker who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 8. Section 4996.26 of the Business and Professions Code is amended to read:

4996.26. (a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of the course.

(b) The course shall include, but is not limited to, the biological, social, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken

prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4996.22.

(f) This section shall become operative on January 1, 2005.

SEC. 9. Section 4999.32 of the Business and Professions Code is amended to read:

4999.32. (a) This section shall apply to applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4999.33.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (d), the coursework in the core content areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 48 graduate semester or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in each of following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and

practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of

research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) In addition to the course requirements described in paragraph (1), a minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or

postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

(e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:

(1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A two semester unit or three quarter unit survey course in psychopharmacology.

(4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.

(5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.

(6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors. When coursework in a master's or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

SEC. 10. Section 4999.33 of the Business and Professions Code is amended to read:

4999.33. (a) This section shall apply to the following:

(1) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for examination eligibility or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of

counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including California law and professional ethics for professional clinical counselors, professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(2) In addition to the course requirements described in paragraph (1), 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(4) An understanding of the effects of socioeconomic status on treatment and available resources.

(5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.

(6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.

(8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(9) Child abuse assessment and reporting.

(10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging. *On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.*

(e) A degree program that qualifies for licensure under this section shall do all of the following:

(1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.

(2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.

(3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **SB 389** **VERSION:** **AMENDED JUNE 1, 2009**

AUTHOR: **NEGRETE MCLEOD** **SPONSOR:** **AUTHOR**

RECOMMENDED POSITION: **OPPOSE UNLESS AMENDED**

SUBJECT: **FINGERPRINT SUBMISSION**

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)

5) Requires all Board licensees and registrants that have not previously submitted fingerprints to DOJ, or for whom an electronic record of the submission of the fingerprints does not exist with the DOJ, to complete a state and federal level criminal offender record information search through the DOJ before his or her license renewal date, effective June 19, 2009. (Title 16, California Code of Regulations, Section 1815)

This Bill:

1) States that specified Boards under the Department of Consumer Affairs (DCA) shall requires applicants for licensure and petitioners for reinstatement of a revoked, surrendered, or canceled license 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 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) Board Regulation. The Board's regulation 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 went into effect June 19, 2009.

Specifically the Board's regulation does the following:

- 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 fingerprint regulation are very similar. However, one major difference is that the Board's 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. SB 389 fingerprint submission requirement as a condition of renewal becomes operative for those renewing after January 1, 2011.
   The Board's regulation went into effect June 19, 2009 and all licensees and registrants subject to the regulatory requirements (those that have not submitted fingerprints previously or for whom an electronic record of their fingerprints do not exist with DOJ) began submitting fingerprints November 1, 2009. As of April 1, 2010, the Board had processed 8,238 fingerprint submissions for those licensees subject to the regulation, accounting for 14% of the population that did not have an electronic record of his or her fingerprints on file with DOJ.

5) **Fingerprint Submission and Certification as a Condition of License Renewal.** The Board's 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 legislation states that renewal is contingent on successful completion of the process necessary for 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.

   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 an expedient and efficient manner. It is important that the Board be able to continue 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 three 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 regulation currently in place will allow the board to receive all fingerprint submissions by October, 2011.

7) **Past Board Action.** On May 22, 2009 the Board took an oppose position on this bill unless the measure was 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. Technical

amendments have since been made to the bill, though the concerns have not been addressed with those amendments.

8) Support and Opposition. (As of July 7, 2009)

Support: California Association of Nurse Practitioners
California Medical Board
California Board of Accountancy
California Chiropractic Association

Opposition: Construction Industry Legislative Counsel
Southern California Contractors Association

9) History

2009

July 7	Set, first hearing. Failed passage in committee. Reconsideration granted.
June 30	From committee: Do pass, but first be re-referred to Com. on PUB.S
.	(Ayes 6. Noes 0.) Re-referred to Com. on PUB. S. (Heard in committee on June 30.)
June 18	To Coms. on B. & P. and PUB. S.
June 3	In Assembly. Read first time. Held at Desk.
June 3	Read third time. Passed. (Ayes 37. Noes 1. Page 1178.) To Assembly.
June 1	From committee: Do pass as amended. (Ayes 12. Noes 0. Page 1070.) Read second time. Amended. To third reading.
May 22	Set for hearing May 28. (Suspense - for vote only.)
May 18	Placed on APPR suspense file.
May 8	Set for hearing May 18.
May 5	Read second time. Amended. Re-referred to Com. on APPR.
May 4	From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 7. Noes 0. Page 705.)
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.

<u>ATTACHMENTS</u>

16 CCR, Section 1815 – Board fingerprinting regulations

.

BOARD OF BEHAVIORAL SCIENCES
Final Approved Language

§1815 FINGERPRINT SUBMISSION.

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

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

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

(d) Licensees and registrants shall pay the actual costs for furnishing the fingerprints and conducting the searches in compliance with subdivision (a).

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

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

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

§1886.40. AMOUNT OF FINES.

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

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

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

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

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

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

(4) The citation involves unlicensed practice.

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

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

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

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

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 5, 2009

SENATE BILL No. 389

Introduced by Senator Negrete McLeod

February 26, 2009

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 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 *new* applicants for a license ~~and,~~ *and petitioners for reinstatement of a revoked, surrendered, or canceled license, to successfully complete a state and federal level criminal record information search. The bill would also require,* 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 *the process necessary for* a state and federal level criminal offender record information search, as specified. The bill would require licensees *applying for license renewal* 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*, or any member of the personnel of record of the licensee,* has been convicted, as defined, of a felony or misdemeanor since ~~his or her~~ *the* last renewal, or if this is the licensee's first renewal, since the initial license was issued. *The bill would provide that the Contractors' State License Board shall implement the provisions pertaining to renewal licenses on a specified schedule, after an appropriation is made for this purpose, utilizing its applicable fees.*

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 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant for a license *or a petitioner for reinstatement of a revoked, surrendered, or canceled license* to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks and shall require the applicant *or petitioner* to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice as provided in subdivision (c) or as otherwise provided in this code.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Bureau.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.
(27) Dental Board of California.
(28) Dental Hygiene Committee of California.
(29) Professional Fiduciaries Bureau.
(30) California Board of Podiatric Medicine.
(31) Osteopathic Medical Board of California.
(32) State Board of Chiropractic Examiners.

(c) Except as otherwise provided in this code, each agency listed in subdivision (b) shall direct applicants for a license *or a petitioner for reinstatement of a revoked, surrendered, or canceled license* to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency

pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

SEC. 2. Section 144.5 is added to the Business and Professions Code, to read:

144.5. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) of Section 144 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~~ *complete the process necessary for* a state and federal level criminal offender record information search *to be* conducted through the Department of Justice as provided in subdivision (d).

~~(b) (1) A licensee described in subdivision (a) shall, as a condition of license renewal, certify on the renewal application that he or she has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).~~

~~(2) The licensee shall retain for at least three years, as evidence of the certification made pursuant to paragraph (1), either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's fingerprints were taken.~~

(b) (1) As a condition of license renewal, a licensee described in subdivision (a) shall complete the process necessary for a state and federal level criminal offender record information search to be conducted as provided in subdivision (d).

(2) No license of a licensee described in subdivision (a) shall be renewed until certification by the licensee is received by the agency verifying that the licensee has complied with this subdivision. The certification shall be made on a form provided by the agency not later than the renewal date of the license.

(3) As evidence of the certification made pursuant to paragraph (2), the licensee shall retain either of the following for at least three years:

(A) The receipt showing that the fingerprint images required by this section were electronically transmitted to the Department of Justice.

(B) For those licensees who did not use an electronic fingerprinting system, the receipt evidencing that the fingerprint images required by this section were taken.

(c) Failure to provide the certification required by subdivision (b) renders an application for *license* renewal incomplete. An agency shall not renew the license until a complete application is submitted.

(d) Each agency listed in subdivision (b) of Section 144 shall direct licensees described in subdivision (a) to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(e) An agency may waive the requirements of this section if the license is inactive or retired, or if the licensee is actively serving in the military. The agency ~~may~~ *shall* not activate an inactive license or return a retired license to full licensure status for a licensee described in subdivision (a) until the licensee has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

~~(f) With respect to licensees that are business entities, each agency listed in subdivision (b) of Section 144 shall, by regulation, determine which owners, officers, directors, shareholders,~~

~~members, agents, employees, or other natural persons who are representatives of the business entity are required to submit fingerprint images to the Department of Justice and disclose the information on its renewal forms, as required by this section.~~

~~(g)~~

(f) A licensee who falsely certifies completion of a state and federal level criminal record information search under subdivision ~~(b) may be subject to disciplinary action by his or her licensing agency.~~ *(b) shall be subject to disciplinary action.*

(g) (1) As it relates to the Contractors' State License Board, the provisions of this section shall become operative on the date on which an appropriation is made in the annual Budget Act to fund the activities of the Contractors' State License Board to accommodate a criminal history record check pursuant to this section. If this section becomes operative with respect to the Contractors' State License Board on or before July 1, 2012, the Contractors' State License Board shall implement this section according to the following schedule, and shall utilize the fees under its fee cap accordingly:

(A) For licenses initially issued between January 1, 2000, and December 31, 2005, inclusive, the certification required under subdivision (b) shall be submitted during the license renewal period that commences on January 1, 2013.

(B) For licenses initially issued between January 1, 1990, and December 31, 1999, inclusive, the certification required under subdivision (b) shall be submitted during the license renewal period that commences on January 1, 2015.

(C) For licenses initially issued prior to January 1, 1990, the certification required under subdivision (b) shall be submitted during the license renewal period that commences on January 1, 2017.

(2) If this section becomes operative with respect to the Contractors' State License Board after July 1, 2012, the license renewal period commencement dates specified in subparagraphs (A), (B), and (C) of paragraph (1) shall be delayed one year at a time until this section becomes operative with respect to the Contractors' State License Board.

(h) This section shall become operative on January 1, 2011.

SEC. 3. Section 144.6 is added to the Business and Professions Code, to read:

144.6. (a) An agency described in subdivision (b) of Section 144 shall require a licensee, as a condition of license renewal, to ~~notify the board on the license renewal form if he or she has been~~ *notify the agency on the license renewal form if he or she, or any member of the personnel of record of the licensee, has been* convicted, as defined in Section 490, 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.~~ *since the license was last renewed, or since the license was initially issued if it has not been previously renewed.*

(b) The reporting requirement imposed under this section shall apply in addition to any other reporting requirement imposed under this code.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **SB 543** **VERSION:** **AMENDED SEPTEMBER 3, 2009**

AUTHOR: **LENO** **SPONSOR:** National Association for Social Workers,
California Chapter Mental Health America of Northern California
GSA Network, Equality California

RECOMMENDED POSITION: **NONE**

SUBJECT: **MINORS: CONSENT TO MENTAL HEALTH TREATMENT**

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 of 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))

<u>This Bill:</u>

1) Defines a "professional person" related to mental health treatment or counseling services in the treatment of minors on an outpatient basis as any of the following: (Welfare and Institutions Code Section 5849.10(a)(2))

a) A psychiatrist;

b) A psychologist, licensed by the State Board of Medical Quality Assurance;

c) A Licensed Clinical Social Worker (LCSW),

d) A Licensed Marriage and Family Therapist (MFT);

e) A Licensed Educational Psychologist (LEP);

f) A credentialed school psychologist;

g) A clinical psychologist; and,

h) A MFT Intern, while working under the supervision of a licensed professional.

2) Defines "mental health treatment or counseling services" as outpatient mental health treatment or counseling by a professional person, as defined. (WIC §5849.10(a)(1))

3) Allows a minor who is 12 years of age or older to consent to mental health services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. (WIC §5849.10(b))

4) Requires the mental health treatment or counseling of a minor authorized by this bill to include the involvement of the minor's parent or guardian unless, the professional person who is treating or counseling the minor, after consulting with the minor, determines that the involvement would be inappropriate. (WIC §5849.10(c))

5) Requires the professional person treating or counseling a minor to state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful. (WIC §5849.10(c))

6) Requires a professional person treating a minor pursuant to the provisions of this bill, that determines that involvement of a parent or guardian is inappropriate, to note the reason why, in the opinion of that professional person, it would be inappropriate to contact the minor's parent or guardian. (WIC §5849.10(c))

7) States that a parent or guardian is not liable for payment for mental health treatment or counseling services provided pursuant to the provisions of this bill unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. (WIC §5849.10(d))

8) Clarifies that the provisions of this bill do not authorize a minor to receive convulsive therapy or psychosurgery or psychotropic drugs without the consent of the minor's parent or guardian. (WIC §5849.(e))

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, if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in that treatment. Currently a minor would not only have to meet this requirement, but also be found to present a danger of serious physical or mental harm to self or others without receiving the services or be an alleged victim of incest or child abuse (essentially specifying that the youth must be in crisis to receive services without parental

consent). Also, current law requires these services to be offered in specified settings. This bill does not limit the settings in which services to minors without parental consent may be offered. By lowering the threshold for services and removing the limitation of applicable settings, more minors will be eligible for mental health services without parental consent. 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. Therefore, it could be stated that by allowing these minors to meet only one of the current requirements to consent to mental health services (participating intelligently), this bill will effectively open up services 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 has similar parental notification provisions but expands the applicable settings from specified outpatient settings to any setting a minor may receive the mental health treatment or counseling. Additionally, as discussed in the second comment (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 and the practitioner deems involvement of the parent inappropriate. This takes considerable discretion away from the parent and gives that discretion to a minor and a mental health practitioner. Current law allows for this type of delegation of consent only in situations where the minor is found to present a danger of serious physical or mental harm to self or others without receiving the services or the minor is an alleged victim of incest of child abuse.

4) **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?

5) **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:

   a) Minors of any age to consent to medical care related to the prevention or treatment of pregnancy (Family Code §6925).

   b) 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 §6926)

   c) 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 §6929)

d) 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 §6928)

e) A minor 15 years or age or older to consent to medical care or dental care if the minor is living separate and apart from the minor's parents or guardians and the minor manages his or her own financial affairs. (FC § 6922)

6) Suggested Technical Amendment. As written subdivision (g) of Welfare and Institutions Code Section 5849.10, 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, 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 four 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. Staff recommends amending this subdivision to reference the correct code section (Business and Professions Code Section 4980.03(g)), or simply reference Chapter 13.

7) Past Board Action. This bill came before the Board for review on May 22, 2009. The Policy and Advocacy Committee did not make a position recommendation to the Board when it heard the bill on April 10, 2009. The full Board discussed the measure at length. The Board voted to take an oppose position on the bill, with four members voting for an oppose position and two members abstaining from the vote. This version of the bill differs from that discussed at the May 22, 2009 Board meeting in two significant ways:

a) The previous version of this bill limited the settings in which a professional person could provide services to a minor to the following: a governmental agency, persons or agency contracting with the government, a runaway house or crisis resolution center, or residential shelter.

b) The previous version of this bill stated that a professional person providing services described therein must involve a parent or guardian if appropriate. Current law, and this bill, states that the parent or guardian shall be involve unless, in the opinion of the professional person, it is determined to be inappropriate. The language shifts the burden for the practitioner to involve the parent or guardian. The previous version changed the assumption that the parent *would be* involved to an assumption that they *would not be* involved. This provision was a point of concern for the Board. The bill version before the Committee today has removed this controversial language.

8) Support and Opposition. (as of June 30, 2009)

Support: Equality California (co-sponsor)
Gay-Straight Alliance Network (co-sponsor)
Mental Health America of Northern California (co-sponsor)

National Association of Social Workers, California Chapter (co-sponsor)
Asian & Pacific Islander American Health Forum
California Adolescent Health Collaborative
California Association of Marriage and Family Therapists
California Primary Care Association
California Society for Clinical Social Work
California Youth Empowerment Network
Children's Law Center of Los Angeles
Mental Health Association in California
National Alliance on Mental Health

Opposition: Capitol Resource Family Pact

9) History

2009

Sept. 11 Placed on inactive file on request of Assembly Member Torrico.
Sept. 3 Read third time. Amended. To third reading.
July 8 Read second time. To third reading.
July 7 Read second time. Amended. To second reading.
July 6 From committee: Do pass as amended. (Ayes 7. Noes 3.) (Heard in committee on June 30.)
June 25 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD.
June 22 To Com. on JUD.
June 3 In Assembly. Read first time. Held at Desk.
June 3 Read third time. Passed. (Ayes 22. Noes 12. Page 1182.) To Assembly.
June 1 From committee: Do pass as amended. (Ayes 7. Noes 3. Page 1072.) Read second time. Amended. To third reading.
May 22 Set for hearing May 28.
May 21 Re-referred to Com. on RLS. Withdrawn from committee. Re-referred to Com. on APPR.
May 13 Read second time. Amended. To third reading.
May 12 From committee: Do pass as amended. (Ayes 3. Noes 0. Page 808.)
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.

ATTACHMENTS

Family Code Sections relating to existing youth consent laws
Family Code Section 6924 relating to current mental health services and minor consent

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.

Current Law Related to Minor Consent for Mental Health Services

Family Code Section 6924. (a) As used in this section:
(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:
(A) A governmental agency.
(B) A person or agency having a contract with a governmental agency to provide the services.
(C) An agency that receives funding from community united funds.
(D) A runaway house or crisis resolution center.
(E) A professional person, as defined in paragraph (2).
(2) "Professional person" means any of the following:
(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.
(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.
(D) A credentialed school psychologist as described in Section 49424 of the Education Code.
(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.
(F) The chief administrator of an agency referred to in paragraph (1) or (3).
(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (g) of Section 4980.03 of the Business and Professions Code.
(3) "Residential shelter services" means any of the following:
(A) The provision of residential and other support services to minors on a temporary or 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 in paragraph (2).
(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:
(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.
(2) The minor (A) would present a danger of serious physical or

mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include 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. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

AMENDED IN ASSEMBLY SEPTEMBER 3, 2009

AMENDED IN ASSEMBLY JULY 7, 2009

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 13, 2009

SENATE BILL No. 543

Introduced by Senator Leno

February 27, 2009

An act to add Part 3.9 (commencing with Section 5849.10) to Division 5 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, 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, as specified.

This bill would, notwithstanding any provision of law, instead, provide that a minor who is 12 years of age or older may consent to outpatient mental health services, if, in the opinion of the professional person, as defined, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. The bill would expand the definition of a professional person to include a licensed clinical social worker, as specified, *and a board certified or board eligible psychiatrist*.

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

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

SECTION 1. Part 3.9 (commencing with Section 5849.10) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.9. MENTAL HEALTH SERVICES FOR MINORS

5849.10. (a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of outpatient mental health treatment or counseling by a professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Chapter 13.5 (commencing with Section 4989.10) of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) A licensed clinical social worker as defined in Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code.

(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code as that subdivision read on January 1, 2003.

(H) A board certified, or board eligible, psychiatrist.

(b) Notwithstanding any provision of law to the contrary, a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services.

(c) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian, unless the professional person who is treating or counseling the minor, after consulting with the minor, determines that the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(d) The minor's ~~parents~~ *parent* or guardian ~~are~~ *is* not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian.

(e) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **SB 1282** **VERSION:** **AMENDED MARCH 23, 2010**

AUTHOR: **STEINBERG** **SPONSOR:** California Association for Behavioral Analysis (CalABA)

RECOMMENDED POSITION: **NONE**

SUBJECT: **APPLIED BEHAVIORAL ANALYSIS SERVICES**

Existing Law:

1) Defines several types of professionals used in regional centers for functions related to behavioral analysis for persons with developmental disabilities as follows: (17CCR§54342(a)(8),(11),(12),(13)):

   A. Behavior Analyst
   - Assesses the function of a consumer's behavior and designs, implements, and evaluates modifications to produce socially significant improvements in behavior through skill acquisition and the reduction of behavior.
   - Engages in functional assessments or analyses to identify environmental factors of which behavior is a function.
   - Prohibited from practicing psychology.
   - Must be certified by the National Behavior Analyst Certification Board.

   B. Behavior Management Consultant
   Designs or implements behavior modification intervention services and possesses all of the following:
   - 12 semester units in applied behavior analysis;
   - Valid license as a Psychologist, Clinical Social Worker, Marriage and Family Therapist, or other professional whose California licensure permits the design or implementation of behavior modification intervention services; and,
   - Two years of experience designing and implementing behavior modification intervention services.

   C. Associate Behavior Analyst
   Performs the same functions as a Behavior Analyst (see A. above), but under the direct supervision of a Behavior Analyst or Behavior Management Consultant and:
   - Is prohibited from practicing psychology.
   - Must be certified by the National Behavior Analyst Certification Board.

   D. Behavior Management Assistant
   - Designs or implements behavior modification intervention services under the direct supervision of a Behavior Management Consultant.
   - May perform the same functions as a Behavior Analyst under direct supervision of a Behavior Analyst or Behavior Management Consultant, if the individual meets either of the following requirements:

1. Possesses a Bachelor's degree and one of the following:
   - 12 semester units in applied behavior analysis and one year of experience in designing or implementing behavior modification intervention services; OR
   - Two years of experience in designing or implementing behavior modification intervention services.

   OR
2. Is registered as either a psychological assistant or an associate clinical social worker.

2) Defines "Applied behavioral analysis" as the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction. (WIC § 4686.2(d)(1), GC § 95021(d)(1))

3) Defines "Intensive behavioral intervention" as any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. (WIC § 4686.2(d)(2), GC § 95021(d)(2))

4) Defines "Behavioral intervention case manager" as a designated certificated school/district/county/nonpublic school or agency staff member(s) or other qualified contracted personnel trained in behavioral analysis with an emphasis on positive behavioral interventions. Permits such work to be performed by any staff member with specific training in this area and may include but is not limited to, a teacher, resource specialist, school psychologist, or program specialist. (5 CCR § 3001(f))

5) Defines "Behavioral intervention plan" as a document developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the pupil's individual education plan (IEP). (5 CCR § 3001(g))

6) Permits a Behavioral intervention plan to only be implemented by, or under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. (5 CCR § 3052(a)(2))

7) Requires a Functional analysis assessment to be conducted by, or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. A functional analysis assessment shall occur after the individualized education program team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. (5 CCR § 3052(b))

8) Requires nonpublic school and agency personnel who design or plan behavior intervention services to possess one of the following: (5 CCR § 3065(d))
   - Pupil personnel services credential in school counseling or school psychology
   - Special education instruction credential
   - Marriage and Family Therapist, Clinical Social worker, Educational Psychologist or Psychologist license
   - Master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavioral science, human development, social work, rehabilitation, or a related field.

9) Requires nonpublic school and agency personnel who provide behavior intervention to meet one of the following: (5 CCR § 3065(e))
   - The qualifications under subdivision (d); OR

- Work under the supervision of personnel qualified under subdivision (d); AND
  - Possess a high school diploma or its equivalent; AND
  - Receive the specific level of supervision required in the pupil's IEP.

This Bill:

1) Establishes the California Behavioral Certification Organization (CBCO), a nonprofit organization that provides for the certification and registration of applied behavioral analysis practitioners. (Business and Professions Code § 2529.7(a))

2) States that a person qualified to provide applied behavioral analysis services, as defined in this bill, may do all of the following: (BPC §2529.55(a))

   a) Design, implement, and evaluate systematic instructional and environmental modifications to produce social improvements in the behavior of individuals or groups.

   b) Apply the principles, methods, and procedures of behavior analysis.

   c) Utilize contextual factors and establish operations, antecedent stimuli, positive reinforcement, other consequences, and other behavior analysis procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

   d) Assess functional relations between behavior and environmental factors, known as functional assessment and functional analysis.

   e) Use procedures based on scientific research and the direct observation and measurement of behavior and environment.

3) Provides that the practice of applied behavioral analysis does not include psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling. (BPC §2529.55(b))

4) States that the following licensed professionals are recognized as qualified to provide applied behavior analysis services: physicians and surgeons, psychologists, social workers, marriage and family therapists, speech-language pathologists, occupational therapists, physical therapists, or counselors, when acting within the scope of their license, formal training, experience, and accepted standards of their profession. (BPC §2529.6(a)(1))

5) Sets forth requirements for certification and registration as a Behavior Analysis Professional by the CBCO and states that specified certification or registration deems the individual qualified to provide applied behavioral analysis services, as defined. (BPC §2529.6(c))

6) Prohibits any person from holding himself or herself out as a Board Certified Behavior Analyst (BCBA) unless the person is currently certified as such by the Behavior Analyst Certification Board. (BPC §2529.9(a)).

7) Prohibits any person from holding himself or herself out as a Board Certified Assistant Behavior Analyst (BCaBA) unless the person is currently certified as such by the Behavior Analyst Certification Board. (BPC §2529.9(b)).

8) Prohibits any person from holding himself or herself out to have state recognition, certification, or registration as a California Certified Behavior Services Professional, California Applied Behavior Analysis Professional, or a California Certified Assistant Services Professional by the California Association for Behavior Analysis, or the Behavior Analyst Certification Board or the CBCO unless that individual holds that recognition from that entity. (BPC §2529.9(c))

9) States that nothing in the provisions of this bill shall be construed to require certification, licensure, recognition, or authorization to provide applied behavior analysis services nor to add to or increase requirements for providing those service. (BPC §2529.13(c))

Comments:

1) **Author's Intent.** Uncodified legislative intent language in section one of this bill states that this bill is intended "to create an additional pathway for certification through the establishment of a private nonprofit organization that will enable consumers to indentify qualified providers of applied behavioral analysis services."

2) **Current Certification.** A nonprofit corporation**,** The Behavior Analyst Certification Board (BACB) provides the following certification for behavioral analysts: Board Certified Behavior Analyst (BCBA) and Board Certified Assistant Behavior Analyst (BCaBA). The Behavior Analyst Certification Board's BCBA and BCaBA credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC.

   The BACB credentials practitioners at three levels. Individuals who wish to become a BCBA must possess at least a Masters Degree, have 225 classroom hours of specific graduate-level coursework, meet experience requirements, and pass the Behavior Analyst Certification Examination. Persons wishing to be Board Certified BCaBA must have at least a Bachelors Degree, have 135 classroom hours of specific coursework, meet experience requirements, and pass the Assistant Behavior Analyst Certification Examination. Board Certified Behavior Analyst-Doctoral must be BCBAs with doctorate degrees and meet other criteria. BACB certificants must accumulate continuing education credit to maintain their credentials.

3) **Unclear purpose.** The need for this bill unclear. This bill creates a new nonprofit organization to issue registration and certification to individuals providing behavior analysis services. However, a national nonprofit certifying body already exists with that purpose. Additionally, this bill does not provide for practice protection, or in any way regulates the practice of behavior analysis. This bill does provide title protection for those certifications issued by the national certifying body, the Behavior Analyst Certification Board, as well as the newly established California Behavioral Certification Organization.

4) **Affect of Board Licensees.** Provisions of this bill provide that marriage and family therapists and licensed clinical social workers are recognized as qualified to provide applied behavior analysis services, as defined. Additionally, as explained in comment three (above), this bill does not provide that an individual must have certification or registration to practice behavior analysis services, but only that an individual cannot use the protected titles specified in the bill (unless that individual is so registered or certified). Therefore, all Board licensees would be able to practice behavior analysis (if it is within that practitioner's scope of competency) but could not use the specified titles that imply certification or registration by either the private certifying board described or by the established nonprofit CBCO.

5) **Consumer Confusion.** By creating a private nonprofit entity that provides a certification which allows the individual to represent themselves as a “California Certified Behavior Service Professional”, this bill may cause confusion as to what that certification really means. The words ‘California Certified” has the connotation that the State is the entity certifying the practitioner. In general, consumers have certain expectations of liability and protections afforded by the government when an individual is assumed to be regulated by the state. One such expectation is an established course of action by the regulating entity for unprofessional conduct by a certificate holder.

Support and Opposition.

None on file

History

2010

Mar. 25	Re-referred to Com. on B., P. & E.D.
Mar. 23	From committee with author's amendments. Read second time. Amended. Re-referred to Com. on RLS.
Mar. 4	To Com. on RLS.
Feb. 20	From print. May be acted upon on or after March 22.
Feb. 19	Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL No. 1282

Introduced by Senator Steinberg

February 19, 2010

An act *to add Chapter 5.2 (commencing with Section 2529.50) to Division 2 of the Business and Professions Code,* relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1282, as amended, Steinberg. Applied ~~behavioral~~ *behavior* analysis ~~therapists~~ *services: California Behavioral Certification Organization*.

Existing law provides for the licensure and regulation of various healing arts practitioners, including, but not limited to, marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors, by the Board of Behavioral Sciences in the Department of Consumer Affairs.

This bill would ~~state the intent of the Legislature to enact legislation that would provide for the certification of applied behavioral analysis therapists~~ *provide for the certification or registration of specified applied behavior analysis practitioners by a California Behavioral Certification Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would specify which individuals would be considered as qualified to practice applied behavior analysis services, and would prohibit an individual from holding himself or herself out as a practitioner unless he or she has complied with the act or another applicable licensing provision or is otherwise certified by certain nationally recognized entities. The bill would authorize the organization*

to establish specified curriculum and continuing education standards, and establish a certification and registration process, in conjunction with the California Association for Behavior Analysis (CalABA). The bill would require CalABA to implement the certification or registration process until the organization is established. The bill would set forth other disciplinary standards and hearing requirements.

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

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

SECTION 1. It is the intent of the Legislature in enacting this act to provide state recognition of educated, trained, and experienced individuals that provide applied behavior analysis services to individuals with medical conditions such as autism spectrum disorder and other conditions that are responsive to behavior analysis. This act recognizes those professionals practicing with existing licenses issued by the state and those certified by nationally accredited organizations, and is intended to create an additional pathway for certification through the establishment of a private nonprofit organization that will enable consumers to identify qualified providers of applied behavior analysis services. These pathways for recognition of qualified providers will ensure that providers have completed sufficient training at approved institutions of higher education and follow nationally recognized standards for recognition of these professionals upon which consumers and those who pay for applied behavior analysis services, including private entities, governmental entities, nonprofit organizations, health care service plans, or insurers, may rely.

SEC. 2. Chapter 5.2 (commencing with Section 2529.50) is added to Division 2 of the Business and Professions Code, to read:

Chapter 5.2. Applied Behavior Analysis Services

2529.50. For purposes of this chapter, the following terms have the following meanings:

(a) "ANSI" means the American National Standards Institute.

(b) "BACB" means the Behavior Analyst Certification Board.

(c) "CalABA" means the California Association for Behavior Analysis.

(d) "CBCO" or "organization" means the California Behavioral Certification Organization established by this chapter.

(e) "NCCA" means the National Commission for Certifying Agencies.

2529.55. (a) A person who is qualified to provide applied behavior analysis services, as enumerated in Section 2529.6, may do all of the following:

(1) Design, implement, and evaluate systematic instructional and environmental modifications to produce social improvements in the behavior of individuals or groups.

(2) Apply the principles, methods, and procedures of behavior analysis.

(3) Utilize contextual factors and establish operations, antecedent stimuli, positive reinforcement, other consequences, and other behavior analysis procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

(4) Assess functional relations between behavior and environmental factors, known as functional assessment and functional analysis.

(5) Use procedures based on scientific research and the direct observation and measurement of behavior and environment.

(6) Determine whether a nonlicensed or noncertified individual shall be deemed as qualified to provide applied behavior analysis services, exclusive of paragraph (7), subject to his or her supervision and solely for the purpose of implementing the services of applied behavior analysis developed by a person described in subdivision (a) of Section 2529.6.

(7) Supervise the delivery of applied behavior analysis services by nonlicensed or noncertified individuals as described in paragraph (6).

(b) The practice of applied behavior analysis excludes psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

2529.6. (a) The following persons shall be recognized as qualified to provide applied behavior analysis services as described in Section 2529.55:

(1) Licensed professionals, including, but not limited to, physicians and surgeons, psychologists, social workers, marriage and family therapists, speech-language pathologists, occupational therapists, physical therapists, or counselors, when acting within the scope of their license, formal training, experience, and accepted standards of their profession.

(2) An individual with certification in applied behavior analysis from the BACB or another organization that is accredited by the NCCA or ANSI whose mission is to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services.

(3) An individual specializing in the treatment of autism spectrum disorder who meets all of the following requirements if verified on or before December 31, 2014, by one of the organizations specified in Section 2529.8:

(A) Possesses a master's or doctorate degree in applied behavior analysis or a related field.

(B) Demonstrates three years of experience in the last five years of providing, on a consistent rather than an episodic basis, applied behavior analysis services to individuals with autism spectrum disorder, either as an independent professional or as an employee of an organization providing services to those with autism spectrum disorder.

(C) Submits references from at least two individuals who meet the requirements of paragraph (1) or (2).

(4) An individual certified by the CBCO pursuant to subdivision (f) of Section 2529.7.

(5) An individual who holds a bachelor's degree and meets the requirements of subparagraphs (B) and (C) of paragraph (3), subject to registration by one of the organizations specified in Section 2529.8.

(b) The following persons shall be recognized as qualified to provide applied behavior analysis services as described in Section 2529.55, so long as supervised by a person described in paragraph (1), (2), (3), or (4) of subdivision (a):

(1) A person who is certified as an Assistant Behavior Analyst by the BACB.

(2) A person who is certified as a California certified assistant services professional by the CBCO pursuant to subdivision (g) of Section 2529.7.

(c) (1) Pursuant to subdivisions (a) and (b), all of the following shall apply:

(A) Persons meeting the requirements of paragraph (1) of subdivision (a) may hold themselves out as licensed professionals according to the conditions of their professional license and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55. These persons may also hold themselves out as certified behavior analysis professionals if they meet any of the criteria specified in paragraph (2), (3), or (4) of subdivision (a).

(B) Persons meeting the requirements of paragraph (2), (3), or (4) of subdivision (a) may hold themselves out as certified behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(C) Persons meeting the requirements of paragraph (5) of subdivision (a) may hold themselves out as registered behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(D) Persons meeting the requirements of subdivision (b) may hold themselves out as certified assistant behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(E) Persons meeting the requirements of paragraph (6) of Section 2529.55 may hold themselves out as qualified by the state solely for the purpose of implementing the services of applied behavior analysis, as set forth in Section 2529.55.

(2) Paragraph (1) shall apply regardless of whether the services provided by those persons are paid for by private entities, governmental entities, nonprofit organizations, health care service plans, or insurers.

2529.7. (a) There is a hereby established a California Behavioral Certification Organization, which shall be a nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and subdivision (d) of Section 23701 of the Revenue and Taxation Code.

(b) The organization may commence activities as authorized by this chapter once it has submitted a request to the Internal Revenue Service and the Franchise Tax Board seeking tax exemption. The tax exempt application shall include information necessary to illustrate that the organization will operate in a manner consistent

with the requirements imposed upon, and authority given to, the organization pursuant to this chapter.

(c) The organization shall have until January 1, 2016, to receive accreditation from either ANSI or NCCA.

(d) If the organization does not obtain national accreditation by January 1, 2016, it may not certify any additional individuals. However, any individuals certified during the five-year period commencing with the enactment of this section may retain their certification indefinitely provided they continue to meet any requirements established by the organization for certification maintenance and ethical compliance.

(e) The CBCO board of directors shall be comprised of 12 members who shall be residents of the state.

(f) The CBCO board of directors shall determine through a process involving public input the specific standards necessary to receive certification as a certified behavior analysis professional, as described in paragraph (4) of subdivision (a) of Section 2529.6. However, in the interest of consumer protection, the specific standards shall include one of the following:

(1) Option one, which minimum requirements shall include all of the following:

(A) A doctoral or master's degree in applied behavior analysis or a related field from a nationally accredited institution of higher learning and a course sequence in applied behavior analysis that is approved by the CBCO. The course sequence shall be at least equivalent to or more rigorous than an approved course sequence of the BACB.

(B) The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct one-to-one contact with the supervisor, or which is equivalent to or more rigorous than the approved practicum requirements of the BACB.

(C) To ensure mastery of the material, successful completion of an examination administered by the BACB or the CBCO, which is at least as rigorous or equivalent to the examination administered by the BACB.

(2) Option two, which minimum requirements shall include all of the following:

(A) A doctoral or master's degree from a recognized educational program accredited by the Association for Behavior Analysis International, or from a program at a recognized educational institution that is approved by the third organization and that substantially meets the educational standards of the accreditation board of the Association for Behavior Analysis International. The program shall also include an approved course sequence of the BACB.

(B) The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct one-to-one contact with the supervisor.

(C) To ensure mastery of the material, successful completion of an examination administered by the BACB or the CBCO, which is at least as rigorous or equivalent to the examination administered by the BACB.

(g) The CBCO board of directors shall determine through a process involving public input the specific standards necessary to receive certification as a California certified assistant services professional, as described in paragraph (2) of subdivision (b) of Section 2529.6. However, in the interest of consumer protection, the specific standards shall meet all the following minimum requirements:

(1) A bachelor's degree from a nationally accredited institution of higher learning and a course sequence in applied behavior analysis that is approved by the CBCO. The course sequence shall be at least equivalent to or more rigorous than an approved course sequence for an Assistant Behavior Analyst from the BACB.

(2) The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,000 hours over a period of not less than six months, of which at least 50 hours are in direct one-to-one contact with the supervisor, or which is equivalent to or more rigorous than the approved practicum requirements for an Assistant Behavior Analyst from the BACB.

(3) To ensure mastery of the material, successful completion of an examination administered by the CBCO, which is equivalent to or more rigorous than the examination for an Assistant Behavior Analyst administered by the BACB.

(h) The CBCO may charge applicants a fee not to exceed the costs of implementation of the chapter.

2529.8. (a) (1) Until December 31, 2014, the CBCO shall have the primary responsibility for verifying the qualifications of persons submitting the information set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) The CBCO shall have the primary responsibility for verifying the qualifications of persons submitting the information set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(b) (1) Prior to the establishment and operation of the CBCO or through December 31, 2014, whichever is earlier, CalABA or its designee shall be authorized to verify the qualifications of persons submitting the information set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) Prior to the establishment and operation of the CBCO, CalABA or its designee shall be authorized to verify the qualifications of persons submitting the information set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(c) (1) Prior to December 31, 2014, an individual meeting the requirements of paragraph (3) of subdivision (a) of Section 2529.6 may submit to the CBCO, or to CalABA, if the latter is accepting submissions, information necessary to establish that the individual meets the requirements set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) If submitted to CalABA under subdivision (b), CalABA shall issue to an individual that meets the qualifications a certificate of temporary certification as a California Certified Behavior Services Professional, which shall be valid for one year or until the CBCO is accepting submissions from those seeking certification pursuant to paragraph (3) of subdivision (a) of Section 2529.6, whichever is later. Once the CBCO commences accepting applications, CalABA shall finish processing all the submissions it has received and shall notify the CBCO of all individuals previously receiving certification from CalABA. Those individuals shall automatically receive CBCO certification.

(3) If an individual submits information to the CBCO, the CBCO shall issue to an individual that meets the qualifications, certification as a California Certified Behavior Services Professional.

(d) (1) An individual meeting the requirements of paragraph (5) of subdivision (a) of Section 2529.6 may submit to the CBCO, or to CalABA, if the latter is accepting submissions, information necessary to establish that the individual meets the requirements set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(2) If submitted to CalABA under subdivision (b), CalABA shall issue to an individual that meets the qualifications a certificate of temporary registration as a California Applied behavior analysis professional, which shall be valid for one year or until the CBCO is accepting submissions from those seeking registration pursuant to paragraph (5) of subdivision (a) of Section 2529.6, whichever is later. Once the CBCO commences accepting applications, CalABA shall finish processing all the submissions it has received and shall notify the CBCO of all individuals previously receiving registration from CalABA. Those individuals shall automatically receive CBCO registration, which shall be valid for five years from the original date of issuance by CalABA.

(3) If an individual submits information to the CBCO, the CBCO shall issue to an individual who meets the qualifications, registration as a California Applied behavior analysis professional, which shall be valid for five years.

(e) No later than January 1, 2016, individuals who have received certification pursuant to subdivision (c), shall maintain that certification only if they meet the requirements established by the CBCO for compliance with continuing education and ethical standards. If the CBCO is not in operation, those previously certified by the CBCO shall no longer be able to represent themselves as California Certified Behavior Services Professionals, but may represent that they are recognized by the state as qualified to provide applied behavior analysis services.

2529.9. (a) It shall be unlawful for any person to hold himself or herself out as a Board Certified Behavior Analyst (BCBA) unless the person is currently certified as a Board Certified Behavior Analyst by the BACB.

(b) It shall be unlawful for any person to hold himself or herself out as a Board Certified Assistant Behavior Analyst (BCaBA) unless the person is currently certified as a Board Certified Assistant Behavior Analyst by the BACB.

(c) It shall be unlawful to claim to have state recognition, certification, or registration as a California Certified Behavior

Services Professional, California Applied behavior analysis professional, or California certified assistant services professional by CalABA, the CBCO, or the BACB, unless the person is otherwise recognized, certified, or registered by that entity.

2529.10. The CBCO shall implement this chapter in conformity with accepted standards for professional credentialing programs, including, but not limited to, doing all of the following:

(a) Conducting certification activities in a manner that upholds standards for the competent practice of the profession of behavior analysis.

(b) Structuring and governing the certification program in ways that are appropriate for the profession of behavior analysis and ensure autonomy in decision making over certification activities.

(c) Including certified behavior analysts and at least one consumer or public member on the CBCO board of directors.

(d) Having adequate financial and human resources to conduct effective and thorough certification, registration, recertification, and reregistration activities.

(e) Establishing, publishing, applying, and reviewing policies and procedures for key certification or registration activities, such as determining eligibility criteria, applying for certification or registration, administering assessment instruments, establishing performance domains, appeals confidentiality, certification and registration statistics, and discipline, and complying with applicable laws.

(f) Publishing a description of the assessment instruments used to make certification and registration decisions and the research methods used to ensure that the assessment instruments are valid.

(g) Awarding certification or registration only after the applicant's knowledge and skill have been evaluated and found to be acceptable.

(h) Maintaining a publicly available list of certified behavior analysts and verifying their certification.

(i) Analyzing, defining, and publishing performance domains and tasks and associated knowledge and skills for the practice of behavior analysis, and using them to develop the assessment instruments.

(j) Using assessment instruments that are derived from the job or practice analysis and are consistent with accepted psychometric principles and procedures, such as for setting passing scores,

scoring and interpreting assessment results, ensuring reliability of scores, or establishing that different forms of the assessment instruments are equivalent.

(k) Developing, adhering to, and publishing appropriate, standardized, and secure procedures for developing and administering the assessment instruments and for retaining all evidence of the validity and reliability of the assessment instruments, assessment results, and scores of all candidates.

(l) Requiring periodic recertification and establishing, publishing, applying, and periodically reviewing policies and procedures for recertification or reregistration.

(m) Requiring adequate continuing education.

(n) Monitoring the practicing of applied behavioral analysis services consistent with the accepted standards of their respective professions and that the practice of applied behavior analysis is commensurate with their level of formal training and experience.

(o) Maintaining accreditation by demonstrating continued compliance with accreditation standards.

(p) Demonstrating that recertification or reregistration requirements measure or enhance the competence of those certified or registered.

(q) Developing appropriate supervision guidelines for the provision of applied behavior analysis services.

(r) (1) Establishing and maintaining a process to receive, review, and take corrective action, when necessary, with regard to complaints by consumers of applied behavior analysis or other interested parties against certificate holders or registrants and to make available to the public current status of those persons, such as whether they are in good standing or their certificate or registration has been suspended or revoked and details of any complaints or corrective action taken.

(2) Maintaining on the organization's Internet Web site information updated annually related to implementation of this chapter.

(s) Establishing a disciplinary and hearing process pursuant to Sections 2529.11 and 2529.12.

(t) Requiring an applicant for certification or registration to submit fingerprint images to the CBCO, and establishing a procedure consistent with state law to obtain background information on the applicant.

2529.11. (a) The CBCO may discipline a certificate holder or registrant by any, or a combination, of the following methods:

(1) Placing the certificate holder or registrant on probation.

(2) Suspending the certificate or registration and the rights conferred by this chapter on a certificate holder or registrant for a period not to exceed one year.

(3) Revoking the certificate or registration.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.

(b) The CBCO may issue an initial certificate or registration on probation, with specific terms and conditions, to any applicant.

2529.12. (a) No certificate holder, registrant, or applicant may be disciplined or denied a certificate or registration pursuant to Section 2529.11 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section shall be void and without effect.

(b) Any applicant denial or discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the denial or discipline are considered.

(c) A procedure is fair and reasonable if all of the following apply:

(1) The provisions of the procedure have been set forth in the CBCO articles or bylaws, or copies of those provisions are sent annually to certificate holders or registrants if required by the articles or bylaws.

(2) It provides the giving of 15 days prior notice of the denial or discipline and the reasons therefor.

(3) It provides an opportunity for the applicant or certificate holder or registrant to be heard, orally or in writing, not less than five days before the effective date of the denial or discipline by a person or body authorized to decide that the proposed denial or discipline not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to

the last address of the applicant or certificate holder or registrant shown on the organization's records.

(e) Any action challenging a denial or discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the denial or discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for denial or discipline and not the substantive grounds therefor. A denial or discipline based upon substantive grounds that violates contractual or other rights or is otherwise unlawful is not made valid by compliance with this section.

(g) An applicant or certificate holder or registrant who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the denial or discipline or arising from contract or otherwise.

2529.13. (a) Nothing in this chapter shall be interpreted to prohibit individuals not recognized in Section 2529.6 from providing the services defined as applied behavior analysis services, as set forth in Section 2529.55, provided those individuals do not hold themselves out to be Certified Behavior Analysts or claim to have state recognition or certification by the CBCO or CalABA pursuant to this chapter.

(b) Nothing in this chapter shall be construed to prevent behavior analysis service providers who are vendorized by one of the California Regional Centers or hold state accredited nonpublic agency status from developing, providing, or supervising applied behavior analysis consistent with the requirements of their Regional Center vendorization or nonpublic agency certification or accreditation, provided their practice of behavior analysis is commensurate with their level of training and experience, and they do not hold themselves out to the public by any title or description stating or implying that they are Certified Behavior Analysts, that they are "certified" to practice behavior analysis if they are not in fact certified, or that they are recognized or certified by the state to practice applied behavior analysis.

(c) Nothing in this chapter shall be construed to require certification, licensure, recognition, or authorization to provide

applied behavior analysis services nor to add to or increase requirements for providing those services.

SEC. 3. Nothing in this act shall be construed as interpreting an existing statutory or regulatory requirement.

~~SECTION 1. It is the intent of the Legislature to enact legislation that would provide for the certification of applied behavioral analysis therapists.~~

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Board of Behavioral Sciences

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Memo

To:	Policy and Advocacy Committee Members	**Date:**	April 7, 2010
From:	Sean O'Connor Associate Governmental Program Analyst	**Telephone:**	(916) 574-7863
Subject:	**Licensed Professional Clinical Counselor and Clean-Up Regulations**		

Background

Business and Professions Code (BPC) Section 4990.20 authorizes the Board of Behavioral Sciences (BBS) to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the Business and Professions Code for which it is responsible. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) within Division 2 of the BPC and mandated the BBS implement the provisions of the new chapter. BPC Section 4999.30 prohibits any person in the State of California from practicing or advertising the performance of professional clinical counseling services without a license issued by the BBS. Furthermore, BPC Section 4999.80 mandates the BBS enforce laws designed to protect the public from incompetent, unethical or unprofessional practitioners, investigate complaints concerning the conduct of any licensed professional clinical counselor, and take disciplinary action against licenses issued as enumerated in rules and regulations of the BBS.

The purpose of this rulemaking is to revise existing regulations to incorporate licensed professional clinical counselor (LPCC) requirements and fees referenced in various sections of Chapter 16, Division 2, of the BPC. These revisions will also modify the document titled "Board of Behavioral Sciences Disciplinary Guidelines (Rev. November 2008)" referenced in Title 16 of the California Code of Regulations Section 1888. Additionally, these revisions will correct numerous erroneous authority citations and references in existing regulations that were not updated upon the Governor's approval of SB 1475 (Figueroa) on September 29, 2006 and update references to new forms and revisions to previously incorporated forms.

Problem

The majority of proposed language changes included in this rulemaking are non-substantive and fundamental to the implementation of the professional clinical counselor license. For example, a number of proposed changes involve inserting references to LPCCs and fees in regulations currently referring to the other mental health licenses the BBS issues. Several proposed revisions and new regulatory sections, however, do raise policy-related questions, including the following:

- Will LPCCs be eligible to supervise registrants pursuing other BBS-regulated mental health licenses? (See Title 16, CCR Section 1833.1 and 1874)

- Should the professional clinical counselor intern be required to complete a *Supervisory Plan*? (See Title 16, CCR Section 1822)

- What should be the definition of "community mental health setting" as referenced in BPC section 4999.46? (See Title 16, CCR Section 1820)

The proposed regulatory language reflects the BBS staff's attempt to make policies relating to implementation of the professional clinical counselor licensure comparable to policies reflected in the statutes and regulations for other mental health license types.

Previously Approved Regulatory Changes

This rulemaking also proposes changes to the continuing education (CE) exception process for all licensees, in order to bring this section and the BBS' forms into compliance with both the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Other clarifying and technical changes are also proposed to CE regulations. The proposed language relating to CE was previously approved by the Board at its February 2009 meeting as part of a rulemaking intended to implement Licensed Educational Psychologist (LEP) CE requirements. The references to LEP requirements have been removed from the proposed language.

Recommendation

Recommend to the Board to direct staff to initiate the rulemaking process.

ATTACHMENTS

1. Notice of Proposed Changes in the Regulations
2. Initial Statement of Reasons
3. Proposed Regulatory Language
4. Form 399 - Economic and Fiscal Impact Statement
5. Form 399 – Attachment A
6. Form 399 – Attachment B
7. Proposed Changes to Disciplinary Guidelines
8. Proposed Form – "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern"
9. Proposed Form – "Weekly Summary of Experience Hours for Professional Clinical Counselor Interns"
10. Proposed Revised Form – "Supervisory Plan"
11. Proposed Revised Form – "Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern"
12. Proposed Revised Form – "Responsibility Statement for Supervisors of an Associate Clinical Social Worker"
13. Proposed Revised Form – "Continuing Education Provider Application"
14. Proposed Form – "Request for Continuing Education Exception – Licensee Application"
15. Proposed Form – "Request for Continuing Education Exception Verification of Disability or Medical Condition"
16. Senate Bill 788

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

Licensed Professional Clinical Counselors and Language Clean-Up

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (BBS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the (Addr - TBD) at (Time – TBD), on (Date – TBD). Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the BBS at its office not later than 5:00 p.m. on (Date – TBD), or must be received by the BBS at the hearing.

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

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret, or make specific Sections 4989.10, 4989.12, 4989.14, 4989.20, 4989.22, 4989.24, 4989.26, 4989.28, 4989.34, 4990, 4990.04, 4990.08, 4990.12, 4990.20, 4989.68, 4996.2, 4996.22, 4996.23, 4999.20, 4999.24, 4999.30, 4999.32, 4999.33, 4999.34, 4999.36, 4999.42, 4999.44, 4999.45, 4999.46, 4999.47, 4999.48, 4999.50, 4999.52, 4999.54, 4999.58, 4999.60, 4999.76, 4999.90, 4999.104, 4999.112, and 4999.120 of the BPC, the Board is considering amending Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

BPC Section 4990.20 authorizes the BBS to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the BPC for which it is responsible. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) of Division 2 in the BPC and mandated the BBS implement the provisions of the new chapter. BPC Section 4999.30 prohibits any person in the State of California from practicing or advertising the performance of professional clinical counseling services without a license issued by the BBS. Furthermore, BPC Section 4999.80 mandates the BBS enforce laws designed to protect the public from incompetent, unethical or unprofessional practitioners, investigate complaints concerning the conduct of any licensed professional clinical counselor, and take disciplinary action against licenses issued as enumerated in rules and regulations of the BBS.

Division 18 of Title 16 of the CCR includes numerous sections relating to education requirements, experience requirements, fees, administrative actions, and disciplinary guidelines of BBS-regulated licensees and registrants.

The purpose of these regulations is to revise existing regulations to incorporate licensed professional clinical counselor (LPCC) requirements and fees referenced in various sections of Chapter 16 of Division 2 of the BPC. These revisions will also modify the document titled “Board of Behavioral Sciences Disciplinary Guidelines (Rev. November 2008)” referenced in CCR

Section 1888 (Division 18 of Title 16). Additionally, these revisions will correct numerous erroneous authority citations and references in existing regulations that were not updated upon the Governor's approval of SB 1475 (Figueroa) on September 29, 2006 and update references to new forms and revisions to previously incorporated forms.

This rulemaking also proposes changes to the continuing education (CE) exception process for all licensees, in order to bring this section and the Board's forms into compliance with both the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Other clarifying and technical changes are also proposed to the Board's CE regulations.

Amend Section 1800 – Declaratory Decisions
Section 1800 clarifies what decisions from the BBS are "Declaratory Decisions."

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1802 – Definitions
Section 1802 defines references to "board" and "Code" in the rules and regulations.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section. The proposed regulation would also delete an errant reference to a BPC section.

Amend Section 1803 – Delegation of Certain Functions
Section 1803 delegates authority to the BBS to conduct a variety of functions related to formal discipline and administrative action against licensees and registrants.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section. The proposed regulation would also replace two errant references to BPC sections.

Amend Section 1804 – Filing of Addresses
Section 1804 sets forth provisions for maintaining a current address of record with the BBS.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section. The proposed regulation would also replace two errant references to BPC sections.

Amend Section 1805 – Applications
Section 1805 mandates applications submitted to the BBS be on forms prescribed by the BBS and requires a 180-day waiting period between failure and re-take of an examination.

The proposed regulation adds a reference to a BPC section relating to LPCCs.

Amend Section 1805.1 – Permit Processing Times
Section 1805.1 sets forth the maximum processing times for BBS applications.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1806 – Abandonment of Application
Section 1806 specifies the conditions under which the Board shall abandon an application.

The proposed regulation would set forth a one-year deadline to complete an application submitted to the Board related to professional clinical counselors. The proposed regulation would set a one-year deadline from either initial examination eligibility or notification of examination failure to take the jurisprudence and ethics examination, the examination required in BPC section 4999.54(b)(2), or the examination required in BPC section 4999.52(c)(5). Furthermore, the proposed regulation requires the initial LPCC license fee be submitted within one year after notification of successful completion of examination requirements. In addition, the proposed regulation adds references to BPC sections relating to LPCCs.

Amend Section 1807 – Human Sexuality Training
Section 1807 specifies the requirements for human sexuality training required of marriage and family therapists (MFTs) and licensed clinical social workers (LCSWs).

The proposed regulation change would require LPCC applicants complete a human sexuality training at least 10 hours in length. In addition, the proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section, add a reference to a BPC section relating to LCSWs, and add a reference to a BPC section relating to LPCCs.

Amend Section 1807.2 – Child Abuse Assessment Training Requirements
Section 1807.2 sets forth the requirements for child abuse assessment and reporting training for MFTs and LCSWs.

The proposed regulation would require LPCC applicants complete a child abuse assessment and reporting training, which must be at least seven hours in length. In addition, the proposed regulation replaces an errant reference in the authority cited section and adds a reference to a BPC section relating to LPCCs.

Amend Section 1810 – Alcoholism and Other Chemical Substance Dependency Training
Section 1810 sets forth the requirements for substance abuse training for MFTs and LCSWs.

The proposed regulation would require LPCC applicants complete a course, which must be at least 15 hours in length, in alcoholism and other chemical dependencies. In addition, the proposed regulation replaces an errant reference in the authority cited section and adds a reference to a BPC section relating to LPCCs.

Amend Section 1811 – Use of License Number in Directories and Advertisements
Section 1811 sets forth requirements for advertising for all current BBS licenses and registrations.

The proposed regulation would require LPCCs and professional clinical counselor interns comply with the same advertising requirements of current BBS licensees and registrants. In addition, the proposed regulation replaces an errant reference in the authority cited section and adds a reference to a BPC section relating to LPCCs.

Amend Section 1812 – Substantial Relationship Criteria
Section 1812 clarifies the criteria for determining substantial relationship of a crime or act to authority to practice.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1813 – Criteria for Rehabilitation – Denial of Licensure

Section 1813 sets forth the criteria for determining rehabilitation when considering denial of licensure.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1814 – Criteria for Rehabilitation – Suspensions or Revocations
Section 1814 sets forth the criteria for determining rehabilitation when considering suspension or revocation of licensure.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1815 – Fingerprint Submission
Section 1815 sets forth requirements for fingerprint submissions and criminal background checks for BBS licensees and registrants.

The proposed regulation would add a reference to a BPC section relating to LPCCs.

Amend Section 1816 – Renewal Fees
Section 1816 sets forth renewal fees for all BBS licenses and registrations.

The proposed regulation would add renewal fees for professional clinical counselor interns ($100), licenses issued pursuant to BPC section 4999.54 ($150), and the LPCC biennial renewal ($175). In addition, the proposed regulation would add a reference to a BPC section relating to LPCCs.

Amend Section 1816.1 – Initial License and Registration Fees
Section 1816.1 sets forth initial license and registration fees.

The proposed regulation would add the LPCC initial license fee ($200) and the professional clinical counselor intern registration fee ($100). In addition, the proposed regulation would add a reference to a BPC section relating to LPCCs.

Amend Section 1816.2 – Examination Fees
Section 1816.2 sets forth examination fees.

The proposed regulation would add the LPCC jurisprudence and ethics examination fee ($100) for the examination required by BPC section 4999.54(a)(1)(D)(3), the LPCC examination fee ($100) for the examination required by 4999.54(b), and the fee for the LPCC written examination ($150). In addition the proposed regulation would add a reference to a BPC section relating to LPCCs.

Amend Section 1816.3 – Examination Rescoring Fees
Section 1816.3 sets the fee for rescoring any examination.

The proposed regulation would replace an errant reference to a BPC section with the appropriate section.

Amend Section 1816.4 – Examination Application Fees
Section 1816.4 sets the fees for examination eligibility applications.

The proposed regulation would add the LPCC examination eligibility fee ($180). In addition, the proposed regulation would add a reference to a BPC section relating to LPCCs.

Amend Section 1816.5 – Replacement and Certification Fees
Section 1816.5 sets forth fees for replacement licenses and registrations and certifications of licensure and registration.

The proposed regulation would replace an errant reference to a BPC section with the appropriate section.

Amend Section 1816.6 – Inactive License Fees
Section 1816.6 sets the inactive license fees for BBS licensees.

The proposed regulation would add the LPCC biennial inactive renewal fee ($87.50) and inactive renewal fee for license issued pursuant to BPC section 4999.54(a)(1)($75). In addition, the proposed regulation would add a reference to the BPC relating to LPCCs.

Amend 1816.7 – Delinquent Fees
Section 1816.7 sets the delinquent fees for BBS licensees.

The proposed regulation would add the delinquency fee for an LPCC renewal ($87.50) and add the delinquency fee for licenses issued pursuant to BPC section 4999.54(a)(1)($75). In addition, the proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section, replaces an errant BPC section reference with the appropriate section, and adds a reference to a section relating to LPCCs.

Amend Section 1819.1 – Continuing Education Provider Fees
Section 1819.1 sets the fee for CE provider applications at two hundred dollars ($200).

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section and adds two BPC section references relating to LPCCs.

Add Section 1820 – Experience
Section 1820 defines the term supervision, clinical mental health setting, and community mental health setting. In addition, Section 1820 sets forth the conditions under which supervision can be credited.

The proposed regulation creates this section to define terms and make specific requirements referenced in BPC section 4999.46.

Add Section 1821 – Requirements for Supervisors
Section 1821 sets forth the qualifications licensed mental health professionals must possess prior to supervising a professional clinical counselor intern.

The proposed regulation creates this section to define the qualifications needed to supervise an individual completing the requirements referenced in BPC section 4999.46.

Add Section 1822 – Supervisory Plan
Section 1822 requires supervisors of professional clinical counselor interns sign a Supervisory Plan.

The proposed regulation creates this section mandating supervisors sign-off on a BBS prescribed form documenting the goals of professional supervision.

Amend Section 1833.1 – Requirements for Supervisors
Section 1833.1 sets forth the requirements for supervising MFT Trainees and Interns.

The proposed regulation would add LPCCs to the list of licensed mental health professionals eligible to supervise MFT Trainees and Interns, update the revision date (3/10) for the form referenced in regulation, and add a reference to a BPC section relating to LPCCs.

Amend Section 1833.2 – Supervision of Experience Gained Outside of California
Section 1833.2 sets forth the requirements for experience gained outside of California.

The proposed regulation would add "professional clinical counselor" to the list of supervisors eligible to supervise experience applied to BBS requirements that the applicant earned out-of-state.

Amend Section 1850.6 – Name of Corporation
Section 1850.6 clarifies the appropriate wording for abbreviations denoting corporations.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1850.7 – Shares: Ownership and Transfer
Section 1850.7 sets forth requirements for transfer of corporate shares and clarifies what needs to be included on the share certificates.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1870 – Requirements for Associate Clinical Social Worker Supervisors
Section 1870 sets forth requirements for supervising associate clinical social workers.

The proposed regulation would update the revision date (3/10) for the form referenced in regulation and delete an errant reference to a BPC section.

Amend Section 1870.1 – Supervisory Plan
Section 1870.1 requires associate clinical social workers develop a Supervisory Plan with their supervisors and send the original signed plan to the BBS upon application for licensure.

The proposed regulation would update the revision date (3/10) for the form referenced in regulation, replace an errant reference in the authority cited with the appropriate BPC section, and replace an errant reference to a BPC section with the appropriate section.

Amend Section 1874 – Definition of Acceptable Mental Health Professionals
Section 1874 defines the types of acceptable mental health professionals, in addition to an LCSW, who may supervise an associate clinical social worker.

The proposed regulation would delete two errant references to repealed BPC sections and replace them with the accurate reference. In addition, the proposed regulation would add the title of "licensed professional clinical counselor" to the types of mental health professionals who can supervise an associate clinical social worker.

Amend Section 1877 – Examinations

Section 1877 clarifies the types of written examinations an individual must pass to earn a clinical social work license.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1880 – Unlicensed Assistants
Section 1880 requires an unlicensed person employed under BPC section 4996.15 disclose the lack of a license and the license held by the individual's supervisor.

The proposed regulation would add the titles of "marriage and family therapist" and "license professional clinical counselor" to the list of individuals who would supervise an unlicensed assistant. In addition, the proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1881 – Unprofessional Conduct
Section 1881 sets forth the conditions in which the BBS may suspend or revoke a license or refuse to issue a license.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section. In addition, the proposed regulation would replace an errant reference to a BPC section with the appropriate reference.

Amend Section 1886 – Authority to Issue Citations and Fines
Section 1886 gives authority to the BBS Executive Officer to issue citations, orders of abatement, and fines against the licenses and registrants the BBS regulates.

The proposed regulation would add LPCCs and professional clinical counselor interns to the list of licenses and registrations for which the Executive Officer has authority to issue a citation, order of abatement, or fine. In addition, the proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.10 – Citations for Unlicensed Practice
Section 1886.10 gives authority to the BBS Executive Officer to issue citations, orders of abatement, and fines against individuals engaging in unlicensed practice.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.20 – Citation Format
Section 1886.20 sets forth the information required to be included in any citation.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.30 – Citation Factors
Section 1886.30 sets forth the considerations to be made by the BBS Executive Officer when assessing an administrative fine or issuing an order of abatement.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.40 – Amount of Fines

Section 1886.40 sets forth limits relating to citable offenses.

The proposed regulation would add BPC Chapters 13.5 (Licensed Educational Psychologists) and 16 (LPCC) to the list of statutes enforced by the BBS. In addition, the proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section and add references to BPC sections relating to Licensed Educational Psychologists and LPCCs.

Amend Section 1886.50 – Exceptions
Section 1886.50 sets forth exceptions for issuing citations.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.60 – Compliance with Citation/Order of Abatement
Section 1886.60 sets forth the terms for compliance with a citation or order of abatement.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.70 – Contested Citations and Request for a Hearing or Informal Citation Conference
Section 1886.70 sets forth requirements for contesting a citation.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Section 1886.80 – Disconnection of Telephone Service
Section 1886.80 specifies that nothing in Article 7 of Title 16 of the California Code of Regulations precludes the BBS from using the provisions described in BPC section 149.

The proposed regulation would replace an errant reference in the authority cited with the appropriate BPC section.

Amend Article 8 Title – Continuing Education Requirements for Marriage and Family Therapists and Licensed Clinical Social Workers
Article 8 includes all the BBS regulations related to CE.

The proposed regulation would add “Licensed Professional Clinical Counselors” to the title of Article 8.

Amend Section 1887 – Definitions
Section 1887 defines several terms used in regulations related to CE.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. In addition, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.1 – License Renewal Requirements
Section 1887.1 specifies that licensees renewing must certify completion of the mandatory CE requirements.

The proposed regulation would add language referring to two BPC sections relating to LPCCs. In addition, the proposed regulation would replace an errant reference to a BPC section in the

authority cited with the appropriate section.

Amend Section 1887.2 – Exceptions from Continuing Education Requirements
Section 1887.2 sets forth the conditions under which the BBS may grant special accommodations or exceptions for CE requirements.

The proposed regulation would do the following:

- Add a reference to BPC section 4999.112, a form entitled "Request for Continuing Education Exception – License Application," and a form entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition;
- Require the request for exception or accommodation be submitted at least 60 days prior to the expiration date of a license;
- Clarify the valid time period for an approved exception;
- Add the term "reasonable accommodation" in subsection (c) for consistency;
- Clarify the term disability to include physical and mental disabilities;
- Specify that a domestic partner shall be considered an immediate family member;
- Specify the time period during the previous renewal period to be one year in order to qualify for a reasonable accommodation;
- Deletes references to information that will now be included with the "Request for Continuing Education Exception – Verification of Disability or Medical Condition."
- Delete an errant BPC section from the authority cited;
- Add two sections of the BPC and two sections of the Government Code to the authority cited; and,
- Add a BPC reference to a section related to LPCCs.

Amend Section 1887.3 - Continuing Education Course Requirements
Section 1887.3 sets forth continuing education course requirements for licensees.

The proposed regulation makes several grammatical non-substantive changes. In addition, the proposed regulation adds two sections of the BPC to the authority cited and adds a reference to a BPC section relating to LPCCs.

Amend Section 1887.4 – Continuing Education Course Content
Section 1887.4 specifies requirements for continuing education course content and sets responsibilities for course providers.

The proposed regulation adds the title "professional clinical counselor" and language referring to BPC section 4999.76. In addition, the proposed regulation adds two sections of the BPC to the authority cited and adds a reference to a BPC section relating to LPCCs.

Amend Section 1887.5 – Hours of Continuing Education Credit
Section 1887.5 specifies conversions of academic units to hours of CE.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. In addition, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.6 – Continuing Education Providers
Section 1887.6 identifies the entities at which a licensee can complete CE.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. In addition, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.7 – Board-Approved Providers
Section 1887.7 sets forth the qualifications to become an approved CE provider with the BBS.

The proposed regulation would update the revision date to the "Continuing Education Provider Application." In addition, the proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.8 – Revocation and Denial of Board-Approved Provider Status
Section 1887.8 sets forth the conditions under which the BBS can revoke its approval of a CE provider.

The proposed regulation would add language referencing Chapter 16 of the BPC. In addition, the proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.9 – Course Advertisements
Section 1887.9 identifies what information CE providers must include on course advertisements. The proposed regulation would add language referring to LPCCs. In addition, the proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.10 – Course Instructor Qualifications
Section 1887.10 sets forth the requirements for instructors for courses offered through approved BBS CE providers.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.11 – Records of Course Completion
Section 1887.11 requires approved CE providers to provide course completion records to licensees.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.12 – Licensee and Provider Course Records
Section 1887.12 sets forth record retention requirements for licensees and approved CE providers.

The proposed regulation would replace an errant reference to a BPC section in the authority cited with the appropriate section. Also, the proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.13 – Renewal of Expired Approval

Section 1887.13 sets forth the time period within which an expired CE provider may renew a BBS approval.

The proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1887.14 – Time Limit for Renewal of Approval After Expiration; New Approval
Section 1887.14 requires an expired CE provider submit a new application for approval if the previous approval has been expired for more than one year.

The proposed regulation would add a BPC section relating to LPCCs to the authority cited and references.

Amend Section 1888 – Disciplinary Guidelines
Section 1888 incorporates the BBS' disciplinary guidelines by reference and grants the BBS authority to deviate from the guidelines when warranted.

The proposed regulation would updated the revision date of the "Board of Behavioral Sciences Disciplinary Guidelines," replace an errant reference in the authority cited with the appropriate BPC section, and a reference to the BPC relating to LPCCs.

Forms Incorporated by Reference
This proposed rulemaking also makes changes to four forms incorporated by reference that are currently used by the BBS:

- Section 1833.1: "Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern," Form 1800 37A-523 (Revised 3/10)
- Section 1870: "Responsibility Statement for Supervisors of an Associate Clinical Social Worker," Form 1800 37A-522 (Revised 3/10)
- Section 1870.1 and 1822: "Supervisory Plan," Form 1800 37A-521 (Revised 3/10)
- Section 1887.7: "Continuing Education Provider Application", Form 1800 37A-633 (Revised 3/10).

Additionally, four new forms are being added by reference:

- Section 1820: "Weekly Summary of Experience Hours for Professional Clinical Counselor Interns," Form 1800 37A-645
- Section 1821: "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern," Form 1800 37A-643 (New 3/10)
- Section 1887.2: "Request for Continuing Education Exception – Verification of Disability or Medical Condition," Form 1800 37A-636 (New 02/09).
- Section 1887.2: "Request for Continuing Education Exception – Licensee Application," Form 1800 37A-635 (Revised 3/10).

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

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

Business Impact: The BBS has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Furthermore, individuals who previously could not start private businesses because no LPCC license existed now will have the opportunity to start a business.

AND

The following studies/relevant data were relied upon in making the above determination:
The costs associated with this regulation represent the fees an individual would be required to pay to pursue the LPCC license (e.g. application fees, examination fees, etc).

The annual salary of a Mental Health Counselor as reported by the Bureau of Labor Statistics created a baseline for the benefits to an individual who earns a license as an LPCC.

Impact on Jobs/New Businesses: The BBS has determined that this regulatory proposal would create job and business opportunities for those who earn a license as an LPCC. Otherwise, this proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:
Depending on the qualification method for the license, the cost for obtaining a LPCC license ranges between approximately $380 and $1050. Depending on the type of LPCC license held (e.g. annual renewal versus biennial renewal), the ongoing annual cost for maintaining an active license would range between $87.50 and $150.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The BBS has determined the net impact to small business will be positive because the creation of the LPCC license represents new opportunities for individuals to open small-businesses who previously could not because no LPCC license existed in the State of California. The initial cost of obtaining and maintaining the license would be surpassed over the life of the regulation if LPCCs achieve an annual income similar to the annual income of a ‘Mental Health Counselor’ as reported by the Bureau of Labor Statistics (approximately $45,000).

CONSIDERATION OF ALTERNATIVES

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

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

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

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

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

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

CONTACT PERSON

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

Name:	Tracy Rhine
Address:	1625 North Market Blvd., Suite S200 Sacramento, CA 95834
Telephone:	916-574-7847
Fax:	916-574-8626
Email:	tracy_rhine@dca.ca.gov

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

WEB SITE ACCESS

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

BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS

Hearing Date: (TO BE DETERMINED)

Subject Matter of Proposed Regulations: Licensed Professional Clinical Counselors (LPCC) and Language Clean-up.

Section(s) Affected: Amend Sections 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1833.1, 1833.2, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, and 1888 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1820, 1821, and 1822 to Division 18 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code (BPC) Section 4990.20 authorizes the Board of Behavioral Sciences (BBS) to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the Business and Professions Code for which it is responsible. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) in Division 2 of the BPC and mandated the BBS implement the provisions of the new chapter. BPC Section 4999.30 prohibits any person in the State of California from practicing or advertising the performance of professional clinical counseling services without a license issued by the BBS. Furthermore, BPC Section 4999.80 mandates the BBS enforce laws designed to protect the public from incompetent, unethical or unprofessional practitioners, investigate complaints concerning the conduct of any licensed professional clinical counselor, and take disciplinary action against licenses issued as enumerated in rules and regulations of the BBS.

Division 18 of Title 16 of the California Code of Regulations (CCR) includes numerous sections relating to education requirements, supervised experience requirements, fees, administrative actions, and disciplinary guidelines of BBS-regulated licensees and registrants.

The purpose of these regulations is to revise existing regulations to incorporate licensed professional clinical counselor requirements and fees referenced in various sections of Chapter 16 of Division 2 of the BPC. These revisions will also modify the document titled “Board of Behavioral Sciences Disciplinary Guidelines (Rev. November 2008)” referenced in CCR Section 1888 (Division 18 of Title 16). Additionally, these revisions will correct numerous erroneous authority citations and references to existing regulations that were not updated upon the Governor’s approval of SB 1475 (Figueroa) on September 29, 2006 and update references to new forms and revisions to previously incorporated forms.

This rulemaking also proposes changes to the continuing education (CE) exception process for all licensees, in order to bring this section and the BBS' forms into compliance with both the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Other clarifying and technical changes are also proposed to the BBS' CE regulations.

Specifically, the regulation would incorporate amendments to Division 18 of Title 16 of the CCR as follows:

Replacement of Errant References and Addition of LPCC BPC Section References

- Replace errant references to BPC sections 4990.1, 4990.8, 4990.11, 4990.13, 4990.14, and 4986.80. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to BBS administration and Licensed Educational Psychologist licensure requirements and moved the previous content in the above code sections to BPC Sections 4990, 4990.04, 4990.08, 4990.12, 4990.20, and 4989.68, respectively. Delete errant references to BPC sections 4996.20 and 4996.21 relating to experience requirements for Licensed Clinical Social Workers. SB 819, Chapter 308, Statutes of 2009 repealed BPC section 4996.20 and 4996.21. Replace reference to BPC section 4996.20 and 4996.21 with reference to BPC section 4996.23 (SB 724, Chapter 728, Statutes of 2001), which is the most recent and only existing reference to requirements previously described in BPC Section 4996.20. The purpose of this proposed change is to make the CCR sections mentioned above consistent with these current statutes.

- Add references to BPC sections 4999.20, 4999.24, 4999.30, 4999.32, 4999.33, 4999.42, 4999.44, 4999.45, 4999.46, 4999.50, 4999.52, 4999.54, 4999.58, 4999.60, 4999.76, 4999.90, 4999.104, 4999.112, 4999.120. SB 788, Chapter 619, Statutes of 2009 created BP, Division 2, Chapter 16 and all BPC sections.

- Add references to BPC sections 4996.2, 4996.22, 4989.10, 4989.12, 4989.14, 4989.20, 4989.22, 4989.24, 4989.26, 4989.28, and 4989.34. The purpose of this proposed change is to update references to relevant code sections.

Addition of LPCC Language in Existing Regulations

- Add grounds for abandonment of applications for LPCC jurisprudence and ethics examination, the examination required in BPC section 4999.54(b)(2), and the examination required in 4999.52(c)(5). The one-year requirement to sit for any of these examinations is consistent with requirements for existing license types referenced in the same section (Section 1806).

- Add title of professional clinical counselor and reference to BPC section 4999.32, which requires applicants complete a human sexuality course (Section 1807).

- Add title of professional clinical counselor. BPC section 4999.32 requires applicants to complete coursework in child abuse assessment and reporting (Section 1807.2).

- Add reference to BPC section 4999.32 (Section 1810).

- Add LPCC license type and language referring to advertisements of unlicensed professional clinical counselor interns (Section 1811).

- Add the annual renewal fee for professional clinical counselor interns ($100), the biennial active renewal fee for licensed professional clinical counselors ($175), and the annual renewal fee for licenses issued pursuant to BPC section 4999.54(a)(1) ($150). BPC section 4999.120 authorizes charging fees for these renewals. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816).

- Add the LPCC initial license issuance fee ($200) and the professional clinical counselor intern registration fee ($100). BPC section 4999.120 authorizes charging fees for initial license issuance. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816.1).

- Add the LPCC jurisprudence and ethics examination fee ($100) for the examination required by BPC section 4999.54(a)(1)(D)(3), the LPCC examination fee ($100) for the examination required by 4999.54(b), and the fee for the LPCC written examination ($150). BPC section 4999.120 authorizes charging fees for examinations. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816.2).

- Add the LPCC examination eligibility fee ($180). BPC section 4999.120 authorizes charging a fee for examination eligibility. The amount does not exceed the cap specified in BPC section 4999.120 (Section 1816.4).

- Add LPCC biennial inactive renewal fee ($87.50) and inactive renewal fee for licenses issued pursuant to BPC section 4999.54(a)(1)($75). BPC section 4999.112 mandates setting an inactive fee that is half of the active license renewal fee. (Section 1816.6)

- Add the delinquency fee for LPCC license ($87.50) and the delinquency fee for a license issued pursuant to BPC section 4999.54(a)(1)($75). BPC section 4999.104 authorizes the BBS to collect a delinquency fee. The delinquency fee for all other BBS license types is half of the active license renewal fee. (Section 1816.7)

- Add the updated revision date to the “Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern” form (3/10), the title of licensed professional clinical counselors and professional clinical counselor intern, and reference to BPC section 4999.76 (Section 1833.1). The changes to this section will also require a change to the form “Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern.” The necessary changes include the following:

    - Update the letterhead;
    - Update the form revision date (3/10);
    - Add the license title “Licensed Professional Clinical Counselor” under item number one on the form; and,
    - Add the registration title “professional clinical counselor intern” under item number three on the form.

- Add professional clinical counselor license type (Section 1833.2).

- Update revision date of “Responsibility Statement for Supervisors of an Associate Clinical Social Worker” form (Section 1870). The form incorporated by reference in this section will also need to be changed due to changes to Section 1874. The necessary changes include the following:

    - Update the form revision date (3/10);
    - Add the license title “Licensed Professional Clinical Counselor” under item number one on the form; and,
    - Add a reference to “LPCCs” under the asterisk.

- Add the title of licensed professional clinical counselor (Section 1874).

- Add the title of licensed professional clinical counselor (Section 1880).

- Add the title of licensed professional clinical counselor and professional clinical counselor intern (Section 1886).

- Add language referencing Chapter 16 of the BPC (Section 1886.40).

- Add the title of licensed professional clinical counselor (Article 8).

- Add a reference to BPC section 4999.76 and 4999.90(b) (Section 1887.1).

- Make several grammatical and non-substantive changes (Section 1887.3).

- Add the title of professional clinical counselors and a reference to BPC section 4999.76 (Section 1887.4).

- Add reference to BPC section 4999.76(d) (Section 1887.6).

- Update revision date of “Continuing Education Provider Application” (rev 3/10) (Section 1887.7). The changes to the form “Continuing Education Provider Application,” which is incorporated by reference in Section 1887.7, follow:

    - Update the letterhead;
    - Update the form revision date (3/10);
    - Update address of BBS on instructions page;
    - Replace item number five in the current version with a question asking the applicant if he or she has ever applied to be a CE provider before; and,
    - Make several non-substantive grammatical changes to the instructions page.

- Add reference to Chapter 16 of the BPC (Section 1887.8).

- Add reference to LPCCs (Section 1887.9).

Addition of New LPCC Sections Relating to Work Experience and Supervision

- Add Section 1820 (Experience), which defines the term supervision, clinical mental health setting, and community mental health setting. In addition, Section 1820 sets forth the conditions under which supervision can be credited.

- Add Section 1821 (Requirements for Supervisors), which sets forth the qualifications licensed mental health professionals must possess prior to supervising a professional clinical counselor intern.

- Add Section 1822 (Supervisory Plan), which requires supervisors of professional clinical counselor interns complete a Supervisory Plan. The changes to the form Supervisory Plan, which is incorporated by reference, follow:

    - Add the titles professional clinical counselor interns and Professional Clinical Counselor to the introductory paragraph;
    - Add references to BPC sections 4996.23(a) and 4999.12(h) to the introductory paragraph;
    - Add reference to Section 1822 to the introductory paragraph;
    - Replace references to "Associate Clinical Social Worker," "Associate," and "ASW" with "registrant" and "registration" in introductory paragraph and headings;
    - Replace "licensure" with "examination eligibility" in the introductory paragraph;
    - Add "Community Mental Health Facility" to the list of Employment Settings;
    - Update the letterhead; and,
    - Update the form revision date (3/10).

Addition of LPCC Language to Disciplinary Guidelines

- Update revision date for "Board of Behavioral Sciences Disciplinary Guidelines" (Section 1888).

- Add references to BPC Section 4999.90 subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), and (z), BPC section 4990.38, and BPC section 728 to "Penalty Guidelines."

- Add reference to LPCCs to "Education" and "Law and Ethics Course" under "Optional Terms and Conditions of Probation."

- Add reference to BPC section 4999.32 and 4999.33 to "Law and Ethics" under "Optional Terms and Conditions of Probation." Add reference to BPC section 4999.20 to "Residing of Practicing Out-of-State" and "Failure to Practice – California Resident" under "Optional Terms and Conditions of Probation."

- Add reference to professional clinical counselor to "Reinstatement/Reduction of Penalty Hearings."

- Add reference to BPC section 4990.38 to "Residing or Practicing Out-of-State" under "Optional Terms and Conditions of Probation."

Clean-up Due to Revised Forms and Previously Repealed or Moved BPC Sections

- Add reference to BPC section 4996.2, which is the BPC section requiring the Human Sexuality Training for clinical social workers (Section 1807).

- Update revision date (3/10) of Supervisory Plan (Section 1870.1). The changes to the Supervisory Plan, which is incorporated by reference in Section 1870.1, follow:

    - Add the titles professional clinical counselor interns and Professional Clinical Counselor to the introductory paragraph;
    - Add references to BPC sections 4996.23(a) and 4999.12(h) to the introductory paragraph;
    - Add reference to Section 1822 to the introductory paragraph;
    - Replace references to "Associate Clinical Social Worker," "Associate," and "ASW" with "registrant" and "registration" in introductory paragraph and headings;
    - Replace "licensure" with "examination eligibility" in the introductory paragraph;
    - Add "Community Mental Health Facility" to the list of Employment Settings;
    - Update the letterhead; and,
    - Update the form revision date (3/10).

- Add language referring to marriage and family therapists. All other types of licensed mental health professionals are referenced in the code section (Section 1880).

- Add language referring to BPC Chapter 13.5. All other chapters pertaining to BBS issued licenses are listed (Section 1886.40).

- Change language to refer to 4980.44(c) and 4996.18(h). The current references are erroneous (Section 1811).

Clarifications Relating to Continuing Education Exceptions and Reasonable Accommodations

- Make numerous changes to Section 1887 (Exceptions from Continuing Education Requirements). Current language allows the BBS to grant reasonable accommodations if during the licensee's previous renewal period, the licensee or an immediate family member for whom the licensee is a primary caregiver suffered a disability. The proposed changes will:

    - Add a reference to BPC section 4999.112, a form entitled "Request for Continuing Education Exception – License Application," and a form entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition;"
    - Require the request for exception or accommodation be submitted at least 60 days prior to the expiration date of a license;
    - Clarify the valid time period for an approved exception;
    - Add the term "reasonable accommodation" in subsection (c) for consistency;
    - Clarify the term disability to include physical and mental disabilities;

- Specify that a domestic partner shall be considered an immediate family member;
- Specify the time period during the previous renewal period to be one year in order to qualify for a reasonable accommodation; and,
- Deletes references to information that will now be included with the "Request for Continuing Education Exception – Verification of Disability or Medical Condition."

Factual Basis/Necessity

SB 788 created a new mental health license type in California and mandates the BBS implement the regulations of the new license. BPC Section 4990.20 authorizes the BBS to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the BPC for which it is responsible, which now includes Chapter 16 (Licensed Professional Clinical Counselors) of Division 2.

In order to administer and enforce the new mental health license type, the BBS must make modifications to existing regulations relating to application fees, examination fees, license renewal fees, supervision requirements, administrative actions, and disciplinary guidelines.

Furthermore, other changes to existing regulations correct erroneous BPC section references. The Governor's approval of SB 1475 (Figueroa) on September 29, 2006 moved various sections of the BPC. The authority cited and code references in numerous regulations must be updated to refer to the appropriate BPC sections. Currently, multiple regulations refer to erroneous BPC sections.

The language of several regulations also includes references to repealed BPC sections, specifically BPC section 4996.20 and 4996.21. Upon the Governor's approval of SB 819 (Yee) on October 11, 2009, these BPC sections were repealed. The only remaining BPC section referring to qualifying supervised work experience for licensed clinical social workers is BPC section 4996.23.

The BBS has made several non-substantive changes to forms relating to mandatory supervision requirements for registrants pursuing licenses as clinical social workers and marriage and family therapists. Revision dates for these forms are referenced in regulation; thus, those dates must be changed.

This proposed rulemaking also makes changes to the CE exception process. In particular, this rulemaking makes changes to the regulation language and to the forms incorporated by reference and revises the BBS's processes for the granting of reasonable accommodations. The federal Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 and following) and the California Fair Employment and Housing Act (FEHA) (Government Code Sections 12900-12996) are both civil rights laws enacted for individuals with disabilities. The ADA provides protections for those with disabilities from discrimination. Similarly, the FEHA was enacted to provide added protections for those individuals with disabilities in California. The FEHA is made applicable to the BBS and other state licensing agencies through Government Code section 12944, subdivision (b). FEHA contains broad definitions of physical disability, mental disability and medical condition. In passing FEHA, the legislature found and declared the following:

- The importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the equal Employment Opportunity Commission in its interpretive guidance of the ADA;

- The definition of physical disability and mental disability under California law require a "limitation" upon major life activity, but do not require, as does the ADA, a "substantial limitation." According to FEHA, this distinction is intended to result in broader coverage under California law than under the federal ADA;

- That it is intended that State law be independent of the ADA; and,

- California state agencies must comply with the federal ADA and the California FEHA. (Government Code section 12926.1.)

In recognition of the foregoing, proposed changes to Section 1887.2 set forth the criteria for granting an exception to the CE requirements for MFTs, LCSWs and LPCCs pursuant to BPC sections 4980.54, 4996.22, and 4999.76, consistent with FEHA. Further, this proposed rulemaking will clarify that other reasonable accommodations may be provided rather than a complete exception for persons with a disability or medical condition. This change is necessary to bring this section and the BBS's forms into compliance with both the ADA and the broader protections of FEHA. Originally, this regulatory section was adopted consistent with the ADA definition of disability. However, FEHA has since changed the definition of disability in California. FEHA requires that a mental or physical disability present a "limitation" upon a major life activity, but does not require, as does the ADA, a "substantial limitation." (Government Code section 12926.1(c); 42 U.S.C. section 12102). As a result, it is necessary to revise subdivisions (d) of this Section and add and make changes to existing forms to provide updated documents and procedures for granting reasonable accommodations as required by law.

Other regulatory changes to this Section that would help to ensure compliance with FEHA are as follows:

- In addition to disability, permit a medical condition to be considered for an exception, as defined in FEHA; and,

- Clarify that a disability may be physical or mental, as defined in Government Code section 12926.

Other changes to this Section include that the CE exception request and form must be received at least sixty (60) days prior to the expiration date of the license for the request for exception to be considered by the BBS. This is necessary to permit the BBS time to process the request before the expiration of a license and to ensure that the licensee will have time to meet the CE requirements if the exception is not approved.

<u>Underlying Data</u>

None

Business Impact

This proposal will not have adverse economic impact on businesses. This proposal would only affect individuals who choose to pursue license as a professional clinical counselor and imposes no new fees or fee increases for current licensees of the BBS.

Specific Technologies or Equipment

___**X**__ This regulation does not mandate the use of specific technologies or equipment.

_____ This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Consideration of Alternatives

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

BBS ARTICLE 1. GENERAL PROVISIONS

§1800. DECLARATORY DECISIONS

No decision or opinion issued by the Board is a declaratory decision under Government Code Sections 11465.10.-11465.70. unless the decision or opinion specifically states that it is a “Declaratory Decision”.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 11465.10-11465.70, Government Code.

§1802. DEFINITIONS

For the purpose of the rules and regulations contained in this chapter, the term "board" means the Board of Behavioral Sciences; and the term "Code" means the Business and Professions Code.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 4990 ~~and 4990.1~~, Business and Professions Code.

§1803. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, ~~4990.8 and 4990.13~~ 4990.04 and 4990.12, Business and Professions Code; and Section 11500-11528, Government Code.

§1804. FILING OF ADDRESSES

Each person or professional corporation regulated by the board shall maintain a current mailing address with the board and shall notify the board within thirty (30) days concerning any change of address giving both the old and new addresses.

Note: Authority cited: Sections 4980.60, 4990.11 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 4980.07, ~~4990.11 and 4990.13~~,4990.08 and 4990.12, Business and Professions Code.

§1805. APPLICATIONS

(a) Applications submitted to the board for registration or licensure shall be on a form prescribed by the board.

(b) A 180-day waiting period is required between examinations for any applicant retaking an examination. In the event special or unusual circumstances occur that impact the examination, the Board’s Executive Officer may allow for a lesser period of time, as long as the integrity of the examination or examination security is not compromised.

Note: Authority Cited: Sections 4980.60, 4988.2, and 4990.20 (a), Business and Professions Code. Reference: Sections 4980.30, 4980.40, 4989.20,

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~~4987.6~~, 4992, ~~and~~ 4996.2, and 4999.50, Business and Professions Code.

§1805.1. PERMIT PROCESSING TIMES

"Permit" as defined by the Permit Reform Act of 1981 means any license, certificate, registration, permit or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the board's various programs are set forth below. The actual processing times reflect the period from the date the board receives an application to the date a license or registration is issued, and apply to those persons who take and pass the first actual available examination.

	Maximum time for notifying that application is complete or deficient	Maximum time after receipt of a complete application to issue or deny license or registration	ACTUAL PROCESSING TIMES BASED ON PRIOR TWO YEARS		
PROGRAM			*Minimum*	*Median*	*Maximum*
MFT Intern Registration	60 days	30 days	15	100	186
MFT License	90 days	120 days	104	182	260
LCSW Associate Registration	60 days	30 days	15	53	90
LCSW License	90 days	120 days	104	178	253
LEP License	90 days	120 days	98	179	260
CE Provider Approval	30 days	30 days	n/a	n/a	n/a
MFT Referral Service Registration	30 days	30 days	n/a	n/a	n/a
All Renewals	30 days	60 days	28	42	56

Note: Authority Cited: Sections 650.4, 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Section 15376, Government Code.

§1806. ABANDONMENT OF APPLICATION

An application shall be deemed abandoned under any of the following circumstances:

(a) The application has not been completed by the applicant within one (1) year after it has been filed. An application shall be deemed complete when all documents and information required have been submitted to the board.

(b) The applicant does not submit information required in order to correct the deficiencies specified in a deficiency letter within one (1) year from the date of the deficiency letter.

(c) The applicant fails to sit for the standard written examination within one (1) year after being notified of initial eligibility to take the standard written examination.

(d) The applicant fails to sit for the clinical vignette examination within one (1) year of being notified of passing the standard written examination.

(e) The applicant fails to sit for the jurisprudence and ethics examination required in Section 4999.52 and 4999.54 of the Code within one (1) year after being notified of initial eligibility to take the jurisprudence and ethics examination.

(f) The applicant fails to sit for the examination required in 4999.54 (b) (2) of the Code within one (1) year after being notified of initial eligibility to take the examination.

(g) The applicant fails to sit for an examination required in 4999.52 (c) (5) of the Code within one (1) year after

being notified of initial eligibility to take that examination.

~~(e)~~ (h) An applicant fails to retake an examination within one (1) year from the date the applicant was notified of failing an examination.

~~(f)~~ (i) The applicant fails to pay the initial license fee within one (1) year after notification by the board of successful completion of examination requirements.

An application submitted after an application has been abandoned shall be treated as a new application, including any fees required, and current requirements.

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4980.30, 4980.35, 4984.7, 4989.20, 4989.68, 4992, ~~and~~ 4996.3, 4999.50, 4999.52, 4999.54, and 4999.120, Business and Professions Code.

§1807. HUMAN SEXUALITY TRAINING

The human sexuality training required of marriage and family therapists, ~~and~~ clinical social workers, and professional clinical counselors by Sections 25, ~~and~~ 4980.41, 4996.2, and 4999.32 of the Code shall:

(a) Consist of a minimum of ten (10) hours of training or coursework.

(b) Include the study of physiological-psychological and social-cultural variables associated with sexual identity, sexual behavior or sexual disorders.

(c) Have been completed after January 1, 1970, and shall have been obtained from one of the educational institutions or entities specified herein:

(1) An educational institution accredited by one or more of those entities specified in Section 1832 of these regulations, including extension courses offered by such institutions; or

(2) An educational institution approved by the Bureau for Private Postsecondary and Vocational Education pursuant to Sections 94900 and 94901 of the Education Code, including extension courses offered by such institutions; or

(3) A continuing education provider approved by the board; or

(4) A course sponsored by a professional association; or

(5) A course sponsored, offered, or approved by a state, county, or local department of health services or department of mental health.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 25, 4980.41, 4980.54, 4996.2, ~~and~~ 4996.22, and 4999.32, Business and Professions Code.

§1807.2. CHILD ABUSE ASSESSMENT TRAINING REQUIREMENTS

All persons applying for a license as a marriage and family therapist, clinical social worker, or professional clinical counselor or renewal of a license as a marriage and family therapist or clinical social worker shall in addition to all other requirements for licensure, have completed coursework or training in child abuse assessment and reporting and shall submit documentation to the board. The coursework or training in child abuse assessment and reporting shall consist of not less than 7 classroom hours and shall include training in each of the subject areas described in Section 28 of the Code. The coursework or training shall be:

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(a) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education, pursuant to Sections 94900 and 94901 of the Education Code; or

(b) Obtained from a statewide professional association representing the professions of psychology, social work or marriage and family therapy; or

(c) Obtained from or sponsored by a local, county, state or federal governmental entity, or licensed health facility; or

(d) Obtained from a continuing education provider approved by the board.

(e) Completed after January 1, 1983.

Note: Authority cited: Sections 28, 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 28, 4980.54, ~~and~~ 4996.22, and 4999.32 Business and Professions Code; and Sections 11165 and 11166, Penal Code.

§1810. ALCOHOLISM AND OTHER CHEMICAL SUBSTANCE DEPENDENCY TRAINING

(a) The instruction and training in alcoholism and other chemical substance dependency required by Sections 4980.41, 4980.80, 4980.90, 4996.2, ~~and~~ 4996.17, and 4999.32 of the Code shall consist of not less than fifteen hours of classroom training or coursework and shall include each of the following areas:

(1) The definition of alcoholism and other chemical dependency, and the evaluation of the abuser.

(2) Medical aspects of alcoholism and other chemical dependency.

(3) Current theories of the etiology of substance abuse.

(4) The role of persons and systems that support or compound the abuse.

(5) Major treatment approaches to alcoholism and chemical dependency.

(6) Legal aspects of substance abuse.

(7) Knowledge of certain populations at risk with regard to substance abuse.

(8) Community resources offering assessment, treatment and follow-up for the abuser and family.

(9) The process of referring affected persons.

(10) Education concerning and prevention of substance abuse.

(b) For persons subject to Section 4980.41 (d) of the Code, the training or coursework shall be:

(1) Obtained from an educational institution or in an extension course offered by an institution that is either accredited by one or more of the entities specified in Section 1832 of these regulations or is approved by the Bureau for Private Postsecondary and Vocational Education pursuant to Sections 94900 and 94901 of the Education Code;

(c) For all others, the training or coursework shall be:

(1) Obtained from the educational institutions identified in subsection (b) (1); or

(2) Obtained from or sponsored by a local, county, state or federal governmental entity; or

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(3) Obtained from a licensed health facility; or

(4) Obtained from a continuing education provider approved by the board.

Note: Authority cited: Sections 4980.60 ~~4990.14~~ and 4990.20, Business and Professions Code. Reference: Sections 4980.41, 4980.80, 4980.90,4996.2, ~~and~~ 4996.17, and 4999.32, Business and Professions Code.

§1811. USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS

All persons or referral services regulated by the board who advertise their services shall include their license or registration number in the advertisement unless such advertisement contains the following specific information:

(a) The full name of the licensee or registered referral service as filed with the board; and

(b) A designation of the type of license or registration held as follows:

(1) Licensed Marriage and Family Therapist.

(2) Licensed Educational Psychologist.

(3) Licensed Clinical Social Worker.

(4) Registered MFT Referral Service.

(5) Licensed Professional Clinical Counselor

(c) An unlicensed Marriage and Family Therapist Registered Intern may advertise if such advertisement complies with Section 4980.44~~(a)(4)~~(c) of the Code making disclosures required by that section.

(d) An unlicensed Associate Clinical Social Worker may advertise if such advertisement complies with Section 4996.18 (e) of the Code making disclosures required by that section.

(e) An unlicensed Professional Clinical Counselor Intern may advertise if such advertisement complies with Section 4999.45(c) of the Code making disclosures required by that section.

Note: Authority cited: Sections 137, 650.4, 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 137, 4980.44, ~~and~~ 4996.18, and 4999.45, Business and Professions Code.

§1812. SUBSTANTIAL RELATIONSHIP CRITERIA

For purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapter 17 of Division 3 and Chapter 4 of Part 3 of Division 7 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4999.20, Business and Professions Code. Reference: Sections 481, 490 and 4982, Business and Professions Code.

§1813. CRITERIA FOR REHABILITATION-DENIAL OF LICENSURE

When considering the denial of a license or registration under Section 480 of the Code, the board, in evaluating

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the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in Section 480 of the Code.

(d) The extent to which the applicant has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 482 and 4982, Business and Professions Code.

§1814. CRITERIA FOR REHABILITATION-SUSPENSIONS OR REVOCATIONS

(a) When considering the suspension or revocation of a license, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation.

(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.

(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

(8) Evidence, if any, of rehabilitation submitted by the licensee.

(b) When considering a petition for reinstatement of a license or registration under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1813 of this article.

Note: Authority cited: Sections 4980.60 ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 482 and 4982, Business and Professions Code.

§1815. FINGERPRINT SUBMISSION

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

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

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

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

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

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

Note: Authority cited: Sections 4990.16, 4990.18, 4990.20 and 4996.6, Business and Professions Code. Reference: Sections 4982(a), 4989.54(a), 4992.3(a), ~~and~~ 4996.6, <u>and 4999.90 (a)</u> Business and Professions Code; and Sections 11105(b)(10), and 11105(e), Penal Code.

ARTICLE 2. FEES

§1816. RENEWAL FEES

(a) The annual renewal fee for marriage and family therapist intern registration is seventy-five dollars ($75.00).

(b) The annual renewal fee for associate clinical social worker registration is seventy-five dollars ($75.00).

(c) The fee for associate clinical social worker extension is fifty dollars ($50.00).

<u>(d) The annual renewal fee for professional clinical counselor interns is one hundred dollars ($100.00).</u>

~~(d)~~ <u>(e)</u> The biennial active renewal fee for a marriage and family therapist is one hundred thirty dollars ($130.00).

~~(e)~~ <u>(f)</u> The biennial active renewal fee for a licensed educational psychologist is eighty dollars ($80.00).

~~(f)~~ <u>(g)</u> The biennial active renewal fee for a licensed clinical social worker is one hundred dollars ($100.00).

<u>(h) The biennial active renewal fee for a licensed professional clinical counselor is one hundred seventy-five dollars ($175.00).</u>

<u>(i) The annual renewal fee for licenses issued pursuant to Section 4999.54 (a)(1) of the Code is one hundred fifty dollars ($150.00).</u>

~~(g)~~ <u>(j)</u>The biennial renewal fee for a board-approved continuing education provider is two hundred dollars

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($200.00).

~~(h)~~ (k) For the period of January 1, 2001 through December 31, 2002, the biennial renewal fee for a marriage and family therapist is twenty-five dollars ($25.00).

~~(i)~~ (l) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed educational psychologist is twenty-five dollars ($25.00).

~~(j)~~ (m) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed clinical social worker is twenty-five dollars ($25.00).

Note: Authority Cited: Sections 4980.54, 4980.60, and 4990.20 (a), Business and Professions Code. Reference: Sections 4980.54, 4984.7, 4989.68, 4996.3, 4996.6, 4996.18, ~~and~~ 4996.22, and 4999.120, Business and Professions Code.

§1816.1. INITIAL LICENSE AND REGISTRATION FEES

(a) The fee for initial issuance of the marriage and family therapist license shall be one hundred thirty dollars ($130.00).

(b) The fee for initial issuance of the licensed educational psychologist license shall be eighty dollars ($80.00).

(c) The fee for initial issuance of the licensed clinical social worker license shall be one hundred dollars ($100.00).

(d) The fee for initial issuance of the licensed professional clinical counselor license shall be two hundred dollars ($200.00).

(e) The fee for initial issuance of the professional clinical counselor intern registration shall be one hundred dollars ($100.00).

Note: Authority Cited: Sections 4980.60, and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4989.68, 4996.3, and 4996.18, and 4999.120, Business and Professions Code.

§1816.2. EXAMINATION FEES

(a) The licensed clinical social worker standard written examination fee shall be one hundred dollars ($100.00).

(b) The licensed clinical social worker written clinical vignette examination fee shall be one hundred dollars ($100).

(c) The marriage and family therapist standard written examination fee shall be one hundred dollars ($100.00).

(d) The marriage and family therapist written clinical vignette examination fee shall be one hundred dollars ($100.00).

(e) The licensed educational psychologist written examination fee shall be one hundred dollars ($100.00).

(f) The licensed professional clinical counselor jurisprudence and ethics examination required by Section 4999.54(a)(1)(D)(3) of the Code shall be one hundred dollars ($100.00).

(g) The licensed professional clinical counselor examination described in Section 4999.54(b) of the Code shall be one hundred dollars ($100.00).

(h) The fee for the licensed professional clinical counselor written examination shall be one hundred and fifty

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dollars ($150.00).

Note: Authority Cited: 4980.60 and ~~4~~990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4989.68, 4996.3(a), ~~and~~ 4996.4, and 4999.120, Business and Professions Code.

§1816.3. EXAMINATION RESCORING FEES

The fee for rescoring any marriage and family therapist, licensed clinical social worker, or licensed educational psychologist written examination shall be twenty dollars ($20.00).

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 4984.7, ~~4986.80~~ 4989.68 , and 4996.3, Business and Professions Code.

§1816.4. EXAMINATION APPLICATION FEES

(a) The fee for the marriage and family therapist examination eligibility application shall be one hundred dollars ($100.00).

(b) The fee for the licensed clinical social worker examination eligibility application shall be one hundred dollars ($100.00).

(c) The fee for the licensed educational psychologist examination eligibility application shall be one hundred dollars ($100.00).

(d) The fee for the licensed professional clinical counselor examination eligibility application shall be one hundred and eighty dollars ($180.00).

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4989.68, ~~and~~ 4996.3, and 4999.120,Business and Professions Code.

§1816.5. REPLACEMENT AND CERTIFICATION FEES

(a) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20.00).

(b) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25.00).

Note: Authority cited: Sections 4980.60 and 4990.14, Business and Professions Code. Reference: Sections 4984.7, ~~4986.80~~4989.68, and 4996.6, Business and Professions Code.

§1816.6. INACTIVE LICENSE FEES

(a) The fee for issuance or renewal of an inactive marriage and family therapist license shall be sixty-five dollars ($65.00).

(b) The fee for issuance or renewal of an inactive licensed clinical social worker license shall be fifty dollars ($50.00).

(c) The fee for issuance or renewal of an inactive licensed educational psychologist license shall be forty dollars ($40.00).

(d) The fee for issuance or biennial renewal of an inactive licensed professional clinical counselor license shall be eighty seven dollars and fifty cents ($87.50).

(e) The fee for issuance or annual renewal of an inactive license issued pursuant to Section 4999.54(a)(1) of the

Code shall be seventy five dollars ($75.00).

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.8, 4989.44, ~~and~~ 4997, and 4999.112, Business and Professions Code.

§1816.7. DELINQUENT FEES

(a) The delinquency fee for the marriage and family therapist license shall be sixty-five dollars ($65.00) except for the period of time in subsection ~~(e)~~ (g).

(b) The delinquency fee for the licensed clinical social worker license shall be fifty dollars ($50.00) except for the period of time in subsection ~~(f)~~ (h).

(c) The delinquency fee for the licensed educational psychologist license shall be forty dollars ($40.00) except for the period of time in subsection ~~(g)~~ (i).

(d) The delinquency fee for the licensed professional clinical counselor license shall be eighty seven dollars and fifty cents ($87.50).

(e) The delinquency fee for the license issued pursuant to Section 4999.54(a)(1) of the Code shall be seventy five dollars ($75.00).

~~(d)~~ (f) The delinquency fee for the continuing education provider approval shall be one hundred dollars ($100).

~~(e)~~ (g) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the marriage and family therapist license shall be twenty-five dollars ($25.00).

~~(f)~~ (h) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the licensed clinical social worker license shall be twenty-five dollars ($25.00).

~~(g)~~ (i) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the licensed educational psychologist license shall be twenty-five dollars ($25.00).

Note: Authority cited: Sections 4980.60 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 4984.7, ~~4986.80~~4989.60, ~~and~~ 4996.6, and 4999.104, Business and Professions Code.

§1819.1. CONTINUING EDUCATION PROVIDER FEES

The application fee for board approval as a continuing education provider is two hundred dollars ($200.00). This fee also covers the issuance of the initial two-year continuing education provider approval.

Note: Authority Cited: Sections 4980.60 and ~~4990.14~~4990.20, Business and Professions Code. Reference: Sections 4980.54, 4996.22, 4999.32, and 4999.76, Business and Professions Code.

ARTICLE 3. LICENSED PROFESSIONAL CLINICAL COUNSELORS

§1820 EXPERIENCE

(a) In order for experience to qualify under Section 4999.50(a)(2) of the Code, it must have been gained in accordance with Sections 4999.44 through 4999.47 of the Code and the regulations contained in this article.

(b) The term "supervision", as used in this article, includes ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised; reviewing client/patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the intern or trainee; monitoring and evaluating the ability of the intern or trainee to provide

services at the site(s) where he or she will be practicing and to the particular clientele being served; and ensuring compliance with laws and regulations governing the practice of professional clinical counseling. Supervision shall include that amount of direct observation, or review of audio or video tapes of counseling, if deemed appropriate by the supervisor.

(c) The term "clinical mental health setting," as used in this article means any setting that meets all the following requirements:

(1) Lawfully and regularly provides mental health counseling or psychotherapy; and,

(2) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in Chapter 16 (Commencing with Section 4999.10) of Division 2 of the Business and Professions Code and is within the scope of practice of the profession as specified therein.

(d) The term "community mental health setting," as used in this article, means a clinical setting that meets all of the following requirements:

(1) A majority of clients routinely receive psychopharmacological interventions in conjunction with psychotherapy, counseling, or other psycho-social interventions;

(2) Clients receive coordinated care that includes the collaboration of mental health providers; and,

(3) Is not a private practice owned by a licensed professional clinical counselor, marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician or surgeon, or a professional corporation of any of these licensed professions.

(e) Supervision shall be credited only upon the following conditions:

(1) During each week in which experience is claimed and for each work setting in which experience is gained, an applicant shall have at least one (1) hour of one-on-one, individual, face-to-face supervisor contact or two (2) hours of face-to-face supervisor contact in a group of not more than eight (8) persons receiving supervision. No more than five (5) hours of supervision, whether individual or group, shall be credited during any single week.

(2) The applicant shall have received at least one (1) hour of one-on-one, individual, face-to-face supervisor contact per week for a minimum of fifty-two (52) weeks.

(3) In a setting which is not a private practice, the authorized supervisor may be employed by the applicant's employer on either a paid or a voluntary basis. If such employment is on a voluntary basis, a written agreement must be executed between the supervisor and the organization, prior to commencement of supervision, in which the supervisor agrees to ensure that the extent, kind, and quality of counseling performed by the intern is consistent with the intern training, education, and experience, and is appropriate in extent, kind, and quality. The agreement shall contain an acknowledgment by the employer that the employer:

(A) Is aware of the licensing requirements that must be met by the intern or trainee and agrees not to interfere with the supervisor's legal and ethical obligations to ensure compliance with those requirements; and

(B) Agrees to provide the supervisor access to clinical records of the clients counseled by the intern.

(4) The applicant maintains a record of all hours of experience gained toward licensure on the "Weekly Summary of Experience Hours for Professional Clinical Counselor Interns" (form. No. 1800 37A-645 New 03/10). The record of hours must be signed by the supervisor on a weekly basis. An applicant shall retain all "Weekly Summary of Experience Hours for Professional Clinical Counselor Interns" until such time as the applicant is licensed by the board. The board shall have the right to require an applicant to submit all or such portions of the "Weekly Summary of Experience Hours for Professional Clinical Counselor Interns" as it deems

necessary to verify hours of experience.

(f) When an intern employed in private practice is supervised by someone other than the employer, the supervisor must be employed by and practice at the same site(s) as the intern's employer.

NOTE: Authority cited: Section 4990.20, 4999.48 and 4999.50, Business and Professions Code. Reference: Sections 4999.44, 4999.45, 4999.46, 4999.47 Business and Professions Code.

§1821. REQUIREMENTS FOR SUPERVISORS

(a) Any person supervising an intern (hereinafter "supervisor") within California shall comply with the requirements set forth in this section.

(b) Prior to the commencement of any counseling or supervision, the supervisor shall sign under penalty of perjury the “Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern” (form No.1800 37A-643, New 3/10) requiring that:

(1) The supervisor possesses and maintains a current valid California license as either a professional clinical counselor, marriage and family therapist, licensed clinical social worker, licensed psychologist, or physician who is certified in psychiatry as specified in Section 4999.12 (h) of the Code and has been so licensed in California for at least two years prior to commencing any supervision.

(2) A supervisor who is not licensed as a professional clinical counselor, shall have sufficient experience, training, and education in professional clinical counseling to competently practice professional clinical counseling in California.

(3) The supervisor keeps himself or herself informed of developments in professional clinical counselor and in California law governing the practice of professional clinical counselor.

(4) The supervisor has and maintains a current license in good standing and will immediately notify the intern of any disciplinary action, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure that affects the supervisor's ability or right to supervise.

(5) The supervisor has practiced psychotherapy or provided direct supervision of trainees, interns, or associate clinical social workers who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding any supervision.

(6) The supervisor has had sufficient experience, training, and education in the area of clinical supervision to competently supervise interns.

> (A) Persons licensed by the board who provide supervision shall complete a minimum of six (6) hours of supervision training or coursework in each renewal period while providing supervision. This training or coursework may apply towards the continuing education requirements set forth in Sections 4999.76 of the Code.
>
> (B) Persons licensed by the board who provide supervision and who have not met requirements of subsection (A), shall complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of commencement of supervision.

(7) The supervisor knows and understands the laws and regulations pertaining to both the supervision of interns and the experience required for licensure as a professional clinical counselor.

(8) The supervisor shall ensure that the extent, kind, and quality of counseling performed by the intern is consistent with the education, training, and experience of the intern.

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(9) The supervisor shall monitor and evaluate the extent, kind, and quality of counseling performed by the trainee or intern by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate by the supervisor.

(10) The supervisor shall address with the intern the manner in which emergencies will be handled.

(c) Each supervisor shall provide the intern with the original signed "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern"(new 03/10, form #1800 37A-643) prior to the commencement of any counseling or supervision. Interns shall provide the board with the signed "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern" (new 03/10, form #1800 37A-634) from each supervisor upon application for examination eligibility.

(d) A supervisor shall give at least one (1) week's prior written notice to an intern of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(e) The supervisor shall obtain from each intern for whom supervision will be provided, the name, address, and telephone number of the intern's most recent supervisor and employer.

(f) In any setting that is not a private practice, a supervisor shall evaluate the site(s) where an intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of practice of a professional clinical counselor; and (2) the experience is in compliance with the requirements set forth in section 1820 and section 4999.46 of the Code.

(g) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(h) The board shall not deny hours of experience gained towards licensure by any supervisee due to failure of his or her supervisor to complete the training or coursework requirements in subsection (a) (6) (A).

NOTE: Authority cited: Sections 4990.20 and 4999.48 Business and Professions Code. Reference: Sections 4999.12, 4999.34, 4999.36, 4999.44 through 4999.48 and 4999.54, Business and Professions Code.

§1822. SUPERVISORY PLAN

(a) All licensed mental health professionals acceptable to the board as defined in Section 4999.12 of the Code who assume responsibility for providing supervision shall develop a supervisory plan that describes the goals and objectives of supervision and shall complete and sign under penalty of perjury the "Supervisory Plan", (form no. 1800 37A-521, revised 03/10), hereby incorporated by reference.

(b) This supervisory plan shall be completed by each supervisor providing supervision and the original signed plan shall be submitted by the professional clinical counselor intern to the board upon application for examination eligibility.

Note: Authority cited: Section 4990.20 and 4999.48 Business and Professions Code. Reference: Sections 4999.12, 4999.34, 4999.36, 4999.44 through 4999.48 and 4999.54 Business and Professions Code.

ARTICLE 4. MARRIAGE AND FAMILY THERAPIST

§1829. EXAMINATIONS

The written examinations shall consist of the following:

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(a) A standard written examination designed to determine an applicant's knowledge, familiarity with the field, and practical understanding of the principles, techniques, objectives, theory and laws under which he or she must operate; and

(b) A written clinical vignette examination designed to assess the applicant's judgment, knowledge of the application of psychosocial and psychotherapeutic methods and measures in treatment, and ability to assume professional responsibilities.

Note: Authority cited: Sections 4980.40 and 4980.60, Business and Professions Code. Reference: Section 4980.40, Business and Professions Code.

§1832. EQUIVALENT ACCREDITING AGENCIES

The following accrediting agencies are essentially equivalent to Western College Association, which has been renamed the Western Association of Schools and Colleges, and Northwest Association of Secondary and Higher Schools:

(a) Middle States Association of Colleges and Secondary Schools.

(b) New England Association of Schools and Colleges.

(c) North Central Association of Colleges and Secondary Schools.

(d) Southern Association of Colleges and Schools.

(e) The Credentials Evaluation Service of the International Education Research Foundation, Inc. when it evaluates the foreign degree as being equivalent to the required degrees, and those foreign degree programs meet the educational requirements for equivalent degrees and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41 of the Code.

(f) State of California, Department of Education, Bureau of School Approvals with respect to its functions under Education Code section 29023(a)(2), when applied to master's degree and/or doctoral programs which meet the requirements for an equivalent degree pursuant to section 1830 of these regulations, and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41, of the Code.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.40 and 4980.41, Business and Professions Code.

§1832.5 REQUIREMENTS FOR DEGREES FROM EDUCATIONAL INSTITUTIONS APPROVES BY THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION

(a) A doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university that held an approval to operate from the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007 shall be considered by the board to meet the course requirements necessary to qualify for licensure under Section 4980.40 or registration under 4980.44 of the Code provided that the degree is awarded on or before June 30, 2012.

(b) This Section will become inoperative if legislation reenacts the Private Postsecondary and Vocational Education Reform Act of 1989, Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code and the Bureau for Private Postsecondary and Vocational Education, or if legislation provides for a successor agency to the Bureau for Private Postsecondary and Vocational Education and that agency commences operations on or after January 1, 2009.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4980.40.5 and 4980.44, Business and Professions

Code.

§1833. EXPERIENCE

(a) In order for experience to qualify under Section 4980.40(f) of the Code, it must meet the following criteria:

(1) It must have been gained in accordance with Sections 4980.42 through 4980.45 of the Code and the regulations contained in this article.

(2) Experience shall not be credited for more than forty (40) hours in any week.

(3) No more than five hundred (500) hours of experience will be credited for providing group therapy or group_counseling.

(4) No more than two hundred fifty (250) hours of experience will be credited for administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes; except that for any person who enrolled in a qualifying degree program prior to January 1, 1990, no more than five hundred (500) hours of experience may be credited for such activities.

(5) For any person who enrolls in a qualifying degree program on or after January 1, 1990, no more than two hundred fifty (250) hours of experience will be credited for actual time spent counseling or crisis counseling on the telephone.

(6) For any person who enrolls in a qualifying degree program on or after January 1, 1990, not less than five hundred (500) total hours of experience shall have been gained in diagnosing and treating couples, families, and children.

(b) The term "supervision", as used in this article, includes ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised; reviewing client/patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the intern or trainee; monitoring and evaluating the ability of the intern or trainee to provide services at the site(s) where he or she will be practicing and to the particular clientele being served; and ensuring compliance with laws and regulations governing the practice of marriage and family therapy. Supervision shall include that amount of direct observation, or review of audio or video tapes of therapy, as deemed appropriate by the supervisor. Supervision shall be credited only upon the following conditions:

(1) During each week in which experience is claimed and for each work setting in which experience is gained, an applicant shall have at least one (1) hour of one-on-one, individual, face-to-face supervisor contact or two (2) hours of face-to-face supervisor contact in a group of not more than eight (8) persons receiving supervision. No more than five (5) hours of supervision, whether individual or group, shall be credited during any single week.

(2) The applicant shall have received at least one (1) hour of one-on-one, individual, face-to-face supervisor contact per week for a minimum of fifty-two (52) weeks.

(3) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal or business relationship which undermines the authority or effectiveness of the supervisor shall not be credited toward the required hours of supervised experience.

(4) In a setting which is not a private practice, the authorized supervisor may be employed by the applicant's employer on either a paid or a voluntary basis. If such employment is on a voluntary basis, a written agreement must be executed between the supervisor and the organization, prior to commencement of supervision, in

which the supervisor agrees to ensure that the extent, kind, and quality of counseling performed by the intern or trainee is consistent with the intern or trainee's training, education, and experience, and is appropriate in extent, kind, and quality. The agreement shall contain an acknowledgment by the employer that the employer:

(A) Is aware of the licensing requirements that must be met by the intern or trainee and agrees not to interfere with the supervisor's legal and ethical obligations to ensure compliance with those requirements; and

(B) Agrees to provide the supervisor access to clinical records of the clients counseled by the intern or trainee.

(c) Professional enrichment activities may be credited toward the experience requirement as specified in this article and by Section 4980.43(d)(1) of the Code.

(1) No more than two hundred fifty (250) hours of verified attendance, with the approval of the applicant's supervisor, at workshops, seminars, training sessions, or conferences directly related to marriage and family therapy will be credited.

(2) No more than one hundred (100) hours of psychotherapy, which will be triple counted, received as specified in Section 4980.43(d)(2) of the Code, will be credited.

(d) Experience gained by interns and trainees shall be subject to the following conditions, as applicable:

(1) When an intern employed in private practice is supervised by someone other than the employer, the supervisor must be employed by and practice at the same site(s) as the intern's employer.

(2) A trainee shall not perform services in a private practice.

(3) Interns and trainees may only perform services as employees or volunteers and not as independent contractors.

(e) Effective January 1, 1991, trainees and interns shall maintain a log of all hours of experience gained toward licensure. The log shall be in the form specified below and shall be signed by the supervisor on a weekly basis. An applicant shall retain all logs until such time as the applicant is licensed by the board. The board shall have the right to require an applicant to submit all or such portions of the log as it deems necessary to verify hours of experience.

[See Barclays Official California Code of Regulations for original illustration]

NOTE: Authority cited: Section 4980.35 and 4980.60, Business and Professions Code. Reference: Sections 4980.35, 4980.40(f), and 4980.42 through 4980.45, Business and Professions Code.

§1833.1. REQUIREMENTS FOR SUPERVISORS

Any person supervising a trainee or an intern (hereinafter "supervisor") within California shall comply with the requirements below.

(a) Prior to the commencement of any counseling or supervision, the supervisor shall sign under penalty of perjury the "Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern" (revised ~~08/07~~ 3/10, form #1800 37A-523) requiring that:

(1) The supervisor possesses and maintains a current valid California license as either a marriage and family therapist, licensed clinical social worker, licensed professional clinical counselors, licensed psychologist, or physician who is certified in psychiatry as specified in Section 4980.03 (g) of the Code and has been so licensed in California for at least two years prior to commencing any supervision; or

(A) Provides supervision only to trainees at an academic institution that offers a qualifying degree program as specified in Section 4980.40 (a) of the Code; and

(B) Has been licensed in California as specified in Section 4980.03 (g) of the Code, and in any other state, for a total of at least two years prior to commencing any supervision.

(2) A supervisor who is not licensed as a marriage and family therapist, shall have sufficient experience, training, and education in marriage and family therapy to competently practice marriage and family therapy in California.

(3) The supervisor keeps himself or herself informed of developments in marriage and family therapy and in California law governing the practice of marriage and family therapy.

(4) The supervisor has and maintains a current license in good standing and will immediately notify the trainee or intern of any disciplinary action, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure that affects the supervisor's ability or right to supervise.

(5) The supervisor has practiced psychotherapy or provided direct supervision of trainees, interns, ~~or~~ associate clinical social workers, or professional clinical counselor interns who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding any supervision.

(6) The supervisor has had sufficient experience, training, and education in the area of clinical supervision to competently supervise trainees or interns.

(A) Persons licensed by the board who provide supervision shall complete a minimum of six (6) hours of supervision training or coursework in each renewal period while providing supervision. This training or coursework may apply towards the continuing education requirements set forth in Sections 4980.54, ~~and~~ 4996.22, and 4999.76 of the Code.

(B) Persons licensed by the board who provide supervision and who have not met requirements of subsection (A), shall complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of commencement of supervision.

(7) The supervisor knows and understands the laws and regulations pertaining to both the supervision of trainees and interns and the experience required for licensure as a marriage and family therapist.

(8) The supervisor shall ensure that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the trainee or intern.

(9) The supervisor shall monitor and evaluate the extent, kind, and quality of counseling performed by the trainee or intern by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate by the supervisor.

(10) The supervisor shall address with the trainee or intern the manner in which emergencies will be handled.

(b) Each supervisor shall provide the trainee or intern with the original signed “Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee”(revised ~~08/07~~ 3/10, form #1800 37A-523) prior to the commencement of any counseling or supervision. Trainees and interns shall provide the board with the signed “Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee” (revised ~~08/07~~ 3/10, form #1800 37A-523) from each supervisor upon application for licensure.

(c) A supervisor shall give at least one (1) week's prior written notice to a trainee or intern of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such

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notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(d) The supervisor shall obtain from each trainee or intern for whom supervision will be provided, the name, address, and telephone number of the trainee's or intern's most recent supervisor and employer.

(e) In any setting that is not a private practice, a supervisor shall evaluate the site(s) where a trainee or intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of practice of a marriage and family therapist; and (2) the experience is in compliance with the requirements set forth in section 1833 and section 4980.43 of the Code.

(f) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(g) The board shall not deny hours of experience gained towards licensure by any supervisee due to failure of his or her supervisor to complete the training or coursework requirements in subsection (a) (6) (A).

NOTE: Authority cited: Sections 4980.40, 4980.60, and 4990.20 Business and Professions Code. Reference: Sections 4980.03,4980.35, 4980.42 through 4980.45, 4980.48, 4980.54 ~~and~~ ,4996.22, and 4999.76, Business and Professions Code.

§1833.2. SUPERVISION OF EXPERIENCE GAINED OUTSIDE OF CALIFORNIA

Experience gained outside of California on or after January 1, 1991 must have been supervised in accordance with the following criteria:

At the time of supervision, the supervisor was licensed or certified by the state in which the supervision occurred and possessed a current license which was not under suspension or probation. The supervisor was licensed or certified by that state, for at least two (2) years prior to acting as supervisor, as either a psychologist, clinical social worker, physician certified in psychiatry as specified in Section 4980.40(f) of the code, professional clinical counselor, or a marriage and family therapist or similarly titled marriage and family practitioner.

In a state which does not license or certify marriage and family therapists or similarly titled marriage and family practitioners, experience may be obtained under the supervision of a person who at the time of supervision held a clinical membership in the American Association of Marriage and Family Therapists for at least two years and who maintained such membership throughout the period of supervision.

Note: Authority cited: Sections 4980.35, 4980.40(f) and 4980.60, Business and Professions Code. Reference: Sections 4980.35, 4980.40(f), 4980.42-4980.45 and 4980.90, Business and Professions Code.

§1833.3. REEXAMINATION (REPEALED)

§1845. UNPROFESSIONAL CONDUCT

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

(a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

(c) Failing to comply with the child abuse reporting requirements of Penal Code Section 11166.

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(d) Failing to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institutions Code Section 15630.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.

§1846. MARRIAGE AND FAMILY THERAPIST INTERNS

The registration of each intern shall expire at midnight one year from the last day of the month in which the registration was issued.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03(b), 4980.44 and 4984.7(e), Business and Professions Code.

ARTICLE 4.5. PROFESSIONAL CORPORATIONS

§1850.6. NAME OF CORPORATION

The wording or abbreviation denoting corporate existence shall be limited to one of the following: "Professional Corporation," "Prof. Corp.," "Corporation," "Corp.," "Incorporated," or "Inc."

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 4987.8 and 4998.3, Business and Professions Code.

§1850.7. SHARES: OWNERSHIP AND TRANSFER

(a) The shares of a marriage and family therapist corporation may be issued or transferred only to the issuing corporation or to an appropriately licensed person in accordance with Section 13401.5 of the Corporations Code.

(b) The shares of a licensed clinical social worker corporation may be issued or transferred only to the issuing corporation or to an appropriately licensed person in accordance with Section 13401.5 of the Corporations Code.

(c) Where there are two or more shareholders in a corporation and one of its shareholders dies, or becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, for a period exceeding ninety (90) days, his or her shares shall be sold and transferred to a licensed person or to the issuing corporation, on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date the shareholder became a disqualified person.

(d) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again ceases to become a disqualified person.

(e) The restrictions of subdivisions (a) or (b) where appropriate and, if appropriate, subdivision (c) of this section shall be set forth in the corporation's by-laws or articles of incorporation.

(f) The income of the corporation attributable to professional, licensed services rendered while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or his or her shares.

(g) The share certificates of the corporation shall contain either:

(1) An appropriate legend setting forth the restriction of subdivision (a) or (b) where appropriate, and where applicable, the restriction of subdivision (c), or

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(2) An appropriate legend stating that ownership and transfer of the shares are restricted and specifically referring to an identified section of the by-laws or articles of incorporation of the corporation wherein the restrictions are set forth.

Note: Authority cited: Sections 4980.60 and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 4987.9, 4988, 4998.4 and 4998.5, Business and Professions Code; and Sections 13401, 13401.5, 13403 and 13407, Corporations Code.

ARTICLE 5. LICENSED EDUCATIONAL PSYCHOLOGISTS

§1854. EQUIVALENT DEGREES

Educational institutions approved by the board are defined as a college or university accredited by one of the following agencies:

(a) Western Association of Schools and Colleges.

(b) Northwest Association of Secondary and Higher Schools.

(c) Middle States Association of Colleges and Secondary Schools.

(d) New England Association of Colleges and Secondary Schools.

(e) North Central Association of Colleges and Secondary Schools.

(f) Southern Association of Colleges and Schools.

(g) The Credentials Evaluation Service of the International Education Research Foundation, Inc., where it evaluates the foreign degree as being equivalent to the required degree or degrees.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Section 4989.20(a)(1), Business and Professions Code.

§1855. EQUIVALENT EXPERIENCE IN PUPIL PERSONNEL SERVICES (REPEALED)

§1856. EXPERIENCE EQUIVALENT TO THREE (3) YEARS FULL-TIME EXPERIENCE AS CREDENTIALED SCHOOL PSYCHOLOGIST

(a) No more than one year of experience will be granted for any 12 month period.

(b) Part time experience may be accumulated provided that the experience is obtained within six (6) calendar years.

(c) Experience as a credentialed school psychologist employed by a parochial or private school may, at the board's discretion, be deemed equivalent to experience as a credentialed school psychologist in the public schools.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Section 4982.20, Business and Professions Code.

§1857. EXPERIENCE EQUIVALENT TO ONE YEAR OF SUPERVISED PROFESSIONAL EXPERIENCE (REPEALED)

§1858. UNPROFESSIONAL CONDUCT

The Board may suspend or revoke the license of a licensee who:

(a) Impersonates a licensee or allows another person to use his or her license.

(b) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code.

ARTICLE 6. LICENSED CLINICAL SOCIAL WORKERS

§1870. REQUIREMENTS FOR ASSOCIATE CLINICAL SOCIAL WORKER SUPERVISORS

Any person supervising an associate clinical social worker registered with the board (hereinafter called "supervisor") within California shall comply with the requirements set forth below.

(a) Prior to the commencement of any therapy or supervision, the supervisor shall sign under penalty of perjury the “Responsibility Statement for Supervisors of an Associate Clinical Social Worker” (revised ~~08/07~~ 3/10, form #1800 37A-522), which requires that:

(1) The supervisor possesses and will maintain a current valid California license as a licensed clinical social worker or a licensed mental health professional acceptable to the Board as specified in Section 1874.

(2) The supervisor has and will maintain a current license in good standing and will immediately notify the associate of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or any lapse in licensure, that affects the supervisor's ability or right to supervise.

(3) The supervisor has practiced psychotherapy or provided direct supervision of associates, or marriage and family therapist interns or trainees who perform psychotherapy for at least two (2) years within the last five (5) years immediately preceding supervision.

(4) The supervisor has had sufficient experience, training and education in the area of clinical supervision to competently supervise associates.

(A) Persons licensed by the board who provide supervision shall have a minimum of fifteen (15) contact hours in supervision training obtained from a state agency or approved continuing education provider. This training may apply towards the approved continuing education requirements set forth in Sections 4980.54 and 4996.22 of the Code. The content of such training shall include, but not be limited to:

(i) Familiarity with supervision literature through reading assignments specified by course instructors;

(ii) Facilitation of therapist-client and supervisor-therapist relationships;

(iii) Evaluation and identification of problems in therapist-client and supervisor-therapist relationships;

(iv) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(v) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(vi) The practice of clinical social work, including the mandated reporting laws, and knowledge of ethical and legal issues.

(5) The supervisor knows and understands the laws and regulations pertaining to both supervision of associates and the experience required for licensure as a clinical social worker.

(6) The supervisor shall do all of the following:

(A) Ensure that the extent, kind and quality of clinical social work performed by the associate is consistent with the training and experience of the person being supervised.

(B) Review client/patient records and monitor and evaluate assessment and treatment decisions of the associate clinical social worker.

(C) Monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served.

(D) Ensure compliance with all laws and regulations governing the practice of clinical social work.

(7) The supervisor and the associate shall develop the "Supervisory Plan" as described in Section 1870.1. The associate shall submit the original signed plan for each supervisor to the board upon application for licensure.

(8) The supervisor shall provide the associate with the original, signed "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised ~~08/07~~ 3/10, form #1800 37A-522), prior to commencement of any supervision. The associate shall provide the board with the original signed form for each supervisor upon application for licensure.

(9) A supervisor shall give at least one (1) week's written notice to an associate of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(10) The supervisor shall complete an assessment of the ongoing strengths and limitations of the associate. The assessments shall be completed at least once a year and at the completion or termination of supervision. A copy of all assessments shall be provided to the associate by the supervisor.

(11) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(b) The board shall not deny hours of experience gained toward licensure by any associate due to the failure of his or her supervisor to complete the training requirements specified in subsection (a)(4)(A).

Note: Authority cited: Section 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4980.54, ~~4996.21,~~ 4996.22 and 4996.23, Business and Professions Code.

§1870.1. SUPERVISORY PLAN

(a) On and after January 1, 1999, all associate clinical social workers and licensed clinical social workers or licensed mental health professionals acceptable to the board as defined in Section 1874 who assume responsibility for providing supervision shall develop a supervisory plan that describes the goals and objectives of supervision and shall complete and sign under penalty of perjury the "Supervisory Plan", (form no. 1800 37A-521, revised ~~12/05~~ 3/10), hereby incorporated by reference.

(b) This supervisory plan shall be completed by each supervisor providing supervision and the original signed plan shall be submitted by the associate clinical social worker to the board upon application for licensure.

Note: Authority cited: Section ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 4996.18 and ~~4996.21~~ 4996.23, Business and Professions Code.

§1874. DEFINITION OF ACCEPTABLE MENTAL HEALTH PROFESSIONALS

For purposes of Section~~s~~ ~~4996.20(b) and 4996.21(a)~~ 4996.23 (a), a licensed mental health professional acceptable to the board is one who, at the time of supervision, has possessed for at least two years a valid license as a psychologist, marriage and family therapist, licensed professional clinical counselor or physician certified in psychiatry by the American Board of Psychiatry and Neurology.

Note: Authority cited: Section ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections ~~4996.20 and 4996.21~~ 4996.23, Business and Professions Code.

§1877. EXAMINATIONS

The written examinations shall consist of the following:

(a) A standard written examination designed to determine an applicant's knowledge, familiarity with the field, and practical understanding of the principles, techniques, objectives, theory and laws under which he or she must operate; and

(b) A written clinical vignette examination designed to assess the applicant's judgment, knowledge of the application of psychosocial and psychotherapeutic methods and measures in treatment, and ability to assume professional responsibilities.

Note: Authority cited: Section ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Section 4992.1, Business and Professions Code.

§1880. UNLICENSED ASSISTANTS

An unlicensed person employed under Section 4996.15 of the Code to perform limited social work functions shall inform each patient or client prior to performing any such functions that he or she is not a licensed clinical social worker and is under the supervision of a licensed clinical social worker, marriage and family therapist, licensed professional clinical counselor, or a licensed psychologist or a licensed psychiatrist, whichever is applicable.

Note: Authority cited: Section ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Section 4996.15, Business and Professions Code.

§1881. UNPROFESSIONAL CONDUCT

The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the

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misrepresentation of his or her professional qualifications or affiliations.

(b) Impersonates a licensee or who allows another person to use his or her license.

(c) Aids or abets an unlicensed person to engage in conduct requiring a license.

(d) Intentionally or recklessly causes physical or emotional harm to a client.

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

(f) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of a Licensed Clinical Social Worker.

(g) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(h) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(i) Fails to maintain the confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client during the course of treatment and all information about the client which is obtained from tests or other such means.

(j) Prior to the commencement of treatment, fails to disclose to the client, or prospective client, the fee to be charged for the professional services, or the basis upon which such fee will be computed.

(k) Advertises in a manner which is false or misleading.

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institution Code Section 15630.

Note: Authority cited: Section ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections ~~4990.14~~ 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Section 11166, Penal Code, and Section 15630, Welfare and Institution Code.

ARTICLE 7. CITATIONS AND FINES

§1886. AUTHORITY TO ISSUE CITATIONS AND FINES

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed marriage and family therapist (MFT), licensed educational psychologist (LEP), licensed clinical social worker (LCSW), licensed professional clinical counselor (LPCC), MFT Intern, ~~or~~ Associate Clinical Social Worker, or professional clinical counselor intern of the statutes and regulations enforced by the Board of Behavioral Sciences.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.10. CITATIONS FOR UNLICENSED PRACTICE

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 302(d) of the Code, who are performing or who have performed services for which a license is required under the statutes and regulations enforced by the Board of Behavioral Sciences. Each citation issued for unlicensed activity shall contain an order of abatement. Where appropriate, the executive officer shall levy a fine for such unlicensed activity in accordance with section 1886.40 of these regulations. The provisions of sections 1886-1886.80 shall apply to the issuance of citations for unlicensed activity under this section. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 125.95, 148, 149 and 302(d), Business and Professions Code.

§1886.20. CITATION FORMAT

A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation. The citation shall be served upon the cited person personally or by certified mail in accordance with the provisions of Section 11505 (c) of the Government Code.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.30. CITATION FACTORS

In assessing an administrative fine or issuing an order of abatement, the executive officer of the board shall give due consideration to the following factors:

(a) The gravity of the violation.

(b) The good or bad faith exhibited by the cited person.

(c) The history of previous violations of the same or similar nature.

(d) Evidence that the violation was or was not willful.

(e) The extent to which the cited person has cooperated with the board's investigation.

(f) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by

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the violation.

(g) Any other factors as justice may require.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.40. AMOUNT OF FINES

(a) For purposes of this section, a "citable offense" is defined as any violation of the statutes and regulations enforced by the Board of Behavioral Sciences, including Chapters 13, ~~and~~ 13.5, 14, and 16 of Division Two of the Business and Professions Code and Title 16, Division 18, California Code of Regulations.

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

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

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

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

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

(4) The citation involves unlicensed practice.

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

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

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

Note: Authority cited: Sections 125.9, 148, 149, 4980.60, and ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 123, 125, 125.9, 136, 141, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, 4987.7, 4987.8, 4988, 4988.1, 4989.10, 4989.12, 4989.14, 4989.20, 4989.22, 4989.24, 4989.26, 4989.28, 4989.34, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.22 ~~4996.20~~, 4996.23, 4998.2, 4998.3, 4998.4, 4999.20, 4999.24, 4999.30, 4999.32, 4999.33, 4999.42, 4999.44, 4999.45, 4999.46, 4999.54, 4999.58, 4999.60, and 4999.76. Business and Professions Code; and Section 15630, Welfare and Institutions Code.

§1886.50. EXCEPTIONS

A citation shall not be issued in any of the following circumstances:

(a) The violation is of such a nature and/or severity that revocation of the license or restrictions on the cited person are necessary in order to ensure consumer protection.

(b) The cited person failed to comply with any requirement of any previous citation, including any order of abatement or fine.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9,

148 and 149, Business and Professions Code.

§1886.60. COMPLIANCE WITH CITATION/ORDER OF ABATEMENT

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the executive officer of the board. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) If a citation is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the board or other appropriate judicial action being taken against the cited person.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code; Section 11505(c), Government Code.

§1886.70. CONTESTED CITATIONS AND REQUEST FOR A HEARING OR INFORMAL CITATION CONFERENCE

(a) If a cited person wishes to contest the citation, assessment of the administrative fine, or order of abatement, the cited person shall, within thirty (30) days after service of the citation, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the citation, as provided for in subdivision (b)(4) of Section 125.9 of the Code.

(b) In addition to or instead of requesting an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited person may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the executive officer or his/her designee.

(c) Upon receipt of a written request for an informal citation conference, the executive officer or his/her designee shall, within 60 days, hold an informal citation conference with the cited person. The cited person may be accompanied and represented at the informal citation conference by an attorney or other authorized representative.

(d) If an informal citation conference is held, the request for an administrative hearing shall be deemed to be withdrawn and the executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued, at the conclusion of the informal citation conference. If affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and his/her counsel, if any, within 10 days from the date of the informal citation conference.

(e) If a cited person wishes to contest an affirmed or modified citation, the cited person shall, within 30 days after service of the citation, contest the affirmed or modified citation by submitting a written request for an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, to the executive officer or his or her designee. An informal citation conference shall not be held on affirmed or modified citations.

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NOTE: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.80. DISCONNECTION OF TELEPHONE SERVICE

Nothing in this section shall preclude the board from using the provisions of Section 149 of the Code in addition to any citation issued to an unlicensed person.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, ~~4990.14~~ 4990.20, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

ARTICLE 8. CONTINUING EDUCATION REQUIREMENTS FOR MARRIAGE AND FAMILY THERAPISTS, ~~AND~~ LICENSED CLINICAL SOCIAL WORKERS AND LICENSED PROFESSIONAL CLINICAL COUNSELORS

§1887. DEFINITIONS

As used in this article:

(a) A continuing education "course" means a form of systematic learning at least one hour in length including, but not limited to, academic studies, extension studies, lectures, conferences, seminars, workshops, viewing of videotapes or film instruction, viewing or participating in other audiovisual activities including interactive video instruction and activities electronically transmitted from another location which has been verified and approved by the continuing education provider, and self-study courses.

(b) A "self-study course" means a form of systematic learning performed at a licensee's residence, office, or other private location including, but not limited to, listening to audiotapes or participating in self-assessment testing (open-book tests that are completed by the member, submitted to the provider, graded, and returned to the member with correct answers and an explanation of why the answer chosen by the provider was the correct answer).

(c) A continuing education "provider" means an accredited or approved school, or an association, health facility, governmental entity, educational institution, individual, or other organization that offers continuing education courses and meets the requirements contained in this article.

(d) A “renewal period” means the two-year period which spans from a license’s expiration date to the license’s next expiration date.

Note: Authority Cited: Sections 4980.60, 4999.76 and 4990.20 ~~4990.14~~, Business and Professions Code. Reference: Sections 4980.54 ~~and~~ 4996.22, and 4999.76 Business and Professions Code.

§1887.1. LICENSE RENEWAL REQUIREMENTS

(a) Except as provided in Section 1887.2, a licensee shall certify in writing, when applying for license renewal, by signing a statement under penalty of perjury that during the preceding renewal period the licensee has completed thirty-six (36) hours of continuing education credit as set forth in Sections 4980.54, ~~and~~ 4996.22 and 4999.76 of the Code.

(b) A licensee who falsifies or makes a material misrepresentation of fact when applying for license renewal or who cannot verify completion of continuing education by producing a record of course completion, upon request by the board, is subject to disciplinary action under Sections 4982(b), ~~and~~ 4992.3(b) and 4999.90(b) of the Code.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~ 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ and 4999.90 Business and Professions Code.

§1887.2. EXCEPTIONS FROM CONTINUING EDUCATION REQUIREMENTS

(a) ~~An initial~~ A licensee in his or her initial renewal period shall complete at least eighteen (18) hours of continuing education, of which no more than six (6) hours may be earned through self-study courses, prior to

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his or her first license renewal.

(b) A licensee is exempt from the continuing education requirement if ~~their~~ his or her license is inactive pursuant to Sections 4984.8**,** ~~and~~ 4997 or 4999.112 of the Code.

(c) A licensee may submit a written request for exception from, or reasonable accommodation for, the continuing education requirement, on a form entitled "Request for Continuing Education Exception – Licensee Application," Form No. 1800 37A-635 (Revised 3/10) for any of the reasons listed below. The request must be submitted to the board at least sixty (60) days prior to the expiration date of the license. The board will notify the licensee, within thirty (30) working days after receipt of the request for exception or reasonable accommodation, whether the exception or accommodation was granted. If the request for exception or accommodation is denied, the licensee is responsible for completing the full amount of continuing education required for license renewal. If the request for exception or accommodation is approved, it shall be valid for one renewal period. ~~The board shall grant the exception if the licensee can provide evidence, satisfactory to the board, that:~~

(1) The Board shall grant an exception if the licensee can provide evidence, satisfactory to the board that:

~~(1)~~ (A) For at least one year during the licensee's previous license renewal period the licensee was absent from California due to military service;

~~(2)~~ (B) For at least one year during the licensee's previous license renewal period the licensee resided in another country; or

~~(3)~~ (2) The board may grant a reasonable accommodation if, ~~During~~ for at least one year during the licensee's previous license renewal period, the licensee or an immediate family member, including a domestic partner, where the licensee ~~has~~ is the primary ~~responsibility for the care of~~ caregiver for that family member, ~~was suffering from or suffered~~ had a physical or mental disability or medical condition as defined in Section 12926 of the Government Code. ~~A disability is a physical or mental impairment that substantially limits one or more of the major life activities of an individual~~. The physical or mental disability or medical condition must be verified by a licensed physician or psychologist with ~~special~~ expertise in the area of the physical or mental disability or medical condition. Verification of the physical or mental disability or medical condition must ~~include:~~ be submitted by the licensee on a form entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition," Form No. 1800 37A-636 (New 3/10).

~~(A) the nature and extent of the disability;~~

~~(B) an explanation of how the disability would hinder the licensee from completing the continuing education requirement; and~~

~~(C) the name, title, address, telephone number, professional license or certification number, and original signature of the licensed physician or psychologist verifying the disability.~~

Note: Authority Cited: Sections 4980.54, 4980.60, ~~4990.14~~ 4990.20, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code; Sections 12944 and 12926, Government Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ 4999.76 Business and Professions Code.

§1887.3. CONTINUING EDUCATION COURSE REQUIREMENTS

(a) ~~A~~ During each renewal period, a licensee shall accrue at least thirty-six (36) hours of continuing education ~~courses~~ coursework as defined in Section 1887.4. A licensee may accrue no more than twelve (12) hours of continuing education earned through self-study courses during ~~a single~~ each renewal period.

(b) ~~Pursuant to Section 29 of the Code,~~ ~~a~~ A licensee who started graduate study prior to January 1, 1986, shall take a continuing education course in the detection and treatment of alcohol and other chemical substance dependency during their first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 29 of the Code. This is a one-time requirement for those licensees specified above. Equivalent alcohol and other chemical

substance dependency courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.

(c) ~~Pursuant to Section 32 of the Code, a~~ A licensee shall take a continuing education course in the characteristics and methods of assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) during their first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 32 of the Code. This is a one-time requirement for all licensees. Equivalent HIV and AIDS courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.

(d) Any person renewing his or her license on and after January 1, 2004 shall ~~have completed not less than~~ complete a minimum of six (6) hours of continuing education in the subject of law and ethics for each renewal period. The six (6) hours shall be considered part of the thirty-six (36) hour continuing education requirement.

(e) If a licensee teaches a course, the licensee may claim credit for the course only one time during a single renewal period, receiving the same amount of hours of continuing education credit as a licensee who attended the course.

(f) A licensee may not claim the same course more than once during a single renewal period for hours of continuing education credit.

(g) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing education requirement.

Note: Authority Cited: Sections 4980.60, ~~and 4990.20(a)~~ 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 29, 32, 4980.54, ~~and~~ 4996.22, ~~,~~ and 4999.76 Business and Professions Code.

§1887.4. CONTINUING EDUCATION COURSE CONTENT

(a) A provider shall ensure that the content of a course shall be relevant to the practice of marriage and family therapy, professional clinical counselors or clinical social work and meet the requirements set forth in Sections 4980.54, ~~and~~ 4996.22 and 4999.76 of the Code. The content of a course shall also be related to direct or indirect patient/client care.
(1) Direct patient/client care courses cover specialty areas of therapy (e.g., theoretical frameworks for clinical practice; intervention techniques with individuals, couples, or groups).
(2) Indirect patient/client care courses cover pragmatic aspects of clinical practice (e.g., legal or ethical issues, consultation, recordkeeping, office management, insurance risks and benefits, managed care issues, research obligations, supervision training).
(b) A provider shall ensure that a course has specific objectives that are measurable.
(c) Upon completion of a course, a licensee shall evaluate the course through some type of evaluation mechanism.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~ 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22, and 4999.76 Business and Professions Code.

§1887.5. HOURS OF CONTINUING EDUCATION CREDIT

(a) One hour of instruction is equal to one hour of continuing education credit.
(b) One academic quarter unit is equal to ten (10) hours of continuing education credit.
(c) One academic semester unit is equal to fifteen (15) hours of continuing education credit.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~ 4990.20, and 4999.76, Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22, ~~,~~ and 4999.76 Business and Professions Code.

§1887.6. CONTINUING EDUCATION PROVIDERS

A continuing education course shall be taken from:

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(a) an accredited or approved postsecondary institution that meets the requirements set forth in Sections 4980.54(f)(1), ~~or~~ 4996.22(d)(1), or 4999.76(d) of the Code; or
(b) a board-approved provider with a valid, current approval as provided in Section 1887.7.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22 and 4999.76 Business and Professions Code.

§1887.7. BOARD-APPROVED PROVIDERS

(a) A continuing education provider must meet the board's course content and instructor qualifications criteria, as provided under this article, to qualify to become a board-approved provider.

(b) A continuing education provider shall submit a completed Continuing Education Provider Application (Form no. 1800 37A-633, ~~new 5/97~~ revised 03/10), hereby incorporated by reference, remit the appropriate fees, and obtain a continuing education provider number from the board to become a board-approved provider.

(c) A provider may not apply for a new provider approval number within one year of an existing approval's expiration unless the provider has undergone a change of ownership.

(d) A provider approval issued under this section shall expire on the last day of the twenty-fourth month after the approval issue date. To renew an unexpired provider approval, the provider shall, on or before the expiration date of the approval, pay the two-year renewal fee set forth in Section 1816 of these regulations.

(e) When a provider's approval is expired, the provider may not present a course for continuing education credits for licensees of the Board of Behavioral Sciences.

(f) Board-approved provider numbers are non-transferable.

(g) The Board shall send a renewal notice, at least thirty (30) days prior to the expiration, to any continuing education provider approved by the Board, to the address of record for such provider.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code.

§1887.8. REVOCATION AND DENIAL OF BOARD-APPROVED PROVIDER STATUS

(a) The board may revoke its approval of a provider or deny a provider application for good cause. Good cause includes, but is not limited to, the following:

(1) a provider is convicted of a felony or misdemeanor offense substantially related to the activities of a board-approved provider;
(2) a provider, who is a licensee of the board, fails to comply with any provisions of Chapters 13, ~~and~~ 14 and 16 of the Business and Professions Code or Title 16, Division 18 of the California Code of Regulations; or
(3) a provider makes a material misrepresentation of fact in information submitted to the board.

(b) After a thorough case review, should the board decide to revoke or deny its approval of a provider, it shall give the provider written notice setting forth its reasons for revocation or denial. The provider may appeal the revocation or denial in writing, within fifteen (15) days after receipt of the revocation or denial notice, and request a hearing with the board's designee. The revocation is stayed at this point. Should the board's designee decide to uphold the revocation or denial, the provider may appeal the decision of the board's designee in writing, within seven (7) days after receipt of the decision of the board's designee, and request a hearing with a continuing education appeals committee appointed by the board chairperson. The hearing will take place at the next regularly scheduled board meeting, provided the appeal is received before the meeting is noticed to the public. It is at the discretion of the board's designee whether to stay the revocation further.

The continuing education appeals committee shall contain three board members, one public member and two members representing two of the three license types regulated by the board. The decision of the continuing

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education appeals committee is final.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code.

§1887.9. COURSE ADVERTISEMENTS

A provider shall ensure that information publicizing a continuing education course is accurate and includes the following:
(a) the provider's name;
(b) the provider number, if a board-approved provider;
(c) the statement "Course meets the qualifications for _____ hours of continuing education credit for MFTs, LPCCs and/or LCSWs as required by the California Board of Behavioral Sciences";
(d) the provider's policy on refunds in cases of non-attendance by the registrant; and
(e) a clear, concise description of the course content and objectives.

Note: Authority Cited: Sections 4980.60, ~~and~~ 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~and 4999.76 Business and Professions Code.

§1887.10. COURSE INSTRUCTOR QUALIFICATIONS

(a) A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

(1) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
(2) a master's or higher degree from an educational institution in an area related to the subject matter of the course;
(3) training, certification, or experience in teaching subject matter related to the subject matter of the course; or
(4) at least two years' experience in an area related to the subject matter of the course.

(b) During the period of time that any instructor has a healing arts license that is restricted pursuant to a disciplinary action in California or in any other state or territory, that instructor shall notify all approved continuing education providers for whom he or she provides instruction of such discipline before instruction begins or immediately upon notice of the decision, whichever occurs first.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, 4982.15, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code.

§1887.11. RECORDS OF COURSE COMPLETION

Upon completion of a course, a provider shall issue a record of course completion to a licensee (e.g., letters of verification of attendance, certificates, gradeslips, transcripts) containing the following information:
(a) name of licensee and license number or other identification number;
(b) course title;
(c) provider name and address;
(d) provider number, if a board-approved provider;
(e) date of course;
(f) number of hours of continuing education credit; and
(g) signature of course instructor, provider, or provider designee.

Note: Authority Cited: Sections 4980.60, ~~and 4990.14~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22, and 4999.76 Business and Professions Code.

§1887.12. LICENSEE AND PROVIDER COURSE RECORDS

(a) A licensee shall maintain records of course completion for a period of at least two (2) years from the date of license renewal for which the course was completed.
(b) A provider shall maintain records related to continuing education courses for a period of at least four (4) years. Records shall include:

(1) syllabi for all courses;

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(2) the time and location of all courses;
(3) course advertisements;
(4) course instructors' vitaes or resumes;
(5) attendance rosters with the names and license numbers of licensees who attended the courses;
(6) sign-in sheets; and
(7) records of course completion issued to licensees who attended the courses.

(c) The board may audit the course records of a provider to ensure compliance with the board's continuing education requirements.

Note: Authority Cited: Sections 4980.60, ~~and 4990.1~~4990.20 and 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code.

1887.13 RENEWAL OF EXPIRED APPROVAL

A provider approval that has expired may be renewed at any time within one (1) year after its expiration upon all of the following:

(a) Filing an application for renewal on a form prescribed by the board.
(b) Payment of the renewal fee in effect on the last regular renewal date.
(c) Payment of the delinquency fee in effect on the last regular renewal date.
(d) Submission of a letter stating that no courses were presented while the provider's approval status was expired. If a course was presented during that time, the letter shall state that all participants have been notified that the provider's approval status at the time of completion of the continuing education was expired and that continuing education hours will not be disallowed by the Board if the provider renews within one (1) year after its expiration.

Note: Authority Cited: Sections 4980.60 ~~and~~ 4980.20~~,~~ 4999.76 Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22, and 4999.76 Business and Professions Code.

1887.14 TIME LIMIT FOR RENEWAL OF APPROVAL AFTER EXPIRATION; NEW APPROVAL

A provider approval that is not renewed within one year of its expiration date may not be renewed, reinstated, or reissued thereafter, but the provider may apply for and obtain a new approval if:

(a) No fact, circumstance, or condition exists that, if the approval were issued, would justify its revocation; and
(b) The applicant pays the fees that would be required if applying for approval for the first time.

Note: Authority Cited: Sections 4980.60, ~~and~~ 4980.20 and 4999.76, Business and Professions Code. Reference: Sections 4980.54, ~~and~~ 4996.22~~,~~ and 4999.76 Business and Professions Code.

ARTICLE 9. DISCIPLINARY GUIDELINES

§1888. DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled "Board of Behavioral Sciences Disciplinary Guidelines" [Rev. ~~November 2008~~ March 2010] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 4980.60, 4987, and 4980.20 ~~4990.1~~4, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 4982, 4986.70, ~~and~~ 4992.3, and 4990.90 , Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

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ARTICLE 10. GROUP ADVERTISING AND REFERRAL SERVICES FOR MARRIAGE AND FAMILY THERAPIST

§1889. DEFINITIONS

An “MFT referral service” means a group advertising and referral service for marriage and family therapists as provided for in Section 650.4 of the Code.

Note: Authority Cited: Sections 650.4 and 4980.60, Business and Professions Code. Reference: Section 650.4, Business and Professions Code.

§1889.1. REGISTRATION

(a) The board shall issue a registration for an MFT referral service to an applicant who submits:

(1) a completed MFT Referral Service Registration Application (form no. 37A-309, new 8/97), hereby incorporated by reference;

(2) a copy of the service’s standard form contract regulating its relationship with member marriage and family therapists, demonstrating compliance with Section 650.4 of the Code and this article; and

(3) a copy of the service’s advertising, demonstrating compliance with Section 650.4 of the Code and this article.

(b) An MFT referral service registration issued under this section shall remain valid until suspended or revoked, or until the MFT referral service notifies the board in writing that the service has discontinued referrals to any marriage and family therapists and no longer desires registration, provided there are no pending disciplinary actions on the MFT referral service’s registration.

(c) It is unlawful for any MFT referral service to make referrals to participating or member marriage and family therapists unless at the time of so doing such service holds a registration that is valid and in good standing.

(d) An MFT referral service registration is non-transferable.

(e) An MFT referral service shall notify the board within thirty (30) days concerning any changes or modifications to the service’s standard form contract regulating its relationship with member marriage and family therapists, providing a copy of the new contract to the board.

Note: Authority Cited: Sections 650.4 and 4980.60, Business and Professions Code. Reference: Section 650.4, Business and Professions Code.

§1889.2. REVOCATION OR DENIAL OF REGISTRATION

(a) The board may revoke its registration of an MFT referral service or deny an MFT referral service application for good cause. For the purposes of this subsection, “responsible party” includes any owner, co-owner, or member on the board of directors of an MFT referral service. Good cause includes, but is not limited to, the following:

(1) the responsible party of an MFT referral service is convicted of a felony or misdemeanor offense substantially related to the activities of an MFT referral service;

(2) the responsible party of an MFT referral service, who is a licensee of the board, fails to comply with any provisions of Chapters 13 and 14 of the Business and Professions Code or Title 16, Division 18 of the California Code of Regulations;

(3) an MFT referral service fails to comply with any provisions of Sections 650, 650.4, or 651 of the Code or these regulations; or

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(4) an MFT referral service makes a material misrepresentation of fact in information submitted to the board.

(b) After a thorough case review, should the board decide to revoke or deny its registration of an MFT referral service, it shall give the MFT referral service written notice setting forth its reasons for revocation or denial. The MFT referral service may appeal the revocation or denial in writing, within fifteen (15) days after service of the revocation or denial notice, and request a hearing with the board's designee. The revocation is stayed at this point.

Should the board's designee decide to uphold the revocation or denial, the MFT referral service may appeal the decision of the board's designee in writing, within fifteen (15) days after service of the decision of the board's designee, and request a hearing with a referral services appeals committee appointed by the board chairperson. The hearing will take place at the next regularly scheduled board meeting, provided the appeal is received before the meeting is noticed to the public. It is at the discretion of the board's designee whether to stay the revocation further.

The referral services appeals committee shall contain three board members, one of whom shall be a public member, and two of whom shall be members representing two of the three license types regulated by the board. The decision of the referral services appeals committee is final.

Note: Authority Cited: Sections 650.4 and 4980.60, Business and Professions Code. Reference: Section 650.4, Business and Professions Code.

§1889.3. ADVERTISING AND REFERRAL GUIDELINES

(a) An MFT referral service shall advertise and make referrals in accordance with Sections 650.4 and 651 of the Code and Section 1811 of these regulations.

(b) An MFT referral service shall only make referrals to marriage and family therapists with current, valid licenses. Referrals made to marriage and family therapists on probation shall be made in accordance with the terms of probation set by the board.

Note: Authority Cited: Sections 650.4 and 4980.60, Business and Professions Code. Reference: Section 650.4, Business and Professions Code.

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STATE OF CALIFORNIA

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98) *See SAM Sections 6600 - 6680 for Instructions and Code Citations*

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
Board of Behavioral Sciences	Tracy Rhine	916-574-7847
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Licensed Professional Clinical Counselors and Language Clean Up		

ECONOMIC IMPACT STATEMENT

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

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

☒ a. Impacts businesses and/or employees

☒ b. Impacts small businesses

☒ c. Impacts jobs or occupations

☐ d. Impacts California competitiveness

☒ e. Imposes reporting requirements

☐ f. Imposes prescriptive instead of performance standards

☒ g. Impacts individuals

☐ h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*

h. (cont.) See Attached

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

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

Enter the number or percentage of total businesses impacted that are small businesses: **See Attach.**

3. Enter the number of businesses that will be created: **See Attach.** eliminated: **See Attach.**

Explain: **See Attach.**

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

5. Enter the number of jobs created: 0 or eliminated: 0 Describe the types of jobs or occupations impacted:

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

☐ Yes ☒ No If yes, explain briefly: N/A

B. ESTIMATED COSTS *(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ See Attached

a. Initial cost for a small business: $ **See Attach.** Annual ongoing cost: $ **See Attach.** Years: N/A

b. Initial cost for a typical business: $ **See Attach.** Annual ongoing cost: $ **See Attach.** Years: N/A

c. Initial cost for an individual: $ **See Attach.** Annual ongoing cost: $ **See Attach.** Years See attached

d. Describe other economic costs that may occur: N/A

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

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

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

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

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

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

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

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

3. What are the total statewide benefits from this regulation over its lifetime? $ **See Attach.**

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

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

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

   Regulation: See Attached Benefit: $ See Attached Cost: $ See Attached

   Alternative 1: See Attached Benefit: $ See Attached Cost: $ See Attached

   Alternative 2: See Attached Benefit: $ See Attached Cost: $ See Attached

   Alternative 3: _____ Benefit: $ _____ Cost: $ _____

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

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

   Explain: **See Attach**.

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

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

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million? ☒ Yes ☐ No (*If No, skip the rest of this section)*

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

   Alternative 1: _____**See Attach**_____
   Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

   Regulation: $ _____ **See Attach**_____ Cost-effectiveness ratio: _____
   Alternative 1: $ _____ Cost-effectiveness ratio: _____
   Alternative 2: $ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (item _____, Budget Act of _____) or (Chapter _____ Statutes of _____.

☐ b. will be requested in the _____(fiscal year) Governor's Budget for appropriation in Budget Act of _____.

☐ 2. Additional expenditures of approximately $_____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____.

☐ b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____.

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election;

☐ d. is issued only in response to a specific request from the _____, which is/are the only local entities affected;

☐ e. will be fully financed from the _____ authorized by § _____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately $ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

☒ 5. No fiscal impact exist because the regulation does not affect any local entity or program.

☐ 6 Other:

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

B. FISCAL EFFECT ON STATE GOVERNMENT
(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

☒ 1. Additional expenditures of approximately __0____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☒ b. request an increase in the currently authorized budget level for the __See Attached __ Fiscal Year.

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

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

☐ Other:

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS
(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

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

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

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

☐ 4. Other _____

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

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

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

Board of Behavioral Sciences

License Professional Clinical Counselors and Language Clean-Up

Title 16

Amend Sections 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1833.1, 1833.2, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, and 1888 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1820, 1821, and 1822.

Economic Impact Statement

Section A

Questions A1

Business and Professions Code (BPC) Section 4990.20 authorizes the Board of Behavioral Sciences (BBS) to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the Business and Professions Code for which it is responsible. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) of Division 2 of the BPC and mandated the BBS implement the provisions of the new chapter. BPC Section 4999.30 prohibits any person in the State of California from practicing or advertising the performance of professional clinical counseling services without a license issued by the BBS.

Furthermore, BPC Section 4999.80 mandates the BBS enforce laws designed to protect the public from incompetent, unethical or unprofessional practitioners, investigate complaints concerning the conduct of any licensed professional clinical counselor, and take disciplinary action against licenses issued as enumerated in rules and regulations of the BBS.

This rulemaking proposal establishes numerous fees and references to licensed professional clinical counselors (LPCC) in regulation. These fees and references are necessary to enable the BBS to administer and enforce Chapter 16 of Division 2 of the BPC. Additionally, this proposal also makes several technical and clarifying changes to existing regulations not related to LPCCs.

Impact on Businesses and/or Employees:

Licensed Professional Clinical Counselors: "Grand-Parented" Applicants

Existing BBS licensees who meet certain qualifications can qualify for a "grand-parented" LPCC license. Furthermore, some individuals who do not currently hold a license with the BBS can qualify for a "grand-parented" LPCC license if they meet certain requirements.

In the short term, the majority of LPCC licensees will be "grand-parented" licenses, and the majority of which will be currently licensed Marriage and Family Therapists (MFT) and Licensed Clinical Social Workers (LCSW). In the 2010/2011 fiscal year, based on the BBS'

licensing population as of July 1, 2009, the BBS anticipates receiving 4,564 applications for "grand-parented" LPCC licensure from MFTs, assuming 75% of the licensing population is aware of the opportunity and 20% of this population applies. The BBS anticipates receiving 1,333 applications for "grand-parented" LPCC licensure from LCSWs, assuming 75% of the licensing population is aware of the opportunity and 10% apply. The BBS also expects to receive 1,500 applications for "grand-parented" licensure from individuals meeting the qualifications but not currently holding any license with the BBS. Operating under the BBS' predictions, approximately 7,397 individuals/employees will be impacted by the portion of this regulation relating to "grand-parented" LPCC applicants.

The BBS will require these individuals pay application and renewal fees. Depending on the type of application submitted, the total cost to an individual to obtain the license will differ. Furthermore, per BPC section 4999.54(b)(2), MFTs and LCSWs qualifying for LPCC "grand-parented" licensure may have to take an examination if the BBS and the Office of Professional Examination Services (OPES) determine divergence between the practice of professional clinical counseling and the practice of marriage and family therapy and/or clinical social work.

Table 1. Cost for MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming No Practice Divergence Examination

Applicant License Type	"Grand Parent" App Fee	Practice Divergence Exam Fee	Initial License Fee	Total Fees
MFT/LCSW	$180	N/A	$200	$380

Table 2. Cost for MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming Practice Divergence Examination is Necessary

Applicant License Type	"Grand Parent" App Fee	Practice Divergence Exam Fee	Initial License Fee	Minimum Total Fees[1]
MFT/LCSW	$180	$100	$200	$480

[1]Because applicants may incur additional exam charges if multiple attempts are necessary to pass, this is a minimum total fee, presuming successful completion of the examination on the first attempt.

Individuals not currently licensed with the BBS but qualifying for "grand-parented" licensure will have to prove successful passage of two national examinations and a California constructed jurisprudence and ethics examination. One of the national examinations can be either the National Counselor Examination for Licensure and Certification (NCE) or the Certified Rehabilitation Counselor Examination (CRCE). According to the Web sites of the organizations who offer these examinations, the costs for these examinations are $325 and $385, respectively. The second national examination must be the National Clinical Mental Health Counselor Examination (NCMHC), which costs $185 according to the California Coalition for Counselor Licensure. The fee proposed for the California constructed jurisprudence and ethics examination is $100. The BBS expects most applicants (85%) qualifying for licensure in this manner have previously taken the NCE, CRCE, or NCMHC as a previous requirement for licensure as a professional counselor in another state. These applicants will not be forced to re-take these examinations; thus, they will incur no cost for these exams. Tables 3 and 4 below outline the total cost for an applicant who must complete the NCE or CRCE and NCMHC examinations, and Table 5 outlines the cost for an applicant who previously passed these examinations as a condition for licensure in another state.

Table 3. Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming NCE Exam)

Applicant License Type	"Grand Parent" App Fee	Jurisprudence and Ethics Exam Fee	NCE Exam Fee	NCMHC Exam Fee	Initial License Fee	Minimum Total Fees[1]
Unlicensed	$180	$100	$325	$185	$200	$990

[1]Because applicants may incur additional exam charges if multiple attempts are necessary to pass, this is a minimum total fee, presuming successful completion of the examinations on the first attempts.

Table 4. Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming CRCE Exam)

Applicant License Type	"Grand Parent" App Fee	Jurisprudence and Ethics Exam Fee	CRCE Exam Fee	NCMHC Exam Fee	Initial License Fee	Minimum Total Fees[1]
Unlicensed	$180	$100	$385	$185	$200	$1050

[1]Because applicants may incur additional exam charges if multiple attempts are necessary to pass, this is a minimum total fee, presuming successful completion of the examinations on the first attempts.

Table 5. Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (previously took exams)

Applicant License Type	"Grand Parent" App Fee	Jurisprudence and Ethics Exam Fee	Initial License Fee	Minimum Total Fees[1]
Unlicensed	$180	$100	$200	$480

[1]Because applicants may incur additional exam charges if multiple attempts are necessary to pass, this is a minimum total fee, presuming successful completion of the examination on the first attempt.

In addition to the fees to obtain a license, LPCC "grand-parented" licensees will have to pay an ongoing renewal fee. The proposed regulation sets the biennial license renewal fee for current licensees who qualify for "grand-parented" LPCC licensure at $175.

The annual renewal fee for individuals qualifying for "grand-parented" licensure but who do not hold a current license with the BBS is $150. Additionally, these individuals will need to earn 18-hours of continuing education (CE) each year in order to be qualified to renew the license. Based on a review of seven Web sites currently offering CE to MFTs and LCSWs, the average cost for CE is $5 per unit. In the event a person could not complete the mandatory CE, an exception can be requested.

Because the LPCC license is new, the people earning the license that do not currently hold a mental health license in the State of California will have employment opportunities now available to them in a variety of public and private settings that previously did not exist. The anticipated 1,500 individuals applying for the "grand-parented" LPCC license without possessing an MFT or LCSW license will likely have many new employment opportunities previously unavailable to them prior to implementation of these regulations. According to the Bureau of Labor Statistics, in California, the yearly wages for individuals with education and experience comparable to a "grand-parented" LPCC licensee range from $45,000 to $50,000.

Professional Clinical Counselor Interns and Future Licensees

Recent graduates from qualifying degree programs can apply for the professional clinical counselor intern registration. The proposed regulation sets the cost and annual renewal of this registration at $100. Like the un-licensed "grand-parented" LPCC applicants, intern registrants will have new employment opportunities in a variety of public and private settings because the registration does not currently exist. The BBS expects to receive approximately 538 applications for professional clinical counselor intern status. According to the Bureau of Labor Statistics, in California, the yearly wages for individuals with education and experience comparable to a professional clinical counselor intern range from $45,000 to $50,000.

Because these registrants are not yet fully licensed as LPCCs, the yearly wages will most likely fall on the lower end of the range.

Upon completion of the equivalent of two years of supervised work experience, professional clinical counselor interns can become an LPCC after passing a jurisprudence and ethics examination and a written examination. Table 6 outlines the total cost to a person who registers as an intern, completes experience requirements, and passes both examinations to earn the LPCC license.

Table 6. Cost to Obtain License for LPPC Intern

Applicant License Type	Initial Registration Fee	Registration Renewal Fee	Exam Eligibility Fee	Jurisprudence and Ethics Exam Fee	Written Exam Fee	Initial License Fee	Minimum Total Fees[1]
LPCC Intern	$100	$100	$180	$185	$150	$200	$915

[1]Because applicants may need additional registered years to meet supervised experience requirements and may incur additional exam charges if multiple attempts are necessary to pass, this is a minimum total fee, presuming timely completion of experience requirements and successful completion of the examinations on the first attempts.

Once licensed, the biennial renewal fee to maintain the LPCC license is $175. Additionally, these individuals will need to earn 36-hours of continuing education (CE) each two-year renewal period in order to qualify for active license renewal. Based on a review of seven Web sites currently offering CE to MFTs and LCSWs, the average cost for CE is $5 per unit. In the event a person could not complete the mandatory CE, an exception can be requested.

Impact on Small Business

Licensed Professional Clinical Counselors: "Grand-Parented" Applicants

According to data the BBS collected in 2006, 59% of MFTs and 28% of LCSWs have a private practice. Give the current population of active licensees as of 12/31/2009, this means approximately 17,936 and 5,023 MFTs and LCSWs, respectively, have private practices. Assuming 85% are small businesses, this means 19,516 of these private practices are small businesses. Only those MFTs and LCSWs who own small businesses and choose to apply for the LPCC license will experience a cost due to the implementation of this new regulation. As previously mentioned, the BBS anticipates receiving approximately 4,564 "grand-parented" licensure applications from MFTs and 1,333 "grand-parented" licensure applications from LCSWs. Those who choose to obtain the LPCC license may experience an increase in their client-base as a result of an expansion of their scope of practice.

The BBS anticipates receiving 1,500 licensure applications from individuals currently not licensed with the BBS. Upon receiving the license, approximately 40% of the applicant pool will open a private-practice, and 85% of those private practices are likely to be small business. Following these assumptions, 510 small businesses are created as a direct consequence of this regulation because these individuals were previously not licensed to practice.

Professional Clinical Counselor Interns and Future Licensees

Professional clinical counselor interns are unlicensed and under the law cannot open their own private practice, but interns can work as employees in the private practices of other licensees. Assuming 20% of interns work as employees in a licensee's private practice, this means 102 of the interns will work as employees in a private practice, and approximately 85%

of those private practices are small businesses. At roughly one intern per private practice, that is approximately 85 interns working as employees in a small business.

Impacts Jobs or Occupations

See above for businesses/employees.

Imposes reporting requirements

LPCCs will be required to maintain CE certificates documenting completion of mandatory CE units.

Impacts individuals

See above for businesses/employees.

Question A2

Based on approximations previously stated relating to the number of licensees who own their own private practice, approximately 22,959 businesses currently owned and operated by MFTs and LCSWs in private practice will be impacted. These individuals would be choosing to apply for "grand-parented" licensure status as LPCCs and would face no requirement to do so. Based upon BBS staff conversations with the professional associations representing these mental health professionals, the motive for applying for the LPCC "grand-parented" license would be a potential increase in client-base and advantage in advertising over those who only hold one mental health license.

Some licensed individuals also own and operate non-profit organizations that offer mental health services. Presuming 5% of current licensees eligible for LPCC "grand-parenting" own non-profit organizations, this means 2,417 additional businesses will be impacted in a similar manner to private practices.

Finally, presuming 85% of private practices are small business, the proposed regulations would impact 19,516 small businesses.

Question A3

New business growth will come nearly exclusively from the anticipated 1,500 LPCC "grand-parented" licensees who do not currently hold a license with the BBS. Upon receiving the license, approximately 40% of the applicant pool will open a private-practice, and 85% of those private practices are likely to be small business. Following these assumptions, 510 small businesses will be created as a direct consequence of this regulation because these individuals were previously not licensed to practice independently. Furthermore, if 5% of newly licensed LPCCs open a non-profit organization to provide mental health services, this creates an additional 75 businesses.

Because the implementation of a new license type does not inhibit those already holding or on a path to a different mental health license, this proposed regulation will not eliminate any businesses.

Question A5

Approximately 2,038 new jobs will be created as a result of previously unlicensed individuals earning a license as an LPCC or registering as a professional clinical counselor intern. Holding a license or registration will enable these individuals to qualify for jobs previously unavailable to them.

No jobs will be eliminated as a result of this proposed regulation. The jobs created will be exclusively related to the provision of mental health services.

Section B

Question B1

Because different licensure paths will be available with different associated costs, potential costs are displayed in multiple tables below. Because uncertainty about the necessity of a practice divergence examination for MFT and LCSW "grand-parented" license applications still exists, the costs below presume the examination will be required. If the Board determines the examination is not required, the initial cost figures in Table 7 will decrease by $100.

The costs for individuals who meet "grand-parenting" requirements but are not currently licensed with the BBS will fluctuate depending on the type of national licensure examination they complete.

Table 10 displays total cost over the lifetime of the regulation.

Table 7. Initial and Ongoing Cost for MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming Practice Divergence Examination is Necessary

a. Initial costs for a small business	$480	Annual ongoing costs	$87.50	Years	Ongoing
b. Initial costs for a typical business	$480	Annual ongoing costs	$87.50	Years	Ongoing
c. Initial costs for an individual	$480	Annual ongoing costs	$87.50	Years	Ongoing
d. Other economic costs that may occur:					

Table 8. Initial and Ongoing Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming NCE Exam)

a. Initial costs for a small business	$990	Annual ongoing costs	$150	Years	Ongoing
b. Initial costs for a typical business	$990	Annual ongoing costs	$150	Years	Ongoing
c. Initial costs for an individual	$990	Annual ongoing costs	$150	Years	Ongoing
d. Other economic costs that may occur:	18 hours of CE per year may increase the licensee's workload by up to 18 hours per year (many already take CE courses). There may also be very minor costs to the LPCC associated with maintaining records of course completion for two years.				

Table 9. Initial and Ongoing Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming CRCE Exam)

a. Initial costs for a small business	$1050	Annual ongoing costs	$150	Years	Ongoing
b. Initial costs for a typical business	$1050	Annual ongoing costs	$150	Years	Ongoing
c. Initial costs for an individual	$1050	Annual ongoing costs	$150	Years	Ongoing

d. Other economic costs that may occur:	18 hours of CE per year may increase the licensee's workload by up to 18 hours per year (many already take CE courses). There may also be very minor costs to the LPCC associated with maintaining records of course completion for two years.

Table 10. Initial and Ongoing Cost to Obtain License for LPPC Intern

a. Initial costs for a small business	$915	Annual ongoing costs	$87.50	Years	Ongoing
b. Initial costs for a typical business	$915	Annual ongoing costs	$87.50	Years	Ongoing
c. Initial costs for an individual	$915	Annual ongoing costs	$87.50	Years	Ongoing
d. Other economic costs that may occur:	18 hours of CE per year may increase the licensee's workload by up to 18 hours per year (many already take CE courses). There may also be very minor costs to the LPCC associated with maintaining records of course completion for two years.				

For the cost-benefit analysis of the regulation, please refer to Attachment B. Total estimated lifetime costs to businesses and individuals is approximately $71 million dollars.

Question B2

Only individuals applying for the LPCC license or intern registration are affected.

Question B3

Annual costs a typical business may incur to comply with reporting requirements are as follows:

- LPCCs: $15

Section C

Questions C1

The benefits of this proposal are as follows:

- Increased employment opportunities for individuals who are currently unlicensed and apply for LPCC licensure or intern registration.
- Established disciplinary guidelines for individuals who commit unprofessional conduct as identified in BPC section 4999.90.
- Expanded practice opportunities for currently licensed LCSWs and MFTs.

Question C2

The benefits are the result of specific statutory requirements. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) of Division 2 of the BPC and mandated the BBS implement the provisions of the new chapter

Question C3

For the cost-benefit analysis of the regulation, please refer to Attachment B. Total estimated lifetime benefits to businesses and individuals is approximately $6 billion dollars.

Section D

Questions D1, D2 and D3

Regulation: This proposal would implement Chapter 16 of Division 2 of the BPC. With these regulations in place, the BBS would implement a statutory mandate.

Alternative – Status Quo

Not amending existing regulations and creating new regulations relating to supervised experience is not an option because BPC Chapter 16 of Division 2 sets forth various mandates for the BBS relating to licensing and complaint investigation for LPCCs.

Question D4
Because these regulations deal with the implementation of a new mental health license type, performance standards are not applicable.

Section E

Question E1, E2, and E3

The total cost to individuals and business over the lifetime of the regulation exceeds 10 million dollars (see Attachment B). This is mainly a byproduct of growth in the number of individuals who will apply for the LPCC license in the future. The cost of pursuing the license is a direct reflection of fees proposed in these regulations. The proposed fees are comparable to current fees for other licenses issued through the BBS and generate sufficient revenue to repay the loan used for startup funds and support the program in future fiscal years.

The year-to-year costs of this regulation are not anticipated to exceed $10 million dollars. Only when costs are extended over the life of the regulation do costs exceed $10 million dollars. Furthermore, because obtaining a license will provide expanded business and employment opportunities for individuals, the benefits (estimated at over $6 billion dollars) far exceed the costs in perpetuity and on a year-to-year basis (see Attachment B).

Because the BBS is mandated to implement Chapter 16 of Division 2 of the BPC, no alternatives exist.

Fiscal Impact Statement

Section B

Question B1
Implementation of the Licensed Professional Clinical Counselor Act (BPC Chapter 16, Division 2) will require ongoing staff time of approximately 21,144 hours (12 personnel years). Per BPC Section 4999.122, startup funds to implement the LPCC program will be derived from a loan from the reserve fund of the BBS. The BBS received an approved budget change proposal for the 2010/2011 fiscal year (BCP 110-03L) to hire the necessary staff to implement the program; thus, no additional increase in the BBS' authorized budget is necessary at this time.

Attachment B. Cost-Benefit Analysis

Cost Summary Table	Initial	Ongoing
Cost for MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming Practice Divergence Examination is Necessary	$480	$88
Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming NCE Exam)	$990	$150
Cost for Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming CRCE Exam)	$1,050	$150
Cost to Obtain License for LPPC Intern*	$915	$88

*Initial cost to obtain license for LPCC for interns is distributed over multiple years. For the purposes of this analysis, we are accounting for all of the cost in the first year.

Benefit Summary Table	Initial	Ongoing
Approximate Increase in Income for Current MFTs and LCSWs*	$2,250	$2,250
Approx. Yearly Wage for New Mental Health Counselor**	$45,000	$45,000

*presuming 5% increase in client base

**according to Bureau of Labor Statistics

	FY 10/11			FY 11/12			FY 12/13			FY 13/14			Perpetuity			Sub - Totals
Cost Projection Table	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Initial+Ongoing
MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming Practice Divergence Examination is Necessary	$5,897	$2,830,560	$0	$0	$0	$515,988	$0	$0	$515,988	$0	$0	$515,988	$0	$0	$10,319,750	$14,698,273
Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming NCE Exam)	$750	$742,500	$0	$0	$0	$112,500	$0	$0	$112,500	$0	$0	$112,500	$0	$0	$2,250,000	$3,330,000
Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming CRCE Exam)	$750	$787,500	$0	$0	$0	$112,500	$0	$0	$112,500	$0	$0	$112,500	$0	$0	$2,250,000	$3,375,000
Cost to Obtain License for LPPC Intern	$538	$492,270	$0	$1,076	$984,540	$47,075	$1,076	$984,540	$141,225	$1,076	$984,540	$235,375	$2,152	$39,381,600	$6,590,500	$49,841,665
															Total Cost	$71,244,938

Formula for calculating ongoing costs in perpetuity - (Annual value/discount rate) Discount rate of 5% used.

	FY 10/11			FY 11/12			FY 12/13			FY 13/14			Perpetuity			Sub - Totals
Benefit Projection Table	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Pop.	Initial	Ongoing	Initial+Ongoing
MFT/LCSW Obtaining an LPCC "Grand-Parented" License Assuming Practice Divergence Examination is Necessary	$5,897	$13,268,250	$0	$0	$0	$13,268,250	$0	$0	$13,268,250	$0	$0	$13,268,250	$0	$0	$13,268,250	$66,341,250
Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming NCE Exam)	$750	$33,750,000	$0	$0	$0	$33,750,000	$0	$0	$33,750,000	$0	$0	$33,750,000	$0	$0	$33,750,000	$168,750,000
Non-MFT/LCSW Obtaining an LPCC "Grand-Parented" License (Assuming CRCE Exam)	$750	$33,750,000	$0	$0	$0	$33,750,000	$0	$0	$33,750,000	$0	$0	$33,750,000	$0	$0	$33,750,000	$168,750,000
Cost to Obtain License for LPPC Intern	$538	$24,210,000	$0	$1,076	$48,420,000	$24,210,000	$1,076	$48,420,000	$72,630,000	$1,076	$48,420,000	$121,050,000	$2,152	$1,936,800,000	$3,389,400,000	$5,713,560,000
															Total Benefit	$6,117,401,250

Formula for calculating ongoing costs in perpetuity - (Annual value/discount rate) Discount rate of 5% used.

State of California

Department of Consumer Affairs

Board of Behavioral Sciences

DISCIPLINARY GUIDELINES

Revised: ~~November 2008~~ March 2010

INTRODUCTION

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

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

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

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

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Penalty Guidelines

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

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

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982.26 LCSW: B&P § 4992.33 LEP: B&P § 4989.58 LPCC: B&P § 4999.90(k) GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	• Revocation / Denial of license or registration • Cost recovery.	• Revocation / Denial of license or registration • Cost recovery. The law requires revocation/denial of license or registration.
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(x)(1) LEP: B&P § 4989.54(y)(1) LPCC: B&P § 4999.90(z)(1)	Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. **or** Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.	• Revocation / Denial of license or registration • Cost recovery. The Board considers this reprehensible offense to warrant revocation/denial.	• Revocation / Denial of license or registration • Cost recovery. The Board considers this reprehensible offense to warrant revocation/denial.
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(k), 4992.33 CCR § 1881(f) LEP B&P § 4989.58 B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480, 726	Sexual Misconduct (Anything other than as defined in B&P Section 729)	• Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Take and pass licensure examinations as a condition precedent to resumption of practice • 7 years probation • Standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to resumption of practice • Supervised practice	• Revocation / Denial of license or registration • Cost recovery. (See B&P 4982.26, 4989.58 4992.33) The Board considers this reprehensible offense to warrant revocation/denial.

		• Psychotherapy • Education • Take and pass licensure examination • Reimbursement of probation program And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples; restricted practice, reimbursement of probation program costs.	
MFT: B&P § 4982(k) LCSW: B&P § 4992.3(k) CCR § 1881(f) LEP: B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480	Commission of an Act Punishable as a Sexually Related Crime	• Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs And if warranted, restricted practice.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.26 LPCC: B&P § 4999.90(c) GP: B&P § 480, 820	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	• Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery • Reimbursement of probation program costs. In addition: • MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy.	• Revocation / Denial of license or registration • Cost recovery.

		• PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Psychological/psychiatric evaluation; therapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid tests and samples; and if warranted: restricted practice.	
MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.54(c), 4989.56 LPCC: B&P § 4999.90(c) GP: B&P § 480	Chemical Dependency / Use of Drugs With Client While Performing Services	• Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation • Standard terms and conditions • Psychological/psychiatric evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances • Submit to biological fluid test and samples • Cost recovery • Reimbursement of probation program costs And if warranted, psychotherapy; restricted practice	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(i) LCSW: B&P § 4992.3(i) CCR § 1881(d) LEP: B&P § 4989.54(m) LPCC: B&P § 4999.90(i) GP: B&P § 480	Intentionally / Recklessly Causing Physical or Emotional Harm to Client	• Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.	• Revocation / Denial of license or registration application • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: B&P § 4989.54(k) LPCC: B&P § 4999.90(d) GP: B&P § 480	Gross Negligence / Incompetence	• Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4989.54 CCR § 1858 LPCC: B&P § 4999.90 GP: B&P § 125.6 480, 821	General Unprofessional Conduct	• Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice, law and ethics course.	• Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4980.40(h), 4982(a) LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(a) LEP: B&P § 4989.20(a)(3), 4989.54(a) LPCC: B&P § 4999.90(a) GP: B&P § 480, 490, 493	Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant	• Revocation stayed • 60 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice. DRUGS AND ALCOHOL: Add: Psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice. FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.	• Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(j) CCR § 1881(e) LEP: B&P § 4989.54(g) LPCC: B&P § 4999.90(j) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	• Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(l) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4989.14 4989.54(r) CCR § 1858(b) 1858(j) LPCC: B&P § 4999.90(l), 4999.90(s) 4999.90(t) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	• Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4989.54(h), 4989.54(i) LPCC: B&P § 4990.38 GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	• Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	• Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P §4992.7 LEP: B&P § 4989.54(b) LPCC: B&P § 4999.90 (b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	• Revocation / Denial of license or registration application; • Cost recovery.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980, 4982(f) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(f), 4996 CCR § 1881(a) LEP: B&P § 4989.54(l) LPCC: B&P § 4999.90(f) GP: B&P § 480	Misrepresentation of License / Qualifications	• Revocation stayed • 60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: take and pass licensure examinations.	• Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(q) CCR § 1881(l) LEP: B&P § 4989.54(s) LPCC: B&P § 4999.90(q) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	• Revocation stayed • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(g), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) LPCC: B&P § 4999.90(g) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	• Revocation stayed • 60-90 days actual suspension • 5 years probation • Supervised practice • Standard terms and conditions • Psychological/psychiatric evaluation • Psychotherapy • Cost recovery • Reimbursement of probation costs	• Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(h) CCR § 1881(c) LEP: B&P § 4989.54 (t) LPCC: B&P § 4999.90(h) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	• Revocation stayed • 30-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(m) CCR § 1881(i) LEP: B&P § 4989.54 (q) LPCC: B&P § 4999.90(m) GP: B&P § 480	Failure to Maintain Confidentiality	• Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Take and pass licensure exams • Cost recovery • Reimbursement of probation program costs	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 728 LCSW: B&P § 728 LPCC: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	• Revocation stayed • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs.	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(r) LEP: CCR § 1881(h) LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u)	Improper Supervision of Trainee / Intern / Associate / Supervisee	• Revocation stayed • 30-90 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	• Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(e), 4992.3(r) LEP: B&P § 4989.54(f) LPCC: B&P § 4999.90(e) 4999.90(u) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	• Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs.	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(o) CCR § 1881(n) LEP: B&P § 4989.54(p) LPCC: B&P § 4999.90 (o) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	• Revocation stayed • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs • Law and Ethics course	• Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(n) CCR § 1881(j) LEP: B&P § 4989.54(0) LPCC: B&P § 4999.90 (n)	Failure to Disclose Fees in Advance	• Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program	• Revocation stayed • 30 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(p) CCR § 1881(k) LEP: B&P § 4989.54(e) LPCC: B&P § 4999.90(p) ALL: CCR § 1811 GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	• Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program	• Revocation stayed • 30-60 days actual suspension • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	**Violation Category**	**Minimum Penalty**	**Maximum Penalty**
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(s) LEP: B&P § 4989.54(i) LPCC: B&P § 4999.90(v)	Failure to Keep Records Consistent with Sound Clinical Judgment	• Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program	• Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(y) LCSW: B&P § 4992.3(v) LEP: B&P § 4989.54(x)	Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code	• Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs	• Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(z) LCSW: B&P § 4992.3(w)	Failure To Comply With Section 2290.5 (Telemedicine)	• Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery; • Reimbursement of probation program costs.	• Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

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Model Disciplinary Orders

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

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

Optional Terms and Conditions of Probation

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

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

1. Actual Suspension

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

OR

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

2. Psychological / Psychiatric Evaluation

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

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

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

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

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

3. Psychotherapy

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

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

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

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

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

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

4. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.
If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

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

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

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

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

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

5. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____ . All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, ~~or~~ educational psychologist, or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

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

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

6. Take and Pass Licensure Examinations

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

7. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.
Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

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

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

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by

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

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

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

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

10. Restricted Practice

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

11. Restitution

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

12. Reimbursement of Probation Program

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

13. Physical Evaluation

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

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

recommendations of the physician.

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

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

14. Monitor Billing System

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

15. Monitor Billing System Audit

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

16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, ~~or~~ educational psychologist, professional clinical counselor as defined in Sections 4980.40, ~~and~~ 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education units required for renewal of licensure.

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

Standard Terms and Conditions of Probation

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

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

Specific Language for Standard Terms and Conditions of Probation

(To be included in all Decisions)

17. Obey All Laws

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

18. File Quarterly Reports

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

19. Comply with Probation Program

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

20. Interviews with the Board

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

21. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, ~~or~~ 4996.9, or 4999.20 of the Business and Professions Code.

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

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

(**OPTIONAL)**

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36, ~~or~~ 4989.54(h), 4989.54(i), or 4990.38 (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22. Failure to Practice- California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which

respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, ~~or~~ 4996.9, or 4999.20 of the Business and Professions Code.

23. Change of Place of Employment or Place of Residence

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

24. Supervision of Unlicensed Persons

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

25. Notification to Clients

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

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

26. Notification to Employer

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

27. Violation of Probation

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

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be

automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28. Maintain Valid License

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

29. License Surrender

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

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

30. Instruction of Coursework Qualifying for Continuing Education

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

31. Notification to Referral Services

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

32. Cost Recovery

Respondent shall pay the Board $_____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Any order for payment of cost recovery shall

remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

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

BOARD POLICIES AND GUIDELINES

Accusations

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

Statement of Issues

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

Stipulated Settlements

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

Recommended Language for License Surrenders

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

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

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time

the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

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

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

Recommended Language for Registration Applicants

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

Recommended Language for Registrants

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

Proposed Decisions

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

A. Names and addresses of all parties to the action.

B. Specific Code section violated with the definition of the code in the Determination of Issues.

C. Clear description of the acts or omissions that constitute a violation.

D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.

E. Explanation for deviation from the Board's Disciplinary Guidelines.

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

Reinstatement / Reduction of Penalty Hearings

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

(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.

(4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.

(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

(8) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

A. The original violations for which action was taken against the petitioner's license;

B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;

C. The petitioner's attitude toward his or her commission of the original violations and his or her

attitude in regard to compliance with legal sanctions and rehabilitative efforts;

D. The petitioner's documented rehabilitative efforts;

E. Assessment of the petitioner's rehabilitative and corrective efforts;

F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

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

Board of Behavioral Sciences
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RESPONSIBILITY STATEMENT FOR SUPERVISORS OF A PROFESSIONAL CLINICAL COUNSELOR INTERN

Title 16, California Code of Regulations (16 CCR) Section 1821 requires any qualified licensed mental health professional who assumes responsibility for providing supervision to those working toward a Professional Clinical Counselor (PCC) license to complete and sign, under penalty of perjury, the following statement prior to the commencement of any counseling or supervision.

Name of PCC Intern: Last	First	Middle
Name of Qualified Supervisor:	Qualified Supervisor's Daytime Telephone Number:	

As the supervisor:

1) I am licensed in California and have been so licensed for at least two years prior to commencing this supervision. (16 CCR § 1821)(b)(1) and Business and Professions Code (BPC) § 4999.12(h)(1))

A. The license I hold is:

	License #	Issue Date
Licensed Professional Clinical Counselor		
Marriage and Family Therapist		
Licensed Clinical Social Worker		
*Licensed Clinical Psychologist		
*Licensed Physician and Surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology		

**B. I have had sufficient experience, training, and education in professional clinical counseling to competently practice professional clinical counseling in California. (16 CCR§ 1821(b)(2))

C. I will keep myself informed about developments in professional clinical counseling and in California law governing the practice of professional clinical counseling. (16 CCR § 1821(b)(3))

2) I have and maintain a current and valid license in good standing and will immediately notify any intern under my supervision of any disciplinary action taken against my license, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure, that affects my ability or right to supervise. (16 CCR § 1821(b)(4))

3) I have practiced psychotherapy or provided direct supervision of trainees, interns, or associate clinical social workers who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding this supervision. (16 CCR § 1821(b)(5))

4) I have had sufficient experience, training, and education in the area of clinical supervision to competently supervise interns. (16 CCR § 1821(b)(6))

5) I have completed six (6) hours of supervision training or coursework within the two-year period immediately preceding this supervision, and must complete such coursework in each renewal period while supervising. If I have not completed such training or coursework, I will complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of the commencement of this supervision, and in each renewal period while providing supervision. (16 CCR § 1821(b)(6)(A) and (B))

6) I know and understand the laws and regulations pertaining to both the supervision of interns and the experience required for licensure as a licensed professional clinical counselor. (16 CCR § 1821(b)(7))

7) I shall ensure that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the intern. (16 CCR § 1821(b)(8))

8) I shall monitor and evaluate the extent, kind, and quality of counseling performed by the intern by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate. (16 CCR § 1821(b)(9))

9) I shall address with the intern the manner in which emergencies will be handled. (16 CCR § 1821(b)(10))

10) I agree not to provide supervision to an intern unless the intern is a volunteer or employed in a 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 and is within the scope of practice for the profession as defined in BPC Section 4999.20. (BPC § 4999.44)

11) If I am to provide supervision on a voluntary basis in a setting which is not a private practice, a written agreement will be executed between myself and the organization in which the employer acknowledges that they are aware of the licensing requirements that must be met by the intern, they agree not to interfere with my legal and ethical obligations to ensure compliance with these requirements, and they agree to provide me with access to clinical records of the clients counseled by the intern. (16 CCR § 1820(e)(3))

12) I shall give at least (1) one week's prior written notice to an intern of my intent not to sign for any further hours of experience for such person. If I have not provided such notice, I shall sign for hours of experience obtained in good faith where I actually provided the required supervision. (16 CCR § 1821(d))

13) I shall obtain from each intern for whom supervision will be provided, the name, address, and telephone number of the intern's most recent supervisor and employer. (16 CCR § 1821(e)))

14) In any setting that is not a private practice, I shall evaluate the site(s) where an intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of practice of a licensed professional clinical counselor; and (2) the experience is in compliance with the requirements set forth in 16 CCR Section 1820 and 4999.44 of the Code. (16 CCR § 1821(f))

15) Upon written request of the Board, I shall provide to the board any documentation which verifies my compliance with the requirements set forth in 16 CCR Section 1821. (16 CCR § 1821(g))

16) I shall provide the intern with the original of this signed statement prior to the commencement of any counseling or supervision. (16 CCR § 1821(c))

I declare under penalty of perjury under the laws of the State of California that I have read and understand the foregoing and that I meet all criteria stated herein and that the information submitted on this form is true and correct.

_____	_____	_____
Printed Name of Qualified Supervisor	Signature of Qualified Supervisor	*Date*

_____			
Mailing Address: Number and Street	City	State	Zip Code

The supervisor shall provide the intern being supervised with the original of this signed statement prior to the commencement of any counseling or supervision.

The intern shall submit this form to the board upon application for examination eligibility.

* Licensed Clinical Psychologists and Physicians certified in psychiatry are not required to comply with #5.
** Applies only to supervisors NOT licensed as a Licensed Professional Clinical Counselor.

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WEEKLY SUMMARY OF EXPERIENCE HOURS FOR PROFESSIONAL CLINICAL COUNSELOR INTERNS

THIS FORM SHALL BE COMPLETED PURSUANT TO TITLE 16, CALIFORNIA CODE OF REGULATIONS SECTION 1820(e) Use a separate log for each supervised work setting.

(*Please type or print clearly in ink*)

Name of PCC Intern: Last	First	Middle
Name of Supervisor:		BBS File No (if known)
Name of Work Setting:	Address of Work Setting: Number and Street	City, State, Zip
Indicate the status of the hours logged: ☐ Registered PCC Intern (PCC Intern No. _____) ☐ Post-Degree with Application Pending for Intern		Is this setting a hospital or community mental health setting? ☐ Yes ☐ No

Note: Child counseling can be logged in any appropriate category as specified by your supervisor

YEAR: WEEK OF:													Total Hours
Individual Psychotherapy (performed by you)													
Group Therapy or Counseling (max. 500)													
Telephone Counseling (max. 250)													
Administering & evaluating psych. tests, writing clinical reports, writing progress or process notes (max. 250)*													
Workshops, seminars, training sessions, or conferences directly related to marriage, family, and child counseling** (max. 250)*													
Client Centered Advocacy (CCA)*													
Supervision, Individual Face-to-Face *													
Supervision, Group **													
Total Per Week													
	Signature of Supervisor												
	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	Signature of Supervisor	

*When combined, these categories shall not exceed 1,250 hours of experience (BPC Section 4999.46 (b)(6))

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SUPERVISORY PLAN

Title 16, California Code of Regulations (CCR) Sections 1870.1 and 1822 requires all associate clinical social workers and professional clinical counselor interns and ~~licensed clinical social workers or~~ licensed mental health professionals acceptable to the Board as defined in Business and Professions Code Section 4996.23(a), 4999.12(h) ,and CCR Section 1874, who assume responsibility for providing supervision to those working toward a license as a Clinical Social Worker or Professional Clinical Counselor to complete and sign the following supervisory plan. The original signed plan shall be submitted by the ~~Associate Clinical Social Worker~~ registrant to the board upon application for ~~licensure~~ examination eligibility.

REGISTRANT ~~ASSOCIATE~~: *(Please type or print clearly in ink.)*

Legal name: Last	First	Middle	~~ASW~~ Registration Number
Address: Number and Street			
City		State	Zip Code
Business Telephone ( )	Residence Telephone ( )		

LICENSED SUPERVISOR: *(Please type or print clearly in ink.)*

Name:	Last	First	Middle	License No:	Expiration Date:
Employer Name:				Telephone Number: ( )	
Address: Number and Street					
City				State	Zip Code

Employment Setting:

a. Private Practice ☐
a. Governmental Entity ☐
b. Nonprofit and Charitable Corporation ☐
c. School, College, or University ☐
d. Licensed Health Facility ☐
e. Social Rehabilitation Facility/Community Treatment Facility ☐
f. Pediatric Day Health and Respite Care Facility ☐
g. Licensed Alcoholism or Drug Abuse Recovery or Treatment Facility ☐
h. Community Mental Health Facility ☐

Briefly describe the goals and objectives:

I certify that I understand the responsibilities regarding clinical supervision, including the supervisor's responsibility to perform ongoing assessments of the supervisee, and I declare under penalty of perjury under the laws of the State of California that the information submitted on this form is true and correct.

Supervisor's Signature Date signed

Associate's Signature Date signed

The **original** of this form must be submitted to the board upon application for ~~licensure~~ examination eligibility**.**

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RESPONSIBILITY STATEMENT FOR SUPERVISORS OF A MARRIAGE AND FAMILY THERAPIST TRAINEE OR INTERN

Title 16, California Code of Regulations (16 CCR) Section 1833.1 requires any qualified licensed mental health professional who assumes responsibility for providing supervision to those working toward a Marriage and Family Therapist license to complete and sign, under penalty of perjury, the following statement prior to the commencement of any counseling or supervision.

Name of MFT Trainee/Intern: Last	First	Middle
Name of Qualified Supervisor:	Qualified Supervisor's Daytime Telephone Number:	

As the supervisor:

1) I am licensed in California and have been so licensed for at least two years prior to commencing this supervision.
(16 CCR § 1833.1(a)(1) and Business and Professions Code (BPC) § 4980.03(g)(1))

A. The license I hold is:

	License #	Issue Date
Marriage and Family Therapist		
Licensed Clinical Social Worker		
Licensed Professional Clinical Counselor		
*Psychologist		
*Physician certified in psychiatry by the American Board of Psychiatry and Neurology		

**B. I have had sufficient experience, training, and education in marriage and family therapy to competently practice marriage and family therapy in California. (16 CCR § 1833.1(a)(2))

C. I will keep myself informed about developments in marriage and family therapy and in California law governing the practice of marriage and family therapy. (16 CCR § 1833.1(a)(3))

2) I have and maintain a current and valid license in good standing and will immediately notify any trainee or intern under my supervision of any disciplinary action taken against my license, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure, that affects my ability or right to supervise. (16 CCR § 1833.1(a)(1), (a)(4))

3) I have practiced psychotherapy or provided direct supervision of trainees, interns, ~~or~~ associate clinical social workers, or professional clinical counselor interns who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding this supervision. (16 CCR § 1833.1(a)(5))

4) I have had sufficient experience, training, and education in the area of clinical supervision to competently supervise trainees or interns. (16 CCR § 1833.1(a)(6))

5) I have completed six (6) hours of supervision training or coursework within the renewal period immediately preceding this supervision, and must complete such coursework in each renewal period while supervising. If I have not completed such training or coursework, I will complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of the commencement of this supervision, and in each renewal period while providing supervision. (16 CCR § 1833.1(a)(6)(A)&(B))

6) I know and understand the laws and regulations pertaining to both the supervision of trainees and interns and the experience required for licensure as a marriage and family therapist. (16 CCR § 1833.1(a)(7))

7) I shall ensure that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the trainee or intern. (16 CCR § 1833.1(a)(8))

8) I shall monitor and evaluate the extent, kind, and quality of counseling performed by the trainee or intern by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate. (16 CCR § 1833.1(a)(9))

9) I shall address with the trainee or intern the manner in which emergencies will be handled. (16 CCR § 1833.1(a)(10))

10) I agree not to provide supervision to a TRAINEE unless the trainee is a volunteer or employed in a 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 and is within the scope of practice for the profession as defined in BPC 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. (BPC § 4980.43(d)(1))

11) I agree not to provide supervision to an INTERN unless the intern is a volunteer or employed in a 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 and is within the scope of practice for the profession as defined in BPC Section 4980.02. (BPC § 4980.43(e)(1))

12) If I am to provide supervision on a voluntary basis in a setting which is not a private practice, a written agreement will be executed between myself and the organization in which the employer acknowledges that they are aware of the licensing requirements that must be met by the intern or trainee, they agree not to interfere with my legal and ethical obligations to ensure compliance with these requirements, and they agree to provide me with access to clinical records of the clients counseled by the intern or trainee. (16 CCR § 1833(b)(4))

13) I shall give at least (1) one week's prior written notice to a trainee or intern of my intent not to sign for any further hours of experience for such person. If I have not provided such notice, I shall sign for hours of experience obtained in good faith where I actually provided the required supervision. (16 CCR § 1833.1(c))

14) I shall obtain from each trainee or intern for whom supervision will be provided, the name, address, and telephone number of the trainee's or intern's most recent supervisor and employer. (16 CCR § 1833.1(d))

15) In any setting that is not a private practice, I shall evaluate the site(s) where a trainee or intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of practice of a marriage and family therapist; and (2) the experience is in compliance with the requirements set forth in 16 CCR Section 1833 and Section 4980.43 of the Code. (16 CCR § 1833.1(e))

16) Upon written request of the Board, I shall provide to the board any documentation which verifies my compliance with the requirements set forth in 16 CCR Section 1833.1. (16 CCR § 1833.1(f))

17) I shall provide the intern or trainee with the original of this signed statement prior to the commencement of any counseling or supervision. (16 CCR § 1833.1(b))

I declare under penalty of perjury under the laws of the State of California that I have read and understand the foregoing and that I meet all criteria stated herein and that the information submitted on this form is true and correct.

_____	_____	_____
Printed Name of Qualified Supervisor	Signature of Qualified Supervisor	*Date*

_____

Mailing Address: Number and Street City State Zip Code

The supervisor shall provide the intern or trainee being supervised with the original of this signed statement prior to the commencement of any counseling or supervision.

The trainee or intern shall submit this form to the board upon application for examination eligibility.

* Psychologists and Physicians certified in psychiatry are not required to comply with #5.
** Applies only to supervisors NOT licensed as a Marriage and Family Therapist.

STATE OF CALIFORNIA

RESPONSIBILITY STATEMENT FOR SUPERVISORS OF AN ASSOCIATE CLINICAL SOCIAL WORKER

1800 37A-522 (REV. ~~08/07~~ 3/10)

BOARD OF BEHAVIORAL SCIENCES
1625 NORTH MARKET BLVD, SUITE S 200
SACRAMENTO CA 95834
TELEPHONE:(916) 574-7830
WEBSITE ADDRESS: http://www.bbs.ca.gov

Title 16, California Code of Regulations (16 CCR) Section 1870 requires any qualified licensed mental health professional who assumes responsibility for providing supervision to those working toward a license as a Clinical Social Worker to complete and sign, under penalty of perjury, the following statement prior to the commencement of supervision.

Associate's Name	ASW Number
Supervisor's Name	

As the supervisor:

1) I am licensed in California. The license I hold is: (16 CCR § 1870(a)(1))

	License #	Issue Date
Marriage and Family Therapist.....		
Licensed Clinical Social Worker.....		
Licensed Professional Clinical Counselor.....		
*Psychologist.....		
*Physician certified in psychiatry by the ..... *American Board of Psychiatry and Neurology*		

2) I have and will maintain a current and valid license in good standing and will immediately notify the associate of any disciplinary action, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure, that affects my ability or right to supervise. (16 CCR § 1870(a)(1)&(2))

3) I have practiced psychotherapy or provided direct supervision of associates, or marriage and family therapist interns or trainees who perform psychotherapy for at least two (2) years within the last five (5) years immediately preceding this supervision. (16 CCR § 1870(a)(3))

4) I have completed a minimum of fifteen (15) contact hours in supervision training that includes content specified in 16 CCR Section 1870(a)(4)) obtained from a state agency or approved continuing education provider.** (16 CCR § 1870(a)(4)(A))

5) I have had sufficient experience, training, and education in the area of clinical supervision to competently supervise associates. (16 CCR § 1870(a)(4))

6) I know and understand the laws and regulations pertaining to both the supervision of associates and the experience required for licensure as a clinical social worker. (16 CCR § 1870(a)(5))

7) I shall ensure that the extent, kind, and quality of clinical social work performed is consistent with the training and experience of the associate. (16 CCR § 1870(a)(6)(A))

8) I shall review client/patient records, monitor and evaluate assessment and treatment decisions of the associate clinical social worker, and monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served, and ensure compliance with all laws and regulations governing the practice of clinical social work. (16 CCR § 1870(a)(6)(B)-(D)

*** MFTs, LPCCs, Psychologists, and Physicians certified in psychiatry must be licensed for two years prior to commencement of supervision.**

**** Psychologists and Physicians board certified in psychiatry are not required to comply with #4.**

9) I shall develop a supervisory plan as described in Section 1870.1 of the California Code of Regulations. The original signed plan shall be submitted to the board upon the associate's application for licensure. (16 CCR § 1870(a)(7), 1870.1)

10) I agree not to provide supervision to an associate unless the associate is a volunteer or employed by a setting that (1) lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy; and (2) provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in Chapter 14 of the Business and Professions Code (BPC) and is within the scope of practice for clinical social work and psychotherapy as defined in BPC Section 4996.9. (BPC § 4996.23(e))

11) I shall provide the associate with this original signed form prior to the commencement of any supervision. (16 CCR § 1870(a)(8))

12) I shall give at least one (1) week's written notice to the associate of my intent not to certify any further hours of experience for such person. If I have not provided such notice, I shall sign for hours of experience obtained in good faith where I actually provided the required supervision. (16 CCR § 1870(a)(9))

13) I shall complete an assessment of the ongoing strengths and limitations of the associate at least once a year and upon completion or termination of supervision and will provide copies of all assessments to the associate. (16 CCR § 1870(a)(10))

14) Upon written request of the board, I shall provide to the board any documentation which verifies my compliance with the requirements set forth in 16 CCR section 1870. (16 CCR § 1870(a)(11))

I declare under penalty of perjury under the laws of the State of California that I have read and understand the foregoing and that I meet all criteria stated herein and the information submitted on this form is true and correct.

_____	_____	_____
Printed Name of Qualified Supervisor	*Signature of Qualified Supervisor*	*Date*

_____

Mailing Address: Number and Street City State Zip Code

Qualified Supervisor's Daytime Telephone Number: ( )_____

THE SUPERVISOR SHALL PROVIDE THE ASSOCIATE WITH THE ORIGINAL OF THIS SIGNED STATEMENT PRIOR TO THE COMMENCEMENT OF ANY SUPERVISION.

THE ASSOCIATE SHALL SUBMIT THE ORIGINAL SIGNED FORM TO THE BOARD UPON APPLICATION FOR LICENSURE.

Board of Behavioral Sciences
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone: (916) 574-7830 TDD:(916) 322-1700
www.bbs.ca.gov

CONTINUING EDUCATION (CE) PROVIDER APPLICATION

$200 FEE (Non-refundable)

***(please type or print clearly in ink** - use additional paper as necessary)*

For Office Use Only:
Cashiering No.:_____
File No. _____
Approval No.:_____

1. PROVIDER NAME *(limited to 40 characters)*

2. BUSINESS PHONE NUMBER
( )

3. MAILING ADDRESS *(street address, city, state, zip)*

EMAIL OR WEBSITE ADDRESS (optional)

TAXPAYER ID NUMBER

WILL OFFER ON-LINE COURSES
YES ☐ NO ☐

4. ORGANIZATION TYPE *(select one)*

- ☐ association
- ☐ licensed health facility
- ☐ governmental agency
- ☐ other *(please specify)*:
- ☐ 4-yr institution of higher learning
- ☐ other educational organization
- ☐ corporation
- ☐ non-profit corporation
- ☐ partnership
- ☐ individual:

TYPE: _____ LIC. # _____

~~5. CALIF. DEPT. OF CONSUMER AFFAIRS LICENSES/REGISTRATIONS (*list those held **only** by the provider*)~~

~~type_____number_____expiration date_____~~
~~type_____number_____expiration date_____~~

5. HAVE YOU OR YOUR AGENCY EVER APPLIED TO BE A PROVIDER WITH THIS BOARD BEFORE? YES ☐ NO ☐
IF APPROVED, PCE # _____ IF DENIED, DATE OF DENIAL _____

6. CE COORDINATOR NAME

7. CE COORDINATOR PHONE NUMBER
( )

8. COURSE SUBJECT MATTER~~(S)~~ *(list subject matter - **attach course outlines and an explanation of how each course relates to the scope of practice for LCSWs, LPCCs or MFTs**)*

9. INSTRUCTOR QUALIFICATIONS *(check all that apply - **attach instructor resumes**)*

- ☐ license, registration, or certificate in an area related to the course subject matter
- ☐ master's or higher degree in an area related to the course subject matter
- ☐ training, certification, or teaching experience in subject matter related to the course subject matter
- ☐ at least 2 years' experience in an area related to the course subject matter
- ☐ other *(please specify)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

CE Coordinator Signature	Date

~~1800 37A-633 (NEW 5/97)~~

- PLEASE ALLOW 6 TO 8 WEEKS FOR PROCESSING -

CE PROVIDER APPLICATION INSTRUCTIONS

SUBMIT YOUR COMPLETED APPLICATION AND FEE TO THE: ~~BOARD OF BEHAVIORAL SCIENCES, CONTINUING EDUCATION PROGRAM, 400 R STREET, SUITE 3150, SACRAMENTO, CA 95814-6240.~~

BOARD OF BEHAVIORAL SCIENCES
CONTINUING EDUCATION PROGRAM
1625 NORTH MARKET BLVD. SUITE S200
SACRAMENTO, CA 95834

1. ~~**PROVIDER NAME**~~ **PROVIDER NAME**: Full ~~full~~ business name or individual's name (limited to 40 characters) **NOTE:** *If provider is an individual, the provider will be listed by last name then first name.*

2. ~~**BUSINESS PHONE NUMBER**~~ **BUSINESS PHONE NUMBER**: The ~~the~~ business phone number will be provided to licensees upon request.

3. ~~**MAILING ADDRESS**~~ **MAILING ADDRESS**: This ~~the mailing~~ address ~~will be provided to licensees upon request~~ is public information and will be placed on the internet.

4. ~~**ORGANIZATION TYPE**~~ **ORGANIZATION TYPE**: The ~~the~~ primary organization type of the provider - collected for statistical purposes.

~~5. DCA LICENSES/REGISTRATIONS: licenses/registrations issued by any licensing board or committee under the California Department of Consumer Affairs (Board of Behavioral Sciences, Board of Psychology, Board of Registered Nursing, etc.) which are held by the **provider** – do **not** list any licenses or registrations which are held by just the CE coordinator or instructors~~

5. **HAVE YOU OR YOUR AGENCY EVER APPLIED TO BE A PROVIDER WITH THIS BOARD**: This information is requested for historical purposes only and will not have any bearing on your current request for approval.

6. ~~**CE COORDINATOR NAME**~~ **CE COORDINATOR NAME**: The ~~the~~ individual responsible for administering the provider's CE program – this person will be the primary contact for the Board of Behavioral Sciences.

7. ~~**CE COORDINATOR PHONE NUMBER**~~ **CE COORDINATOR PHONE NUMBER**: The ~~the~~ CE Coordinator's phone number if different from business phone number will **not** be provided to licensees.

8. ~~**COURSE SUBJECT MATTER(S)**~~ **COURSE SUBJECT MATTER**: A ~~a~~ description of the types of subject matter to be covered in future ~~MFCC~~MFT/LPCC/LCSW courses offered by the provider. This ~~– this~~ list does not have to be all-inclusive - but must include documentation that ~~which~~ demonstrates subject matter (e.g., ads, course outlines, catalogs). If ~~– if~~ the provider does not have any courses planned at this time, list a sampling of the courses provided in the past.

9. ~~**INSTRUCTOR QUALIFICATIONS**~~ **INSTRUCTOR QUALIFICATIONS**: Each ~~each~~ instructor must have at least two of the four qualifications listed – check all ~~the~~ boxes that apply and include documentation (e.g., resumes, curriculum vitae, biographical synopses) which ~~that~~ demonstrates qualifications for a **sampling** (one to four) of the instructors.

INFORMATION COLLECTION, ACCESS, AND DISCLOSURE

The information provided on this application is maintained by the Executive Officer of the Board of Behavioral Sciences, ~~400 R Street, Suite 3150, Sacramento, CA 95814-6440,~~ 1625 North Market Blvd., Suite S200, Sacramento, CA 95834, under the authority granted by the Business and Professions Code, Division 2, Chapter 13, Article 1, Section 4980.54, ~~and~~ Chapter 14, Article 4, Section 4996.22 and Chapter 16, Article 4, Section 4999.76.

→→→ IT IS MANDATORY THAT YOU PROVIDE ALL INFORMATION REQUESTED. OMISSION OF ANY ITEM OF INFORMATION WILL RESULT IN THE APPLICATION BEING REJECTED AS

INCOMPLETE.

Your completed application becomes the property of the Board of Behavioral Sciences and will be used by authorized personnel to determine your eligibility for approval as a provider of continuing education. Information on your application may be transferred to other governmental or law enforcement agencies.

You have the right to review the records maintained on you by the Board ~~board~~ unless the records are identified as confidential information pursuant to the Public Records Act or are exempted by Section 1798.40 of the Civil Code. You may gain access to the information by contacting the Board ~~board~~ at the above address.

Board of Behavioral Sciences
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone: (916) 574-7830 TDD: (916) 322-1700
www.bbs.ca.gov

REQUEST FOR CONTINUING EDUCATION EXCEPTION – LICENSEE APPLICATION

This form must be received by the Board at least sixty (60) days prior to the expiration date of the license.

READ ~~REVERSE SIDE~~ INSTRUCTIONS BEFORE COMPLETING THIS FORM.
Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

For Office Use Only:
Date Received
Date Approved Denied
Date of Audit (if applicable)
Enforcement Approval ☐Yes ☐No Date:_____

(Please type or print clearly in ink)

Part 1 To be completed by applicant/licensee

*NAME:	Last	First	Middle
BUSINESS TELEPHONE:		RESIDENCE TELEPHONE:	
ADDRESS OF RECORD: Number and Street	City	State	Zip Code
SOCIAL SECURITY NUMBER:	LICENSE NUMBER:	RENEWAL PERIOD REQUESTING EXCEPTION FOR: _____/_____/_____ TO _____/_____/_____	

REASON FOR EXCEPTION: (Check √ one box only)

☐ **Health** (Complete Part 2) ☐ **Health-Family** (Complete Part 2) ☐ **Military** (submit proof) ☐ **Out of Country** (submit proof)

Part 2 To be completed by licensee to explain medical condition or disability.
Please attach extra sheets if necessary. ~~attending physician/psychologist~~

1. Provide a detailed description of the physical or mental disability or medical condition and an explanation as to how the disability or medical condition limits interferes with one or more major life activities:, including the licensee's ability to complete 36 hours of Continuing Education through classroom/seminar attendance, home study, Internet courses over a two-year period. Please attach additional sheets, if necessary.

_____

_____

_____

_____

Approximate date disability began:_____ disability is ☐ Temporary ☐ Permanent

If temporary, approximate date licensee will be able to continue his/her Continuing Education:_____.

Is licensee limited in working in his/her licensed capacity? ☐ Yes ☐ No

If yes, please explain limitations:_____

2. Attach completed "Request for Continuing Education Exception – Verification of Disability or Medical Condition," Form No. 37A-636 (New 03/10).

3. What type of accommodation are you requesting?

☐ **Total Exception from Continuing Education Requirements** – *By checking this box you are certifying that for at least one year during your previous license renewal period you were prevented from completing the continuing education requirements due to one of the following:(a) total physical and/or mental disability; or, (b) total physical and/or mental disability of an immediate family member, including a domestic partner, where you were the primary caregiver for that family member.*

☐ **Request to Complete all Continuing Education Hours via Self -Study** – By checking this box you are certifying that for at least one year during your previous license renewal period you were prevented from completing the interactive continuing education requirements due to one of the following: (a) physical and/or mental disability or medical condition; or, (b) physical and/or mental disability or medical condition of an immediate family member, including a domestic partner, where you are the primary caregiver for that family member.

4. Explain how another accommodation would allow you to comply with the continuing education requirements.

_____

_____

_____

Attending Physician's/Psychologist's Name	License Number	Business Telephone	
Attending Physician's/Psychologist's Address	City	State	Zip Code

I declare under penalty of perjury under the laws of the State of California that I have read and understand the foregoing and that I meet all of the information that I have criteria stated herein and the information submitted on this form and on any accompanying attachments is true and correct. Providing false information or omitting required information are grounds for disciplinary action.

_____ _____

Date ***Signature of Licensee***

_____ _____

Date ***Signature of Physician/Psychologist***

** Business and Professions Code Sections 4982(b) and 4992.3(b) gives the board the right to refuse issuance of any registration or license, or to suspend or revoke the registration or license of any registrant or licensee if the applicant secures the registration or license by fraud, deceit, or misrepresentation on any application for registration or licensure submitted to the board.*

(OVER)

Certifying on your renewal form that you have either completed the required hours of continuing education or been granted an exception from the continuing education requirements prior to receiving the approved exception may constitute a violation of Business and Professions Code Sections 4982(b), 4992.3(b) and 4999.90(b).

EXCEPTIONS FROM THE CE REQUIREMENT

Notice of Collection of Personal Information: The Board of Behavioral Sciences of the Department of Consumer Affairs collects the personal information requested on this form as authorized by Business and Professions Code Section 4980.54, 4996.22 and 4999.76 and Title 16 California Code of Regulations (CCR) Section 1887.2 for the purpose of determining eligibility for a "good cause" exception to the Board's continuing education requirements. Submission of your social security number is voluntary. Submission of other personal information such as name, license number and medical history, is mandatory. The Board cannot process your request for exception to the continuing education requirements unless you provide all of the other requested personal information on this form. We make every effort to protect the personal information you provide us. However, the information may be transferred to other governmental and

enforcement agencies, or provided in response to a court order or subpoena. You have a right of access to records containing personal information about you maintained by the Board, unless the records are exempt from disclosure by Section 1798.40 of the California Civil Code. Individuals may obtain information regarding the location of his or her records by containing the Public Records Request Coordinator at the following address and telephone number: 1625 North Market Blvd., Suite S-200, Sacramento, CA 95834 or (916) 574-7830.

~~Section 1887.2(c) of the California Code of Regulations outlines three reasons for which the board will grant exception and the board's procedure for processing these requests.~~

Exception Regulation, 16 CCR Section 1887.2(c)

(c) A licensee may submit a written request for exception from, or reasonable accommodation for, the continuing education requirement, on a form entitled "Request for Continuing Education Exception," Form No. 1800 37A-635 (Revised 03/10) for any of the reasons listed below. The request must be submitted to the board at least sixty (60) days prior to the expiration date of the license. The board will notify the licensee, within thirty (30) working days after receipt of the request for exception or reasonable accommodation, whether the exception or accommodation was granted. If the request for exception or accommodation is denied, the licensee is responsible for completing the full amount of continuing education required for license renewal. If the request for exception or accommodation is approved, it shall be valid for one renewal period. ~~The board shall grant the exception if the licensee can provide evidence, satisfactory to the board, that:~~

(1) The Board shall grant an exception if the licensee can provide evidence, satisfactory to the board that:

~~(1)~~ (A) For at least one year during the licensee's previous license renewal period the licensee was absent from California due to military service;

~~(2)~~ (B) For at least one year during the licensee's previous license renewal period the licensee resided in another country; or

~~(3)~~ (2) The board may grant a reasonable accommodation if, ~~During~~ for at least one year during the licensee's previous license renewal period, the licensee or an immediate family member, including a domestic partner, where the licensee ~~has~~ is the primary ~~responsibility for the care of~~ caregiver for that family member, ~~was suffering from or suffered~~ had a physical or mental disability or medical condition as defined in Section 12926 of the Government Code. ~~A disability is a physical or mental impairment that substantially limits one or more of the major life activities of an individual~~. The physical or mental disability or medical condition must be verified by a licensed physician or psychologist with ~~special~~ expertise in the area of the physical or mental disability or medical condition. Verification of the physical or mental disability or medical condition must ~~include:~~ be submitted by the licensee on a form entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition," Form No. 1800 37A-636 (New 03/10).

~~(A) the nature and extent of the disability;~~

~~(B) an explanation of how the disability would hinder the licensee from completing the continuing education requirement; and~~

~~(C) the name, title, address, telephone number, professional license or certification number, and original signature of the licensed physician or psychologist verifying the disability.~~

How to Request Exception

To request an exception, complete the form on the reverse side and submit it to the board, along with sufficient proof. The board will accept any documentation establishing the validity of your request, including military orders that demonstrate service outside California~~,~~ or a passport or visa showing the dates you resided ~~out-of-country~~ out of the country~~, a doctor's note, etc~~. The Board may accept a written statement from your physician or psychologist in lieu of completing Part 2, provided that the statement provides all of the information requested in Part 2 of the verification form and includes all of the following: the name, title, address, telephone number, professional license number, and original signature of the physician or psychologist providing the verification. **Please remember that the documentation must supply all of the information required by Section 1887.2(c) above**. After the board's review, you will be notified whether your request was granted.

Exceptions Cannot be Granted Before the Fact

The boa~~-~~rd can only grant exceptions when provided with proof that you have met the minimum criteria outlined in Section 1887.2(c). You may request exception after the situation has occurred, or during the situation as long as you have met the minimum criteria. *For example, if your license expiration date is July 31, ~~2006~~ 2012, and you are going to live out of the country from May ~~2005~~ 2011 through November ~~2006~~ 2012, you can submit your request for exception due to living out of the country anytime after May ~~2006~~ 2012.*

Renewal Application

Please send in your request for exception prior to submitting your renewal application. Courtesy renewal applications are mailed out 90 days prior to the expiration date. It takes 30 business days to process an application for exception. ***Do not submit your renewal application until you have received a written decision regarding your request for exception. If your request is denied, you will be required to complete the mandatory coursework and hours of continuing education prior to renewing your license in an active status. The Board must receive your request for exception at least sixty (60) days PRIOR to the expiration date of the license in order for the exception to be considered.***

If you have any questions, please contact the board's CE program at (916) 574-7830.

Board of Behavioral Sciences
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone: (916) 574-7830 TDD: (916) 322-1700
www.bbs.ca.gov

REQUEST FOR CONTINUING EDUCATION EXCEPTION
VERIFICATION OF DISABILITY OR MEDICAL CONDITION

This form must be received by the Board at least sixty (60) days prior to the expiration date of the license.

READ INSTRUCTIONS BEFORE COMPLETING THIS FORM
Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

For Office Use Only:
Date Received
Date Approved Denied
Date of Audit (if applicable)
Enforcement Approval ☐Yes ☐No Date:_____

(Please type or print clearly in ink)

Part 1 - To be completed by applicant/licensee

*NAME: Last First Middle

BUSINESS TELEPHONE:	RESIDENCE TELEPHONE:

ADDRESS OF RECORD: Number and Street	City	State	Zip Code

*SOCIAL SECURITY NUMBER:	LICENSE NUMBER:	RENEWAL PERIOD REQUESTING EXCEPTION FOR: _____/_____/_____ TO _____/_____/_____

REASON FOR EXCEPTION: (Check √ one box only)

☐ **Health** (Complete Part 2) ☐ **Health-Family** (Complete Part 2)

Part 2 – To be completed by attending physician/psychologist

1. Provide a description of the physical or mental disability or medical condition and an explanation as to how the disability or medical condition limits one or more major life activities, including the licensee's ability to complete 36 hours of continuing education over a two-year period through classroom/seminar attendance, home study, Internet courses. Please attach additional sheets if necessary.

_____

_____

2. Approximate date disability/medical condition began: _____ Disability/medical condition is ☐ Temporary ☐ Permanent

If temporary, approximate date licensee will be able to resume his/her continuing education: _____

3. Is licensee limited in working in his/her licensed capacity? ☐ Yes ☐ No

If yes, please explain limitations:_____

_____

Attending Physician's/Psychologist's Name	License Number	Business Telephone

Attending Physician's/Psychologist's Address	City	State	Zip Code

I declare under penalty of perjury under the laws of the State of California that all the information I have submitted on this form and on any accompanying attachments is true and correct. Providing false information or omitting required information are grounds for disciplinary action.

_____ ***Date*** _____ ***Signature of Licensee***

_____ ***Date*** _____ ***Signature of Physician/Psychologist***

***See "Notice of Collection of Personal Information" (over)**

EXCEPTIONS FROM THE CE REQUIREMENT

***Notice of Collection of Personal Information**: The Board of Behavioral Sciences of the Department of Consumer Affairs collects the personal information requested on this form as authorized by Business and Professions Code Sections 4980.54, 4996.22 and 4999.76 and Title 16 California Code of Regulations (CCR) Section 1887.2 for the purpose of determining eligibility for a "good cause" exception to the Board's continuing education (CE) requirements. Submission of your social security number is voluntary. Submission of other personal information, such as name, license number and medical history, is mandatory. The Board cannot process your request for exception to the continuing education requirements unless you provide all of the other requested personal information on this form. We make every effort to protect the personal information you provide us. However, the information may be transferred to other governmental and enforcement agencies, or provided in response to a court order or subpoena. You have a right of access to records containing personal information about you maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the California Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Public Records Request Coordinator at the following address or telephone number: 1625 North Market Blvd., Suite S200, Sacramento, CA 95834 or (916) 574-7830.*

Exception Regulation, 16 CCR Section 1887.2(c)

(c) A licensee may submit a request for exception from or reasonable accommodation for the continuing education requirement, on a form entitled "Request for Continuing Education Exception," Form No. 1800 37A-635 (Revised 03/10), for any of the reasons listed below. The request must be submitted to the board at least sixty (60) days prior to the expiration date of the license. The board will notify the licensee within thirty (30) working days after the receipt of the request for exception or reasonable accommodation, whether the exception or accommodation was granted. If the request for exception or accommodation is denied, the licensee is responsible for completing the full amount of continuing education required for license renewal. If the request for exception or accommodation is approved, it shall be valid for one renewal period.

(1) The board shall grant an exception if the licensee can provide evidence, satisfactory to the board, that:

(A) For at least one year during the licensee's previous license renewal period the licensee was absent from California due to military service; or,

(B) For at least one year during the licensee's previous license renewal period the licensee resided in another country.

(2) The board may grant a reasonable accommodation if, for at least one year during the licensee's previous license renewal period, the licensee or an immediate family member, including a domestic partner, where the licensee is the primary caregiver for that family member, had a physical or mental disability or medical condition as defined in Section 12926 of the Government Code. The physical or mental disability or medical condition must be verified by a licensed physician or psychologist with expertise in the area of the physical or mental disability or medical condition. Verification of the physical or mental disability or medical condition must be submitted by the licensee on a form entitled "Request for Continuing Education Exception –Verification of Disability or Medical Condition," Form No. 1800 37A-636 (New 03/10).

How to Request Exception

To request an exception, complete the form on the reverse side and submit it to the board, along with sufficient proof. The board will accept documentation establishing the validity of your request, including military orders that demonstrate service outside California or a passport or visa showing the dates you resided out of the country. The board may accept a written statement from your physician or psychologist in lieu of completing Part 2 of the verification form, provided that the statement provides all of the information requested in Part 2 of the form and includes all of the following: the name, title, address, telephone number, professional license number, and original signature of the physician or psychologist providing the verification. **Please remember that the documentation must supply all of the information required by Section 1887.2(c) above**. After the board's review, you will be notified whether your request was granted.

Exceptions Cannot be Granted Before the Fact

The board can only grant exceptions when provided with proof that you have met the minimum criteria outlined in Section 1887.2(c). You may request exception after the situation has occurred, or during the situation as long as you have met the minimum criteria. *For example, if your license expiration date is July 31, 2011, and you are going to live out of the country from May 2010 through November 2011, you can submit your request for exception due to living out of the country any time after May 2011.*

Renewal Application

Please send in your request for exception prior to submitting your renewal application. Courtesy renewal applications are mailed out 90 days prior to the expiration date. It takes 30 business days to process an application for exception. ***Do not submit your renewal application until you have received a written decision regarding your request for exception. If your request is denied, you will be required to complete the mandatory coursework and hours of continuing education prior to renewing your license in an active status. The Board must receive your request for exception at least sixty (60) days PRIOR to the expiration date of the license in order for the exception to be considered.***

If you have any questions, please contact the Board's CE program at (916) 574-7830.

Senate Bill No. 788

CHAPTER 619

An act to amend Sections 728 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.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 788, Wyland. Licensed professional clinical counselors.

Existing law provides for the licensure and regulation of marriage and family therapists 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 provide for the licensure, registration, and regulation of licensed professional clinical counselors and interns by the board and would add 2 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 clinical 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 licensure examination eligibility 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.

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.

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

SECTION 1. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a licensed professional clinical counselor, a psychological assistant, a marriage and family therapist registered intern or trainee, an intern or clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10), or an associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

SEC. 2. Section 4990 of the Business and Professions Code is amended to read:

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of the following members:

(1) Two state licensed clinical social workers.

(2) One state licensed educational psychologist.

(3) Two state licensed marriage and family therapists.

(4) Commencing January 1, 2012, one state licensed professional clinical counselor.

(5) Seven public members.

(b) Each member, except the seven public members, shall have at least two years of experience in his or her profession.

(c) Each member shall reside in the State of California.

(d) The Governor shall appoint five of the public members and the six licensed members with the advice and consent of the Senate. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.

(i) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 3. Chapter 16 (commencing with Section 4999.10) is added to Division 2 of the Business and Professions Code, to read:

Chapter 16. Licensed Professional Clinical Counselors

Article 1. Administration

4999.10. This chapter constitutes, and may be cited as, the Licensed Professional Clinical Counselor Act.

4999.11. In enacting this chapter, the Legislature recognizes that licensed professional clinical counselors practice a separate and distinct profession from the professions practiced by licensed marriage and family therapists and licensed clinical social workers. As such, the Legislature recognizes the need to appropriately test licensed marriage and family therapists and licensed clinical social workers seeking to become licensed professional clinical counselors on the difference in practice between the professions.

4999.12. For purposes of this chapter, the following terms have the following meanings:

(a) "Board" means the Board of Behavioral Sciences.

(b) "Accredited" means a school, college, or university accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

(c) "Approved" means a school, college, or university that possessed unconditional approval by the Bureau for Private Postsecondary and Vocational Education at the time of the applicant's graduation from the school, college, or university.

(d) "Applicant" means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, and whose application for registration as an intern is pending or who has applied for examination eligibility, or an unlicensed person who has completed the requirements for licensure specified in this chapter and is no longer registered with the board as an intern.

(e) "Licensed professional clinical counselor" or "LPCC" means a person licensed under this chapter to practice professional clinical counseling, as defined in Section 4999.20.

(f) "Intern" means an unlicensed person who meets the requirements of Section 4999.42 and is registered with the board.

(g) "Clinical counselor trainee" means an unlicensed person who is currently enrolled in a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(h) "Approved supervisor" means an individual who meets the following requirements:

(1) Has documented two years of clinical experience as a licensed professional clinical counselor, licensed marriage and family therapist, licensed clinical psychologist, licensed clinical social worker, or licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has received professional training in supervision.

(3) Has not provided therapeutic services to the clinical counselor trainee or intern.

(4) Has a current and valid license that is not under suspension or probation.

(i) "Client centered advocacy" includes, but is not limited to, researching, identifying, and accessing resources, or other activities, related to obtaining or providing services and supports for clients or groups of clients receiving psychotherapy or counseling services.

(j) "Advertising" or "advertise" includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(k) "Referral" means evaluating and identifying the needs of a client to determine whether it is advisable to refer the client to other specialists, informing the client of that judgment, and communicating that determination as requested or deemed appropriate to referral sources.

(*l*) "Research" means a systematic effort to collect, analyze, and interpret quantitative and qualitative data that describes how social characteristics, behavior, emotion, cognitions, disabilities, mental disorders, and interpersonal transactions among individuals and organizations interact.

(m) "Supervision" includes the following:

(1) Ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised.

(2) Reviewing client or patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the clinical counselor trainee.

(3) Monitoring and evaluating the ability of the intern or clinical counselor trainee to provide services to the particular clientele at the site or sites where he or she will be practicing.

(4) Ensuring compliance with laws and regulations governing the practice of licensed professional clinical counseling.

(5) That amount of direct observation, or review of audio or videotapes of counseling or therapy, as deemed appropriate by the supervisor.

4999.14. The board shall do all of the following:

(a) Communicate information about its activities, the requirements and qualifications for licensure, and the practice of professional clinical counseling to the relevant educational institutions, supervisors, professional associations, applicants, clinical counselor trainees, interns, and the public.

(b) Develop policies and procedures to assist educational institutions in meeting the educational qualifications of Sections 4999.32 and 4999.33.

Article 2. Scope of Practice

4999.20. (a) (1) "Professional clinical counseling" means the application of counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. "Professional clinical counseling" includes conducting assessments for the purpose of establishing counseling goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, change behavior, and make well-informed, rational decisions.

(2) "Professional clinical counseling" is focused exclusively on the application of counseling interventions and psychotherapeutic techniques for the purposes of improving mental health, and is not intended to capture other, nonclinical forms of counseling for the purposes of licensure. For purposes of this paragraph, "nonclinical" means nonmental health.

(3) "Professional clinical counseling" does not include the assessment or treatment of couples or families unless the professional clinical counselor has completed all of the following additional training and education, beyond the minimum training and education required for licensure:

(A) One of the following:

(i) Six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy.

(ii) A named specialization or emphasis area on the qualifying degree in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy.

(B) No less than 500 hours of documented supervised experience working directly with couples, families, or children.

(C) A minimum of six hours of continuing education specific to marriage and family therapy, completed in each license renewal cycle.

(4) "Professional clinical counseling" does not include the provision of clinical social work services.

(b) "Counseling interventions and psychotherapeutic techniques" means the application of cognitive, affective, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness, and maladjustment that reflect a pluralistic society. These interventions and techniques are specifically implemented in the context of a professional clinical counseling relationship and use a variety of counseling theories and approaches.

(c) "Assessment" means selecting, administering, scoring, and interpreting tests, instruments, and other tools and methods designed to measure an individual's attitudes, abilities, aptitudes, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral concerns and development and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or ameliorating changing life situations, as part of the counseling process. "Assessment" shall not include the use of projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior.

(d) Professional clinical counselors shall refer clients to other licensed health care professionals when they identify issues beyond their own scope of education, training, and experience.

4999.22. (a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the public by any title or description of services incorporating the words "licensed professional clinical counselor" and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.

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

(c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of 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.

(d) This chapter shall not apply to an employee of a governmental entity or 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, college, university, or institution 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.

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

4999.24. Nothing in this chapter shall restrict or prevent activities of a psychotherapeutic or counseling nature on the part of persons employed by accredited or state-approved academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or clinical counselor trainees pursuing a course of study leading to a degree that qualifies for professional clinical counselor licensure at an accredited or state-approved college or university, or working in a recognized training program, provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by a title such as "clinical counselor trainee" or other title clearly indicating the training status appropriate to the level of training.

Article 3. Licensure

4999.30. Except as otherwise provided in this chapter, a person shall not practice or advertise the performance of professional clinical counseling services without a license issued by the board, and shall pay the license fee required by this chapter.

4999.32. (a) This section shall apply to applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4999.33.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (d), the coursework in the core content areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 48 graduate semester or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in each of following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing

the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) In addition to the course requirements described in paragraph (1), a minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

(e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:

(1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A two semester unit or three quarter unit survey course in psychopharmacology.

(4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.

(5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.

(6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors. When coursework in a master's or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging.

(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

4999.33. (a) This section shall apply to the following:

(1) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for examination eligibility or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing

the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including California law and professional ethics for professional clinical counselors, professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(2) In addition to the course requirements described in paragraph (1), 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(4) An understanding of the effects of socioeconomic status on treatment and available resources.

(5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.

(6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.

(8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(9) Child abuse assessment and reporting.

(10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging.

(e) A degree program that qualifies for licensure under this section shall do all of the following:

(1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.

(2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.

(3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

4999.34. A clinical counselor trainee may be credited with predegree supervised practicum and field study experience completed in a setting that meets all of the following requirements:

(a) Lawfully and regularly provides mental health counseling and psychotherapy.

(b) Provides oversight to ensure that the clinical counselor trainee's work at the setting meets the practicum and field study experience and requirements set forth in this chapter and is within the scope of practice for licensed professional clinical counselors.

(c) Is not a private practice.

(d) Experience may be gained by the clinical counselor trainee solely as part of the position for which the clinical counselor trainee volunteers or is employed.

4999.36. (a) A clinical counselor trainee may perform activities and services provided that the activities and services constitute part of the clinical counselor trainee's supervised course of study and that the person is designated by the title "clinical counselor trainee."

(b) All practicum and field study hours gained as a clinical counselor trainee shall be coordinated between the school and the site where hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site.

(c) If an applicant has gained practicum and field study hours while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those practicum and field study hours were gained in compliance with this section.

(d) A clinical counselor trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under supervision.

(e) No hours earned while a clinical counselor trainee may count toward the 3,000 hours of postdegree internship hours.

(f) A clinical counselor trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. For purposes of this subdivision, "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 in segments lasting no less than one continuous hour.

4999.40. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Section 4999.32 or 4999.33 and shall certify to the board that it has so notified its students.

(b) An applicant trained at an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from an institution of higher education that is accredited or approved. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services and shall provide any other documentation the board deems necessary.

4999.42. (a) To qualify for registration as an intern, an applicant shall have all of the following qualifications:

(1) The applicant shall have earned a master's or doctoral degree as specified in Section 4999.32 or 4999.33, as applicable. An applicant whose education qualifies him or her under Section 4999.32 shall also have completed the coursework or training specified in subdivision (e) of Section 4999.32.

(2) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(3) The board shall not issue a registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(b) The board shall begin accepting applications for intern registration on January 1, 2011.

4999.44. An intern may be credited with supervised experience completed in any setting that meets all of the following requirements:

(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 specified in Article 2 (commencing with Section 4999.20).

(c) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(d) An intern shall not be employed or volunteer in a private practice until registered as an intern.

4999.45. An intern employed under this chapter shall:

(a) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(b) Not be employed or volunteer in a private practice until registered as an intern.

(c) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(d) File for renewal annually for a maximum of five years after initial registration with the board.

(e) Cease continued employment as an intern after six years unless the requirements of subdivision (f) are met.

(f) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

4999.46. (a) To qualify for licensure, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a clinical mental health counseling setting using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns 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 professional clinical counseling. At no time shall a supervisor supervise more than two interns.

(f) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting.

(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 in segments lasting no less than one continuous hour.

(4) An intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain up to 30 hours of the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

4999.47. (a) Clinical counselor trainees, interns, and applicants shall perform services as an employee or as a volunteer, not as an independent contractor.

The requirements of this chapter regarding gaining hours of clinical mental health experience and supervision are applicable equally to employees and volunteers.

(b) Clinical counselor trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(c) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(d) Clinical counselor trainees, interns, and applicants who provide voluntary 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 clinical counselor trainees, interns, and applicants for services rendered in any lawful work

setting other than a private practice shall be considered an employee and not an independent contractor.

(e) The board may audit an intern or applicant who receives reimbursement for expenses and the intern or applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(f) Clinical counselor trainees, interns, and applicants shall only perform services at the place where their employer regularly conducts business and services, which may include other locations, as long as the services are performed under the direction and control of the employer and supervisor in compliance with the laws and regulations pertaining to supervision. Clinical counselor trainees, interns, and applicants shall have no proprietary interest in the employer's business.

(g) 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 clinical counselor 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.

4999.48. The board shall adopt regulations regarding the supervision of interns which may include, but not be limited to, the following:

(a) Supervisor qualifications.

(b) Continuing education requirements of supervisors.

(c) Registration or licensing of supervisors, or both.

(d) General responsibilities of supervisors.

(e) The board's authority in cases of noncompliance or gross or repeated negligence by supervisors.

4999.50. (a) The board may issue a professional clinical counselor license to any person who meets all of the following requirements:

(1) He or she has received a master's or doctoral degree described in Section 4999.32 or 4999.33, as applicable.

(2) He or she has completed at least 3,000 hours of supervised experience in the practice of professional clinical counseling as provided in Section 4999.46.

(3) He or she provides evidence of a passing score, as determined by the board, on examinations designated by the board pursuant to Section 4999.52.

(b) An applicant who has satisfied the requirements of this chapter shall be issued a license as a professional clinical counselor in the form that the board may deem appropriate.

(c) The board shall begin accepting applications for examination eligibility on January 1, 2012.

4999.51. To qualify for licensure as a professional clinical counselor or registration as an intern, applicants shall meet the board's regulatory

requirements for professional clinical counselor licensure or intern registration, as applicable, including the following:

(a) The applicant has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) The board shall not issue a license or registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(c) The applicant has successfully passed a state and federal level criminal offender record information search conducted through the Department of Justice, as follows:

(1) The board shall direct applicants to electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state and federal level convictions and arrests and information as to the existence and content of a record of state or federal level arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) The Department of Justice shall forward the fingerprint images and related information received pursuant to paragraph (1) to the Federal Bureau of Investigation and request a federal summary for criminal history information.

(3) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to paragraph (1).

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

4999.52. (a) Except as provided in Sections 4999.54 and 4999.56, every applicant for a license as a professional clinical counselor shall be examined by the board. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine.

(c) (1) It is the intent of the Legislature that national licensing examinations, such as the National Counselor Examination for Licensure and Certification (NCE) and the National Clinical Mental Health Counselor Examination (NCMHCE), be evaluated by the board as requirements for licensure as a professional clinical counselor.

(2) The board shall evaluate various national examinations in order to determine whether they meet the prevailing standards for the validation and use of licensing and certification tests in California.

(3) The Department of Consumer Affairs' Office of Professional Examination Services shall review the occupational analysis that was used for developing the national examinations in order to determine if it adequately describes the licensing group and adequately determines the tasks, knowledge, skills, and abilities the licensed professional clinical counselor would need to perform the functions under this chapter.

(4) Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(5) If national examinations do not meet the standards specified in paragraph (2), the board may require a passing score on either of the following:

(A) The national examinations plus one or more board-developed examinations.

(B) One or more board-developed examinations.

(6) The licensing examinations shall also incorporate a California jurisprudence and ethics examination element that is acceptable to the board, or, as an alternative, the board may develop a separate California jurisprudence and ethics examination.

(d) The board shall not deny any applicant who has submitted a complete application for examination admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(e) The board shall not deny any applicant whose application for licensure is complete admission to the examinations, nor shall the board postpone or delay any applicant's examinations or delay informing the candidate of the results of the examinations, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(f) If an applicant for examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the examinations, but may notify the applicant that licensure will not be granted pending completion of the investigation.

(g) Notwithstanding Section 135, the board may deny any applicant who has previously failed an examination permission to retake that examination pending completion of the investigation of any complaints against the applicant.

(h) Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, respectively, or the application has been denied in accordance with subdivision (b) of Section 485.

(i) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

4999.54. (a) Notwithstanding Section 4999.50, the board may issue a license to any person who submits an application for a license between January 1, 2011, and June 30, 2011, provided that all documentation is submitted within 12 months of the board's evaluation of the application, and provided he or she meets one of the following sets of criteria:

(1) He or she meets all of the following requirements:

(A) Has a master's or doctoral degree from a school, college, or university as specified in Section 4999.32, that is counseling or psychotherapy in content. If the person's degree does not include all the graduate coursework in all nine core content areas as required by paragraph (1) of subdivision (c) of Section 4999.32, a person shall provide documentation that he or she has completed the required coursework prior to licensure pursuant to this chapter. A qualifying degree must include the supervised practicum or field study experience as required in paragraph (3) of subdivision (c) of Section 4999.32.

(i) A counselor educator whose degree contains at least seven of the nine required core content areas shall be given credit for coursework not contained in the degree if the counselor educator provides documentation that he or she has taught the equivalent of the required core content areas in a graduate program in counseling or a related area.

(ii) Degrees issued prior to 1996 shall include a minimum of 30 semester units or 45 quarter units and at least six of the nine required core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32. The total number of units shall be no less than 48 semester units or 72 quarter units.

(iii) Degrees issued in 1996 and after shall include a minimum of 48 semester units or 72 quarter units and at least seven of the nine core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32.

(B) Has completed all of the coursework or training specified in subdivision (e) of Section 4999.32.

(C) Has at least two years, full-time or the equivalent, of postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.

(D) Has a passing score on the following examinations:

(i) The National Counselor Examination for Licensure and Certification or the Certified Rehabilitation Counselor Examination.

(ii) The National Clinical Mental Health Counselor Examination.

(iii) A California jurisprudence and ethics examination, when developed by the board.

(2) Is currently licensed as a marriage and family therapist in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(3) Is currently licensed as a clinical social worker in the State of California, meets the coursework requirements described in subparagraph (A) of paragraph (1), and passes the examination described in subdivision (b).

(b) (1) The board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

(B) The practice of professional clinical counseling and the practice of clinical social work.

(2) If the board, in consultation with the Office of Professional Examination Services, determines that an examination is necessary pursuant to this subdivision, an applicant described in paragraphs (2) and (3) of subdivision (a) shall pass the examination as a condition of licensure.

(c) Nothing in this section shall be construed to expand or constrict the scope of practice of professional clinical counseling, as defined in Section 4999.20.

4999.56. (a) A license issued under paragraph (1) of subdivision (a) of Section 4999.54 shall be valid for six years from the issuance date of the initial license provided that the license is annually renewed during that period pursuant to Section 4999.101. After this six-year period, it shall be canceled unless the licensee does both of the following within the next renewal period:

(1) Obtains a licensure renewal as provided in Section 4999.101.

(2) Passes the examinations required for licensure on or after January 1, 2012, as required by the board pursuant to Section 4999.52, or documents that he or she has already passed those examinations.

(b) Upon failure to meet the requirements set forth in this section, a license issued pursuant to paragraph (1) of subdivision (a) of Section 4999.54 shall be canceled and the person shall be required to meet the requirements listed in Section 4999.50 to obtain a new license.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

4999.58. (a) This section applies to persons who apply for examination eligibility between January 1, 2011, and December 31, 2013, inclusive.

(b) The board may issue a license to a person who, at the time of application, has held for at least two years, a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States, if the education and supervised experience requirements are substantially the equivalent of this chapter, as described in subdivision

(e) and in Section 4999.46, the person complies with subdivision (b) of Section 4999.40, if applicable, the person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50, and the person pays the required fees.

(c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised clinical experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.

(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

4999.60. (a) This section applies to persons who are licensed outside of California and apply for examination eligibility on or after January 1, 2014.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or other counseling license that

allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4999.62.

(2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.

(4) The applicant passes the examinations required to obtain a license under this chapter.

4999.61. (a) This section applies to persons who apply for examination eligibility or registration on or after January 1, 2014, and who do not hold a license as described in Section 4999.60.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4999.62, and the applicant complies with subdivision (b) of Section 4999.40, if applicable.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

4999.62. (a) This section applies to persons who apply for examination eligibility or registration on or after January 1, 2014.

(b) For purposes of Sections 4999.60 and 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(2) The applicant completes any units and course content requirements under Section 4999.33 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

(4) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

Article 4. Practice Requirements

4999.70. A licensee shall display his or her license in a conspicuous place in his or her primary place of practice.

4999.72. Any licensed professional clinical counselor who conducts a private practice under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

4999.74. Licensed professional clinical counselors shall provide to each client accurate information about the counseling relationship and the counseling process.

4999.76. (a) (1) Except as provided in paragraph (2) and subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding two years, as determined by the board.

(2) Except as provided in subdivision (c), the board shall not renew a license issued pursuant to paragraph (1) of subdivision (a) of Section 4999.54 unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding year, as determined by the board. This paragraph shall become inoperative on January 1, 2018.

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for

a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional clinical counseling association, a licensed health facility, a governmental entity, a continuing education unit of a four-year institution of higher learning that is accredited or approved, or a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.

(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(g) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

(i) The continuing education requirements of this section shall fully comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

Article 5. Enforcement

4999.80. In order to carry out the provisions of this chapter, the board shall do all of the following:

(a) Enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(b) Investigate complaints concerning the conduct of any licensed professional clinical counselor.

(c) Revoke, suspend, or fail to renew a license that it has authority to issue for just cause, as enumerated in rules and regulations of the board. The board may deny, suspend, or revoke any license granted under this chapter pursuant to Section 480, 481, 484, 496, 498, or 499.

4999.82. It shall be unlawful for any person to engage in any of the following acts:

(a) Engage in the practice of professional clinical counseling, as defined in Section 4999.20, without first having complied with the provisions of this chapter and without holding a valid license as required by this chapter.

(b) Represent himself or herself by the title "licensed professional clinical counselor," "LPCC," "licensed clinical counselor," or "professional clinical counselor" without being duly licensed according to the provisions of this chapter.

(c) Make any use of any title, words, letters, or abbreviations, that may reasonably be confused with a designation provided by this chapter to denote a standard of professional or occupational competence without being duly licensed.

(d) Materially refuse to furnish the board information or records required or requested pursuant to this chapter.

4999.84. It is the intent of the Legislature that any communication made by a person to a licensed professional clinical counselor in the course of professional services shall be deemed a privileged communication.

4999.86. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

4999.88. In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has

been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any clinical counselor trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any intern or clinical counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established

by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a clinical counselor trainee or intern under one's supervision or control to perform, or permitting the clinical counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the clinical counselor trainee's or intern's level of education, training, or experience.

(u) The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

Article 6. Revenue

4999.100. (a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

4999.101. (a) A license issued under paragraph (1) of subdivision (a) of Section 4999.54 shall expire one year from the last day of the month during which it was issued.

(b) To renew an unexpired license described in subdivision (a), the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(c) The board shall begin accepting applications for licensure renewal on January 1, 2012.

(d) If a license issued under paragraph (1) of subdivision (a) of Section 4999.54 is not renewed on or before the expiration date of the license, the license shall be canceled and the person shall be required to meet the requirements set forth in Section 4999.50 in order to obtain a new license.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

4999.102. (a) Licenses issued under Section 4999.50, paragraph (2) or (3) of subdivision (a) of Section 4999.54, subdivision (b) of Section 4999.58, or Section 4999.60 and, on and after January 1, 2018, licenses issued under paragraph (1) of subdivision (a) of Section 4999.54 shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license described in subdivision (a), the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

4999.104. Licenses issued under Section 4999.50, paragraph (2) or (3) of subdivision (a) of Section 4999.54, subdivision (b) of Section 4999.58, or Section 4999.60 and, on and after January 1, 2018, licenses issued under paragraph (1) of subdivision (a) of Section 4999.54 that have expired may be renewed at any time within three years of expiration. To renew an expired license described in this section, the licensee shall do all of the following:

(a) File an application for renewal on a form prescribed by the board.

(b) Pay all fees that would have been paid if the license had not become delinquent.

(c) Pay all delinquency fees.

(d) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(e) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

4999.106. A license that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued, except that a former licensee may apply for and obtain a new license if he or she complies with all of the following:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she takes and passes the current examinations required for licensing.

(c) He or she submits an application for initial licensure.

4999.108. A suspended license is subject to expiration and shall be renewed as provided in this article, but that renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

4999.110. A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

4999.112. (a) A licensed professional clinical counselor may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall do all of the following:

(1) Pay a biennial fee of one-half of the active renewal fee.

(2) Be exempt from continuing education requirements.

(3) Not engage in the practice of professional clinical counseling in this state.

(4) Otherwise be subject to this chapter.

(b) A licensee on inactive status may have his or her license reactivated by complying with all of the following:

(1) Submitting a request to the board.

(2) Certifying that he or she has not committed any acts or crimes constituting grounds for denial of licensure.

(3) Paying the remaining one-half of the renewal fee.

(4) Completing the following continuing education requirements:

(A) Eighteen hours of continuing education is required within the two years preceding the date of the request for reactivation if the license will expire less than one year from the date of the request for reactivation.

(B) Thirty-six hours of continuing education is required within the two years preceding the date of the request for reactivation if the license will expire more than one year from the date of the request for reactivation.

4999.114. The board shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and at the same time deposit the entire amount thereof in the State Treasury for credit to the Behavioral Sciences Fund.

4999.116. (a) The moneys credited to the Behavioral Sciences Fund under Section 4999.114 shall, upon appropriation by the Legislature, be used for the purposes of carrying out and enforcing the provisions of this chapter.

(b) The board shall keep records that will reasonably ensure that funds expended in the administration of each licensing or registration category bear a reasonable relation to the revenue derived from each category, and shall so notify the department no later than May 31 of each year.

(c) Surpluses, if any, may be used in a way so as to bear a reasonable relation to the revenue derived from each category, and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.

4999.118. A licensee or registrant shall give written notice to the board of a name change within 30 days after each change, giving both the old and new names. A copy of the legal document authorizing the name change, such as a court order or marriage certificate, shall be submitted with the notice.

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall be up to two hundred fifty dollars ($250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars ($150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars ($180).

(d) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).

(e) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).

(f) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(g) The fee for the issuance of a license shall be up to two hundred fifty dollars ($250).

(h) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(i) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars ($150).

(j) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars ($250).

4999.122. The professional clinical counselor licensing program shall be supported from fees assessed to applicants, interns, and licensees. Startup funds to implement this program shall be derived, as a loan, from the reserve fund of the Board of Behavioral Sciences, subject to an appropriation by the Legislature in the annual Budget Act. The board shall not implement this chapter until funds have been appropriated.

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

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Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** April 7, 2010

From: Tracy Rhine
Assistant Executive Officer **Telephone:** (916) 574-7830

Subject: **Proposed Amendments to SB 1489 (Business, Professions and Economic Development Committee)**

Associate Clinical Social Worker Experience Hours

Background
A provision of Marriage and Family Therapist (MFT) licensing law, Business and Professions Code (BPC) Section 4980.43(c)(2)) was amended last year to read as follows:

> *~~Each~~ An 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.~~ degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.*

This change in statute requires an *additional* hour of supervisor contact for every week in which *more than* 10 hours of client contact is gained. Previously, a supervisee would have to gain an *average* of one hour for *every* 10 hours.

At its January 23, 2010 meeting, the Board approved a legislative change to make conforming amendments to related provisions governing the supervised hours of Licensed Professional Clinical Counselors (LPCC) interns (BPC Section 4999.46(g)).

However an inconsistency remains with the related provision in Licensed Clinical Social Worker (LCSW) licensing law. Current BPC section 4996.23(c)(3) reads:

> *An associate shall receive **an average of** at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.* [Emphasis added]

Issue
The language above (BPC section 4996.23(c)(3)) would allow an Associate Clinical Social Worker (ASW) to receive an *average* of one hour of supervision for every week over 10 hours of client contact is gained.

Because each Board licensed mental health care practitioner can supervise any Board registrant (pending regulations for LPCCs and notwithstanding hour limitations for ASWs), there should be consistency for supervisors that are supervising across professions.

Amendment
Amend BPC Section 4996.23 as follows:

(3) On or after January 1, 2011, ~~An~~ an associate shall receive ~~an average of~~ at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

Failure to Comply with Telemedicine Provisions

Background
The unprofessional conduct statutes for MFTs (BPC section 4982(z)), Licensed Educational Psychologists (4989.54 (d)) and LCSWs (4992.3(x)) allow the Board to take action against an applicant, registrant or licensee that fails to comply with the provisions set forth in BPC Section 2290.5 related to telemedicine.

Issue
Violation of provisions relating to telemedicine statute were not included in LPCC licensing law. In order to have consistent unprofessional conduct provisions across the professions, LPCC licensing law should be amended to add a violation of telemedicine statute to the unprofessional conduct section.

Amendment
Add the following:
4999.90 (ac) Failure to comply with Section 2290.5.

Licensed Professional Clinical Counselor Intern Experience Setting
Background
BPC section 4999.46 sets forth supervised experience requirements for LPCC interns to qualify for licensure.

Issue
BPC section 4999.46(b)(2) makes reference to a “clinical mental health counseling setting” that is vague and not defined in statute. However, BPC section 4999.44 describes an applicable setting in which an intern may gain hours.

Amendment
Amend 4999.46(b)(2) to reference the setting parameters in Section 4999.44, clarifying the appropriate setting in which an intern may gain experience:

4999.46(b)(2) Not less than 1,750 hours of direct counseling with individuals or groups in a ~~clinical mental health counseling~~ setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

Marriage and Family Therapist Practicum Requirement

Background
In early 2007, the Board began discussing some needed revisions to the education requirements for MFT licensure. Through a number of meetings of the Marriage and Family Therapist Education Committee (Committee), and subsequent discussion at Board meetings, board staff, MFT educators, licensee member associations and other stakeholders developed the concepts that eventually became Board sponsored legislation to change the education requirements of MFTs. SB 1218 (Correa) containing the Board's education change proposal was vetoed by the Governor in 2008, however, subsequent and identical legislation, SB 33 (Correa) Chapter 26, Statutes of 2009 was signed into law the following year and became effective January 1, 2010.

One change in the new law requires MFT trainees, after August 1, 2012, to be enrolled in a practicum course while counseling clients (BPC §4980.36(d)(1)(B)(iii)). Currently a trainee must take 6 semester units or 9 quarter units of practicum as part of his or her degree program, and may not practice as a trainee until he or she has completed 12 semester units or 18 quarter units of coursework in a qualifying degree program. Additionally, a trainee treating clients must be enrolled in a master's or doctorate degree program designed to qualify him or her for licensure (BPC §4980.03(c)). According to Committee minutes, the provision requiring enrollment in a practicum course for trainees counseling clients evolved from an initial proposal brought to the Committee that would have simply increased the number of units of practicum required for licensure to the equivalent of 9 semester units, which represented a proportional increase corresponding to the increase in the direct client contact hours required. However, during discussions stakeholders conveyed to Board members that the increasing of the practicum unit requirement would be burdensome to some schools and the increase in units required may displace other courses integral to the MFT education program. In response to these concerns the Board did not mandate increased units of practicum, but instead, included in legislation the language currently found in law requiring trainees to be enrolled in practicum if he or she is counseling clients.

Issues
Two issues have been brought to staff's attention surrounding this change in law. First, with the passage of SB 33, there is a conflict between the following sections of the BPC:

BPC §4980.36(d)(1)(B)(iii) *A student must be enrolled in a practicum course while counseling clients.*

§4980.42(a) *Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee."* ***Trainees may gain hours of experience outside the required practicum.*** *Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.* [emphasis added]

Currently, a conflict exists only for those students enrolled in educational institutions that have, or are going to transition their educational programs to meet the post 2012 requirements before that date. Current requirements for those educational programs not choosing to move to the new requirements before the mandated date (August 1, 2012) allow for trainees to counsel clients and gain experience outside of practicum.

This conflict can be remedied by clarifying that trainees may only gain experience outside required practicum if he or she is enrolled in a degree program in compliance with BPC section 4999.37 (current education requirements).

The second issue is related to the operation of this provision. Staff has been made aware of possible implementation problems with requiring a trainee to be enrolled in practicum while counseling clients. Several schools have inquired on how this provision would operate during intersession and summer break,

when students may not be able to enroll in a practicum course. This could present both issues related to continuity of care, when a trainee would have to take a summer off of work leaving those clients with a different practitioner or without care, and barriers to licensure when a trainee will not be able to gain direct client hours because they are unable to enroll in practicum. However, it should be noted that only 225 hours of face-to-face experience is required, and if these hours were completed within one school year (approximately 34 weeks of course enrollment – with time off between semesters), it would require a trainee to complete only seven hours of client contact per week.

Comment [D1]: I see this is your propaganda to keep the mandatory enrollment in practicum. I would counter that 225 is only the minimum. Many students end up getting 750-1000 hours while enrolled in school under current requirements. Also, even under current requirements, licensure attainment for MFTs typically occurs 3-5 years after graduation. Limiting the number of hours they can get in grad school will push this timeframe out. If I were a professional association, I'd also ask on what basis we determined the current oversight system is broken. Have we seen an increase in complaints against Trainees? Just my thoughts…

The intent of the Board in requiring practicum for trainees counseling clients is to ensure that these minimally trained individuals have greater oversight from the school and to also provide mentorship and support for the trainees that they would not get outside the practicum course. By requiring enrollment in practicum and not increasing the total units of practicum required for MFT licensure, the Board afforded the flexibility to the schools to provide more practicum with the same amount of units. For example, one school contacted staff and stated that their institution would be offering one quarter unit practicum courses so that the trainee could be enrolled in a course every quarter, but not have to take extra units to meet the requirement.

Amendments
Several options are available to the Committee to address the issues outlined above.

1. **Exempt trainees from the practicum requirement during specified periods when enrollment may not possible**: Amend section 4980.42(a) to correct the inconsistency allowing trainees to gain experience outside of practicum if the trainee is in a degree program meeting the pre 2012 education requirements. An additional amendment would have to be made to BPC 4980.42(a) and to BPC §4980.36(d)(1)(B)(iii) to allow for an exception during intersession or summer break periods.

2. **Retain current law requiring enrollment in practicum to counsel clients:** Alternatively, if the committee decides that a trainee should be enrolled in practicum during intersession or summer break periods (or not counsel clients during those time periods), the committee can leave the current language in BPC §4980.36(d)(1)(B)(iii) and simply amend BPC Section 4980.42(a) to correct the inconsistency (below).

§4980.42(a) *Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may <u>only</u> gain hours of experience outside the required practicum <u>if the qualifying degree program in which the trainee is enrolled is in compliance with the requirements set forth in section 4980.37</u>. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.*

3. **Strike requirement that a trainee must be enrolled in practicum to counsel clients:** If the Committee decides that they believe the practicum requirement is too burdensome, they can recommend to the board amending BPC §4980.36(d)(1)(B)(iii) to delete the reference to practicum and instead require trainees to be enrolled in a course (current law) while counseling clients.

<u>Recommendation</u>
Staff requests that the Committee review and discuss the proposed amendments and make a recommendation to the full Board to sponsor legislation making discussed changes.

<u>Attachment</u>
Proposed Amendments
Senate Bill 1489

AMENDMENTS 3/20/2010 (Bill Version: As Amended 3/26/2010)

SECTION 1. Section 4984.41 is added to the Business and Professions Code, to read:

4984.41. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a marriage and family therapist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active marriage and family therapist license is required

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued less than *five* years prior to the application date, and the applicant meets all of the following requirements:

(1) ~~who has~~ Has not committed an act or crime constituting grounds for denial of licensure.~~, may restore his or her license to practice marriage and family therapy to active status by:~~

~~(1)~~ (2)~~Paying~~ Pays the renewal fee required by this chapter.

~~(2)~~ (3) ~~Completing~~ Completes the required continuing education as specified in Section 4980.54.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4980.54.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4980.54.

~~(e)~~(g) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued ~~more than~~ *five or more* years prior to the application date, and the applicant meets all of the following requirements:

(1) ~~who has~~Has not committed an act or crime constituting grounds for denial of licensure may have his or her license to practice marriage and family therapy restored to active status by:

(2)~~(1) Applying~~ Applies for licensure and paying the fee required by this chapter.

(3) ~~(2) Passing~~ Passes the examinations required for licensure.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 2. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. (a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an intern registration shall be seventy-five dollars ($75).

(2) The renewal fee for an intern registration shall be seventy-five dollars ($75).

(3) The fee for the application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be one hundred dollars ($100). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars ($180).

(7) The fee for license renewal shall be a maximum of one hundred eighty dollars ($180).

(8) The fee for inactive license renewal shall be a maximum of ninety dollars ($90).

(9) The renewal delinquency fee shall be a maximum of ninety dollars ($90). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 3. Section 4989.45 is added to the Business and Professions Code, to read:

4989.45. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed educational psychologist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active educational psychologist license is required

(c) The holder of a retired license shall not be required to renew

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that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued less than *five* years prior to the application date, and the applicant meets all of the following requirements:

~~who~~ (1) ~~has~~ Has not committed an act or crime constituting grounds for denial of licensure~~, may have his or her license to practice educational psychology restored to active status by:~~

(2)~~(1) Paying~~ Pays the renewal fee fixed by this chapter.

~~(2)~~(3) ~~Completing~~ Completes the required continuing education as specified in Section 4989.34.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4989.34.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section on or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4989.34.

~~(e)~~(g) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued ~~more than~~ *five* ~~–~~or more years prior to the application date, and the applicant meets all of the following requirements:

(1) ~~who has~~Has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

~~(1)~~(2) ~~Applying~~ Applies for licensure and paying the required fee.

~~(2)~~(3) ~~Passing~~ Passes the examinations required for licensure.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 4. Section 4989.68 of the Business and Professions Code is amended to read:

4989.68. (a) The board shall assess the following fees relating to the licensure of educational psychologists:

(1) The application fee for examination eligibility shall be one hundred dollars ($100).

(2) The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars ($150).

(3) The fee for license renewal shall be a maximum amount of one hundred fifty dollars ($150).

(4) The delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(5) The written examination fee shall be one hundred dollars

($100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.

(6) The fee for rescoring a written examination shall be twenty dollars ($20).

(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(9) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

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SEC. 6. Section 4997.1 is added to the Business and Professions Code, to read:

4997.1. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed clinical social worker who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active clinical social worker license is required

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice clinical social work if that retired license was issued less than *five* years prior to the application date, and the applicant meets all of the following requirements:

(1) ~~who has~~ Has not committed an act or crime constituting grounds for denial of licensure. ~~, may have his or her license to practice clinical social work restored to active status by:~~

~~(1)~~(2) ~~Paying~~ Pays the required renewal fee.

~~(2)~~(3) ~~Completing~~ Completes the required continuing education as specified in Section 4996.22.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4996.22.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4996.22.

~~(e)~~(g) The holder of a retired license may apply to restore to active status his or her license to practice clinical social work if that retired license was issued ~~more than~~ *five or more* years prior to the application date, and that applicant meets all of the following requirements:

(1) ~~who has~~Has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice clinical social work restored to active status by:

~~(1)~~(2) ~~Applying~~ Applies for licensure and paying the required fees.

~~(2)~~(3) Passes ~~Passing~~ the examinations required for licensure.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 7. Section 4999.113 is added to the Business and Professions Code, to read:

4999.113. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a

professional clinical counselor who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active professional clinical counselor license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued less than five years prior to the application date, and that applicant meets all of the following requirements:

(1) ~~who has~~Has not committed an act or crime constituting grounds for denial of licensure. ~~, may have his or her license to practice professional clinical counseling restored to active status by:~~

~~(1)~~(2) ~~Paying~~ Pays the required renewal fee.

~~(2)~~(3) ~~Completing~~ Completes the required continuing education as specified in Section 4999.76.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4999.76.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4999.76.

~~(e)~~(g) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued ~~more than~~ five or more years prior to the application date, and the applicant meets the following requirements:

(1) ~~who has~~Has not committed an act or crime constituting grounds for denial of licensure~~, may have his or her license to practice professional clinical counseling restored to active status by:~~

~~(1)~~(2) ~~Applying~~ Applies for licensure and paying the required fees.

~~(2)~~(3) ~~Passing~~ Passes the examinations required for licensure.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 8. Section 4999.120 of the Business and Professions Code is amended to read:

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall

be up to two hundred fifty dollars ($250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars ($150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars ($180).

(d) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).

(e) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).

(f) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(g) The fee for the issuance of a license shall be up to two hundred fifty dollars ($250).

(h) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(i) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars ($150).

(j) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars ($250).

(k) The fee for issuance of a retired license shall be forty dollars ($40).

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AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2191

Introduced by Assembly Member Emmerson

February 18, 2010

An act to amend Sections 4984.7, 4989.68, 4996.3, and 4999.120 of, and to add Sections 4984.41, 4989.45, 4997.1, and 4999.113 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2191, as amended, Emmerson. Healing arts: behavioral sciences: licensure.

Existing law provides for the licensure and regulation of marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors by the Board of Behavioral Sciences within the Department of Consumer Affairs. Existing law fixes the license fees and creates the Behavioral Sciences Fund in the State Treasury into which these license fees are deposited. Existing law specifies requirements for renewal of these licenses, including completing continuing education, as specified.

This bill would require the board to issue a retired license to a marriage and family therapist, clinical social worker, educational psychologist, and professional clinical counselor who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action. The bill would prohibit a retired license holder from engaging in any activity for which an active license in his or her respective profession is required. The bill would provide that a retired license holder may have his or her license restored to active

status if the holder has not committed an act or crime constituting grounds for denial of licensure, and the holder applies for licensure, pays the required fee, passes the examination required for licensure, and completes specified continuing education requirements. The bill would fix the retired license fee at $40.

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 4984.41 is added to the Business and Professions Code, to read:

4984.41. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a marriage and family therapist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active marriage and family therapist license is required. ~~A marriage and family therapist holding a retired license shall be permitted to use the titles "retired marriage and family therapist" or "marriage and family therapist, retired."~~

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may restore his or her license to practice marriage and family therapy to active status by:

(1) Paying the renewal fee required by this chapter.

(2) Completing the required continuing education as specified in Section 4980.54.

(e) The holder of a retired license issued more than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure may have his or her license to practice marriage and family therapy restored to active status by:

(1) Applying for licensure and paying the fee required by this chapter.

(2) Passing the examinations required for licensure.

SEC. 2. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. (a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an intern registration shall be seventy-five dollars ($75).

(2) The renewal fee for an intern registration shall be seventy-five dollars ($75).

(3) The fee for the application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be one hundred dollars ($100). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars ($180).

(7) The fee for license renewal shall be a maximum of one hundred eighty dollars ($180).

(8) The fee for inactive license renewal shall be a maximum of ninety dollars ($90).

(9) The renewal delinquency fee shall be a maximum of ninety dollars ($90). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 3. Section 4989.45 is added to the Business and Professions Code, to read:

4989.45. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed educational psychologist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active educational psychologist license is required. ~~A licensed educational psychologist holding a retired license shall be permitted to use the titles "retired licensed educational psychologist" or "licensed educational psychologist, retired."~~

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

(1) Paying the renewal fee fixed by this chapter.

(2) Completing the required continuing education as specified in Section 4989.34.

(e) The holder of a retired license issued more than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

(1) Applying for licensure and paying the required fee.

(2) Passing the examinations required for licensure.

SEC. 4. Section 4989.68 of the Business and Professions Code is amended to read:

4989.68. (a) The board shall assess the following fees relating to the licensure of educational psychologists:

(1) The application fee for examination eligibility shall be one hundred dollars ($100).

(2) The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars ($150).

(3) The fee for license renewal shall be a maximum amount of one hundred fifty dollars ($150).

(4) The delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(5) The written examination fee shall be one hundred dollars ($100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.

(6) The fee for rescoring a written examination shall be twenty dollars ($20).

(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(9) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 6. Section 4997.1 is added to the Business and Professions Code, to read:

4997.1. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed clinical social worker who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active clinical social worker license is required. ~~A licensed clinical social worker holding~~

~~a retired license shall be permitted to use the titles "retired licensed clinical social worker" or "licensed clinical social worker, retired."~~

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice clinical social work restored to active status by:

(1) Paying the required renewal fee.

(2) Completing the required continuing education as specified in Section 4996.22.

(e) The holder of a retired license issued more than ~~three~~ *five* years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice clinical social work restored to active status by:

(1) Applying for licensure and paying the required fees.

(2) Passing the examinations required for licensure.

SEC. 7. Section 4999.113 is added to the Business and Professions Code, to read:

4999.113. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a professional clinical counselor who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active professional clinical counselor license is required. A licensed professional clinical counselor holding a retired license shall be permitted to use the titles "retired licensed professional clinical counselor" or "licensed professional clinical counselor, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than three years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:

(1) Paying the required renewal fee.

(2) Completing the required continuing education as specified in Section 4999.76.

(e) The holder of a retired license issued more than three years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:

(1) Applying for licensure and paying the required fees.

(2) Passing the examinations required for licensure.

SEC. 8. Section 4999.120 of the Business and Professions Code is amended to read:

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall be up to two hundred fifty dollars ($250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars ($150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars ($180).

(d) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).

(e) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).

(f) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(g) The fee for the issuance of a license shall be up to two hundred fifty dollars ($250).

(h) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(i) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars ($150).

(j) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars ($250).

(k) The fee for issuance of a retired license shall be forty dollars ($40).

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Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** April 7, 2010

From: Tracy Rhine
Assistant Executive Officer **Telephone:** (916) 574-7830

Subject: **Proposed Amendments to SB 1489 (Business, Professions and Economic Development Committee)**

Associate Clinical Social Worker Experience Hours

Background
A provision of Marriage and Family Therapist (MFT) licensing law, Business and Professions Code (BPC) Section 4980.43(c)(2)) was amended last year to read as follows:

> *~~Each~~ An 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.~~ degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.*

This change in statute requires an *additional* hour of supervisor contact for every week in which *more than* 10 hours of client contact is gained. Previously, a supervisee would have to gain an *average* of one hour for *every* 10 hours.

At its January 23, 2010 meeting, the Board approved a legislative change to make conforming amendments to related provisions governing the supervised hours of Licensed Professional Clinical Counselors (LPCC) interns (BPC Section 4999.46(g)).

However an inconsistency remains with the related provision in Licensed Clinical Social Worker (LCSW) licensing law. Current BPC section 4996.23(c)(3) reads:

> *An associate shall receive **an average of** at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.* [Emphasis added]

Issue
The language above (BPC section 4996.23(c)(3)) would allow an Associate Clinical Social Worker (ASW) to receive an *average* of one hour of supervision for every week over 10 hours of client contact is gained.

Because each Board licensed mental health care practitioner can supervise any Board registrant (pending regulations for LPCCs and notwithstanding hour limitations for ASWs), there should be consistency for supervisors that are supervising across professions.

Amendment
Amend BPC Section 4996.23 as follows:

(3) On or after January 1, 2011, ~~An~~ an associate shall receive ~~an average of~~ at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

Failure to Comply with Telemedicine Provisions

Background
The unprofessional conduct statutes for MFTs (BPC section 4982(z)), Licensed Educational Psychologists (4989.54 (d)) and LCSWs (4992.3(x)) allow the Board to take action against an applicant, registrant or licensee that fails to comply with the provisions set forth in BPC Section 2290.5 related to telemedicine.

Issue
Violation of provisions relating to telemedicine statute were not included in LPCC licensing law. In order to have consistent unprofessional conduct provisions across the professions, LPCC licensing law should be amended to add a violation of telemedicine statute to the unprofessional conduct section.

Amendment
Add the following:
4999.90 (ac) Failure to comply with Section 2290.5.

Licensed Professional Clinical Counselor Intern Experience Setting
Background
BPC section 4999.46 sets forth supervised experience requirements for LPCC interns to qualify for licensure.

Issue
BPC section 4999.46(b)(2) makes reference to a “clinical mental health counseling setting” that is vague and not defined in statute. However, BPC section 4999.44 describes an applicable setting in which an intern may gain hours.

Amendment
Amend 4999.46(b)(2) to reference the setting parameters in Section 4999.44, clarifying the appropriate setting in which an intern may gain experience:

4999.46(b)(2) Not less than 1,750 hours of direct counseling with individuals or groups in a ~~clinical mental health counseling~~ setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

Marriage and Family Therapist Practicum Requirement

Background
In early 2007, the Board began discussing some needed revisions to the education requirements for MFT licensure. Through a number of meetings of the Marriage and Family Therapist Education Committee (Committee), and subsequent discussion at Board meetings, board staff, MFT educators, licensee member associations and other stakeholders developed the concepts that eventually became Board sponsored legislation to change the education requirements of MFTs. SB 1218 (Correa) containing the Board's education change proposal was vetoed by the Governor in 2008, however, subsequent and identical legislation, SB 33 (Correa) Chapter 26, Statutes of 2009 was signed into law the following year and became effective January 1, 2010.

One change in the new law requires MFT trainees, after August 1, 2012, to be enrolled in a practicum course while counseling clients (BPC §4980.36(d)(1)(B)(iii)). Currently a trainee must take 6 semester units or 9 quarter units of practicum as part of his or her degree program, and may not practice as a trainee until he or she has completed 12 semester units or 18 quarter units of coursework in a qualifying degree program. Additionally, a trainee treating clients must be enrolled in a master's or doctorate degree program designed to qualify him or her for licensure (BPC §4980.03(c)). According to Committee minutes, the provision requiring enrollment in a practicum course for trainees counseling clients evolved from an initial proposal brought to the Committee that would have simply increased the number of units of practicum required for licensure to the equivalent of 9 semester units, which represented a proportional increase corresponding to the increase in the direct client contact hours required. However, during discussions stakeholders conveyed to Board members that the increasing of the practicum unit requirement would be burdensome to some schools and the increase in units required may displace other courses integral to the MFT education program. In response to these concerns the Board did not mandate increased units of practicum, but instead, included in legislation the language currently found in law requiring trainees to be enrolled in practicum if he or she is counseling clients.

Issues
Two issues have been brought to staff's attention surrounding this change in law. First, with the passage of SB 33, there is a conflict between the following sections of the BPC:

BPC §4980.36(d)(1)(B)(iii) *A student must be enrolled in a practicum course while counseling clients.*

§4980.42(a) *Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee."* ***Trainees may gain hours of experience outside the required practicum.*** *Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.* [emphasis added]

Currently, a conflict exists only for those students enrolled in educational institutions that have, or are going to transition their educational programs to meet the post 2012 requirements before that date. Current requirements for those educational programs not choosing to move to the new requirements before the mandated date (August 1, 2012) allow for trainees to counsel clients and gain experience outside of practicum.

This conflict can be remedied by clarifying that trainees may only gain experience outside required practicum if he or she is enrolled in a degree program in compliance with BPC section 4999.37 (current education requirements).

The second issue is related to the operation of this provision. Staff has been made aware of possible implementation problems with requiring a trainee to be enrolled in practicum while counseling clients. Several schools have inquired on how this provision would operate during intersession and summer break,

when students may not be able to enroll in a practicum course. This could present both issues related to continuity of care, when a trainee would have to take a summer off of work leaving those clients with a different practitioner or without care, and barriers to licensure when a trainee will not be able to gain direct client hours because they are unable to enroll in practicum. However, it should be noted that only 225 hours of face-to-face experience is required, and if these hours were completed within one school year (approximately 34 weeks of course enrollment – with time off between semesters), it would require a trainee to complete only seven hours of client contact per week.

Comment [D1]: I see this is your propaganda to keep the mandatory enrollment in practicum. I would counter that 225 is only the minimum. Many students end up getting 750-1000 hours while enrolled in school under current requirements. Also, even under current requirements, licensure attainment for MFTs typically occurs 3-5 years after graduation. Limiting the number of hours they can get in grad school will push this timeframe out. If I were a professional association, I'd also ask on what basis we determined the current oversight system is broken. Have we seen an increase in complaints against Trainees? Just my thoughts…

The intent of the Board in requiring practicum for trainees counseling clients is to ensure that these minimally trained individuals have greater oversight from the school and to also provide mentorship and support for the trainees that they would not get outside the practicum course. By requiring enrollment in practicum and not increasing the total units of practicum required for MFT licensure, the Board afforded the flexibility to the schools to provide more practicum with the same amount of units. For example, one school contacted staff and stated that their institution would be offering one quarter unit practicum courses so that the trainee could be enrolled in a course every quarter, but not have to take extra units to meet the requirement.

Amendments
Several options are available to the Committee to address the issues outlined above.

1. **Exempt trainees from the practicum requirement during specified periods when enrollment may not possible**: Amend section 4980.42(a) to correct the inconsistency allowing trainees to gain experience outside of practicum if the trainee is in a degree program meeting the pre 2012 education requirements. An additional amendment would have to be made to BPC 4980.42(a) and to BPC §4980.36(d)(1)(B)(iii) to allow for an exception during intersession or summer break periods.

2. **Retain current law requiring enrollment in practicum to counsel clients:** Alternatively, if the committee decides that a trainee should be enrolled in practicum during intersession or summer break periods (or not counsel clients during those time periods), the committee can leave the current language in BPC §4980.36(d)(1)(B)(iii) and simply amend BPC Section 4980.42(a) to correct the inconsistency (below).

§4980.42(a) *Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may <u>only</u> gain hours of experience outside the required practicum <u>if the qualifying degree program in which the trainee is enrolled is in compliance with the requirements set forth in section 4980.37</u>. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.*

3. **Strike requirement that a trainee must be enrolled in practicum to counsel clients:** If the Committee decides that they believe the practicum requirement is too burdensome, they can recommend to the board amending BPC §4980.36(d)(1)(B)(iii) to delete the reference to practicum and instead require trainees to be enrolled in a course (current law) while counseling clients.

<u>Recommendation</u>
Staff requests that the Committee review and discuss the proposed amendments and make a recommendation to the full Board to sponsor legislation making discussed changes.

<u>Attachment</u>
Proposed Amendments
Senate Bill 1489

SB 1489 PROPOSED AMENDMENTS (3/28/10)

§4996.23 The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. For purposes of this subdivision, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours of face-to-face contact in a group conducted within the same week as the hours claimed.

(3) An associate shall receive ~~an average~~ at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(4) Group supervision shall be provided in a group of not more than eight supervisees and

shall be provided in segments lasting no less than one continuous hour.

(5) An associate clinical social worker working in a governmental entity, a school, college, or university, or an institution that is both a nonprofit and charitable institution may be credited with up to 30 hours of direct supervisor contact, via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is maintained.

(6) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker.

(7) Notwithstanding paragraph (2), an associate clinical social worker working for a governmental entity, school, college, or university, or an institution that is both a nonprofit and charitable institution, may obtain the required weekly direct supervisor contact via live two-way videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is preserved.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate'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 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(l) Associates shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(3) Lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

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4999.46. (a) To qualify for licensure, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period
of not less than two years (104 weeks) which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a ~~clinical mental health counseling~~ setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be

credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns 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 professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed 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 in segments lasting no less than one continuous hour.

(4) *Notwithstanding paragraph (3), an* intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

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4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo

contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any clinical counselor trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive *, as defined in Section 651* .

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

`(r) Any conduct in the supervision of *a* registered intern , associate clinical *social worker,* or clinical counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a clinical counselor trainee or intern under one's

supervision or control to perform, or permitting the clinical counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the clinical counselor trainee's or intern's level of education, training, or experience.

(u) The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure tocomply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker, educational psychologist, or marriage and family therapist.

4999.90 (ac) Failure to comply with Section 2290.5.

SENATE BILL No. 1489

Introduced by Committee on Business, Professions and Economic Development (Senators Negrete McLeod (Chair), Aanestad, Calderon, Correa, Florez, Oropeza, Walters, Wyland, and Yee)

March 11, 2010

An act to amend Sections 2065, 2096, 2102, 2103, 2177, 2184, 2397, 2570.19, 3025.1, 3046, 3057.5, 3147, 3147.6, 3147.7, 4017, 4028, 4037, 4052.3, 4059, 4072, 4101, 4119, 4127.1, 4169, 4181, 4191, 4196, 4425, 4426, 4980.40.5, 4980.43, 4980.80, 4982.25, 4984.8, 4989.54, 4990.02, 4990.12, 4990.18, 4990.22, 4990.30, 4990.38, 4992.36, 4996.17, 4996.23, 4999.46, 4999.58, and 4999.90 of, to add Section 4200.1 to, to add and repeal Sections 4999.57 and 4999.59 of, to repeal Sections 4980.07, 4982.2, and 4984.6 of, and to repeal Article 3 (commencing with Section 4994) of Chapter 14 of Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1489, as introduced, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and for the licensure and regulation of podiatrists by the California Board of Podiatric Medicine within the Medical Board of California. Existing law exempts a licensee of either of those boards from liability for civil damages for acts or omissions by the licensee in rendering specified emergency care and for injury or death caused in an emergency situation occurring in the licensee's office or a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure, as specified. Existing law prohibits construing

these provisions to authorize a podiatrist to act beyond certain scope of practice limitations.

This bill would delete that prohibition.

Existing law requires an applicant for a physician's and surgeon's certificate whose professional instruction was acquired in a country other than the United States or Canada to provide evidence satisfactory to the board of, among other things, satisfactory completion of at least one year of specified postgraduate training.

This bill would require the applicant to instead complete at least 2 years of that postgraduate training.

Existing law requires an applicant for a physician's and surgeon's certificate to obtain a passing score on the written examination designated by the board and makes passing scores on a written examination valid for 10 years from the month of the examination for purposes of qualification for a license. Existing law authorizes the board to extend this period of validity for good cause or for time spent in a postgraduate training program.

This bill would limit this 10-year period of validity to passing scores obtained on Step 3 of the United States Medical Licensing Examination and would also authorize the board to extend that period for applicants who hold a valid, unlimited license as a physician and surgeon in another state or a Canadian province and have actively practiced medicine in that state or province.

(2) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. Existing law authorizes the renewal of an expired license within 3 years after its expiration if the licensee files an application for renewal and pays all accrued and unpaid renewal fees and the delinquency fee prescribed by the board.

This bill would also require the licensee to submit proof of completion of the required hours of continuing education for the last 2 years.

Existing law authorizes the restoration of a license that is not renewed within 3 years after its expiration if the holder of the expired license, among other requirements, passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for licenses.

This bill would instead require the holder of the expired license to take the National Board of Examiners in Optometry's Clinical Skills

examination, or other clinical examination approved by the board, and to also pay any delinquency fees prescribed by the board.

Existing law alternatively authorizes the restoration of a license that is not renewed within 3 years after its expiration if the person provides proof that he or she holds an active license from another state, files an application for renewal, and pays the accrued and unpaid renewal fees and the delinquency fee prescribed by the board.

This bill would also require the person to submit proof of completion of the required hours of continuing education for the last 2 years and take and satisfactorily pass the board's jurisprudence examination. The bill would also require that the person not have committed specified crimes or acts constituting grounds for licensure denial.

(3) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and requires an applicant for a license to pass a national licensure examination and the board's jurisprudence examination. Existing law prohibits boards in the Department of Consumer Affairs from restricting an applicant who failed a licensure examination from taking the examination again, except as specified.

This bill would authorize an applicant for a pharmacist license to take the licensure examination and the jurisprudence examination 4 times each. The bill would also authorize the applicant to take those examinations 4 additional times each if additional pharmacy coursework is completed, as specified.

(4) Existing law provides for the licensure and regulation of marriage and family therapists, licensed clinical social workers, educational psychologists, and professional clinical counselors by the Board of Behavioral Sciences. Existing law authorizes a licensed marriage and family therapist, licensed clinical social worker, or licensed educational psychologist whose license has been revoked, suspended, or placed on probation to petition the board for reinstatement or modification of the penalty, as specified. Existing law also authorizes the board to deny an application or suspend or revoke those licenses due to the revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, marriage and family therapist, or educational psychologist.

This bill would make those provisions apply with respect to licensed professional clinical counseling, as specified.

Existing law requires an applicant applying for a marriage and family therapist license to complete a minimum of 3,000 hours of experience

during a period of at least 104 weeks. Existing law requires that this experience consist of at least 500 hours of experience in diagnosing and treating couples, families, and children, and requires that an applicant be credited with 2 hours of experience for each hour of therapy provided for the first 150 hours of treating couples and families in conjoint therapy.

This bill would instead require that an applicant receive that 2-hour credit for up to 150 hours of treating couples and families in conjoint therapy.

Existing law requires an applicant for a professional clinical counselor license to complete a minimum of 3,000 hours of clinical mental health experience under the supervision of an approved supervisor and prohibits a supervisor from supervising more than 2 interns.

This bill would prohibit the board from crediting an applicant for experience obtained under the supervision of a spouse or relative by blood or marriage, or a person with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision. The bill would also delete the provision prohibiting a supervisor from supervising more than 2 interns.

Existing law requires an intern to receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting and authorizes an intern working in a governmental entity, a school, college, or university, or a nonprofit and charitable institution to obtain up to 30 hours of the required weekly direct supervisor contract via two-way, real time videoconferencing.

This bill would delete that 30-hour limit and would require an intern to receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy, as defined, is performed in each setting in which experience is obtained.

Existing law imposes specified requirements with respect to persons who apply for a professional clinical counselor license between January 1, 2011, and December 31, 2013, inclusive. With respect to those applicants, existing law authorizes the board to accept experience gained outside of California if it is substantially equivalent to that required by the Licensed Professional Clinical Counselor Act and if the applicant has gained a minimum of 250 hours of supervised clinical experience in direct counseling in California while registered as an intern with the board.

This bill would eliminate that 250-hour requirement with respect to persons with a counseling license in another jurisdiction, as specified, who have held that license for at least 2 years immediately prior to applying with the board.

Existing law authorizes the board to refuse to issue or suspend or revoke a professional clinical counselor license or intern registration if the licensee or registrant has been guilty of unprofessional conduct, as specified.

This bill would specify that unprofessional conduct includes (1) engaging in conduct that subverts a licensing examination, (2) revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, educational psychologist, or marriage and family therapist, and (3) conduct in the supervision of an associate clinical social worker that violates the profession's governing professional clinical counseling or regulations of the board.

The bill would make other technical, nonsubstantive changes in various provisions governing the healing arts and would delete certain obsolete and duplicative language.

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 2065 of the Business and Professions Code is amended to read:

2065. Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the ~~Division of Licensing~~ *board* and who is enrolled in a postgraduate training program approved by the ~~division~~ *board*, may engage in the practice of medicine whenever and wherever required as a part of the program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as

a part of the training program, and may receive compensation for that practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure ~~given by the division~~, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If the resident or fellow fails to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship or if the ~~division~~ *board* denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

SEC. 2. Section 2096 of the Business and Professions Code is amended to read:

2096. *(a)* In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), *except as provided in subdivision (b),* shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least one year of postgraduate ~~training, which includes at~~ *training.*

(b) An applicant applying pursuant to Section 2102 shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least two years of postgraduate training.

(c) The postgraduate training required by this section shall include at least four months of general medicine~~,~~ *and shall be obtained* in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC).

~~The~~

(d) The amendments made to this section at the 1987 portion of the 1987–88 session of the Legislature shall not apply to applicants who completed their one year of postgraduate training on or before July 1, 1990.

SEC. 3. Section 2102 of the Business and Professions Code is amended to read:

2102. ~~Any~~ *An* applicant whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence satisfactory to the board of compliance with the following requirements to be issued a physician's and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the board that shows final and successful completion of the course. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the board. This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under *subdivision (b) of* Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the board and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the board may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) ~~Pass~~ *Passage of* the written examination as provided under Article 9 (commencing with Section 2170). An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

~~Nothing~~

(e) Nothing in this section prohibits the board from disapproving ~~any~~ *a* foreign medical school or from denying an application if, in the opinion of the board, the professional instruction provided by the medical school or the instruction received by the applicant is

not equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 4. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant who is a citizen of the United States shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

~~(a) Official transcripts or other official evidence satisfactory to the Division of Licensing of compliance with Section 2088.~~

~~(b) Official~~

(a) Submitted official evidence satisfactory to the ~~division~~ *board* of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the ~~division~~ *board* to evaluate for equivalency any coursework obtained at a medical school disapproved by the ~~division~~ *board* pursuant to Article 4 (commencing with Section 2080).

~~(c) Official~~

(b) Submitted official evidence satisfactory to the ~~division~~ *board* of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

~~(d)~~

(c) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the ~~division~~ *board*.

~~(e) Successful completion of~~

(d) Successfully completed one academic year of supervised clinical training in a program approved by the ~~division~~ *board* pursuant to Section 2104. The ~~division~~ *board* shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as

part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program approved by the ~~division~~ *board* pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (b) of Section 2102.

~~(f) Satisfactory completion of~~

(e) Satisfactorily completed the postgraduate training required under Section 2096.

~~(g)~~

(f) Passed the written examination required for certification as a physician and surgeon ~~in~~ *under* this chapter.

SEC. 5. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the ~~Division of Licensing~~ *board*.

(b) Applicants may elect to take the written examinations conducted or accepted by the ~~division~~ *board* in separate parts.

(c) (1) An applicant shall have obtained a passing score on ~~Part III~~ *Step 3* of the United States Medical Licensing Examination within not more than four attempts in order to be eligible for a physician's and surgeon's certificate.

(2) Notwithstanding paragraph (1), an applicant who obtains a passing score on ~~Part III~~ *Step 3* of the United States Medical Licensing Examination in more than four attempts and who meets the requirements of Section 2135.5 shall be eligible to be considered for issuance of a physician's and surgeon's certificate.

SEC. 6. Section 2184 of the Business and Professions Code is amended to read:

2184. (a) Each applicant shall obtain on the written examination a passing score, established by the ~~division~~ *board* pursuant to Section 2177.

(b) *(1)* Passing scores on ~~a written examination~~ *Step 3 of the United States Medical Licensing Examination* shall be valid for a

period of 10 years from the month of the examination for purposes of qualification for licensure in California.

~~This~~

(2) The period of validity *provided for in paragraph (1)* may be extended by the ~~division for good cause and for~~ *board for any of the following:*

(A) For good cause.

(B) For time spent in a postgraduate training program, including, but not limited to, residency training, fellowship training, remedial or refresher training, or other training that is intended to maintain or improve medical skills.

(C) For an applicant who holds a valid, unlimited license as a physician and surgeon in another state or a Canadian province and has actively practiced medicine in that state or province.

~~Upon~~

(3) Upon expiration of the 10-year period plus any extension granted by the ~~division~~ *board under paragraph (2)*, the applicant shall pass the Special Purpose Examination of the Federation of State Medical Boards or a clinical competency written examination determined by the ~~division~~ *board* to be equivalent.

~~This subdivision applies to all passing scores achieved in a written examination for a physician's and surgeon's certificate conducted by the division.~~

SEC. 7. Section 2397 of the Business and Professions Code is amended to read:

2397. (a) A licensee shall not be liable for civil damages for injury or death caused in an emergency situation occurring in the licensee's office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:

(1) The patient was unconscious.

(2) The medical procedure was undertaken without the consent of the patient because the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient.

(3) A medical procedure was performed on a person legally incapable of giving consent, and the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

(b) This section is applicable only to actions for damages for injuries or death arising because of a licensee's failure to inform, and not to actions for damages arising because of a licensee's negligence in rendering or failing to render treatment.

(c) As used in this section:

(1) "Hospital" means a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) "Emergency situation occurring in the licensee's office" means a situation occurring in an office, other than a hospital, used by a licensee for the examination or treatment of patients, requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

(3) "Emergency situation occurring in a hospital" means a situation occurring in a hospital, whether or not it occurs in an emergency room, requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

~~(d) Nothing in this article shall be construed to authorize practice by a podiatrist beyond that set forth in Section 2473.~~

SEC. 8. Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

(b) The members of the board shall consist of the following:

(1) Three occupational therapists who shall have practiced occupational therapy for five years.

(2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.

(3) Three public members who shall not be licentiates of the board or of any board referred to in Section 1000 or 3600.

(c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board. The Governor, the Senate ~~Rules~~ Committee *on Rules*, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the

full-time faculty of any university, college, or other educational institution.

(d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.

(e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to, or have a household member who is, an occupational therapist or an occupational therapy assistant, and may not have had, within two years of the appointment, a substantial financial interest in a person regulated by the board.

(f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.

(g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.

(h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(i) Members of the board shall receive no compensation for their services, but shall be entitled to reasonable travel and other

expenses incurred in the execution of their powers and duties in accordance with Section 103.

(j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.

~~(k) A loan is hereby authorized from the General Fund to the Occupational Therapy Fund on or after July 1, 2000, in an amount of up to one million dollars ($1,000,000) to fund operating, personnel, and other startup costs of the board. Six hundred ten thousand dollars ($610,000) of this loan amount is hereby appropriated to the board to use in the 2000–01 fiscal year for the purposes described in this subdivision. In subsequent years, funds from the Occupational Therapy Fund shall be available to the board upon appropriation by the Legislature in the annual Budget Act. The loan shall be repaid to the General Fund over a period of up to five years, and the amount paid shall also include interest at the rate accruing to moneys in the Pooled Money Investment Account. The loan amount and repayment period shall be minimized to the extent possible based upon actual board financing requirements as determined by the Department of Finance.~~

~~(*l*)~~

(k) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute that is enacted before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 9. Section 3025.1 of the Business and Professions Code is amended to read:

3025.1. The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements for admission to the ~~examination~~ *examinations* for licensure.

SEC. 10. Section 3046 of the Business and Professions Code is amended to read:

3046. In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required ~~examination~~ *examinations*

for licensure, and not have met any of the grounds for denial established in Section 480. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 11. Section 3057.5 of the Business and Professions Code is amended to read:

3057.5. ~~(a)~~ Notwithstanding any other provision of this chapter, the board shall permit a person who meets all of the following requirements to take the ~~examination~~ *examinations* for a certificate of registration as an optometrist:

~~(1)~~

(a) Is over the age of 18 years.

~~(2)~~

(b) Is not subject to denial of a certificate under Section 480.

~~(3)~~

(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

~~(b) This section shall become operative on January 1, 1996.~~

SEC. 12. Section 3147 of the Business and Professions Code is amended to read:

3147. Except as otherwise provided by Section 114, an expired license may be renewed at any time within three years after its expiration ~~on~~ *by* filing ~~of~~ an application for renewal on a form prescribed by the board, ~~and payment of~~ *paying* all accrued and unpaid renewal fees, *paying any delinquency fees prescribed by the board, and submitting proof of completion of the required number of hours of continuing education for the last two years, as prescribed by the board pursuant to Section 3159.* ~~If an expired license is renewed, the licenseholder shall pay the delinquency fee prescribed by the board.~~ Renewal under this section shall be effective on the date on which ~~the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs~~ *all of those requirements are satisfied*. If so renewed, the license shall continue as provided in ~~Section~~ *Sections* 3146 and 3147.5.

SEC. 13. Section 3147.6 of the Business and Professions Code is amended to read:

3147.6. Except as otherwise provided by Section 114, a license that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists

that, if the license were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired license is not subject to denial of a license under Section 480.

(b) The holder of the expired license applies in writing for its restoration on a form prescribed by the board.

~~(c) He or she~~

(c) The holder of the expired license pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time~~ and had not previously taken the examination for a license~~.

~~(d) He or she takes and satisfactorily passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and takes and satisfactorily passes the California law and regulations examination.~~

(d) The holder of the expired license satisfactorily passes both of the following examinations:

(1) The National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board.

(2) The board's jurisprudence examination.

(e) After~~ having taken and satisfactorily passed the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, he or she~~ *taking and satisfactorily passing the examinations identified in subdivision (d), the holder of the expired license* pays a restoration fee equal to the *sum of the license* renewal fee in effect on the last regular renewal date for licenses *and any delinquency fees prescribed by the board*.

SEC. 14. Section 3147.7 of the Business and Professions Code is amended to read:

3147.7. The provisions of Section 3147.6 shall not apply to a person holding a license that has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds an active license from another state~~. In this event, the person may renew his or her license in the manner provided for under Section 3147.~~ *and meets all of the following conditions:*

(a) Is not subject to denial of a license under Section 480.

(b) Applies in writing for restoration of the license on a form prescribed by the board.

(c) Pays all accrued and unpaid renewal fees and any delinquency fees prescribed by the board.

(d) Submits proof of completion of the required number of hours of continuing education for the last two years.

(e) Takes and satisfactorily passes the board's jurisprudence examination.

SEC. 15. Section 4017 of the Business and Professions Code is amended to read:

4017. "Authorized officers of the law" means inspectors of the California State Board of Pharmacy, inspectors of the Food and Drug Branch of the State Department of *Public* Health ~~Services~~, and investigators of the department's Division of Investigation or peace officers engaged in official investigations.

SEC. 16. Section 4028 of the Business and Professions Code is amended to read:

4028. "Licensed hospital" means an institution, place, building, or agency that maintains and operates organized facilities for one or more persons for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay, and includes any institution classified under regulations issued by the State Department of *Public* Health ~~Services~~ as a general or specialized hospital, as a maternity hospital, or as a tuberculosis hospital, but does not include a sanitarium, rest home, a nursing or convalescent home, a maternity home, or an institution for treating alcoholics.

SEC. 17. Section 4037 of the Business and Professions Code is amended to read:

4037. (a) "Pharmacy" means an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail.

(b) "Pharmacy" shall not include any area in a facility licensed by the State Department of *Public* Health ~~Services~~ where floor supplies, ward supplies, operating room supplies, or emergency

room supplies of dangerous drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

SEC. 18. Section 4052.3 of the Business and Professions Code is amended to read:

4052.3. (a) Notwithstanding any other provision of law, a pharmacist may furnish emergency contraception drug therapy in accordance with either of the following:

(1) Standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.

(2) Standardized procedures or protocols developed and approved by both the board and the Medical Board of California in consultation with the American College of Obstetricians and Gynecologists, the California Pharmacist Association, and other appropriate entities. Both the board and the Medical Board of California shall have authority to ensure compliance with this clause, and both boards are specifically charged with the enforcement of this provision with respect to their respective licensees. Nothing in this clause shall be construed to expand the authority of a pharmacist to prescribe any prescription medication.

(b) Prior to performing a procedure authorized under this paragraph, a pharmacist shall complete a training program on emergency contraception that consists of at least one hour of approved continuing education on emergency contraception drug therapy.

(c) A pharmacist, pharmacist's employer, or pharmacist's agent may not directly charge a patient a separate consultation fee for emergency contraception drug therapy services initiated pursuant to this paragraph, but may charge an administrative fee not to exceed ten dollars ($10) above the retail cost of the drug. Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total retail price that a consumer would pay for emergency contraception drug therapy. As used in this subparagraph, total retail price includes providing the consumer with specific information regarding the price of the emergency contraception drugs and the price of the administrative fee charged. This limitation is not intended to interfere with other contractually

agreed-upon terms between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health care service plan or insurer. Patients who are insured or covered and receive a pharmacy benefit that covers the cost of emergency contraception shall not be required to pay an administrative fee. These patients shall be required to pay copayments pursuant to the terms and conditions of their coverage. The provisions of this subparagraph shall cease to be operative for dedicated emergency contraception drugs when these drugs are reclassified as over-the-counter products by the federal Food and Drug Administration.

(d) A pharmacist may not require a patient to provide individually identifiable medical information that is not specified in Section 1707.1 of Title 16 of the California Code of Regulations before initiating emergency contraception drug therapy pursuant to this section.

(e) For each emergency contraception drug therapy initiated pursuant to this section, the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of *Public* Health ~~Services~~, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

SEC. 19. Section 4059 of the Business and Professions Code is amended to read:

4059. (a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a laboratory under sales and purchase records that

correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied.

(c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute dangerous drugs and dangerous devices directly to dialysis patients pursuant to regulations adopted by the board. The board shall adopt any regulations as are necessary to ensure the safe distribution of these drugs and devices to dialysis patients without interruption thereof. A person who violates a regulation adopted pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties that may be imposed pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of the drugs or devices distributed to individual patients.

(d) Home dialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a dialysis center licensed by the State Department of *Public* Health ~~Services~~. The physician prescribing the dialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed the program.

(e) A pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance.

(f) A pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy

~~Examining Committee~~ *Board* of California to perform tissue penetration in accordance with Section 2620.5.

(g) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(h) A veterinary food-animal drug retailer shall dispense, furnish, transfer, or sell veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a prescription from the veterinarian for food-producing animals.

SEC. 20. Section 4072 of the Business and Professions Code is amended to read:

4072. (a) Notwithstanding any other provision of law, a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licentiate, if so authorized by administrative regulation, who is employed by or serves as a consultant for a licensed skilled nursing, intermediate care, or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices pursuant to Sections 4040 and 4070. The furnisher shall take appropriate steps to determine that the person who transmits the prescription is authorized to do so and shall record the name of the person who transmits the order. This section shall not apply to orders for Schedule II controlled substances.

(b) In enacting this section, the Legislature recognizes and affirms the role of the *State* Department of *Public* Health ~~Services~~ in regulating drug order processing requirements for licensed health care facilities as set forth in Title 22 of the California Code of Regulations as they may be amended from time to time.

SEC. 21. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) A pharmacist may take charge of and act as the pharmacist-in-charge of a pharmacy upon application by the pharmacy and approval by the board. Any pharmacist-in-charge who ceases to act as the pharmacist-in-charge of the pharmacy shall notify the board in writing within 30 days of the date of that change in status.

(b) A designated representative or a pharmacist may take charge of, and act as, the designated representative-in-charge of a wholesaler or veterinary ~~food drug-animal~~ *food-animal drug* retailer upon application by the wholesaler or veterinary ~~food drug-animal~~ *food-animal drug* retailer and approval by the board. Any designated representative-in-charge who ceases to act as the designated representative-in-charge at that entity shall notify the board in writing within 30 days of the date of that change in status.

SEC. 22. Section 4119 of the Business and Professions Code is amended to read:

4119. (a) Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of *Public* Health ~~Services~~ set forth in Title 22 of the California Code of Regulations and the requirements set forth in Section 1261.5 of the Health and Safety Code. These emergency supplies shall be approved by the facility's patient care policy committee or pharmaceutical service committee and shall be readily available to each nursing station. Section 1261.5 of the Health and Safety Code limits the number of oral dosage form or suppository form drugs in these emergency supplies to 24.

(b) Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or a dangerous device to an approved service provider within an emergency medical services system for storage in a secured emergency pharmaceutical supplies container, in accordance with the policies and procedures of the local emergency medical services agency, if all of the following are met:

(1) The dangerous drug or dangerous device is furnished exclusively for use in conjunction with services provided in an ambulance, or other approved emergency medical services service provider, that provides prehospital emergency medical services.

(2) The requested dangerous drug or dangerous device is within the licensed or certified emergency medical technician's scope of practice as established by the Emergency Medical Services Authority and set forth in Title 22 of the California Code of Regulations.

(3) The approved service provider within an emergency medical services system provides a written request that specifies the name and quantity of dangerous drugs or dangerous devices.

(4) The approved emergency medical services provider administers dangerous drugs and dangerous devices in accordance with the policies and procedures of the local emergency medical services agency.

(5) The approved emergency medical services provider documents, stores, and restocks dangerous drugs and dangerous devices in accordance with the policies and procedures of the local emergency medical services agency.

Records of each request by, and dangerous drugs or dangerous devices furnished to, an approved service provider within an emergency medical services system, shall be maintained by both the approved service provider and the dispensing pharmacy for a period of at least three years.

The furnishing of controlled substances to an approved emergency medical services provider shall be in accordance with the California Uniform Controlled Substances Act.

SEC. 23. Section 4127.1 of the Business and Professions Code is amended to read:

4127.1. (a) A pharmacy shall not compound injectable sterile drug products in this state unless the pharmacy has obtained a license from the board pursuant to this section. The license shall be renewed annually and is not transferable.

(b) A license to compound injectable sterile drug products may only be issued for a location that is licensed as a pharmacy. Furthermore, the license to compound injectable sterile drug products may only be issued to the owner of the pharmacy license at that location. A license to compound injectable sterile drug products may not be issued until the location is inspected by the board and found in compliance with this article and regulations adopted by the board.

(c) A license to compound injectable sterile drug products may not be renewed until the location has been inspected by the board and found to be in compliance with this article and regulations adopted by the board.

(d) Pharmacies operated by entities that are licensed by either the board or the State Department of *Public* Health ~~Services~~ and that have current accreditation from the Joint Commission on

Accreditation of Healthcare Organizations, or other private accreditation agencies approved by the board, are exempt from the requirement to obtain a license pursuant to this section.

(e) The reconstitution of a sterile powder shall not require a license pursuant to this section if both of the following are met:

(1) The sterile powder was obtained from a manufacturer.

(2) The drug is reconstituted for administration to patients by a health care professional licensed to administer drugs by injection pursuant to this division.

~~(f) This section shall become effective on the earlier of July 1, 2003, or the effective date of regulations adopted by the board pursuant to Section 4127.~~

SEC. 24. Section 4169 of the Business and Professions Code is amended to read:

4169. (a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

(b) Notwithstanding any other provision of law, a violation of this section or of subdivision (c) or (d) of Section 4163 may subject the person or entity that has committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence, pursuant to a citation issued by the board.

(c) Amounts due from any person under this section shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) This section shall not apply to a pharmaceutical manufacturer licensed by the Food and Drug Administration or by the State Department of *Public* Health ~~Services~~.

~~(e) This section shall become operative on January 1, 2008.~~

SEC. 25. Section 4181 of the Business and Professions Code is amended to read:

4181. (a) Prior to the issuance of a clinic license authorized under Section 4180, the clinic shall comply with all applicable laws and regulations of the State Department of *Public* Health ~~Services~~ relating to the drug distribution service to ensure that inventories, security procedures, training, protocol development, recordkeeping, packaging, labeling, dispensing, and patient consultation occur in a manner that is consistent with the promotion and protection of the health and safety of the public. The policies and procedures to implement the laws and regulations shall be developed and approved by the consulting pharmacist, the professional director, and the clinic administrator.

(b) The dispensing of drugs in a clinic shall be performed only by a physician, a pharmacist, or other person lawfully authorized to dispense drugs, and only in compliance with all applicable laws and regulations.

SEC. 26. Section 4191 of the Business and Professions Code is amended to read:

4191. (a) Prior to the issuance of a clinic license authorized under this article, the clinic shall comply with all applicable laws and regulations of the State Department of *Public* Health ~~Services~~ and the board relating to drug distribution to ensure that inventories, security procedures, training, protocol development, recordkeeping, packaging, labeling, dispensing, and patient consultation are carried out in a manner that is consistent with the promotion and protection of the health and safety of the public. The policies and procedures to implement the laws and regulations shall be developed and approved by the consulting pharmacist, the professional director, and the clinic administrator.

(b) The dispensing of drugs in a clinic that has received a license under this article shall be performed only by a physician, a pharmacist, or other person lawfully authorized to dispense drugs, and only in compliance with all applicable laws and regulations.

SEC. 27. Section 4196 of the Business and Professions Code is amended to read:

4196. (a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, a designated representative, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or designated representative shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

(d) Every veterinary food-animal drug retailer shall be supervised or managed by a designated representative-in-charge. The designated representative-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. As part of its initial application for a license, and for each renewal, each veterinary food-animal drug retailer shall, on a form designed by the board, provide identifying information and the California license number for a designated representative or pharmacist proposed to serve as the designated representative-in-charge. The proposed designated representative-in-charge shall be subject to approval by the board. The board shall not issue or renew a veterinary food-animal drug retailer license without identification of an approved designated representative-in-charge for the veterinary food-animal drug retailer.

(e) Every veterinary food-animal drug retailer shall notify the board in writing, on a form designed by the board, within 30 days of the date when a designated representative-in-charge who ceases to act as the designated ~~representative~~ *representative-in-charge, and shall on the same form propose another designated representative* or pharmacist to take over as the designated representative-in-charge. The proposed replacement designated representative-in-charge shall be subject to approval by the board. If disapproved, the veterinary food-animal drug retailer shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a designated representative-in-charge is approved by the board.

(f) For purposes of this section, designated representative-in-charge means a person granted a designated representative license pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

SEC. 28. Section 4200.1 is added to the Business and Professions Code, to read:

4200.1. (a) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination four times, and may take the California Practice Standards and Jurisprudence Examination for Pharmacists four times.

(b) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists four additional times each if he or she successfully completes, at a minimum, 16 additional semester units of education in pharmacy as approved by the board.

(c) The applicant shall comply with the requirements of Section 4200 for each application for reexamination made pursuant to subdivision (b).

(d) An applicant may use the same coursework to satisfy the additional educational requirement for each examination under subdivision (b), if the coursework was completed within 12 months of the date of his or her application for reexamination.

(e) For purposes of this section, the board shall treat each failing score on the pharmacist licensure examination administered by the board prior to January 1, 2004, as a failing score on both the North American Pharmacist Licensure Examination and the

California Practice Standards and Jurisprudence Examination for Pharmacists.

SEC. 29. Section 4425 of the Business and Professions Code is amended to read:

4425. (a) As a condition for the participation of a pharmacy in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health *Care* Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

(b) The State Department of Health *Care* Services shall provide a mechanism to calculate and transmit the price to the pharmacy, but shall not apply the Medi-Cal drug utilization review process for purposes of this section.

(c) The State Department of Health *Care* Services shall monitor pharmacy participation with the requirements of subdivision (a).

(d) The State Department of Health *Care* Services shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in the program described in subdivision (a), including, but not limited to, the following:

(1) Including on its Internet Web site the Medi-Cal reimbursement rate for, at minimum, 200 of the most commonly prescribed medicines and updating this information monthly.

(2) Providing a sign to participating pharmacies that the pharmacies shall prominently display at the point of service and at the point of sale, reminding the Medicare beneficiaries to ask that the charge for their prescription be the same amount as the Medi-Cal reimbursement rate and providing the department's telephone number, e-mail address, and Internet Web site address to access information about the program.

(e) If prescription drugs are added to the scope of benefits available under the federal Medicare program, the Senate Office of Research shall report that fact to the appropriate committees of the Legislature. It is the intent of the Legislature to evaluate the

need to continue the implementation of this article under those circumstances.

(f) This section shall not apply to a prescription that is covered by insurance.

SEC. 30. Section 4426 of the Business and Professions Code is amended to read:

4426. The State Department of Health *Care* Services shall conduct a study of the adequacy of Medi-Cal pharmacy reimbursement rates including the cost of providing prescription drugs and services.

SEC. 31. Section 4980.07 of the Business and Professions Code is repealed.

~~4980.07. The board shall administer the provisions of this chapter.~~

SEC. 32. Section 4980.40.5 of the Business and Professions Code is amended to read:

4980.40.5. (a) A doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling, or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007, shall be considered by the board to meet the requirements necessary for licensure as a marriage and family therapist and for registration as a marriage and family therapist intern provided that the degree is conferred on or before July 1, 2010.

(b) As an alternative to meeting the qualifications specified in subdivision (a) of Section 4980.40, the board shall accept as equivalent degrees those doctor's or master's degrees that otherwise meet the requirements of this chapter and are conferred by educational institutions accredited by any of the following associations:

(1) Northwest ~~Association of Secondary and Higher Schools~~ *Commission on Colleges and Universities*.

(2) Middle States Association of Colleges and Secondary Schools.

(3) New England Association of Schools and Colleges.

(4) North Central Association of Colleges and Secondary Schools.

(5) Southern Association of Colleges and Schools.

~~(c) If legislation enacted in the 2007–08 Regular Session reestablishes the Private Postsecondary and Vocational Education Reform Act of 1989 (Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of Title 3 of the Education Code) or a successor act and the Bureau for Private Postsecondary and Vocational Education or a successor agency, this section shall become inoperative on the date that legislation becomes operative. The board shall post notice on its Internet Web site if the conditions described in this subdivision have been satisfied.~~

SEC. 33. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (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 completing the master's or doctor's degree.

(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 examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,250 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:

(i) 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. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(C) Client centered advocacy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For ~~the first~~ *up to* 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 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 is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(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) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(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.

SEC. 34. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. (a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, 2013, inclusive.

(b) The board may issue a license to a person who, at the time of application, ~~has held for at least two years~~ *holds* a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if ~~the~~ *all of the following requirements are satisfied:*

(1) The person has held that license for at least two years immediately preceding the date of application.

(2) The education and supervised experience requirements are substantially the equivalent of this ~~chapter, the~~ *chapter.*

(3) The person complies with Section 4980.76, if ~~applicable, and the~~ *applicable.*

(4) The person successfully completes the board administered licensing examinations as specified by subdivision (d) of Section 4980.40 and pays the fees specified. ~~Issuance of the license is further conditioned upon the person's completion~~

(5) The person completes all of the following coursework or training:

~~(1) (A) An~~

(A) (i) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, requirements of the Health Insurance Portability and Accountability Act of 1996, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.

~~(B)~~

(ii) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three quarter unit course in California law and

professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.

~~(2)~~

(B) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

~~(3)~~

(C) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

~~(4)~~

(D) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

~~(5) (A)~~

(E) (i) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

~~(B)~~

(ii) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

~~(6)~~

(F) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

~~(7)~~

(G) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

~~(8)~~

(H) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 35. Section 4982.2 of the Business and Professions Code is repealed.

~~4982.2. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, or licensed educational psychologist whose license or registration has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board, or any portion of it, is stayed by the board itself, or by the superior court, from the date the disciplinary action is actually implemented in its entirety:~~

~~(1) At least three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years.~~

~~(2) At least two years for early termination of any probation period of three years, or more.~~

~~(3) At least one year for modification of a condition, or reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.~~

~~(b) The petition may be heard by the board itself, or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code. The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition. The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for~~

~~which the petitioner was disciplined, the petitioner's activities during the time his or her license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.~~

~~(c) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate.~~

~~(d) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4982.15. Where a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board.~~

~~(e) The board may take action with respect to the proposed decision and petition as it deems appropriate.~~

~~(f) The petition shall be on a form provided by the board, and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order.~~

~~(g) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.~~

~~(h) The petition shall be verified by the petitioner, who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.~~

~~(i) The board may delegate to its executive officer authority to order investigation of the contents of the petition, but in no case, may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.~~

~~(j) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.~~

~~(k) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.~~

~~(*l*) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.~~

SEC. 36. Section 4982.25 of the Business and Professions Code is amended to read:

4982.25. The board may deny ~~any~~ *an* application, or may suspend or revoke ~~any~~ *a* license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage and family therapy, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker, *professional clinical counselor,* or educational psychologist shall also constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

SEC. 37. Section 4984.6 of the Business and Professions Code is repealed.

~~4984.6. (a) The Behavioral Sciences Fund shall be used for the purposes of carrying out and enforcing the provisions of this chapter.~~

~~(b) The board shall keep any records as will reasonably ensure that funds expended in the administration of each licensing or registration category shall bear a reasonable relation to the revenue derived from each category, and shall so notify the department no later than May 31 of each year.~~

~~(c) Surpluses, if any, may be used in such a way so as to bear a reasonable relation to the revenue derived from each category, and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.~~

SEC. 38. Section 4984.8 of the Business and Professions Code is amended to read:

4984.8. (a) A licensee may apply to the board to request that his or her license be placed on inactive status.

(b) A licensee on inactive status shall be subject to this chapter and shall not engage in the practice of marriage and family therapy in this state.

(c) A licensee who holds an inactive license shall pay a biennial fee in the amount of one-half of the standard renewal fee and shall be exempt from continuing education requirements.

(d) A licensee on inactive status who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice marriage and family therapy to active status.

(1) A licensee requesting to restore his or her license to active status between renewal cycles shall pay the remaining one-half of his or her renewal fee.

(2) A licensee requesting to restore his or her license to active status, whose license will expire less than one year from the date of the request, shall complete 18 hours of continuing education as specified in Section 4980.54.

(3) A licensee requesting to restore his or her license to active status, whose license will expire more than one year ~~form~~ *from* the date of the request, shall complete 36 hours of continuing education as specified in Section 4980.54.

SEC. 39. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of

unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing educational psychology.

(d) Failure to comply with the consent provisions in Section 2290.5.

(e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker, *professional clinical counselor,* or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(*l*) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the

professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision

occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

(aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use his or her license.

(ab) Permitting a person under his or her supervision or control to perform, or permitting that person to hold himself or herself out as competent to perform, professional services beyond the level of education, training, or experience of that person.

SEC. 40. Section 4990.02 of the Business and Professions Code is amended to read:

4990.02. "Board," as used in this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), ~~and~~ Chapter 14 (commencing with Section 4991), *and Chapter 16 (commencing with Section 4999.10)* means the Board of Behavioral Sciences.

SEC. 41. Section 4990.12 of the Business and Professions Code is amended to read:

4990.12. The duty of administering and enforcing this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), ~~and~~ Chapter 14 (commencing with Section 4991), *and Chapter 16 (commencing with Section 4999.10)* is vested in the board and the executive officer subject to, and under the direction of, the board. In the performance of this duty, the board and the executive officer have all the powers and are subject to all the responsibilities vested in, and imposed upon, the head of a department by Chapter 2 (commencing with

Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 42. Section 4990.18 of the Business and Professions Code is amended to read:

4990.18. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:

(a) The licensure of marriage and family therapists, clinical social workers, *professional clinical counselors,* and educational psychologists.

(b) The development and administration of licensure examinations and examination procedures consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(d) Consumer education.

SEC. 43. Section 4990.22 of the Business and Professions Code is amended to read:

4990.22. (a) The Behavioral Sciences Fund shall be used for the purposes of carrying out and enforcing the provisions of this chapter *and the chapters listed in Section 4990.12. All moneys in the fund shall be expended by the board for the purposes of the programs under its jurisdiction*.

(b) The board shall keep records that reasonably ensure that funds expended in the administration of each licensure or registration category shall bear a reasonable relation to the revenue derived from each category and report to the department no later than May 31 of each year on those expenditures.

(c) Surpluses, if any, may be used by the board in a manner that bears a reasonable relation to the revenue derived from each licensure or registration category and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.

SEC. 44. Section 4990.30 of the Business and Professions Code is amended to read:

4990.30. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, *licensed professional clinical*

counselor, professional clinical counselor intern, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.

(2) Two years for early termination of any probation period of three years or more.

(3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.

(d) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.

(f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license or registration was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.

(j) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(*l*) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the

Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 45. Section 4990.38 of the Business and Professions Code is amended to read:

4990.38. The board may deny an application or may suspend or revoke a license or registration issued under the chapters it administers and enforces for any disciplinary action imposed by another state or territory or possession of the United States, or by a governmental agency on a license, certificate or registration to practice marriage and family therapy, clinical social work, educational psychology, *professional clinical counseling,* or any other healing art. The disciplinary action, which may include denial of licensure or revocation or suspension of the license or imposition of restrictions on it, constitutes unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

SEC. 46. Section 4992.36 of the Business and Professions Code is amended to read:

4992.36. The board may deny ~~any~~ *an* application, or may suspend or revoke ~~any~~ *a* license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice clinical social work or any other healing art shall constitute grounds for disciplinary action for unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice marriage and family therapy, *professional clinical counseling,* or educational psychology against a licensee or registrant shall also constitute

grounds for disciplinary action for unprofessional conduct under this chapter.

SEC. 47. Article 3 (commencing with Section 4994) of Chapter 14 of Division 2 of the Business and Professions Code is repealed.

SEC. 48. Section 4996.17 of the Business and Professions Code is amended to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public

agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, ~~has held~~ *holds* a valid, active clinical social work license ~~for a minimum of four years,~~ issued by a board of clinical social work examiners or a corresponding authority of any state, if *the person has held that license for at least four years immediately preceding the date of application,* the person passes the board administered licensing examinations as specified in Section 4996.1, and *the person* pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

SEC. 49. Section 4996.23 of the Business and Professions Code is amended to read:

4996.23. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall

have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. For purposes of this subdivision, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours of face-to-face contact in a group conducted within the same week as the hours claimed.

(3) An associate shall receive an average of at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(4) Group supervision shall be provided in a group of not more than eight supervisees and shall be provided in segments lasting no less than one continuous hour.

~~(5) An associate clinical social worker working in a governmental entity, a school, college, or university, or an institution that is both a nonprofit and charitable institution may be credited with up to 30 hours of direct supervisor contact, via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is maintained.~~

~~(6)~~

(5) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker.

~~(7)~~

(6) Notwithstanding paragraph (2), an associate clinical social worker working for a governmental entity, school, college, or university, or an institution that is both a nonprofit and charitable institution, may obtain the required weekly direct supervisor contact via live two-way videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is preserved.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate'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 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(*l*) An associate shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(3) Lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

SEC. 50. Section 4999.46 of the Business and Professions Code is amended to read:

4999.46. (a) To qualify for licensure, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a clinical mental health counseling setting using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns 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 professional clinical counseling. ~~At no time shall a supervisor supervise more than two interns.~~

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

~~(f)~~

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

~~(2) An intern shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting.~~

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed 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 in segments lasting no less than one continuous hour.

(4) ~~An~~ *Notwithstanding paragraph (3), an* intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain ~~up to 30 hours of~~ the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

SEC. 51. Section 4999.57 is added to the Business and Professions Code, to read:

4999.57. (a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, 2013, inclusive, who does not hold a license described in subdivision (a) of Section 4999.58.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of

competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

SEC. 52. Section 4999.58 of the Business and Professions Code is amended to read:

4999.58. (a) This section applies to ~~persons who apply~~ *a person who applies* for examination eligibility between January 1, 2011, and December 31, 2013, ~~inclusive.~~ *inclusive, who meets both of the following requirements:*

(1) At the time of application, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States.

(2) Has held the license described in paragraph (1) for at least two years immediately preceding the date of application.

(b) The board may issue a license to a person ~~who, at the time of application, has held for at least two years, a valid license as a professional clinical counselor, or other counseling license that~~

~~allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States, if the~~ *described in subdivision (a) if all of the following requirements are satisfied:*

(1) The education and supervised experience requirements of the other jurisdiction are substantially the equivalent of this chapter, as described in subdivision (e) and in Section 4999.46.

(2) The person complies with subdivision (b) of Section 4999.40, if ~~applicable, the~~ *applicable.*

(3) The person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section ~~4999.50, and the~~ *4999.50.*

(4) The person pays the required fees.

(c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter ~~and if the applicant has gained a minimum of 250 hours of supervised clinical experience in direct counseling within California while registered as an intern with the board~~. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.

(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

SEC. 53. Section 4999.59 is added to the Business and Professions Code, to read:

4999.59. (a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, 2013, inclusive, who meets both of the following requirements:

(1) At the time of application, holds a valid license described in paragraph (1) of subdivision (a) of Section 4999.58.

(2) Has held the license described in paragraph (1) for less than two years immediately preceding the date of application.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure in that state as a professional clinical counselor.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the

applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

SEC. 54. Section 4999.90 of the Business and Professions Code is amended to read:

4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one

who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any clinical counselor trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, *fraudulent*, misleading, or deceptive, *as defined in Section 651*.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

`(r) Any conduct in the supervision of ~~any~~ *a registered* intern, *associate clinical social worker*, or clinical counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a clinical counselor trainee or intern under one's supervision or control to perform, or permitting the clinical counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the clinical counselor trainee's or intern's level of education, training, or experience.

(u) The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker, educational psychologist, or marriage and family therapist.

O

Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** April 1, 2010

From: Kim Madsen
Executive Officer **Telephone:** (916) 574-7841

Subject: **Budget Update**

2009/2010 Fiscal Year

Attached are the current expenditure reports for the 2009/2010 fiscal year. Each report reflects figures as of March 22, 2010. The Board's expenditure report projects a year-end balance of $226,000 and still reflects the commitment to revert $219,000 from our Operating Expense and Equipment (OE&E) budget line. The Mental Health Service Act (MHSA) budget reflects an approximate balance of $3000. The Board's fund condition reflects 6.4 months in reserve.

On March 4, 2010, the Department of Consumer Affairs (DCA) met with the Executive Officers and Bureau Chiefs to discuss Governor Schwarzenegger's Job Creation Program. Since much of the licensing activity within DCA allows individuals issued a license or registration to enter the workforce, DCA is well suited to assist in this program. DCA directed Boards and Bureaus that have a licensing backlog to utilize the necessary resources to reduce the backlog by fifty percent. Board and Bureaus have until June 30, 2010 to meet this goal.

Boards and Bureaus are permitted to allow staff to work extra hours during the week, furlough days, and weekends as well as hire temporary help. Further, Boards and Bureaus are authorized to utilize the OE&E savings ($219,000) to compensate staff working extra hours or weekends. Staff working on Furlough Fridays may only receive time for compensation.

At the time of this direction, the Board identified a backlog in processing Intern Marriage and Family Therapist registrations (590 applications). The Board's goal is 290 applications. Accordingly, the Board staff began working extra hours to reduce the application backlog. To date, 77 applications have been processed. Compensating staff for the time worked will not exceed our $219,000 OE&E savings.

2010/2011

The Board's 2010/2011 budget will increase from $6,500,001 to $8,596,000. The increase is a result of the addition of a new licensing program, Licensed Professional Clinical Counselors, and additional enforcement staff. The Board's MHSA funding will decrease to $91,000. This figure reflects the loss of the $200,000 one time funding from the Department of Mental Health (DMH) as well as reductions to DMH's budget.

The budget negotiations for fiscal year 2010/2011 are expected to be difficult and prolonged. It is highly doubtful that a budget will be approved by July 1, 2010. Without an approved budget, the Board is prohibited from spending any of its $8,596,000 budget authority. This includes purchasing basic office supplies, reimbursing for travel, as well as paying for any services. The Board is cognizant of this situation and is preparing so that core functions are not adversely affected by a lengthy budget negotiation process.

BBS EXPENDITURE REPORT FY 2009/10

OBJECT DESCRIPTION	08/09 ACTUAL EXPENDITURES	FY 2009/10 BUDGET ALLOTMENT	CURRENT AS OF 2/28/2010	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	1,433,012	1,579,636	0	1,540,000	39,636
Salary & Wages (Stat Exempt)	90,599	79,051	0	78,000	1,051
Temp Help (907)(Seasonals)	36,805	105	0	15,000	(14,895)
Temp Help (915)(Proctors)	0	444	0	0	444
Board Memb (Per Diem)	9,500	12,900	0	10,000	2,900
Overtime	70,115	7,533	0	1,000	6,533
Totals Staff Benefits	667,989	697,193	0	697,193	0
Salary Savings		(79,547)			(79,547)
TOTALS, PERSONAL SERVICES	2,308,020	2,297,315	0	2,341,193	(43,878)
OPERATING EXP & EQUIP					
Fingerprint Reports	5,159	36,954	0	24,000	12,954
General Expense	66,706	51,263	0	60,000	(8,737)
Printing	**76,604**	**107,630**	**0**	**50,000**	57,630
Communication	12,579	37,019	0	10,500	26,519
Postage	**72,822**	**118,645**	**0**	**70,000**	48,645
Travel, In State	**104,351**	**98,665**	**0**	**98,665**	0
Travel, Out-of-State	0	3,600	0	0	3,600
Training	**13,448**	**22,202**	**0**	**10,000**	12,202
Facilities Operations	166,926	219,547	0	198,500	21,047
C&P Services - Interdept.	0	14,939	0	0	14,939
C&P Services-External Contracts	**59,349**	**10,978**	**0**	**45,000**	(34,022)
DEPARTMENTAL PRORATA					
DP Billing	404,464	351,616	0	351,616	0
Indirect Distribution Costs	347,651	320,114	0	320,114	0
Public Affairs	17,424	27,988	0	27,988	0
D of I Prorata	14,015	12,859	0	12,859	0
Consumer Relations Division	17,090	15,545	0	15,545	0
OPP Support Services	0	490	0	490	0
Interagency Services (OER IACs)	237,692	245,065	0	245,065	0
Consolidated Data Services	2,295	24,382	0	24,382	0
Data Proc (Maint,Supplies,Cont)	8,378	7,357	0	7,357	0
Statewide Pro Rata	211,636	177,947	0	177,947	0
EXAM EXPENSES					
Exam Site Rental	63,193	99,630	0	99,630	0
Exam Contract (PSI) (404.00)	337,052	345,412	0	350,000	(4,588)
Expert Examiners (404.03)	279,555	295,260	102,531	295,260	0
ENFORCEMENT					
Attorney General	508,831	888,992	0	750,000	138,992
Office of Admin. Hearing	52,569	201,228	0	100,000	101,228
Court Reporters	3,224	0	0	3,500	(3,500)
Evidence/Witness Fees	30,368	71,334	0	60,000	11,334
Division of Investigation	289,156	366,725	0	300,000	66,725
Minor Equipment (226)	**34,933**	**48,300**	**0**	**50,000**	(1,700)

Equipment, Replacement (452)		**7,000**	**0**	**5,000**	2,000
Equipment, Additional (472)		**24,000**	**0**	**0**	24,000
OE&E Reduction Plan				**219,000**	(219,000)
TOTAL, OE&E	3,438,117	4,252,686	102,531	3,982,418	270,268
TOTAL EXPENDITURES	**5,746,137**	**$6,550,001**	**$102,531**	**$6,323,611**	226,390
Fingerprints	(4,392)	(24,000)	21,069		
Other Reimbursements	(16,044)	(26,000)	8,570		
Unscheduled Reimbursements	(35,307)	0	44,125		
Total Reimbursements	(55,743)	(50,000)	73,764		
NET APPROPRIATION	**5,690,394**	**$6,500,001**	**$102,531**	**$6,323,611**	**$226,390**

BLUE PRINT INDICATES THE ITEMS ARE SOMEWHAT DISCRETIONARY.

3/22/2010

BOARD OF BEHAVIORAL SCIENCES
Analysis of Fund Condition
(Dollars in Thousands)

NOTE: $6.0 Million General Fund Outstanding (2002/2003)
NOTE: $3.0 Million General Fund Outstanding (2008/2009)

	Actual 2008-09	Current Year 2009-10	Governor's BY 2010-11	2011-12	2012-13	2013-14	2014-15
BEGINNING BALANCE	$ 7,048	$ 4,493	$ 4,568	$ 4,711	$ 3,809	$ 3,233	$ 2,610
Prior Year Adjustment	$ 110	$ -	$ -	$ -	$ -		
TOTAL ADJUSTED RESERVES	$ 7,158	$ 4,493	$ 4,568	$ 4,711	$ 3,809	$ 3,233	$ 2,610
REVENUES AND TRANSFERS							
Revenues:							
Fees*	$ 5,829	$ 6,535	$ 8,660	$ 7,831	$ 8,404	$ 8,595	8845
Interest	$ 128	$ 45	$ 43	$ 38	$ 34	$ 29	26
Totals, Revenues	$ 5,957	$ 6,580	$ 8,703	$ 7,869	$ 8,438	$ 8,624	$ 8,871
Transfers from Other Funds							
F00683 Teale Data Center	$ -	$ -	$ -	$ -	$ -	$ -	
Tranfers to Other Funds							
General Fund Loan	(3000)						
TOTAL REVENUES AND TRANSFERS	$ 2,957	$ 6,580	$ 8,703	$ 7,869	$ 8,438	$ 8,624	$ 8,871
TOTAL RESOURCES	$ 10,115	$ 11,073	$ 13,271	$ 12,580	$ 12,247	$ 11,857	$ 11,481
EXPENDITURES							
Disbursements:							
State Controller (State Operations)	$ 2	$ 4	$ 10	$ -	$ -	$ -	
Financial Information System for California			$ 4				
Program Expenditures (State Operations)	$ 5,620	$ 6,501	$ 8,546	$ 8,717	$ 8,891	$ 9,069	$ 9,251
Projected Expenses (BCPs) - Breeze			$ -	$ 54	$ 123	$ 177	146
TOTAL	$ 5,622	$ 6,505	$ 8,560	$ 8,771	$ 9,014	$ 9,246	$ 9,397
FUND BALANCE							
Reserve for economic uncertainties	$ 4,493	$ 4,568	$ 4,711	$ 3,809	$ 3,233	$ 2,610	$ 2,085
Months in Reserve	**8.3**	**6.4**	**6.4**	**4.9**	**4.2**	**3.3**	

NOTES:

*ASSUMES FLAT LINE PREDICTED VALUES BASED ON PREDICTIVE MODEL
ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2008-09 AND ONGOING.
ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.
ASSUMES INTEREST RATE AT 2%.

MHSA EXPENDITURE REPORT FY 2009/10

OBJECT DESCRIPTION	2008/09 ACTUAL EXPENDITURES	FY 2009/10 BUDGET ALLOTMENT	CURRENT AS OF 2/28/2010	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	61,104	64,000	0	63,000	1,000
Totals Staff Benefits	33,620	26,511	0	26,000	511
Salary Savings		**(3,083)**			(3,083)
TOTALS, PERSONAL SERVICES	**94,724**	**87,428**	0	89,000	(1,572)
OPERATING EXP & EQUIP					
General Expense	2,655	5,656	0	1,500	4,156
Printing	817	800	0	0	800
Communication	871	1,000	0	900	100
Postage	5,000	800	0	0	800
Travel, In State	3,580	200	0	4,000	(3,800)
Training	10,479	1,000	0	6,180	(5,180)
Facilities Operations	2,328	2,000	0	2,400	(400)
Minor Equipment (226)	433	0	0	0	0
C&P Svcs - External (402)	118,197	200,000	0	190,000	10,000
Statewide Prorata (438)		7,116	0	9,000	(1,884)
TOTAL, OE&E	**144,360**	**218,572**	**0**	**213,980**	**4,592**
TOTAL EXPENDITURES	**239,084**	**$306,000**	**$0**	**$302,980**	**$3,020**

Index - 3085

PCA - 18385

DGS Code - 057472

3/22/2010