



Board of  
Behavioral  
Sciences

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## MEETING NOTICE

### Policy and Advocacy Committee April 19, 2012

Department of Consumer Affairs  
El Dorado Room  
1625 North Market Blvd.  
2<sup>nd</sup> Floor, Room N220  
Sacramento, CA 95834

**9:30 a.m.**

- I. Introductions
- II. Review and Approval of the January 26, 2012 Policy and Advocacy Committee Meeting Minutes
- III. Discussion and Possible Action Regarding Pending Legislation Including:
  - a. Assembly Bill 40 (Yamada)
  - b. Assembly Bill 154 (Beall)
  - c. Assembly Bill 171 (Beall)
  - d. Assembly Bill 367 (Smyth)
  - e. Assembly Bill 1588 (Atkins)
  - f. Assembly Bill 1764(Hernandez, R.)
  - g. Assembly Bill 1785 (Lowenthal, B.)
  - h. Assembly Bill 1864 (Wagner)
  - i. Assembly Bill 1904 (Block)
  - j. Assembly Bill 1932 (Cook)
  - k. Assembly Bill 2570 (Hill)
  - l. Senate Bill 1134 (Yee)
  - m. Senate Bill 1183 (Lieu)
  - n. Senate Bill 1238 (Price)
- IV. Discussion and Possible Action Regarding Other Legislation Affecting the Board
- V. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines



Governor  
Edmund G. Brown Jr.  
State of California  
State and Consumer  
Services Agency  
Department of  
Consumer Affairs

- VI. Discussion and Possible Action Regarding Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts
- VII. Discussion and Possible Action Regarding Research Related to the 90 Day Rule and Enforcement Actions
- VIII. Legislative Update
- IX. Rulemaking Update
- X. Public Comment for Items Not on the Agenda
- XI. Suggestions for Future Agenda Items

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

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

NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

## Policy and Advocacy Committee Minutes - **DRAFT** January 25, 2012

Department of Consumer Affairs  
El Dorado Room  
1625 North Market Blvd, #N-220  
Sacramento, CA 95834

### **Members Present**

Renee Lonner, Chair, LCSW Member  
Dr. Judy Johnson, LEP Member  
Dr. Christine Wietlisbach, Public Member  
Christina Wong, LCSW Member

### **Staff Present**

Kim Madsen, Executive Officer  
Tracy Rhine, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Christina Kitamura, Administrative Analyst

### **Members Absent**

None

### **Guest List**

On file

## **I. Introductions**

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:36 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and guests introduced themselves.

## **II. Review and Approval of the October 13, 2011 Policy and Advocacy Committee Meeting Minutes**

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested clarification to the statement on page two "SB 704 will not take place until January 2013." To clarify, the statement was changed to "The changes to the exam process as a result of SB 704 will not take place until January 2013."

On page six, "HIPPA" should be corrected to "HIPAA." Also on page six, "about that this looks like across the country" should be corrected to "about what this looks like across the country."

Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA), referred to page seven. "Gonzalez" should be corrected to "Gonzales."

***Dr. Christine Wietlisbach moved to approve the October 13, 2011 Policy and Advocacy Committee meeting minutes as amended. Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) to pass the motion.***

**III. Legislative Clean-Up to Business and Professions Code Sections 4980.44, 4980.48, 4980.78, 4980.80, 4999.62 and 4999.76**

Rosanne Helms presented additional items for the 2012 Omnibus Bill.

Staff has identified additional amendments to the Business and Professions Code (BPC) which are needed in order to add clarity and consistency to the Board's licensing laws. Draft language for the 2012 Omnibus Bill has already been approved by the Board and submitted to the Legislature. The additional changes, if approved, would be amended through the Omnibus Bill.

1. Amend BPC Sections 4980.44 and 4980.48 – Addition of Licensed Professional Clinical Counselors (LPCCs) to List of Supervisors

SB 363 amended the law to allow LPCCs to supervise Marriage and Family Therapist (MFT) interns if they meet specified additional training and education requirements. BPC Sections 4980.44 and 4980.48 list the allowable supervisors of MFT interns and trainees, but LPCCs are not included in this list.

The recommendation is to amend Sections 4980.44 and 4980.48 to include LPCCs in the list of supervisors of MFT interns and trainees.

2. Amend BPC Sections 4980.78, 4980.80, and 4999.62 – Reference to Health Insurance Portability and Accountability Act

Certain sections of the Board's licensing laws require coursework in California law and ethics that covers, among other topics, the Health Insurance Portability and Accountability Act (HIPAA).

During previous discussions of the 2012 Omnibus Bill at the October 2011 Policy and Advocacy Committee Meeting and the November 2011 Board Meeting, it was requested that references to HIPAA in Sections 4999.32, 4999.57, 4999.58 and 4999.59 be removed and replaced with the term "state and federal laws related to confidentiality of patient health information." The reasoning for this is that HIPAA is a federal law, which in the future could be repealed or replaced with a different title, therefore making the reference obsolete.

Amendments deleting the references to HIPAA in Sections 4999.57, 4999.58, and 4999.59 and instead including the new reference term in Section 4999.32 have already been approved by the Board. However, there are three other code sections in LPCC licensing law that also reference HIPAA.

The recommendation is to amend BPC Sections 4980.78, 4980.80, and 4999.62 to replace the references to HIPAA with the term "state and federal laws related to confidentiality of patient health information."

This amendment would be in addition to the amendments to 4980.78 and 4980.80 that have already been approved by the Board and submitted to the Legislature for inclusion in the 2012 Omnibus Bill.

3. Amend BPC Section 4999.76 – Continuing Education for Grandparented LPCC Licensees

SB 274 repealed the requirement that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as a Licensed Marriage and Family Therapist (LMFT) or a Licensed Clinical Social Worker (LCSW) renew the license annually. However, Section 4999.76 still contains an annual continuing education requirement for these licensees, despite the annual renewal requirement being repealed.

The recommendation is to delete the requirement in Section 4999.76 that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or LCSW must complete 18 hours of annual continuing education. If this provision is deleted, these licensees would be required to show completion 36 hours of continuing education every two years upon license renewal, as is required of all other LPCC licensees.

***Dr. Judy Johnson moved to direct staff to make any non-substantive changes to the proposed language and submit to the Board for approval as Board-sponsored legislation. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.***

#### **IV. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of Regulations Title 16, Section 1833 Related to Telehealth**

Ms. Helms presented possible regulatory action regarding telehealth experience for LMFT applicants.

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies.

Current law limits the number of experience hours that an LMFT applicant may gain performing services via telehealth to no more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth.

This statute is in conflict with California Code of Regulation (CCR) Section 1833, pertaining to experience needed to qualify for LMFT licensure. CCR Section 1833(a)(5) allows no more than 250 hours of experience counseling or crisis counseling on the telephone to count toward the experience required for licensure.

Staff believes that this regulation is outdated, as it only limits counseling via telephone and does not discuss counseling provided over the internet.

Hours of experience that an applicant may gain via telehealth appears to be adequately addressed in BPC Section 4980.43. Therefore, staff believes the conflicting requirement in regulation is no longer needed and proposes striking the regulation.

Ms. Lonner asked if staff feels there are issues with this. Tracy Rhine responded that this is quite technical, and staff does not have any issues with this. The regulation is outdated and obsolete, and the easiest way to address it is to strike the outdated regulation. She added that the definition of telehealth includes real-time interaction between a patient and a health care provider located at a distant site, which includes Skype.

Mr. Caldwell stated that AAMFT-CA would support this change; it seems unnecessarily complex to say that there is a limit of 375 hours on telemedicine but only 250 of those hours can be crisis counseling on the telephone. He agreed that the best way to solve this would be to strike that section. He questioned whether Section 1833(a)(4) should be stricken as

well because it is already in legislation. Ms. Helms responded that in previous discussion regarding this section, it was noted that this change would be included in the SB 363 rulemaking package if the Board approves that proposal. As for Section 1833(a)(4), Ms. Helms stated that she would have to look into what was decided regarding that particular section.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), expressed that she would like to make the same changes to the LPCC law in order to keep it consistent with the other licensing laws since it is a technical issue. Ms. Helms responded that it would be a legislative change; it could not run in a regulation package. This would have to be addressed in the next legislative session.

Ms. Rhine added that the reason this regulation change is coming about is due to recent legislative changes. The LMFT code has changed; therefore, it is necessary to change this legislation. The conforming change has not happened with the LPCC licensing law.

Ms. Porter stated that technical standards such as this are confusing in the field. She supports keeping the technical standards the same across the professions. Ms. Rhine stated that is something that can be discussed in a future meeting.

Dr. Johnson suggested adding this matter (consistent standards across the professions) for future agenda items to discuss.

Jill Epstein, California Association of Marriage and Family Therapists, expressed that CAMFT supports the proposed change.

***Renee Lonner moved to direct staff to make any non-substantive changes and recommend to the Board submission of the approved amendment in a rulemaking package. Christina Wong seconded. The Committee voted unanimously (4-0) to pass the motion.***

**V. Discussion and Possible Action to Amend Business and Professions Code Sections 4980.397 and 4992.05 Related to Accepting Passing Scores from National Examination Vendors**

Ms. Helms presented background regarding acceptance of valid passing examination scores.

SB 704 restructures the examination process for the Board's LMFT, LCSW, and LPCC licensees beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

LPCC law gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Examination (NCMHCE). Based on an in-depth audit that found the NCMHCE met California examination standards, the Board chose to use the NCMHCE. The law now requires that a passing score on the NCMHCE must be obtained less than seven years from the date of the application, and within seven years of the first attempt.

The Board has accepted the Association of Social Work Boards (ASWB) Clinical Level Examination as the acceptable clinical examination for LCSW licensure. ASWB has committed to making the changes required by the Board. If the changes are made in time, the Board hopes to begin offering the ASWB exam as the clinical exam on January 1, 2013.

The Board is beginning evaluation of the Association of Marital and Family Therapy Regulatory Board's (AMFTRB) national exam to determine if it would be suitable for future use as the LMFT clinical licensing exam. In the meantime, the Board will administer its own clinical exam for LMFT licensure.

SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained for LMFT and LCSW candidates, as long as it is passed within seven years of the initial attempt. It does not cover out of state applicants who passed the exam several years ago.

The Board required applicants for LCSW licensure to take the national ASWB written clinical level examination and a California state oral examination from October 19, 1991 until March 30, 1999. In 1999, the Board determined that the ASWB clinical examination did not meet California standards, and switched to requiring passage of both a State-administered written and a State-administered oral examination.

The Board has never accepted a national examination for LMFT licensure.

Board staff contacted ASWB and AMFTRB to determine if other states impose limits on the age of a passing exam score. Both entities indicated that a majority of states accept their national examinations with no age restrictions. AMFTRB surveyed the states using its exam if they imposed an age limit. AMFTRB provided Board staff with a chart showing the policies of the states that responded. (This information was provided in the meeting materials.)

Massachusetts was the only responding state that imposes an age limit of five years. According to a representative for Massachusetts, this limit was agreed upon because it gives applicants a reasonable amount of time to benefit from a passing score, but also ensures the applicant shows familiarity with contemporary issues. However, an applicant with a current license in another state can be offered reciprocity regardless of how old their passing exam score is, as long as their license from the other state is current. If the license is expired and the exam score is over five years old, the applicant may be required to repeat the exam.

The purpose of a licensing examination is to measure a candidate's competency in performing a given profession. Competencies can change over time based on the changing needs of the population. Typically, an occupational analysis is performed every five years to ensure that an examination is still measuring the needed competencies. The following should be considered in deciding whether to limit the age of passing exam scores:

- The degree to which the profession has changed over time;
- Whether the exam, at any point in the past, still accurately measures the competency needed to practice in the present environment; and
- The best way to achieve balance between accurate measurement of competency, and fairness to the applicant.

Mr. Caldwell suggested requesting a report from AMFTRB on how often exam items turn over and any information they can provide illustrating to what degree the fundamental content of the exam has changed over time. That may provide some ideas in determining when an exam score is too old.

Ms. Lonner stated there is the issue of reciprocity and those who were licensed in the past and need to become "re-licensed." Ms. Lonner added that the national exam was probably not a great exam before 1999.

Ms. Rhine pointed out that a person who has been licensed for many years and has continued to practice versus a person who took an exam 20 years ago and has not been practicing is a very different professional. She added that the Massachusetts model is intriguing. Ms. Helms added that the Massachusetts model is written in their policy, not in regulation.

Ms. Lonner asked if ASWB will be prepared to begin testing by the implementation date. Ms. Madsen responded that staff is in negotiations, and there are technical issues that need to be worked out.

Ms. Rhine explained that the technical issues are a result of DCA's new database and changes with BreEZe, which make it difficult to have a process where there is an interface between ASWB and DCA. Board staff and DCA staff continues to work with ASWB to overcome these issues.

Ms. Gonzales asked the Committee to consider those professionals who have been practicing in other states for years without any disciplinary actions against them; there is no need for those individuals to repeat the exam.

Ms. Wong stated that the candidate will have to pass the California Law and Ethics exam and the national exam. The national exam measures the clinical competency, and the law and ethics exam is tailored to California. After the Board implements the national exam, over time, it will be seen if those exam items can truly reflect competency. It is important to not confuse the licensees and to have a standard in place. Seven years could be the standard to begin with, and then it could be changed later if needed.

Ms. Lonner stated by limiting the age of passing scores of the national exam that a judgment is being made about the curriculum, which is a national curriculum. It's a difficult argument to make.

Dr. Johnson suggested gathering more information from Massachusetts and Texas. Massachusetts and Texas licensing provisions have been very similar to California.

Ms. Porter requested the same research to be conducted regarding LPCCs. She suggested going to the American Association of State Counseling Boards (AASCB) for this information. The National Board for Certified Counselors (NBCC) may be able to provide this information as well.

***Renee Lonner moved to direct staff to conduct further research and submit a revised draft to the Board for consideration as a legislative amendment, to include the standard "currently licensed with no disciplinary actions," and to include information regarding LPCC exam limits. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.***

## **VI. Rulemaking Update**

The rulemaking update was provided for reference. Ms. Helms reported that some of the pending regulatory proposals will be grouped together and will run as a single package.

Ms. Epstein expressed concerned regarding the regulations that are going to be proposed to implement provisions of DCA's Consumer Protection Enforcement Initiative. She inquired

about the timeframe it will take for the Office of Administrative Law (OAL) to determine whether the Board has the authority or legality to implement the regulations.

Ms. Rhine responded that determining the authority and legality happens at the end of the process. Ms. Helms files the package with the Office of Administrative Law (OAL) for notice. There is a 45-day comment period, which becomes part of the rulemaking package. Every comment is addressed. OAL does not review final rulemaking package until the end. OAL has 45 days to review the package.

Ms. Helms stated that it will be submitted within the next couple of months, and the 45-day comment period will be noticed. A hearing date will be set where stakeholders can appear and make their comments. Comments are also accepted in writing.

**VII. Public Comments for Items Not on the Agenda**

Mr. Caldwell referred to the language from SB 363, stating that if the clean-up goes through this year, the piece regarding continuous enrollment and practicum will still affect those coming under the new curriculum standards. Schools are dealing with the 90-day window issue in a variety of ways. These schools need guidance for implementation, and it would be helpful if the Board could provide that guidance by providing some information on this issue.

In regards to the issue with the 90-day window for registering as an MFT intern after graduation, Mr. Caldwell expressed that AAMFT-CA opposes eliminating the 90-day window.

**VIII. Suggestions for Future Agenda Items**

Suggestions were noted during the course of the meeting (under agenda item IV).

Dr. Wietlisbach requested a CE Committee update at the next Policy and Advocacy Committee meeting.

The meeting was adjourned at 10:47 a.m.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 40                      **VERSION:** AMENDED MARCH 21, 2012

**AUTHOR:** YAMADA                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** ELDER AND DEPENDENT ADULT ABUSE: REPORTING

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### **Existing Law:**

- 1) Specifies that certain individuals, including Licensed Marriage Family Therapists, Licensed Clinical Social Workers, Licensed Educational Psychologists, and Licensed Professional Clinical Counselors are “mandated reporters” of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility, except as specified, by calling either the local ombudsperson or the local law enforcement agency immediately, or as soon as possible (Welfare and Institutions Code [WIC] Section 15630).
- 2) Requires a mandated reporter to submit a written report within two working days (WIC §15630).
- 3) Restricts local ombudsman programs from sharing the identity of the complainant in reports of elder or adult abuse with local law enforcement agencies without the consent of the subject of the reported abuse or his or her legal representative (Section 712 of Chapter 2 of Title VII of the Older Americans Act).
- 4) Requires a mandated reported to report suspected financial abuse of an elder or dependent adult that occurred in a long-term care facility to *either* the local ombudsman or local law enforcement agency (WIC §15630.1).
- 5) Allows non-mandated reporters to report suspected instances of abuse of elder or dependent adults that occurred in a long-term care facility to a long-term care ombudsman program or local law enforcement agency (WIC §15631).

### **This Bill:**

- 1) Requires a report made via telephone by a mandated reporter to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility to be made to the local law enforcement agency. The written report must be made to both the local ombudsperson and the local law enforcement agency (WIC §15630).
- 2) Requires a report made via telephone and the written report made by a mandated reporter to report suspected instances of elder or dependent adult abuse other than physical abuse that occurred in a long-term care facility must be made to the local ombudsperson or the local law enforcement agency. (WIC §15630).

- 3) States for a mandated reporter making a report of known or suspected instances of abuse of an elder or dependent adult, for which reports are not mandated, which occurred in a state mental health hospital or state developmental center, may make the report to the following:
  - a. The designated investigator of the State Department of Mental Health; or
  - b. The State Department of Developmental Services; or
  - c. A local law enforcement agency.

The local ombudsperson has been removed from one of the reporting entities on this list. (WIC §15630)

- 4) Allows non-mandated reporters to report suspected instances of elder or dependent adult abuse that occurred in a long-term care facility to either the local long-term care ombudsperson program or the local law enforcement agency or both entities (WIC Section 15631).

**Comments:**

- 1) **Author's Intent.** According to the Author's Office, the local ombudsman's limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation, and ultimately, resolution of certain elder and dependent adult abuse reports. Requiring mandated reporters to report suspected physical abuse that occurred in a long-term care facility with both the local ombudsman and local law enforcement would ensure that law enforcement is aware of all reports of this type of criminal activity.
- 2) **Issue of Trust.** Mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the subject/client. However, Welfare and Institutions Code Section 15633.5 ensures the confidentiality of the identity of the reporter, except as disclosed to specified agencies and under specified circumstances, such as by court order. Section 15633.5 also states that a reporter is not required to disclose his or her identity in the report. This statute suggests that the level of trust between a mandated reporter and the subject of the abuse may not be compromised by submitting the report of abuse to the law enforcement agency.
- 3) **Prior Board Position.** This is a 2-year bill that was introduced on December 6, 2010. At its meeting on May 18, 2011, the Board took a support position on this bill.

This bill has been amended since the Board took its last position. Some concern was raised in the Legislature about requiring a dual mandated report, to both a local ombudsperson and the local law enforcement agency. Therefore, the bill has been amended so that such a dual report is only required in the case of suspected physical abuse to an elder or dependent adult.

**4) Support and Opposition.**

**Support:**

The Arc of California  
Association of California Healthcare Districts  
Board of Behavioral Sciences  
California Advocates for Nursing Homes Reform  
California Board of Behavioral Sciences  
California District Attorney's Association

California Long-Term Care Ombudsman Association  
 California Narcotic Officers' Association  
 California Police Chiefs Association  
 California Senior Legislature  
 Congress of California Seniors  
 Contra Costa County Advisory Council on Aging  
 Crime Victims United of California  
 Disability Rights California Developmental  
 Disabilities Area Board 10  
 (if amended)  
 Emergency Medical Services Association of  
 California  
 Los Angeles County District Attorney's Offices  
 National Association of Social Workers,  
 California Chapter  
 San Luis Obispo County Adult Abuse Council  
 1 individual

**Oppose:**

California Bankers Association  
 California Association of Health Facilities  
 (unless amended)  
 California Association of Marriage and Family  
 Therapists (unless amended)

**Concerns:** California Assisted Living Association

**5) History**

**2012**

Mar. 21 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HUMAN S.  
 Mar. 5 In committee: Hearing postponed by committee.

**2011**

June 2 Referred to Coms. on HUMAN S. and B. & F.I.  
 May 23 In Senate. Read first time. To Com. on RLS. for assignment.  
 May 23 Read third time. Passed. Ordered to the Senate. (Ayes 58. Noes 18. Page 1503.)  
 May 19 Read second time. Ordered to third reading.  
 May 18 From committee: Do pass. (Ayes 17. Noes 0.) (May 18).  
 May 4 From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (May 3). Re-referred to Com. on APPR.  
 Mar. 30 From committee: Do pass and re-refer to Com. on PUB. S. (Ayes 4. Noes 2.) (March 29). Re-referred to Com. on PUB. S.  
 Mar. 22 Re-referred to Com. on AGING & L.T.C.  
 Mar. 21 From committee chair, with author's amendments: Amend, and re-refer to Com. on AGING & L.T.C. Read second time and amended.  
 Jan. 24 Referred to Coms. on AGING & L.T.C. and PUB. S.

**2010**

Dec. 7            From printer. May be heard in committee January 6.  
Dec. 6            Read first time. To print.

## 6) Attachments

- **Attachment A:** Older Americans Act, Title VII, Chapter 2, Section 712
- **Attachment B:** Relevant Code Section (Welfare and Institutions Code Section 15633.5)

# OLDER AMERICANS ACT OF 1965

As Amended In 2006 (Public Law 109-365)

## TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES Subtitle A—State Provision

### CHAPTER 2—OMBUDSMAN PROGRAMS

#### Section 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

##### (d) DISCLOSURE.

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

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## Relevant Code Section

### Welfare and Institutions Code

#### Section 15633.5.

(a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

- (1) An adult protective services agency.
- (2) A long-term care ombudsperson program.
- (3) A licensing agency.
- (4) A local law enforcement agency.
- (5) The office of the district attorney.
- (6) The office of the public guardian.
- (7) The probate court.
- (8) The bureau.
- (9) The Department of Consumer Affairs, Division of Investigation.
- (10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:

- (1) To the district attorney in a criminal prosecution.
- (2) When a person reporting waives confidentiality.
- (3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

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AMENDED IN SENATE MARCH 21, 2012  
AMENDED IN ASSEMBLY MARCH 21, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Yamada**

December 6, 2010

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An act to amend Sections ~~15630, 15630.1, 15630~~ and 15631 of the Welfare and Institutions Code, relating to elder *and dependent adult* abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder *and dependent adult* abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to the local ~~ombudsman~~ *ombudsperson* or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

~~This bill would, instead, require the mandated reporter, and authorize any person who is not a mandated reporter, to report the abuse to both the local ombudsman and the local law enforcement agency.~~

~~Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected~~

~~instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated reporter knows that the elder or dependent adult resides in a long-term care facility.~~

~~This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.~~

*This bill would require that a report made by telephone by a mandated reporter to report suspected or alleged physical abuse, as defined, that occurred in a long-term care facility, be made to the local law enforcement agency and would require that the written report be made to both the local ombudsperson and the local law enforcement agency.*

*Existing law authorizes a mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated occurred in a state mental hospital or a state developmental center, to report to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson.*

*This bill would delete the local ombudsperson from the list of whom the mandated reporter may report to under these circumstances. This bill would authorize a person who is not a mandated reporter to report suspected or alleged abuse that occurred in a long-term care facility to both a long-term care ombudsperson program or local law enforcement agency*

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies *officials*, this 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1     *SECTION 1. Section 15630 of the Welfare and Institutions*  
2     *Code is amended to read:*

3     15630. (a) Any person who has assumed full or intermittent  
4     responsibility for the care or custody of an elder or dependent  
5     adult, whether or not he or she receives compensation, including  
6     administrators, supervisors, and any licensed staff of a public or  
7     private facility that provides care or services for elder or dependent  
8     adults, or any elder or dependent adult care custodian, health  
9     practitioner, clergy member, or employee of a county adult  
10    protective services agency or a local law enforcement agency, is  
11    a mandated reporter.

12    (b) (1) Any mandated reporter who, in his or her professional  
13    capacity, or within the scope of his or her employment, has  
14    observed or has knowledge of an incident that reasonably appears  
15    to be physical abuse, as defined in Section 15610.63, abandonment,  
16    abduction, isolation, financial abuse, or neglect, or is told by an  
17    elder or dependent adult that he or she has experienced behavior,  
18    including an act or omission, constituting physical abuse, as defined  
19    in Section 15610.63, abandonment, abduction, isolation, financial  
20    abuse, or neglect, or reasonably suspects that abuse, shall report  
21    the known or suspected instance of abuse by telephone or through  
22    a confidential Internet reporting tool, as authorized by Section  
23    15658, immediately or as soon as practicably possible. If reported  
24    by telephone, a written report shall be sent, or an Internet report  
25    shall be made through the confidential Internet reporting tool  
26    established in Section 15658, within two working days, as follows:

27    (A) *If the suspected or alleged abuse is physical abuse, as*  
28    *defined in Section 15610.63, and the abuse*~~has~~ *occurred in a*  
29    *long-term care facility, except a state mental health hospital or a*  
30    *state developmental center,*~~the~~ *a report made by telephone shall*  
31    *be made to the local law enforcement agency and the written report*  
32    *shall be made to both the local ombudsperson*~~or~~ *and the local law*  
33    *enforcement agency. If the suspected or alleged abuse is abuse*  
34    *other than physical abuse, as defined in Section 15610.63, and the*  
35    *abuse occurred in a long-term care facility, except a state mental*  
36    *health hospital or a state developmental center, a report made by*  
37    *telephone and the written report shall be made to the local*  
38    *ombudsperson or the local law enforcement agency.*

1 The local ombudsperson and the local law enforcement agency  
2 shall, as soon as practicable, except in the case of an emergency  
3 or pursuant to a report required to be made pursuant to clause (v),  
4 in which case these actions shall be taken immediately, do all of  
5 the following:

6 (i) Report to the State Department of Public Health any case of  
7 known or suspected abuse occurring in a long-term health care  
8 facility, as defined in subdivision (a) of Section 1418 of the Health  
9 and Safety Code.

10 (ii) Report to the State Department of Social Services any case  
11 of known or suspected abuse occurring in a residential care facility  
12 for the elderly, as defined in Section 1569.2 of the Health and  
13 Safety Code, or in an adult day care facility, as defined in paragraph  
14 (2) of subdivision (a) of Section 1502.

15 (iii) Report to the State Department of Public Health and the  
16 California Department of Aging any case of known or suspected  
17 abuse occurring in an adult day health care center, as defined in  
18 subdivision (b) of Section 1570.7 of the Health and Safety Code.

19 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
20 any case of known or suspected criminal activity.

21 (v) Report all cases of known or suspected physical abuse and  
22 financial abuse to the local district attorney's office in the county  
23 where the abuse occurred.

24 (B) If the suspected or alleged abuse occurred in a state mental  
25 hospital or a state developmental center, the report shall be made  
26 to designated investigators of the State Department of Mental  
27 Health or the State Department of Developmental Services, or to  
28 the local law enforcement agency.

29 Except in an emergency, the local law enforcement agency shall,  
30 as soon as practicable, report any case of known or suspected  
31 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

32 (C) If the abuse has occurred any place other than one described  
33 in subparagraph (A), the report shall be made to the adult protective  
34 services agency or the local law enforcement agency.

35 (2) (A) A mandated reporter who is a clergy member who  
36 acquires knowledge or reasonable suspicion of elder or dependent  
37 adult abuse during a penitential communication is not subject to  
38 paragraph (1). For purposes of this subdivision, "penitential  
39 communication" means a communication that is intended to be in  
40 confidence, including, but not limited to, a sacramental confession

1 made to a clergy member who, in the course of the discipline or  
2 practice of his or her church, denomination, or organization is  
3 authorized or accustomed to hear those communications and under  
4 the discipline tenets, customs, or practices of his or her church,  
5 denomination, or organization, has a duty to keep those  
6 communications secret.

7 (B) ~~Nothing in this~~ This subdivision shall *not* be construed to  
8 modify or limit a clergy member's duty to report known or  
9 suspected elder and dependent adult abuse ~~when~~ *if* he or she is  
10 acting in the capacity of a care custodian, health practitioner, or  
11 employee of an adult protective services agency.

12 (C) Notwithstanding any other provision in this section, a clergy  
13 member who is not regularly employed on either a full-time or  
14 part-time basis in a long-term care facility or does not have care  
15 or custody of an elder or dependent adult shall not be responsible  
16 for reporting abuse or neglect that is not reasonably observable or  
17 discernible to a reasonably prudent person having no specialized  
18 training or experience in elder or dependent care.

19 (3) (A) A mandated reporter who is a physician and surgeon,  
20 a registered nurse, or a psychotherapist, as defined in Section 1010  
21 of the Evidence Code, shall not be required to report, pursuant to  
22 paragraph (1), an incident ~~where~~ *if* all of the following conditions  
23 exist:

24 (i) The mandated reporter has been told by an elder or dependent  
25 adult that he or she has experienced behavior constituting physical  
26 abuse, as defined in Section 15610.63, abandonment, abduction,  
27 isolation, financial abuse, or neglect.

28 (ii) The mandated reporter is not aware of any independent  
29 evidence that corroborates the statement that the abuse has  
30 occurred.

31 (iii) The elder or dependent adult has been diagnosed with a  
32 mental illness or dementia, or is the subject of a court-ordered  
33 conservatorship because of a mental illness or dementia.

34 (iv) In the exercise of clinical judgment, the physician and  
35 surgeon, the registered nurse, or the psychotherapist, as defined  
36 in Section 1010 of the Evidence Code, reasonably believes that  
37 the abuse did not occur.

38 (B) This paragraph shall not be construed to impose upon  
39 mandated reporters a duty to investigate a known or suspected

1 incident of abuse and shall not be construed to lessen or restrict  
2 any existing duty of mandated reporters.

3 (4) (A) In a long-term care facility, a mandated reporter shall  
4 not be required to report as a suspected incident of abuse, as defined  
5 in Section 15610.07, an incident ~~where~~ *if* all of the following  
6 conditions exist:

7 (i) The mandated reporter is aware that there is a proper plan  
8 of care.

9 (ii) The mandated reporter is aware that the plan of care was  
10 properly provided or executed.

11 (iii) A physical, mental, or medical injury occurred as a result  
12 of care provided pursuant to clause (i) or (ii).

13 (iv) The mandated reporter reasonably believes that the injury  
14 was not the result of abuse.

15 (B) This paragraph shall not be construed to require a mandated  
16 reporter to seek, nor to preclude a mandated reporter from seeking,  
17 information regarding a known or suspected incident of abuse prior  
18 to reporting. This paragraph shall apply only to those categories  
19 of mandated reporters that the State Department of Public Health  
20 determines, upon approval by the Bureau of Medi-Cal Fraud and  
21 Elder Abuse and the state long-term care ombudsperson, have  
22 access to plans of care and have the training and experience  
23 necessary to determine whether the conditions specified in this  
24 section have been met.

25 (c) (1) Any mandated reporter who has knowledge, or  
26 reasonably suspects, that types of elder or dependent adult abuse  
27 for which reports are not mandated have been inflicted upon an  
28 elder or dependent adult, or that his or her emotional well-being  
29 is endangered in any other way, may report the known or suspected  
30 instance of abuse.

31 (2) If the suspected or alleged abuse occurred in a long-term  
32 care facility other than a state mental health hospital or a state  
33 developmental center, the report may be made to the long-term  
34 care ombudsperson program. Except in an emergency, the local  
35 ombudsperson shall report any case of known or suspected abuse  
36 to the State Department of Public Health and any case of known  
37 or suspected criminal activity to the Bureau of Medi-Cal Fraud  
38 and Elder Abuse, as soon as is practicable.

39 (3) If the suspected or alleged abuse occurred in a state mental  
40 health hospital or a state developmental center, the report may be

1 made to the designated investigator of the State Department of  
2 Mental Health or the State Department of Developmental Services  
3 or to a local law enforcement agency ~~or to the local ombudsperson.~~  
4 Except in an emergency, the local ombudsperson and the local law  
5 enforcement agency shall report any case of known or suspected  
6 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,  
7 as soon as is practicable.

8 (4) If the suspected or alleged abuse occurred in a place other  
9 than a place described in paragraph (2) or (3), the report may be  
10 made to the county adult protective services agency.

11 (5) If the conduct involves criminal activity not covered in  
12 subdivision (b), it may be immediately reported to the appropriate  
13 law enforcement agency.

14 (d) ~~When~~ *If* two or more mandated reporters are present and  
15 jointly have knowledge or reasonably suspect that types of abuse  
16 of an elder or a dependent adult for which a report is or is not  
17 mandated have occurred, and ~~when~~ there is agreement among  
18 them, the telephone report or Internet report, as authorized by  
19 Section 15658, may be made by a member of the team selected  
20 by mutual agreement, and a single report may be made and signed  
21 by the selected member of the reporting team. Any member who  
22 has knowledge that the member designated to report has failed to  
23 do so shall thereafter make the report.

24 (e) A telephone report or Internet report, as authorized by  
25 Section 15658, of a known or suspected instance of elder or  
26 dependent adult abuse shall include, if known, the name of the  
27 person making the report, the name and age of the elder or  
28 dependent adult, the present location of the elder or dependent  
29 adult, the names and addresses of family members or any other  
30 adult responsible for the elder's or dependent adult's care, the  
31 nature and extent of the elder's or dependent adult's condition, the  
32 date of the incident, and any other information, including  
33 information that led that person to suspect elder or dependent adult  
34 abuse, as requested by the agency receiving the report.

35 (f) The reporting duties under this section are individual, and  
36 no supervisor or administrator shall impede or inhibit the reporting  
37 duties, and no person making the report shall be subject to any  
38 sanction for making the report. However, internal procedures to  
39 facilitate reporting, ensure confidentiality, and apprise supervisors

1 and administrators of reports may be established, provided they  
2 are not inconsistent with this chapter.

3 (g) (1) Whenever this section requires a county adult protective  
4 services agency to report to a law enforcement agency, the law  
5 enforcement agency shall, immediately upon request, provide a  
6 copy of its investigative report concerning the reported matter to  
7 that county adult protective services agency.

8 (2) Whenever this section requires a law enforcement agency  
9 to report to a county adult protective services agency, the county  
10 adult protective services agency shall, immediately upon request,  
11 provide to that law enforcement agency a copy of its investigative  
12 report concerning the reported matter.

13 (3) The requirement to disclose investigative reports pursuant  
14 to this subdivision shall not include the disclosure of social services  
15 records or case files that are confidential, nor shall this subdivision  
16 be construed to allow disclosure of any reports or records if the  
17 disclosure would be prohibited by any other provision of state or  
18 federal law.

19 (h) Failure to report, or impeding or inhibiting a report of,  
20 physical abuse, as defined in Section 15610.63, abandonment,  
21 abduction, isolation, financial abuse, or neglect of an elder or  
22 dependent adult, in violation of this section, is a misdemeanor,  
23 punishable by not more than six months in the county jail, by a  
24 fine of not more than one thousand dollars (\$1,000), or by both  
25 that fine and imprisonment. Any mandated reporter who willfully  
26 fails to report, or impedes or inhibits a report of, physical abuse,  
27 as defined in Section 15610.63, abandonment, abduction, isolation,  
28 financial abuse, or neglect of an elder or dependent adult, in  
29 violation of this section, ~~where~~ *if* that abuse results in death or  
30 great bodily injury, shall be punished by not more than one year  
31 in a county jail, by a fine of not more than five thousand dollars  
32 (\$5,000), or by both that fine and imprisonment. If a mandated  
33 reporter intentionally conceals his or her failure to report an  
34 incident known by the mandated reporter to be abuse or severe  
35 neglect under this section, the failure to report is a continuing  
36 offense until a law enforcement agency specified in paragraph (1)  
37 of subdivision (b) of Section 15630 discovers the offense.

38 (i) For purposes of this section, “dependent adult” shall have  
39 the same meaning as in Section 15610.23.

1 SECTION 1. ~~Section 15630 of the Welfare and Institutions~~  
2 ~~Code is amended to read:~~

3 15630. (a) ~~Any person who has assumed full or intermittent~~  
4 ~~responsibility for the care or custody of an elder or dependent~~  
5 ~~adult, whether or not he or she receives compensation, including~~  
6 ~~administrators, supervisors, and any licensed staff of a public or~~  
7 ~~private facility that provides care or services for elder or dependent~~  
8 ~~adults, or any elder or dependent adult care custodian, health~~  
9 ~~practitioner, clergy member, or employee of a county adult~~  
10 ~~protective services agency or a local law enforcement agency, is~~  
11 ~~a mandated reporter.~~

12 (b) ~~(1) Any mandated reporter who, in his or her professional~~  
13 ~~capacity, or within the scope of his or her employment, has~~  
14 ~~observed or has knowledge of an incident that reasonably appears~~  
15 ~~to be physical abuse, as defined in Section 15610.63, abandonment,~~  
16 ~~abduction, isolation, financial abuse, or neglect, or is told by an~~  
17 ~~elder or dependent adult that he or she has experienced behavior,~~  
18 ~~including an act or omission, constituting physical abuse, as defined~~  
19 ~~in Section 15610.63, abandonment, abduction, isolation, financial~~  
20 ~~abuse, or neglect, or reasonably suspects that abuse, shall report~~  
21 ~~the known or suspected instance of abuse by telephone immediately~~  
22 ~~or as soon as practicable possible, and by written report sent within~~  
23 ~~two working days, as follows:~~

24 (A) ~~If the abuse has occurred in a long-term care facility, except~~  
25 ~~a state mental health hospital or a state developmental center, the~~  
26 ~~report shall be made to both the local ombudsman and the local~~  
27 ~~law enforcement agency.~~

28 ~~The local ombudsman and the local law enforcement agency~~  
29 ~~shall, as soon as practicable, except in the case of an emergency~~  
30 ~~or pursuant to a report required to be made pursuant to clause (v),~~  
31 ~~in which case these actions shall be taken immediately, do all of~~  
32 ~~the following:~~

33 (i) ~~Report to the State Department of Public Health any case of~~  
34 ~~known or suspected abuse occurring in a long-term health care~~  
35 ~~facility, as defined in subdivision (a) of Section 1418 of the Health~~  
36 ~~and Safety Code.~~

37 (ii) ~~Report to the State Department of Social Services any case~~  
38 ~~of known or suspected abuse occurring in a residential care facility~~  
39 ~~for the elderly, as defined in Section 1569.2 of the Health and~~

1 Safety Code, or in an adult day care facility, as defined in paragraph  
 2 (2) of subdivision (a) of Section 1502.  
 3 (iii) Report to the State Department of Public Health and the  
 4 California Department of Aging any case of known or suspected  
 5 abuse occurring in an adult day health care center, as defined in  
 6 subdivision (b) of Section 1570.7 of the Health and Safety Code.  
 7 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
 8 any case of known or suspected criminal activity.  
 9 (v) Report all cases of known or suspected physical abuse and  
 10 financial abuse to the local district attorney's office in the county  
 11 where the abuse occurred.  
 12 (B) If the suspected or alleged abuse occurred in a state mental  
 13 hospital or a state developmental center, the report shall be made  
 14 to designated investigators of the State Department of Mental  
 15 Health or the State Department of Developmental Services, or to  
 16 the local law enforcement agency.  
 17 Except in an emergency, the local law enforcement agency shall,  
 18 as soon as practicable, report any case of known or suspected  
 19 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.  
 20 (C) If the abuse has occurred any place other than one described  
 21 in subparagraph (A), the report shall be made to the adult protective  
 22 services agency or the local law enforcement agency.  
 23 (2) (A) A mandated reporter who is a clergy member who  
 24 acquires knowledge or reasonable suspicion of elder or dependent  
 25 adult abuse during a penitential communication is not subject to  
 26 paragraph (1). For purposes of this subdivision, "penitential  
 27 communication" means a communication that is intended to be in  
 28 confidence, including, but not limited to, a sacramental confession  
 29 made to a clergy member who, in the course of the discipline or  
 30 practice of his or her church, denomination, or organization is  
 31 authorized or accustomed to hear those communications and under  
 32 the discipline tenets, customs, or practices of his or her church,  
 33 denomination, or organization, has a duty to keep those  
 34 communications secret.  
 35 (B) This subdivision shall not be construed to modify or limit  
 36 a clergy member's duty to report known or suspected elder and  
 37 dependent adult abuse if he or she is acting in the capacity of a  
 38 care custodian, health practitioner, or employee of an adult  
 39 protective services agency.

1 ~~(C) Notwithstanding any other provision in this section, a clergy~~  
2 ~~member who is not regularly employed on either a full-time or~~  
3 ~~part-time basis in a long-term care facility or does not have care~~  
4 ~~or custody of an elder or dependent adult shall not be responsible~~  
5 ~~for reporting abuse or neglect that is not reasonably observable or~~  
6 ~~discernible to a reasonably prudent person having no specialized~~  
7 ~~training or experience in elder or dependent care.~~

8 ~~(3) (A) A mandated reporter who is a physician and surgeon,~~  
9 ~~a registered nurse, or a psychotherapist, as defined in Section 1010~~  
10 ~~of the Evidence Code, shall not be required to report, pursuant to~~  
11 ~~paragraph (1), an incident if all of the following conditions exist:~~

12 ~~(i) The mandated reporter has been told by an elder or dependent~~  
13 ~~adult that he or she has experienced behavior constituting physical~~  
14 ~~abuse, as defined in Section 15610.63, abandonment, abduction,~~  
15 ~~isolation, financial abuse, or neglect.~~

16 ~~(ii) The mandated reporter is not aware of any independent~~  
17 ~~evidence that corroborates the statement that the abuse has~~  
18 ~~occurred.~~

19 ~~(iii) The elder or dependent adult has been diagnosed with a~~  
20 ~~mental illness or dementia, or is the subject of a court-ordered~~  
21 ~~conservatorship because of a mental illness or dementia.~~

22 ~~(iv) In the exercise of clinical judgment, the physician and~~  
23 ~~surgeon, the registered nurse, or the psychotherapist, as defined~~  
24 ~~in Section 1010 of the Evidence Code, reasonably believes that~~  
25 ~~the abuse did not occur.~~

26 ~~(B) This paragraph shall not be construed to impose upon~~  
27 ~~mandated reporters a duty to investigate a known or suspected~~  
28 ~~incident of abuse and shall not be construed to lessen or restrict~~  
29 ~~any existing duty of mandated reporters.~~

30 ~~(4) (A) In a long-term care facility, a mandated reporter shall~~  
31 ~~not be required to report as a suspected incident of abuse, as defined~~  
32 ~~in Section 15610.07, an incident if all of the following conditions~~  
33 ~~exist:~~

34 ~~(i) The mandated reporter is aware that there is a proper plan~~  
35 ~~of care.~~

36 ~~(ii) The mandated reporter is aware that the plan of care was~~  
37 ~~properly provided or executed.~~

38 ~~(iii) A physical, mental, or medical injury occurred as a result~~  
39 ~~of care provided pursuant to clause (i) or (ii).~~

1     ~~(iv) The mandated reporter reasonably believes that the injury~~  
2     ~~was not the result of abuse.~~

3     ~~(B) This paragraph shall not be construed to require a mandated~~  
4     ~~reporter to seek, nor to preclude a mandated reporter from seeking,~~  
5     ~~information regarding a known or suspected incident of abuse prior~~  
6     ~~to reporting. This paragraph shall apply only to those categories~~  
7     ~~of mandated reporters that the State Department of Public Health~~  
8     ~~determines, upon approval by the Bureau of Medi-Cal Fraud and~~  
9     ~~Elder Abuse and the state long-term care ombudsman, have access~~  
10    ~~to plans of care and have the training and experience necessary to~~  
11    ~~determine whether the conditions specified in this section have~~  
12    ~~been met.~~

13    ~~(e) (1) Any mandated reporter who has knowledge, or~~  
14    ~~reasonably suspects, that types of elder or dependent adult abuse~~  
15    ~~for which reports are not mandated have been inflicted upon an~~  
16    ~~elder or dependent adult, or that his or her emotional well-being~~  
17    ~~is endangered in any other way, may report the known or suspected~~  
18    ~~instance of abuse.~~

19    ~~(2) If the suspected or alleged abuse occurred in a long-term~~  
20    ~~care facility other than a state mental health hospital or a state~~  
21    ~~developmental center, the report may be made to the long-term~~  
22    ~~care ombudsman program. Except in an emergency, the local~~  
23    ~~ombudsman shall report any case of known or suspected abuse to~~  
24    ~~the State Department of Public Health and any case of known or~~  
25    ~~suspected criminal activity to the Bureau of Medi-Cal Fraud and~~  
26    ~~Elder Abuse, as soon as is practicable.~~

27    ~~(3) If the suspected or alleged abuse occurred in a state mental~~  
28    ~~health hospital or a state developmental center, the report may be~~  
29    ~~made to the designated investigator of the State Department of~~  
30    ~~Mental Health or the State Department of Developmental Services~~  
31    ~~or to a local law enforcement agency or to the local ombudsman.~~  
32    ~~Except in an emergency, the local ombudsman and the local law~~  
33    ~~enforcement agency shall report any case of known or suspected~~  
34    ~~criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,~~  
35    ~~as soon as is practicable.~~

36    ~~(4) If the suspected or alleged abuse occurred in a place other~~  
37    ~~than a place described in paragraph (2) or (3), the report may be~~  
38    ~~made to the county adult protective services agency.~~

1 ~~(5) If the conduct involves criminal activity not covered in~~  
2 ~~subdivision (b), it may be immediately reported to the appropriate~~  
3 ~~law enforcement agency.~~

4 ~~(d) If two or more mandated reporters are present and jointly~~  
5 ~~have knowledge or reasonably suspect that types of abuse of an~~  
6 ~~elder or a dependent adult for which a report is or is not mandated~~  
7 ~~have occurred, and there is agreement among them, the telephone~~  
8 ~~report may be made by a member of the team selected by mutual~~  
9 ~~agreement, and a single report may be made and signed by the~~  
10 ~~selected member of the reporting team. Any member who has~~  
11 ~~knowledge that the member designated to report has failed to do~~  
12 ~~so shall thereafter make the report.~~

13 ~~(e) A telephone report of a known or suspected instance of elder~~  
14 ~~or dependent adult abuse shall include, if known, the name of the~~  
15 ~~person making the report, the name and age of the elder or~~  
16 ~~dependent adult, the present location of the elder or dependent~~  
17 ~~adult, the names and addresses of family members or any other~~  
18 ~~adult responsible for the elder's or dependent adult's care, the~~  
19 ~~nature and extent of the elder's or dependent adult's condition, the~~  
20 ~~date of the incident, and any other information, including~~  
21 ~~information that led that person to suspect elder or dependent adult~~  
22 ~~abuse, as requested by the agency receiving the report.~~

23 ~~(f) The reporting duties under this section are individual, and~~  
24 ~~no supervisor or administrator shall impede or inhibit the reporting~~  
25 ~~duties, and no person making the report shall be subject to any~~  
26 ~~sanction for making the report. However, internal procedures to~~  
27 ~~facilitate reporting, ensure confidentiality, and apprise supervisors~~  
28 ~~and administrators of reports may be established, provided they~~  
29 ~~are not inconsistent with this chapter.~~

30 ~~(g) (1) Whenever this section requires a county adult protective~~  
31 ~~services agency to report to a law enforcement agency, the law~~  
32 ~~enforcement agency shall, immediately upon request, provide a~~  
33 ~~copy of its investigative report concerning the reported matter to~~  
34 ~~that county adult protective services agency.~~

35 ~~(2) Whenever this section requires a law enforcement agency~~  
36 ~~to report to a county adult protective services agency, the county~~  
37 ~~adult protective services agency shall, immediately upon request,~~  
38 ~~provide to that law enforcement agency a copy of its investigative~~  
39 ~~report concerning the reported matter.~~

1     ~~(3) The requirement to disclose investigative reports pursuant~~  
2 ~~to this subdivision shall not include the disclosure of social services~~  
3 ~~records or case files that are confidential, nor shall this subdivision~~  
4 ~~be construed to allow disclosure of any reports or records if the~~  
5 ~~disclosure would be prohibited by any other provision of state or~~  
6 ~~federal law.~~

7     ~~(h) Failure to report, or impeding or inhibiting a report of,~~  
8 ~~physical abuse, as defined in Section 15610.63, abandonment,~~  
9 ~~abduction, isolation, financial abuse, or neglect of an elder or~~  
10 ~~dependent adult, in violation of this section, is a misdemeanor,~~  
11 ~~punishable by not more than six months in the county jail, by a~~  
12 ~~fine of not more than one thousand dollars (\$1,000), or by both~~  
13 ~~that fine and imprisonment. Any mandated reporter who willfully~~  
14 ~~fails to report, or impedes or inhibits a report of, physical abuse,~~  
15 ~~as defined in Section 15610.63, abandonment, abduction, isolation,~~  
16 ~~financial abuse, or neglect of an elder or dependent adult, in~~  
17 ~~violation of this section, if that abuse results in death or great bodily~~  
18 ~~injury, shall be punished by not more than one year in a county~~  
19 ~~jail, by a fine of not more than five thousand dollars (\$5,000), or~~  
20 ~~by both that fine and imprisonment. If a mandated reporter~~  
21 ~~intentionally conceals his or her failure to report an incident known~~  
22 ~~by the mandated reporter to be abuse or severe neglect under this~~  
23 ~~section, the failure to report is a continuing offense until a law~~  
24 ~~enforcement agency specified in paragraph (1) of subdivision (b)~~  
25 ~~of Section 15630 discovers the offense.~~

26     ~~(i) For purposes of this section, “dependent adult” shall have~~  
27 ~~the same meaning as in Section 15610.23.~~

28     ~~SEC. 2. Section 15630.1 of the Welfare and Institutions Code~~  
29 ~~is amended to read:~~

30     ~~15630.1. (a) As used in this section, “mandated reporter of~~  
31 ~~suspected financial abuse of an elder or dependent adult” means~~  
32 ~~all officers and employees of financial institutions.~~

33     ~~(b) As used in this section, the term “financial institution” means~~  
34 ~~any of the following:~~

35     ~~(1) A depository institution, as defined in Section 3(e) of the~~  
36 ~~Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(e)).~~

37     ~~(2) An institution-affiliated party, as defined in Section 3(u) of~~  
38 ~~the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).~~

39     ~~(3) A federal credit union or state credit union, as defined in~~  
40 ~~Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),~~

1 including, but not limited to, an institution-affiliated party of a  
2 credit union, as defined in Section 206(r) of the Federal Credit  
3 Union Act (12 U.S.C. Sec. 1786(r)).

4 (e) As used in this section, “financial abuse” has the same  
5 meaning as in Section 15610.30.

6 (d) (1) Any mandated reporter of suspected financial abuse of  
7 an elder or dependent adult who has direct contact with the elder  
8 or dependent adult or who reviews or approves the elder or  
9 dependent adult’s financial documents, records, or transactions;  
10 in connection with providing financial services with respect to an  
11 elder or dependent adult, and who, within the scope of his or her  
12 employment or professional practice, has observed or has  
13 knowledge of an incident, that is directly related to the transaction  
14 or matter that is within that scope of employment or professional  
15 practice, that reasonably appears to be financial abuse, or who  
16 reasonably suspects that abuse, based solely on the information  
17 before him or her at the time of reviewing or approving the  
18 document, record, or transaction in the case of mandated reporters  
19 who do not have direct contact with the elder or dependent adult,  
20 shall report the known or suspected instance of financial abuse by  
21 telephone immediately, or as soon as practicably possible, and by  
22 written report sent within two working days to the local adult  
23 protective services agency or the local law enforcement agency.

24 (2) When two or more mandated reporters jointly have  
25 knowledge or reasonably suspect that financial abuse of an elder  
26 or a dependent adult for which the report is mandated has occurred,  
27 and when there is an agreement among them, the telephone report  
28 may be made by a member of the reporting team who is selected  
29 by mutual agreement. A single report may be made and signed by  
30 the selected member of the reporting team. Any member of the  
31 team who has knowledge that the member designated to report has  
32 failed to do so shall thereafter make that report.

33 (3) If the mandated reporter knows that the elder or dependent  
34 adult resides in a long-term care facility, as defined in Section  
35 15610.47, the report shall be made to the local ombudsman and  
36 local law enforcement agency.

37 (e) An allegation by the elder or dependent adult, or any other  
38 person, that financial abuse has occurred is not sufficient to trigger  
39 the reporting requirement under this section if both of the following  
40 conditions are met:

1 ~~(1) The mandated reporter of suspected financial abuse of an~~  
2 ~~elder or dependent adult is aware of no other corroborating or~~  
3 ~~independent evidence of the alleged financial abuse of an elder or~~  
4 ~~dependent adult. The mandated reporter of suspected financial~~  
5 ~~abuse of an elder or dependent adult is not required to investigate~~  
6 ~~any accusations.~~

7 ~~(2) In the exercise of his or her professional judgment, the~~  
8 ~~mandated reporter of suspected financial abuse of an elder or~~  
9 ~~dependent adult reasonably believes that financial abuse of an~~  
10 ~~elder or dependent adult did not occur.~~

11 ~~(f) Failure to report financial abuse under this section shall be~~  
12 ~~subject to a civil penalty not exceeding one thousand dollars~~  
13 ~~(\$1,000) or if the failure to report is willful, a civil penalty not~~  
14 ~~exceeding five thousand dollars (\$5,000), which shall be paid by~~  
15 ~~the financial institution that is the employer of the mandated~~  
16 ~~reporter to the party bringing the action. Subdivision (h) of Section~~  
17 ~~15630 shall not apply to violations of this section.~~

18 ~~(g) (1) The civil penalty provided for in subdivision (f) shall~~  
19 ~~be recovered only in a civil action brought against the financial~~  
20 ~~institution by the Attorney General, district attorney, or county~~  
21 ~~counsel. No action shall be brought under this section by any~~  
22 ~~person other than the Attorney General, district attorney, or county~~  
23 ~~counsel. Multiple actions for the civil penalty may not be brought~~  
24 ~~for the same violation.~~

25 ~~(2) Nothing in the Financial Elder Abuse Reporting Act of 2005~~  
26 ~~shall be construed to limit, expand, or otherwise modify any civil~~  
27 ~~liability or remedy that may exist under this or any other law.~~

28 ~~(h) As used in this section, “suspected financial abuse of an~~  
29 ~~elder or dependent adult” occurs when a person who is required~~  
30 ~~to report under subdivision (a) observes or has knowledge of~~  
31 ~~behavior or unusual circumstances or transactions, or a pattern of~~  
32 ~~behavior or unusual circumstances or transactions, that would lead~~  
33 ~~an individual with like training or experience, based on the same~~  
34 ~~facts, to form a reasonable belief that an elder or dependent adult~~  
35 ~~is the victim of financial abuse as defined in Section 15610.30.~~

36 ~~(i) Reports of suspected financial abuse of an elder or dependent~~  
37 ~~adult made by an employee or officer of a financial institution~~  
38 ~~pursuant to this section are covered under subdivision (b) of Section~~  
39 ~~47 of the Civil Code.~~

1 ~~(j) This section shall remain in effect only until January 1, 2013,~~  
2 ~~and as of that date is repealed, unless a later enacted statute, that~~  
3 ~~is enacted before January 1, 2013, deletes or extends that date.~~

4 ~~SEC. 3.~~

5 *SEC. 2.* Section 15631 of the Welfare and Institutions Code is  
6 amended to read:

7 15631. (a) Any person who is not a mandated reporter under  
8 Section 15630, who knows, or reasonably suspects, that an elder  
9 or a dependent adult has been the victim of abuse may report that  
10 abuse to a long-term care ~~ombudsman~~ *ombudsperson* program or  
11 local law enforcement agency or both the long-term care  
12 ~~ombudsman~~ *ombudsperson* program and local law enforcement  
13 agency when the abuse is alleged to have occurred in a long-term  
14 care facility.

15 (b) Any person who is not a mandated reporter under Section  
16 15630, who knows, or reasonably suspects, that an elder or a  
17 dependent adult has been the victim of abuse in any place other  
18 than a long-term care facility may report the abuse to the county  
19 adult protective services agency or local law enforcement agency.

20 ~~SEC. 4.~~

21 *SEC. 3.* No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution for certain  
23 costs that may be incurred by a local agency or school district  
24 because, in that regard, this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty for a crime  
26 or infraction, within the meaning of Section 17556 of the  
27 Government Code, or changes the definition of a crime within the  
28 meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 However, if the Commission on State Mandates determines that  
31 this act contains other costs mandated by the state, reimbursement  
32 to local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 171                      **VERSION:** AMENDED JANUARY 23, 2012

**AUTHOR:** BEALL                              **SPONSOR:** Alliance of California Autism Organizations

**RECOMMENDED POSITION:** NONE

**SUBJECT:** PERVASIVE DEVELOPMENT DISORDER OR AUTISM

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### Existing Law:

1) Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. (Health and Safety Code (HSC) §1374.72(a), Insurance Code (IC) §10144.5(a)).

2) Defines “severe mental illnesses” as follows (HSC §1374.72(d), IC §10144.5(d)):

- a) Schizophrenia.
- b) Schizoaffective disorder.
- c) Bipolar disorder (manic-depressive illness).
- d) Major depressive disorders.
- e) Panic disorder.
- f) Obsessive-compulsive disorder.
- g) Pervasive developmental disorder or autism.**
- h) Anorexia nervosa.
- i) Bulimia nervosa.

3) Defines “serious emotional disturbances of a child” as a child who has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) (other than a primary substance use disorder or development disorder) that results in age-inappropriate behavior (HSC §1374.72(e), IC §10144.5(e)). One or more of the following criteria must also be met (HSC §5600.3(a)(2)):

(A) As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

- (i) The child is at risk of removal from home or has already been removed from the home.
- (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

(B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.

(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

- 4) Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if the plan includes prescription drug coverage). (HSC §1374.72(b), IC §10144.5(b)).
- 5) Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract. (HSC §1374.72(c), IC §10144.5(c)).
- 6) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, by no later than July 1, 2012. (HSC §1374.73(a), IC §10144.51(a))
- 7) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):
  - a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
  - b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified professional under supervision of a qualified autism service provider;
  - c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and
  - d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

**This Bill:**

- 1) Would require every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2013, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism. (HSC §1374.745(a), IC §10144.53(a))
- 2) Defines “diagnosis of pervasive development disorder or autism” as medically necessary assessment, evaluations, or tests to diagnose whether one has pervasive development disorder or autism (HSC § 1374.745(i)(1), IC §10144.53(i)(1))
- 3) Defines “treatment for pervasive developmental disorder or autism” to mean the following care, and necessary equipment, that is ordered and deemed medically necessary by a specified licensed professional for an individual with pervasive development disorder or autism (HSC §1374.745(i)(7), IC§10144.53(i)(7)):
  - Pharmacy care
  - Psychiatric care

- Psychological care
  - Therapeutic care
- 4) Specifies that treatment for pervasive developmental disorder or autism does not include behavioral health treatment. (HSC §1374.745(i)(8), IC §10144.53(i)(8))
  - 5) Prohibits a health care service plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an enrollee or insured solely because that person is diagnosed with or has received treatment for pervasive developmental disorder or autism. (HSC §1374.745(b), IC§10144.53(b))
  - 6) Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts. (HSC §1374.745(c), IC §10144.53(c))
  - 7) Provisions for lifetime maximums, deductibles, copayments, coinsurance or other terms and conditions for coverage of pervasive developmental disorder or autism must not be less favorable than the provisions that apply to general physical illnesses covered by the plan. (HSC §1374.745(c), IC §10144.53(c))
  - 8) Prohibits coverage for pervasive developmental disorder or autism from being denied on the basis of the location of delivery of the treatment, or because the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature. (HSC §1374.745(d), IC §10144.53(d))
  - 9) Requires a health care service plan and health insurer to establish and maintain an adequate network of service providers, with appropriate training and experience in pervasive developmental disorder or autism so that patients have a choice of providers, timely access, continuity of care, and ready referral to the services required to be provided by this bill. (HSC §1374.745(f), IC §10144.53(f))
  - 10) Provides that on and after January 1, 2014, no benefits are required to be provided that are in excess of federally required essential health benefits as defined by Federal Law. (HSC §1374.745(h), IC §10144.53(h)).

**Comments:**

- 1) **Author's Intent.** Due to loopholes in current law, those with pervasive development disorder or autism (PDD/A) are frequently denied coverage for their disorder. When they are denied coverage, those with PDD/A must either go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for PDD/A seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with PDD/A by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.
- 2) **Expansion of Current Law.** Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. For example, they may say the treatment is not medically necessary, non-medical, experimental, or educational only. This bill would make the law more explicit about what must be covered.

**3) Previous Legislation.** SB 946 (Chapter 650, Statutes of 2011) was signed into law last fall. It requires, no later than July 1, 2012, that every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A. This bill would expand upon SB 946 by requiring health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of PDD/A other than behavioral health treatment.

**4) Suggested Amendment.** This bill would require insurers to provide coverage for the screening, diagnosis, and treatment of PDD/A. The bill specifically defines “diagnosis of pervasive developmental disorder or autism” and “treatment for pervasive developmental disorder or autism,” citing specific care that these entail. However, there is no definition of “screening of pervasive developmental disorder or autism.” As the purpose of this bill is to close loopholes allowing denial of medically necessary coverage, it is suggested that “screening of autism spectrum disorders” also be specifically defined.

**5) Recommended Position.** At its meeting on May 18, 2011, the Board took a “support if amended” position on this bill, recommending the bill be amended to define the term “screening of autism spectrum disorders.”

This bill has since been amended to incorporate both minor changes and to account for the recent passage of SB 946.

## **6) Support and Opposition.**

### Support:

- Alliance of California Autism Organizations (sponsor)
- Alameda County Developmental Disabilities Council
- American Association of University Women California
- Area 4 Board, State Council of Developmental Disabilities
- Area 10 Board, State Council of Developmental Disabilities
- Association of Regional Center Agencies
- Autism Deserves Equal Coverage
- Autism Speaks
- California Association of Marriage and Family Therapists
- California Association of School Psychologists
- California Communities United Institute
- California Primary Care Association
- California School Boards Association
- Contra Costa Health Services
- Developmental Disabilities Area Board 10, State of California
- People's Care
- San Francisco Unified School District
- Solano County Families for Effective Autism Treatment
- State Council on Developmental Disabilities
- The Arc of California
- Several individuals

### Oppose:

- America's Health Insurance Plans
- Association of California Life & Health Insurance Companies
- California Association of Health Plans
- California Chamber of Commerce

## 7) History

### 2012

- Feb. 16 Referred to Com. on HEALTH.
- Jan. 26 In Senate. Read first time. To Com. on RLS. for assignment.
- Jan. 26 Read third time. Passed. Ordered to the Senate. (Ayes 50. Noes 18. Page 3603.)
- Jan. 24 Read second time. Ordered to third reading.
- Jan. 23 Read second time and amended. Ordered to second reading.
- Jan. 19 From committee: Do pass as amended. (Ayes 12. Noes 5.) (January 19).

### 2011

- May 27 In committee: Hearing postponed by committee.
- May 11 In committee: Set, first hearing. Referred to APPR. suspense file.
- May 4 Re-referred to Com. on APPR.
- May 3 Read second time and amended.
- May 2 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 12. Noes 6.) (April 26).
- Apr. 7 Re-referred to Com. on HEALTH.
- Apr. 6 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
- Feb. 3 Referred to Com. on HEALTH.
- Jan. 21 From printer. May be heard in committee February 20.
- Jan. 20 Read first time. To print.

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AMENDED IN ASSEMBLY JANUARY 23, 2012

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 171**

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**Introduced by Assembly Member Beall**

**(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, Wieckowski, Williams, and Yamada)**

January 20, 2011

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An act to add Section ~~1374.73~~ 1374.745 to the Health and Safety Code, and to add Section ~~10144.51~~ 10144.53 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 171, as amended, Beall. ~~Autism spectrum disorder. Pervasive developmental disorder or autism.~~

(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for ~~licensing and~~ the regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide ~~benefits for specified conditions, including certain mental health conditions.~~ *coverage for the diagnosis and treatment of severe mental illnesses, including pervasive developmental disorder or autism, under the same terms and conditions applied to other medical conditions, as specified. Commencing July 1, 2012, and until July 1, 2014, existing law requires health care service*

*plan contracts and health insurance policies to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism.*

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment, *other than behavioral health treatment, of ~~autism spectrum disorders~~ pervasive developmental disorder or autism.* The bill would, however, provide that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required that exceed the essential health benefits that will be required under specified federal law. The bill would prohibit coverage from being denied for specified reasons health care service plans and health insurers from denying, terminating, or refusing to renew coverage solely because the individual is diagnosed with or has received treatment for pervasive developmental disorder or autism. Because the bill would change the definition of a crime with respect to health care service plans, it would thereby impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section ~~1374.73~~ 1374.745 is added to the Health
- 2 and Safety Code, to read:
- 3 ~~1374.73.~~
- 4 1374.745. (a) Every health care service plan contract issued,
- 5 amended, or renewed on or after January 1, ~~2012~~ 2013, that
- 6 provides hospital, medical, or surgical coverage shall provide
- 7 coverage for the screening, diagnosis, and treatment of ~~autism~~
- 8 ~~spectrum disorders.~~ *pervasive developmental disorder or autism.*
- 9 (b) A health care service plan shall not terminate coverage, or
- 10 refuse to deliver, execute, issue, amend, adjust, or renew coverage,
- 11 to an enrollee solely because the individual is diagnosed with, or

1 has received treatment for, ~~an autism spectrum disorder~~ *pervasive*  
2 *developmental disorder or autism.*

3 (c) Coverage required to be provided under this section shall  
4 extend to all medically necessary services and shall not be subject  
5 to any limits regarding age, number of visits, or dollar amounts.  
6 Coverage required to be provided under this section shall not be  
7 subject to provisions relating to lifetime maximums, deductibles,  
8 copayments, or coinsurance or other terms and conditions that are  
9 less favorable to an enrollee than lifetime maximums, deductibles,  
10 copayments, or coinsurance or other terms and conditions that  
11 apply to physical illness generally under the plan contract.

12 (d) Coverage required to be provided under this section is a  
13 health care service and a covered health care benefit for purposes  
14 of this chapter. Coverage shall not be denied *on the basis of the*  
15 *location of delivery of the treatment or on the basis that the*  
16 *treatment is habilitative, nonrestorative, educational, academic, or*  
17 *custodial in nature.*

18 (e) A health care service plan may request, no more than once  
19 annually, a review of treatment provided to an enrollee for ~~autism~~  
20 ~~spectrum disorders~~ *pervasive developmental disorder or autism.*  
21 The cost of obtaining the review shall be borne by the plan. This  
22 subdivision does not apply to inpatient services.

23 (f) A health care service plan shall establish and maintain an  
24 adequate network of ~~qualified autism~~ service providers with  
25 appropriate training and experience in ~~autism spectrum disorders~~  
26 *pervasive developmental disorder or autism* to ensure that enrollees  
27 have a choice of providers, and have timely access, continuity of  
28 care, and ready referral to all services required to be provided by  
29 this section consistent with Sections 1367 and 1367.03 and the  
30 regulations adopted pursuant thereto.

31 (g) (1) This section shall not be construed as reducing any  
32 obligation to provide services to an enrollee under an individualized  
33 family service plan, an individualized program plan, a prevention  
34 program plan, an individualized education program, or an  
35 individualized service plan.

36 (2) This section shall not be construed as limiting *or excluding*  
37 *benefits that are otherwise available to an enrollee under a health*  
38 *care service plan. plan, including, but not limited to, benefits that*  
39 *are required to be covered pursuant to Sections 1374.72 and*  
40 *1374.73.*

1 (3) *This section shall not be construed to mean that the services*  
2 *required to be covered pursuant to this section are not required*  
3 *to be covered under other provisions of this chapter.*

4 ~~(3)~~

5 (4) This section shall not be construed as affecting litigation  
6 that is pending on January 1, 2012.

7 ~~(h) On and after January 1, 2014, to the extent that this section~~  
8 ~~requires health benefits to be provided that exceed the essential~~  
9 ~~health benefits required to be provided under Section 1302(b) of~~  
10 ~~the federal Patient Protection and Affordable Care Act (Public~~  
11 ~~Law 111-148), as amended by the federal Health Care and~~  
12 ~~Education Reconciliation Act of 2010 (Public Law 111-152) by~~  
13 ~~qualified health plans offering those benefits in the California~~  
14 ~~Health Benefit Exchange pursuant to Title 22 (commencing with~~  
15 ~~Section 100500) of the Government Code, the specific benefits~~  
16 ~~that exceed the federally required essential health benefits are not~~  
17 ~~required to be provided when offered by a health care service plan~~  
18 ~~contract through the Exchange. However, those specific benefits~~  
19 ~~are required to be provided if offered by a health care service plan~~  
20 ~~contract outside of the Exchange.~~

21 ~~(h) Notwithstanding subdivision (a), on and after January 1,~~  
22 ~~2014, this section does not require any benefits to be provided that~~  
23 ~~exceed the essential health benefits that all health plans will be~~  
24 ~~required by federal regulations to provide under Section 1302(b)~~  
25 ~~of the federal Patient Protection and Affordable Care Act (Public~~  
26 ~~Law 111-148), as amended by the federal Health Care and~~  
27 ~~Education Reconciliation Act of 2010 (Public Law 111-152).~~

28 (i) As used in this section, the following terms shall have the  
29 following meanings:

30 ~~(1) "Autism spectrum disorder" means a neurobiological~~  
31 ~~condition that includes autistic disorder, Asperger's disorder, Rett's~~  
32 ~~disorder, childhood disintegrative disorder, and pervasive~~  
33 ~~developmental disorder not otherwise specified.~~

34 ~~(2) "Behavioral health treatment" means professional services~~  
35 ~~and treatment programs, including behavioral intervention therapy,~~  
36 ~~applied behavioral analysis, and other intensive behavioral~~  
37 ~~programs, that have demonstrated efficacy to develop, maintain,~~  
38 ~~or restore, to the maximum extent practicable, the functioning or~~  
39 ~~quality of life of an individual and that have been demonstrated~~

1 to treat the core symptoms associated with autism spectrum  
2 disorder.

3 (3) “Behavioral intervention therapy” means the design,  
4 implementation, and evaluation of environmental modifications,  
5 using behavioral stimuli and consequences, to produce socially  
6 significant improvement in behaviors, including the use of direct  
7 observation, measurement, and functional analyses of the  
8 relationship between environment and behavior.

9 (4)

10 (1) “Diagnosis of autism spectrum disorders” *pervasive*  
11 *developmental disorder or autism*” means medically necessary  
12 assessment, evaluations, or tests to diagnose whether an individual  
13 has one of the autism spectrum disorders *pervasive developmental*  
14 *disorder or autism*.

15 (5) “Evidence-based research” means research that applies  
16 rigorous, systematic, and objective procedures to obtain valid  
17 knowledge relevant to autism spectrum disorders.

18 (2) “*Pervasive developmental disorder or autism*” shall have  
19 the same meaning and interpretation as used in Section 1374.72.

20 (6)

21 (3) “Pharmacy care” means medications prescribed by a licensed  
22 physician and surgeon or other appropriately licensed or certified  
23 provider and any health-related services deemed medically  
24 necessary to determine the need or effectiveness of the medications.

25 (7)

26 (4) “Psychiatric care” means direct or consultative psychiatric  
27 services provided by a psychiatrist or any other appropriately  
28 licensed or certified provider *licensed in the state in which he or*  
29 *she practices*.

30 (8)

31 (5) “Psychological care” means direct or consultative  
32 psychological services provided by a psychologist or any other  
33 appropriately licensed or certified provider *licensed in the state in*  
34 *which he or she practices*.

35 (9) “Qualified autism service provider” shall include any  
36 nationally or state licensed or certified person, entity, or group that  
37 designs, supervises, or provides treatment of autism spectrum  
38 disorders and the unlicensed personnel supervised by the licensed  
39 or certified person, entity, or group, provided the services are  
40 within the experience and scope of practice of the licensed or

1 certified person, entity, or group. “Qualified autism service  
 2 provider” shall also include any service provider that is vendorized  
 3 by a regional center to provide those same services for autism  
 4 spectrum disorders under Division 4.5 (commencing with Section  
 5 4500) of the Welfare and Institutions Code or Title 14  
 6 (commencing with Section 95000) of the Government Code and  
 7 the unlicensed personnel supervised by that provider, or a State  
 8 Department of Education nonpublic, nonsectarian agency as  
 9 defined in Section 56035 of the Education Code approved to  
 10 provide those same services for autism spectrum disorders and the  
 11 unlicensed personnel supervised by that agency. A qualified autism  
 12 service provider shall ensure criminal background screening and  
 13 fingerprinting, and adequate training and supervision of all  
 14 personnel utilized to implement services. Any national license or  
 15 certification recognized by this section shall be accredited by the  
 16 National Commission for Certifying Agencies (NCCA).

17 (10)

18 (6) “Therapeutic care” means services provided by a licensed  
 19 or certified speech therapists *therapist*, an occupational therapists  
 20 *therapist*, or a physical therapists or any other appropriately  
 21 licensed or certified provider. *therapist*.

22 (11)

23 (7) “Treatment for autism spectrum disorders” *pervasive*  
 24 *developmental disorder or autism*” means all of the following  
 25 care, including necessary equipment, *that develops, maintains, or*  
 26 *restores to the maximum extent practicable the functioning or*  
 27 *quality of life of an individual with pervasive developmental*  
 28 *disorder or autism and is prescribed or ordered for an individual*  
 29 *diagnosed with one of the autism spectrum disorders* *pervasive*  
 30 *developmental disorder or autism* by a licensed physician and  
 31 surgeon or a licensed psychologist or any other appropriately  
 32 licensed or certified provider who determines the care to be  
 33 medically necessary:

34 (A) Behavioral health treatment.

35 (B)

36 (A) Pharmacy care, *if the plan contract includes coverage for*  
37 *prescription drugs*.

38 (C)

39 (B) Psychiatric care.

40 (D)

1 (C) Psychological care.

2 ~~(E)~~

3 (D) Therapeutic care.

4 ~~(F) Any care for individuals with autism spectrum disorders~~  
5 ~~that is demonstrated, based upon best practices or evidence-based~~  
6 ~~research, to be medically necessary.~~

7 (8) *“Treatment for pervasive developmental disorder or autism”*  
8 *does not include behavioral health treatment, as defined in Section*  
9 *1374.73.*

10 (j) This section, with the exception of subdivision (b), shall not  
11 apply to dental-only or vision-only health care service plan  
12 contracts.

13 SEC. 2. Section ~~10144.51~~ 10144.53 is added to the Insurance  
14 Code, to read:

15 ~~10144.51.~~

16 10144.53. (a) Every health insurance policy issued, amended,  
17 or renewed on or after January 1, ~~2012,~~ 2013, that provides  
18 hospital, medical, or surgical coverage shall provide coverage for  
19 the screening, diagnosis, and treatment of ~~autism spectrum~~  
20 ~~disorders~~ *pervasive developmental disorder or autism.*

21 (b) A health insurer shall not terminate coverage, or refuse to  
22 deliver, execute, issue, amend, adjust, or renew coverage, to an  
23 insured solely because the individual is diagnosed with, or has  
24 received treatment for, ~~an autism spectrum disorder~~ *pervasive*  
25 *developmental disorder or autism.*

26 (c) Coverage required to be provided under this section shall  
27 extend to all medically necessary services and shall not be subject  
28 to any limits regarding age, number of visits, or dollar amounts.  
29 Coverage required to be provided under this section shall not be  
30 subject to provisions relating to lifetime maximums, deductibles,  
31 copayments, or coinsurance or other terms and conditions that are  
32 less favorable to an insured than lifetime maximums, deductibles,  
33 copayments, or coinsurance or other terms and conditions that  
34 apply to physical illness generally under the policy.

35 (d) Coverage required to be provided under this section is a  
36 health care service and a covered health care benefit for purposes  
37 of this part. Coverage shall not be denied *on the basis of the*  
38 *location of delivery of the treatment or* on the basis that the  
39 treatment is habilitative, nonrestorative, educational, academic, or  
40 custodial in nature.

1 (e) A health insurer may request, no more than once annually,  
2 a review of treatment provided to an insured for ~~autism spectrum~~  
3 ~~disorders~~ *pervasive developmental disorder or autism*. The cost  
4 of obtaining the review shall be borne by the insurer. This  
5 subdivision does not apply to inpatient services.

6 (f) A health insurer shall establish and maintain an adequate  
7 network of ~~qualified autism~~ service providers with appropriate  
8 training and experience in ~~autism spectrum disorders~~ *pervasive*  
9 *developmental disorder or autism* to ensure that insureds have a  
10 choice of providers, and have timely access, continuity of care,  
11 and ready referral to all services required to be provided by this  
12 section consistent with Sections 10133.5 and 10133.55 and the  
13 regulations adopted pursuant thereto.

14 (g) (1) This section shall not be construed as reducing any  
15 obligation to provide services to an insured under an individualized  
16 family service plan, an individualized program plan, a prevention  
17 program plan, an individualized education program, or an  
18 individualized service plan.

19 (2) This section shall not be construed as limiting *or excluding*  
20 benefits that are otherwise available to an enrollee under a health  
21 insurance policy, *including, but not limited to, benefits that are*  
22 *required to be covered under Sections 10144.5 and 10144.51.*

23 (3) *This section shall not be construed to mean that the services*  
24 *required to be covered pursuant to this section are not required*  
25 *to be covered under other provisions of this chapter.*

26 (3)

27 (4) This section shall not be construed as affecting litigation  
28 that is pending on January 1, 2012.

29 (h) ~~On and after January 1, 2014, to the extent that this section~~  
30 ~~requires health benefits to be provided that exceed the essential~~  
31 ~~health benefits required to be provided under Section 1302(b) of~~  
32 ~~the federal Patient Protection and Affordable Care Act (Public~~  
33 ~~Law 111-148), as amended by the federal Health Care and~~  
34 ~~Education Reconciliation Act of 2010 (Public Law 111-152) by~~  
35 ~~qualified health plans offering those benefits in the California~~  
36 ~~Health Benefit Exchange pursuant to Title 22 (commencing with~~  
37 ~~Section 100500) of the Government Code, the specific benefits~~  
38 ~~that exceed the federally required essential health benefits are not~~  
39 ~~required to be provided when offered by a health insurance policy~~  
40 ~~through the Exchange. However, those specific benefits are~~

1 required to be provided if offered by a health insurance policy  
2 outside of the Exchange.

3 (h) Notwithstanding subdivision (a), on and after January 1,  
4 2014, this section does not require any benefits to be provided that  
5 exceed the essential health benefits that all health plans will be  
6 required by federal regulations to provide under Section 1302(b)  
7 of the federal Patient Protection and Affordable Care Act (Public  
8 Law 111-148), as amended by the federal Health Care and  
9 Education Reconciliation Act of 2010 (Public Law 111-152).

10 (i) As used in this section, the following terms shall have the  
11 following meanings:

12 (1) ~~“Autism spectrum disorder” means a neurobiological~~  
13 ~~condition that includes autistic disorder, Asperger’s disorder, Rett’s~~  
14 ~~disorder, childhood disintegrative disorder, and pervasive~~  
15 ~~developmental disorder not otherwise specified.~~

16 (2) ~~“Behavioral health treatment” means professional services~~  
17 ~~and treatment programs, including behavioral intervention therapy,~~  
18 ~~applied behavioral analysis, and other intensive behavioral~~  
19 ~~programs, that have demonstrated efficacy to develop, maintain,~~  
20 ~~or restore, to the maximum extent practicable, the functioning or~~  
21 ~~quality of life of an individual and that have been demonstrated~~  
22 ~~to treat the core symptoms associated with autism spectrum~~  
23 ~~disorder.~~

24 (3) ~~“Behavioral intervention therapy” means the design,~~  
25 ~~implementation, and evaluation of environmental modifications,~~  
26 ~~using behavioral stimuli and consequences, to produce socially~~  
27 ~~significant improvement in behaviors, including the use of direct~~  
28 ~~observation, measurement, and functional analyses of the~~  
29 ~~relationship between environment and behavior.~~

30 (4)

31 (1) ~~“Diagnosis of autism spectrum disorders”~~ *pervasive*  
32 *developmental disorder or autism* means medically necessary  
33 assessment, evaluations, or tests to diagnose whether an individual  
34 has ~~one of the autism spectrum disorders~~ *pervasive developmental*  
35 *disorder or autism*.

36 (5) ~~“Evidence-based research” means research that applies~~  
37 ~~rigorous, systematic, and objective procedures to obtain valid~~  
38 ~~knowledge relevant to autism spectrum disorders.~~

39 (2) *“Pervasive developmental disorder or autism” shall have*  
40 *the same meaning and interpretation as used in Section 1374.72.*

1     ~~(6)~~

2     (3) “Pharmacy care” means medications prescribed by a licensed  
3 physician and surgeon or other appropriately licensed or certified  
4 provider and any health-related services deemed medically  
5 necessary to determine the need or effectiveness of the medications.

6     ~~(7)~~

7     (4) “Psychiatric care” means direct or consultative psychiatric  
8 services provided by a psychiatrist ~~or any other appropriately~~  
9 ~~licensed or certified provider~~ *licensed in the state in which he or*  
10 *she practices.*

11     ~~(8)~~

12     (5) “Psychological care” means direct or consultative  
13 psychological services provided by a psychologist ~~or any other~~  
14 ~~appropriately licensed or certified provider~~ *licensed in the state in*  
15 *which he or she practices.*

16     ~~(9) “Qualified autism service provider” shall include any~~  
17 ~~nationally or state licensed or certified person, entity, or group that~~  
18 ~~designs, supervises, or provides treatment of autism spectrum~~  
19 ~~disorders and the unlicensed personnel supervised by the licensed~~  
20 ~~or certified person, entity, or group, provided the services are~~  
21 ~~within the experience and scope of practice of the licensed or~~  
22 ~~certified person, entity, or group. “Qualified autism service~~  
23 ~~provider” shall also include any service provider that is vendorized~~  
24 ~~by a regional center to provide those same services for autism~~  
25 ~~spectrum disorders under Division 4.5 (commencing with Section~~  
26 ~~4500) of the Welfare and Institutions Code or Title 14~~  
27 ~~(commencing with Section 95000) of the Government Code and~~  
28 ~~the unlicensed personnel supervised by that provider, or a State~~  
29 ~~Department of Education nonpublic, nonsectarian agency as~~  
30 ~~defined in Section 56035 of the Education Code approved to~~  
31 ~~provide those same services for autism spectrum disorders and the~~  
32 ~~unlicensed personnel supervised by that agency. A qualified autism~~  
33 ~~service provider shall ensure criminal background screening and~~  
34 ~~fingerprinting, and adequate training and supervision of all~~  
35 ~~personnel utilized to implement services. Any national license or~~  
36 ~~certification recognized by this section shall be accredited by the~~  
37 ~~National Commission for Certifying Agencies (NCCA).~~

38     ~~(10)~~

39     (6) “Therapeutic care” means services provided by *a* licensed  
40 or certified speech therapists *therapist, an occupational therapists*

1 ~~therapist, or a physical therapists or any other appropriately~~  
2 ~~licensed or certified provider~~ *therapist.*

3 ~~(H)~~

4 (7) ~~“Treatment for autism spectrum disorders”~~ *pervasive*  
5 *developmental disorder or autism”* means all of the following  
6 care, including necessary equipment, *that develops, maintains, or*  
7 *restores to the maximum extent practicable the functioning or*  
8 *quality of life of an individual with pervasive developmental*  
9 *disorder or autism and is prescribed or ordered for an individual*  
10 ~~diagnosed with one of the autism spectrum disorders~~ *pervasive*  
11 *developmental disorder or autism* by a licensed physician and  
12 surgeon or a licensed psychologist ~~or any other appropriately~~  
13 ~~licensed or certified provider~~ who determines the care to be  
14 medically necessary:

15 ~~(A) Behavioral health treatment.~~

16 ~~(B)~~

17 (A) Pharmacy care, *if the policy includes coverage for*  
18 *prescription drugs.*

19 ~~(C)~~

20 (B) Psychiatric care.

21 ~~(D)~~

22 (C) Psychological care.

23 ~~(E)~~

24 (D) Therapeutic care.

25 ~~(F) Any care for individuals with autism spectrum disorders~~  
26 ~~that is demonstrated, based upon best practices or evidence-based~~  
27 ~~research, to be medically necessary.~~

28 (8) *“Treatment for pervasive developmental disorder or autism”*  
29 *does not include behavioral health treatment, as defined in Section*  
30 *10144.51.*

31 (j) This section, with the exception of subdivision (b), shall not  
32 apply to dental-only or vision-only health insurance policies.

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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 367

**VERSION:** AMENDED JANUARY 4, 2012

**AUTHOR:** SMYTH

**SPONSOR:** CALIFORNIA ASSOCIATION OF  
MARRIAGE AND FAMILY THERAPISTS  
(CAMFT)

**RECOMMENDED POSITION:** NONE

**SUBJECT:** BOARD OF BEHAVIORAL SCIENCES: REPORTING

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### **Existing Law:**

- 1) Requires certain boards to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive to the State Department of Health Care Services within ten working days. (Business and Professions Code (BPC) §683)
- 2) Names the following boards as subject to these reporting requirements (BPC §683):
  - Dental Board of California;
  - Medical Board of California;
  - Board of Psychology;
  - State Board of Optometry;
  - California State Board of Pharmacy;
  - Osteopathic Medical Board of California;
  - State Board of Chiropractic Examiners; and
  - California Board of Occupational Therapy.
- 3) States that the purpose of the reporting requirements is to prevent state reimbursement for Medi-Cal services that were provided after the cancellation of a license. (BPC §683)

### **This Bill:**

- 1) Adds the Board of Behavioral Sciences (Board) to the list of boards subject to the reporting requirements. (BPC §683(b))

### **Comment:**

- 1) **Background.** The Department of Health Care Services (DHCS) is responsible for administering several individual health care service delivery programs, including the Medi-Cal program, and helps fund hospitals and clinics in underserved areas. The purpose of these programs is to provide a health safety net to California's low income and disabled residents. The purpose of the reporting requirements in current law is to prevent providers who are no longer licensed to practice from being reimbursed by DHCS for their services.

**2) Author's Intent.** According to the author's office, the intent of this legislation is to prevent Medi-Cal fraud by Board licensees who may provide services that are eligible for Medi-Cal reimbursement, by requiring the Board to report to DHCS the name and license number of any license holder whose license is revoked.

**3) Delayed Implementation Requested.** The Department of Consumer Affairs (DCA) is in the process of implementing a new database system, called BreEZe, for its boards and bureaus. Implementation of the BreEZe system for this Board is scheduled for August 2012. However, any new program changes made between now and January 1, 2015 must be made by the BreEZe vendor, at significant additional cost to the Board. Therefore, Board staff requests consideration of a delayed implementation date of January 1, 2015. At this point the department will retain control of the BreEZe system and will be able to make changes to the system internally.

**4) Support and Opposition.**

*Support:*

- California Association of Marriage & Family Therapists (Sponsor)

*Opposition:*

- None

**5) History**

**2012**

Feb. 16 Referred to Com. on B., P. & E.D.

Jan. 26 In Senate. Read first time. To Com. on RLS. for assignment.

Jan. 26 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0. Page 3606.)

Jan. 23 Read second time. Ordered to consent calendar.

Jan. 19 From committee: Do pass. To consent calendar. (Ayes 17. Noes 0.) (January 19).

Jan. 10 From committee: Do pass and re-refer to Com. on APPR. with recommendation: to consent calendar. (Ayes 8. Noes 0.) (January 10). Re-referred to Com. on APPR.

Jan. 4 From committee chair, with author's amendments: Amend, and re-refer to Com. on AGING & L.T.C. Read second time and amended. Re-referred to Com. on AGING & L.T.C. Re-referred to Com. on B., P. & C.P. pursuant to Assembly Rule 96.

**2011**

Apr. 12 In committee: Set, first hearing. Hearing canceled at the request of author.

Mar. 22 From committee: Do pass and re-refer to Com. on AGING & L.T.C. with recommendation: to consent calendar. (Ayes 7. Noes 0.) (March 22). Re-referred to Com. on AGING & L.T.C.

Mar. 3 Referred to Coms. on PUB. S. and AGING & L.T.C.

Feb. 15 From printer. May be heard in committee March 17.

Feb. 14 Read first time. To print.

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 367**

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**Introduced by Assembly Member Smyth**

February 14, 2011

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~~An act to add Section 15631.5 to the Welfare and Institutions Code, relating to elder abuse. An act to amend, repeal, and add Section 683 of the Business and Professions Code, relating to healing arts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 367, as amended, Smyth. ~~Elder abuse: reporting. Board of Behavioral Sciences: reporting.~~

*Under existing law, the Board of Behavioral Sciences is responsible for the licensure and regulation of marriage and family therapists, licensed educational psychologists, clinical social workers, and licensed professional clinical counselors. Existing law requires certain healing arts boards to report to the State Department of Health Care Services specified licensure information relating to any person whose license has been revoked, suspended, surrendered, or made inactive by the licensee in order to prevent state reimbursement for services provided after the cancellation of a license.*

*This bill would, on and after July 1, 2013, make that reporting requirement applicable to the Board of Behavioral Sciences.*

~~The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse, and the failure of a mandated reporter to report physical abuse and financial abuse of an elder or dependent adult under~~

~~the act is a misdemeanor. The act requires the mandated reporter to report the abuse to the adult protective services agency or the local law enforcement agency if the abuse occurs anywhere other than a long-term facility.~~

~~The act permits a person who is not a mandated reporter who knows, or reasonably suspects, that an elder or dependent adult has been the victim of abuse in a place other than a long-term care facility to report that abuse to the county adult protective services agency or the local law enforcement agency.~~

~~This bill would require a county adult protective services agency or a local law enforcement agency to accept a report by a mandated reporter, or any other person, of suspected elder or dependent adult abuse even if the agency lacks jurisdiction to investigate the report, unless the call can be immediately transferred to an agency with proper jurisdiction. This bill would also require a county adult protective services agency or a local law enforcement agency that lacks jurisdiction to immediately refer the report of suspected abuse by telephone, facsimile, or electronic transmission to an agency with proper jurisdiction. By requiring county adult protective services agencies and local law enforcement agencies to provide a higher level of service, this 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

1     SECTION 1. Section 683 of the Business and Professions Code  
2     is amended to read:

3     683. (a) A board shall report, within 10 working days, to the  
4     State Department of Health Care Services the name and license  
5     number of a person whose license has been revoked, suspended,  
6     surrendered, made inactive by the licensee, or placed in another  
7     category that prohibits the licensee from practicing his or her

1 profession. The purpose of the reporting requirement is to prevent  
2 reimbursement by the state for Medi-Cal and Denti-Cal services  
3 provided after the cancellation of a provider’s professional license.

4 (b) “Board,” as used in this section, means the Dental Board of  
5 California, the Medical Board of California, the Board of  
6 Psychology, the State Board of Optometry, the California State  
7 Board of Pharmacy, the Osteopathic Medical Board of California,  
8 the State Board of Chiropractic Examiners, and the California  
9 Board of Occupational Therapy.

10 (c) *This section shall become inoperative on July 1, 2013, and,*  
11 *as of January 1, 2014, is repealed, unless a later enacted statute*  
12 *that is enacted before January 1, 2014, deletes or extends the dates*  
13 *on which it becomes inoperative and is repealed.*

14 SEC. 2. Section 683 is added to the Business and Professions  
15 Code, to read:

16 683. (a) A board shall report, within 10 working days, to the  
17 State Department of Health Care Services the name and license  
18 number of a person whose license has been revoked, suspended,  
19 surrendered, made inactive by the licensee, or placed in another  
20 category that prohibits the licensee from practicing his or her  
21 profession. The purpose of the reporting requirement is to prevent  
22 reimbursement by the state for Medi-Cal and Denti-Cal services  
23 provided after the cancellation of a provider’s professional license.

24 (b) “Board,” as used in this section, means the Dental Board  
25 of California, the Medical Board of California, the Board of  
26 Psychology, the State Board of Optometry, the California State  
27 Board of Pharmacy, the Osteopathic Medical Board of California,  
28 the State Board of Chiropractic Examiners, the Board of  
29 Behavioral Sciences, and the California Board of Occupational  
30 Therapy.

31 (c) *This section shall become operative on July 1, 2013.*

32 SECTION 1. ~~Section 15631.5 is added to the Welfare and~~  
33 ~~Institutions Code, to read:~~

34 ~~15631.5. Reports of suspected elder or dependent adult abuse~~  
35 ~~pursuant to either subparagraph (C) of paragraph (1) of subdivision~~  
36 ~~(b) of Section 15630 or subdivision (b) of Section 15631 may be~~  
37 ~~made to any county adult protective services agency or local law~~  
38 ~~enforcement agency. Any county adult protective services agency~~  
39 ~~or local law enforcement agency shall accept the report of~~  
40 ~~suspected elder or dependent adult abuse even if the agency to~~

1 whom the report is being made lacks subject matter or geographical  
2 jurisdiction to investigate the reported case, unless the county adult  
3 protective services agency or the local law enforcement agency  
4 can immediately transfer the call reporting suspected elder or  
5 dependent adult abuse to a county adult protective services agency  
6 or a local law enforcement agency with proper jurisdiction. If a  
7 county adult protective services agency or a local law enforcement  
8 agency accepts a report about a case of suspected elder or  
9 dependent adult abuse in which that agency lacks jurisdiction, the  
10 agency shall immediately refer the case by telephone, facsimile,  
11 or electronic transmission to a county adult protective services  
12 agency or a local law enforcement agency with proper jurisdiction.

13 SEC. 2. ~~If the Commission on State Mandates determines that~~  
14 ~~this act contains costs mandated by the state, reimbursement to~~  
15 ~~local agencies and school districts for those costs shall be made~~  
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
17 ~~4 of Title 2 of the Government Code.~~

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 1588**

**VERSION: AMENDED MARCH 5, 2012**

**AUTHOR: ATKINS**

**SPONSOR: AUTHOR**

**RECOMMENDED POSITION: NONE**

**SUBJECT: PROFESSIONS AND VOCATIONS: RESERVIST LICENSEES: FEES AND CONTINUING EDUCATION**

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### **Existing Law:**

- 1) Allows a licensee or registrant of any board, commission, or bureau within the Department of Consumer Affairs (DCA) to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces. The following conditions must be met (Business and Professions Code (BPC §114(a)):
  - a) The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces.
  - b) The application for reinstatement must be made while actively serving, or no later than one year from the date of discharge from active service or return to inactive military status; and
  - c) The applicant must submit an affidavit stating the date of entrance into the service, whether still in the service or the date of discharge, and he or she must also submit the renewal fee for the current renewal period.
- 2) Allows a licensee of the Board to submit a written request for a continuing education exemption if he or she was absent from the state of California due to military service for at least one year during the previous renewal period. The licensee must submit evidence of service and must submit the request for exemption at least 60 days prior to the license expiration date. (Section 1887.2(d) of Title 16 of the California Code of Regulations (CCR))

### **This Bill:**

- 1) Requires all boards, commissions, or bureaus within DCA to waive continuing education requirements and renewal fees for a licensee or registrant while called to active duty as a member of the United States Military Reserve or the California National Guard if the following requirements are met (BPC §114.3):
  - a) The person's license or registration was in good standing at the time they were called to active duty;

- b) The renewal fees and continuing education requirements are only waived for the period that they are on active duty; and
- c) The licensee or registrant, or their spouse or domestic partner, provide the Board with acceptable written notice of the active duty.

**Comments:**

- 1) **Author’s Intent.** This bill is intended to prevent members of the military from being penalized if they allow their professional license to fall into delinquency during their service period. According to the author’s office, “military professionals should not be expected to pay to renew an expensive license or fulfill continuing education requirements for a professional license they cannot use while on active duty.”
- 2) **Current Renewal Fee Policy.** The Board does not currently waive renewal fees if a licensee is called to active military duty. A licensee called to active military duty may choose to renew their license to an inactive status. An inactive status is valid for two years and requires payment of an inactive license fee that is approximately one-half of the standard license renewal fee. There is no inactive status option for a registration.
- 3) **Current Continuing Education Policy.** The Board may waive a licensee’s continuing education requirement if he or she was absent from the state of California due to active military service for at least one year during the previous renewal period. The licensee must request the exemption on a form prescribed by the Board at least 60 days before his or her license expires. Under the new proposal, the Board would be required to waive the continuing education requirement, and there would be no 60 day notice requirement, as long as the licensee or registrant provided acceptable written notice of active duty.
- 4) **Number of Licensees Affected:** The Board does not currently track the number of licensees who are members of the military. However, for the past several years, the Board has tracked the number of licensees who have requested a continuing education exemption due to military service. This is typically a very small number, as summarized below:

Year	Number of Licensees Requesting a CE Exemption Due to Military Service
2012	1
2011	0
2010	1
2009	1
2008	0
2007	1
2006	5

- 5) **Previous Legislation.** The California Military Families Financial Relief Act was passed by the Legislature in 2005 (AB 1666, Frommer, Chapter 345, Statutes of 2005). One of the provisions of this bill required the State Bar of California to waive membership fees of a service member while they are called into active duty if certain requirements are met. This bill is modeled after that provision.
- 6) **Time Limit To Pay Renewal Fee After Active Status Complete.** Staff suggests an amendment setting a time limit by which the renewal fee must be paid once the licensee or registrant completes active service. The Medical Board currently has a renewal fee exemption for its licensees if they are engaging in active military status (BPC §2440). This

code states that a Medical Board licensee becomes liable for payment of the fee for the current renewal period upon discharge from full time active service, and has 60 days after discharge to pay the renewal fee before a delinquency fee is charged. However, any Medical Board licensee who is discharged within 60 days of the end of a renewal period is exempt from paying a fee for that renewal period.

- 7) Suggested Amendment.** Currently, this bill only requires the active duty reservist, or his or her spouse or domestic partner, to provide written notice to the Board substantiating the active duty service. Staff suggests an amendment specifying that the term “written notice” be replaced by the term “affidavit.” The proposed amendment would read as follows:

*(c) The active duty reservist, or the active duty reservist's spouse or registered domestic partner, provides ~~written notice satisfactory~~ an affidavit to the board, commission, or bureau that substantiates the reservist's active duty service.*

Making this amendment clarifies the type of written notice to be provided to the Board, and is consistent with current statute which requires an affidavit stating the dates of active service of a licensee who applies for reinstatement of an expired license or registration after active service.

## **8) Support and Opposition.**

Support:

- Veterans of Foreign Wars of the United States, Department of California
- American Federation of State, County and Municipal Employees
- American Nurses Association California
- Hearing Health Care Providers of California

Opposition:

- None

## **9) History**

2012

- |         |  |
|---------|--|
| Mar. 28 | In committee: Set, first hearing. Referred to APPR. suspense file.   |
| Mar. 13 | From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (March 13). Re-referred to Com. on APPR.           |
| Mar. 6  | Re-referred to Com. on B., P. & C.P.   |
| Mar. 5  | From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended. |
| Feb. 17 | Referred to Com. on B., P. & C.P.  |
| Feb. 7  | From printer. May be heard in committee March 8.   |
| Feb. 6  | Read first time. To print.   |

## **10) Attachment**

- Business and Professions Code Section 2440 (Medical Board Renewal Fee Exemption Licensing Law for Active Military Service)

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**Business and Professions Code Section 2440**  
**(Medical Board – Renewal Fee Exemption for Active Military)**

**2440.** (a) Every licensee is exempt from the payment of the renewal fee while engaged in full-time training or active service in the Army, Navy, Air Force, or Marines, or in the United States Public Health Service.

(b) Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for payment of such fee for the current renewal period upon his or her discharge from full-time active service and shall have a period of 60 days after becoming liable within which to pay the renewal fee before the delinquency fee is required. Any person who is discharged from active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

(c) The time spent in full-time active service or training shall not be included in the computation of the five-year period for renewal and reinstatement of licensure provided in Sections 2427 and 2428.

(d) Nothing in this section shall exempt a person, exempt from renewal fees under this section, from meeting the requirements of Article 10 (commencing with Section 2190).

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AMENDED IN ASSEMBLY MARCH 5, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1588**

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**Introduced by Assembly Member Atkins  
(Principal coauthors: Assembly Members Cook and Nielsen)  
(Coauthors: Assembly Members Block, Beth Gaines, Pan,  
V. Manuel Pérez, Williams, and Yamada)**

February 6, 2012

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An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards, *commissions*, or *bureaus* within the Department of Consumer Affairs and for the licensure or *registration* of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards, *commissions*, or *bureaus* described above to waive the renewal fees and continuing education requirements, if either is applicable, of any licensee or *registrant* who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if certain requirements are met.

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 114.3 is added to the Business and  
2 Professions Code, to read:

3 114.3. Notwithstanding any other provision of law, every board,  
4 *commission, or bureau within the department* shall waive the  
5 renewal fees and continuing education requirements, if either is  
6 applicable, for any licensee *or registrant* who is a reservist called  
7 to active duty as a member of the United States Military Reserve  
8 or the California National Guard if all of the following  
9 requirements are met:

10 (a) The licensee *or registrant* was in good standing with the  
11 board, *commission, or bureau* at the time the reservist was called  
12 to active duty.

13 (b) The renewal fees or continuing education requirements are  
14 waived only for the period during which the reservist is on active  
15 duty service.

16 (c) The active duty reservist, or the active duty reservist's spouse  
17 or registered domestic partner, provides written notice satisfactory  
18 to the board, *commission, or bureau* that substantiates the  
19 reservist's active duty service.

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1764                      **VERSION:** INTRODUCED FEBRUARY 17, 2012

**AUTHOR:** R. HERNANDEZ                      **SPONSOR:** CALIFORNIA ASSOCIATION OF  
MARRIAGE AND FAMILY THERAPISTS  
(CAMFT)

**RECOMMENDED POSITION:** NONE

**SUBJECT:** PRIVATE ADOPTION AGENCIES: LICENSING

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### **Existing Law:**

- 1) Defines a “full service adoption agency” as a licensed entity in the business of providing adoption services that does all of the following (Health and Safety Code (HSC) §1502(a)(9)):
  - Assumes care and custody of a child through relinquishment of the child to the agency;
  - Assesses the birth parents, adoptive parents, and/or child;
  - Places children for adoption; and
  - Supervises adoptive placements.
- 2) Requires a private adoption agency, as a condition of licensure, to employ either an executive director or a supervisor who has at least five years full-time social work employment in the field of child welfare. Two of these years must have been spent performing adoption social work services for either the State Department of Social Services or for a licensed California adoption agency. (HSC §1502.6)

### **This Bill:**

- 1) Would clarify that the executive director or supervisor of a private adoption agency is not required to be licensed as a clinical social worker. This individual may instead be a licensed marriage and family therapist or other licensed mental health practitioner, or may be otherwise qualified, as long as he or she has the experience prescribed by law.

### **Comments:**

- 1) **Author’s Intent.** According to the author’s office, existing law has been interpreted by some to require the executive director or supervisor of a private adoption agency be a licensed clinical social worker, even though this is not explicitly stated.

The author’s office cites Family Code Section 8502, which states that an adoption service provider may be a licensed marriage and family therapist if they have certain prescribed experience, as evidence that the intent of the law is not to require a clinical social work license. They also note that the performance of “child welfare services”, as defined in

Section 16501 of the Welfare and Institutions Code, involves in part, protecting and promoting the welfare of all children, assisting in the solution of problems which may result in child neglect, abuse, exploitation, or delinquency, and assisting families in resolving their problems. Licensed marriage and family therapists are specifically trained to work in these areas.

**2) Support and Opposition.**

Support: CAMFT (Sponsor)

Oppose: None

**3) History**

Mar. 1	Referred to Com. on HUM. S.
Feb. 21	From printer. May be heard in committee March 22.
Feb. 17	Read first time. To print.

**ASSEMBLY BILL**

**No. 1764**

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**Introduced by Assembly Member Roger Hernández**

February 17, 2012

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An act to amend Section 1502.6 of the Health and Safety Code, relating to private adoption agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1764, as introduced, Roger Hernández. Private adoption agencies: licensing.

Existing law requires the State Department of Social Services to deny a private adoption agency a license, and to revoke an existing private adoption agency license, unless the applicant or licensee demonstrates that it employs either an executive director or a supervisor who has had at least 5 years of full-time social work employment in the field of child welfare, as described, 2 years of which have been spent performing adoption social work services, as specified.

This bill would specify that these provisions of law do not require an executive director or supervisor of a private adoption agency to be licensed as a clinical social worker, provided the individual meets the requisite years of experience in social work employment and adoption social work services.

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

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

- 1 SECTION 1. Section 1502.6 of the Health and Safety Code is
- 2 amended to read:

1 1502.6. (a) The department shall deny a private adoption  
2 agency a license, or revoke an existing private adoption agency  
3 license, unless the applicant or licensee demonstrates that it  
4 currently and continuously employs either an executive director  
5 or a supervisor who has had at least five years of full-time social  
6 work employment in the field of child welfare as described in  
7 Chapter 5 (commencing with Section 16500) of Part 4 of Division  
8 9 of the Welfare and Institutions Code or Division 13 (commencing  
9 with Section 8500) of the Family Code, two years of which shall  
10 have been spent performing adoption social work services in either  
11 the department or a licensed California adoption agency.

12 (b) *Subdivision (a) shall not be construed to require an executive*  
13 *director or supervisor of a private adoption agency to be licensed*  
14 *as a clinical social worker. A licensed marriage and family*  
15 *therapist, other licensed mental health practitioner, or any other*  
16 *qualified individual may be employed as an executive director or*  
17 *supervisor of a private adoption agency, provided that he or she*  
18 *possesses the experience with respect to social work employment*  
19 *and adoption social work services specified in subdivision (a).*

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1785                      **VERSION:** INTRODUCED FEBRUARY 21, 2012

**AUTHOR:** B. LOWENTHAL                      **SPONSOR:** CALIFORNIA ASSOCIATION OF  
MARRIAGE AND FAMILY THERAPISTS  
(CAMFT)

**RECOMMENDED POSITION:** NONE

**SUBJECT:** MEDI-CAL: FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH  
CLINICS

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### **Existing Law:**

- 1) Establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits that are reimbursed on a per-visit basis. (Welfare and Institutions Code (WIC) §14132.100(c))
- 2) Defines a FQHC or RHC visit as a face-to-face encounter between an FQHC or RHC patient and one of the following (WIC §14132.100(g))
  - A physician;
  - physician assistant;
  - nurse practitioner;
  - certified nurse-midwife;
  - clinical psychologist;
  - licensed clinical social worker;
  - visiting nurse; or
  - dental hygienist.

### **This Bill:**

- 1) Would add a marriage and family therapist to the list of health care professionals included in the definition of a visit to a FQHC or RHC that is eligible for Medi-Cal reimbursement. (WIC §14132.100(g)(1))

### **Comments:**

- 1) **Author's Intent.** The intent of this legislation is to allow federally qualified health centers and rural health clinics to be able to hire a marriage and family therapist and be reimbursed through Medi-Cal for covered mental health services. Under current law, only clinical psychologists or licensed clinical social workers may receive Medi-Cal reimbursement for covered services in such settings. According to the author's office, the inability to receive

Medi-Cal reimbursement serves as a disincentive for a FQHC or a RHC to consider hiring a marriage and family therapist.

**2) Inclusion of LPCCs.** This amendment leaves out the Board's newest license type, licensed professional clinical counselors (LPCCs). The Board began issuing LPCC licenses and registrations in early 2012. Because LPCCs also practice psychotherapy, the Board may want to recommend that they be included as well.

**3) Suggested Amendment.** Staff suggests an amendment be made to include the word "licensed" in front of the term "marriage and family therapist" in §14132.100(g)(1). This will clarify that the marriage and family therapist must be licensed by the Board, and it is consistent with the use of the term "licensed clinical social worker" in that code section. In addition, it is also consistent with the Board's August 18, 2011 decision that the title "Licensed Marriage and Family Therapist" be utilized in all new regulatory and legislative proposals.

#### **4) Support and Opposition.**

Support:

- CAMFT (Sponsor)

Oppose:

- None

#### **5) History**

2012

Mar. 1 Referred to Com. on HEALTH.

Feb. 22 From printer. May be heard in committee March 23.

Feb. 21 Read first time. To print.

**ASSEMBLY BILL**

**No. 1785**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 21, 2012

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An act to amend Section 14132.100 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1785, as introduced, Bonnie Lowenthal. Medi-Cal: federally qualified health centers: rural health clinics.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. "Visit" is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and specified health care professionals.

This bill would include a marriage and family therapist within those health care professionals covered under that definition.

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 14132.100 of the Welfare and Institutions  
2 Code is amended to read:

3 14132.100. (a) The federally qualified health center services  
4 described in Section 1396d(a)(2)(C) of Title 42 of the United States  
5 Code are covered benefits.

6 (b) The rural health clinic services described in Section  
7 1396d(a)(2)(B) of Title 42 of the United States Code are covered  
8 benefits.

9 (c) Federally qualified health center services and rural health  
10 clinic services shall be reimbursed on a per-visit basis in  
11 accordance with the definition of “visit” set forth in subdivision  
12 (g).

13 (d) Effective October 1, 2004, and on each October 1, thereafter,  
14 until no longer required by federal law, federally qualified health  
15 center (FQHC) and rural health clinic (RHC) per-visit rates shall  
16 be increased by the Medicare Economic Index applicable to  
17 primary care services in the manner provided for in Section  
18 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to  
19 January 1, 2004, FQHC and RHC per-visit rates shall be adjusted  
20 by the Medicare Economic Index in accordance with the  
21 methodology set forth in the state plan in effect on October 1,  
22 2001.

23 (e) (1) An FQHC or RHC may apply for an adjustment to its  
24 per-visit rate based on a change in the scope of services provided  
25 by the FQHC or RHC. Rate changes based on a change in the  
26 scope of services provided by an FQHC or RHC shall be evaluated  
27 in accordance with Medicare reasonable cost principles, as set  
28 forth in Part 413 (commencing with Section 413.1) of Title 42 of  
29 the Code of Federal Regulations, or its successor.

30 (2) Subject to the conditions set forth in subparagraphs (A) to  
31 (D), inclusive, of paragraph (3), a change in scope of service means  
32 any of the following:

33 (A) The addition of a new FQHC or RHC service that is not  
34 incorporated in the baseline prospective payment system (PPS)  
35 rate, or a deletion of an FQHC or RHC service that is incorporated  
36 in the baseline PPS rate.

37 (B) A change in service due to amended regulatory requirements  
38 or rules.

1 (C) A change in service resulting from relocating or remodeling  
2 an FQHC or RHC.

3 (D) A change in types of services due to a change in applicable  
4 technology and medical practice utilized by the center or clinic.

5 (E) An increase in service intensity attributable to changes in  
6 the types of patients served, including, but not limited to,  
7 populations with HIV or AIDS, or other chronic diseases, or  
8 homeless, elderly, migrant, or other special populations.

9 (F) Any changes in any of the services described in subdivision  
10 (a) or (b), or in the provider mix of an FQHC or RHC or one of  
11 its sites.

12 (G) Changes in operating costs attributable to capital  
13 expenditures associated with a modification of the scope of any  
14 of the services described in subdivision (a) or (b), including new  
15 or expanded service facilities, regulatory compliance, or changes  
16 in technology or medical practices at the center or clinic.

17 (H) Indirect medical education adjustments and a direct graduate  
18 medical education payment that reflects the costs of providing  
19 teaching services to interns and residents.

20 (I) Any changes in the scope of a project approved by the federal  
21 Health Resources and Service Administration (HRSA).

22 (3) No change in costs shall, in and of itself, be considered a  
23 scope-of-service change unless all of the following apply:

24 (A) The increase or decrease in cost is attributable to an increase  
25 or decrease in the scope of services defined in subdivisions (a) and  
26 (b), as applicable.

27 (B) The cost is allowable under Medicare reasonable cost  
28 principles set forth in Part 413 (commencing with Section 413) of  
29 Subchapter B of Chapter 4 of Title 42 of the Code of Federal  
30 Regulations, or its successor.

31 (C) The change in the scope of services is a change in the type,  
32 intensity, duration, or amount of services, or any combination  
33 thereof.

34 (D) The net change in the FQHC's or RHC's rate equals or  
35 exceeds 1.75 percent for the affected FQHC or RHC site. For  
36 FQHCs and RHCs that filed consolidated cost reports for multiple  
37 sites to establish the initial prospective payment reimbursement  
38 rate, the 1.75-percent threshold shall be applied to the average  
39 per-visit rate of all sites for the purposes of calculating the cost  
40 associated with a scope-of-service change. "Net change" means

1 the per-visit rate change attributable to the cumulative effect of all  
2 increases and decreases for a particular fiscal year.

3 (4) An FQHC or RHC may submit requests for scope-of-service  
4 changes once per fiscal year, only within 90 days following the  
5 beginning of the FQHC's or RHC's fiscal year. Any approved  
6 increase or decrease in the provider's rate shall be retroactive to  
7 the beginning of the FQHC's or RHC's fiscal year in which the  
8 request is submitted.

9 (5) An FQHC or RHC shall submit a scope-of-service rate  
10 change request within 90 days of the beginning of any FQHC or  
11 RHC fiscal year occurring after the effective date of this section,  
12 if, during the FQHC's or RHC's prior fiscal year, the FQHC or  
13 RHC experienced a decrease in the scope of services provided that  
14 the FQHC or RHC either knew or should have known would have  
15 resulted in a significantly lower per-visit rate. If an FQHC or RHC  
16 discontinues providing onsite pharmacy or dental services, it shall  
17 submit a scope-of-service rate change request within 90 days of  
18 the beginning of the following fiscal year. The rate change shall  
19 be effective as provided for in paragraph (4). As used in this  
20 paragraph, "significantly lower" means an average per-visit rate  
21 decrease in excess of 2.5 percent.

22 (6) Notwithstanding paragraph (4), if the approved  
23 scope-of-service change or changes were initially implemented  
24 on or after the first day of an FQHC's or RHC's fiscal year ending  
25 in calendar year 2001, but before the adoption and issuance of  
26 written instructions for applying for a scope-of-service change,  
27 the adjusted reimbursement rate for that scope-of-service change  
28 shall be made retroactive to the date the scope-of-service change  
29 was initially implemented. Scope-of-service changes under this  
30 paragraph shall be required to be submitted within the later of 150  
31 days after the adoption and issuance of the written instructions by  
32 the department, or 150 days after the end of the FQHC's or RHC's  
33 fiscal year ending in 2003.

34 (7) All references in this subdivision to "fiscal year" shall be  
35 construed to be references to the fiscal year of the individual FQHC  
36 or RHC, as the case may be.

37 (f) (1) An FQHC or RHC may request a supplemental payment  
38 if extraordinary circumstances beyond the control of the FQHC  
39 or RHC occur after December 31, 2001, and PPS payments are  
40 insufficient due to these extraordinary circumstances. Supplemental

1 payments arising from extraordinary circumstances under this  
2 subdivision shall be solely and exclusively within the discretion  
3 of the department and shall not be subject to subdivision (l). These  
4 supplemental payments shall be determined separately from the  
5 scope-of-service adjustments described in subdivision (e).  
6 Extraordinary circumstances include, but are not limited to, acts  
7 of nature, changes in applicable requirements in the Health and  
8 Safety Code, changes in applicable licensure requirements, and  
9 changes in applicable rules or regulations. Mere inflation of costs  
10 alone, absent extraordinary circumstances, shall not be grounds  
11 for supplemental payment. If an FQHC's or RHC's PPS rate is  
12 sufficient to cover its overall costs, including those associated with  
13 the extraordinary circumstances, then a supplemental payment is  
14 not warranted.

15 (2) The department shall accept requests for supplemental  
16 payment at any time throughout the prospective payment rate year.

17 (3) Requests for supplemental payments shall be submitted in  
18 writing to the department and shall set forth the reasons for the  
19 request. Each request shall be accompanied by sufficient  
20 documentation to enable the department to act upon the request.  
21 Documentation shall include the data necessary to demonstrate  
22 that the circumstances for which supplemental payment is requested  
23 meet the requirements set forth in this section. Documentation  
24 shall include all of the following:

25 (A) A presentation of data to demonstrate reasons for the  
26 FQHC's or RHC's request for a supplemental payment.

27 (B) Documentation showing the cost implications. The cost  
28 impact shall be material and significant, two hundred thousand  
29 dollars (\$200,000) or 1 percent of a facility's total costs, whichever  
30 is less.

31 (4) A request shall be submitted for each affected year.

32 (5) Amounts granted for supplemental payment requests shall  
33 be paid as lump-sum amounts for those years and not as revised  
34 PPS rates, and shall be repaid by the FQHC or RHC to the extent  
35 that it is not expended for the specified purposes.

36 (6) The department shall notify the provider of the department's  
37 discretionary decision in writing.

38 (g) (1) An FQHC or RHC "visit" means a face-to-face  
39 encounter between an FQHC or RHC patient and a physician,  
40 physician assistant, nurse practitioner, certified nurse-midwife,

1 clinical psychologist, licensed clinical social worker, *marriage*  
2 *and family therapist*, or a visiting nurse. For purposes of this  
3 section, “physician” shall be interpreted in a manner consistent  
4 with the Centers for Medicare and Medicaid Services’ Medicare  
5 Rural Health Clinic and Federally Qualified Health Center Manual  
6 (Publication 27), or its successor, only to the extent that it defines  
7 the professionals whose services are reimbursable on a per-visit  
8 basis and not as to the types of services that these professionals  
9 may render during these visits and shall include a physician and  
10 surgeon, podiatrist, dentist, optometrist, and chiropractor. A visit  
11 shall also include a face-to-face encounter between an FQHC or  
12 RHC patient and a comprehensive perinatal services practitioner,  
13 as defined in Section 51179.1 of Title 22 of the California Code  
14 of Regulations, providing comprehensive perinatal services, a  
15 four-hour day of attendance at an adult day health care center, and  
16 any other provider identified in the state plan’s definition of an  
17 FQHC or RHC visit.

18 (2) (A) A visit shall also include a face-to-face encounter  
19 between an FQHC or RHC patient and a dental hygienist or a  
20 dental hygienist in alternative practice.

21 (B) Notwithstanding subdivision (e), an FQHC or RHC that  
22 currently includes the cost of the services of a dental hygienist in  
23 alternative practice for the purposes of establishing its FQHC or  
24 RHC rate shall apply for an adjustment to its per-visit rate, and,  
25 after the rate adjustment has been approved by the department,  
26 shall bill these services as a separate visit. However, multiple  
27 encounters with dental professionals that take place on the same  
28 day shall constitute a single visit. The department shall develop  
29 the appropriate forms to determine which FQHC’s or RHC rates  
30 shall be adjusted and to facilitate the calculation of the adjusted  
31 rates. An FQHC’s or RHC’s application for, or the department’s  
32 approval of, a rate adjustment pursuant to this subparagraph shall  
33 not constitute a change in scope of service within the meaning of  
34 subdivision (e). An FQHC or RHC that applies for an adjustment  
35 to its rate pursuant to this subparagraph may continue to bill for  
36 all other FQHC or RHC visits at its existing per-visit rate, subject  
37 to reconciliation, until the rate adjustment for visits between an  
38 FQHC or RHC patient and a dental hygienist or a dental hygienist  
39 in alternative practice has been approved. Any approved increase  
40 or decrease in the provider’s rate shall be made within six months

1 after the date of receipt of the department's rate adjustment forms  
2 pursuant to this subparagraph and shall be retroactive to the  
3 beginning of the fiscal year in which the FQHC or RHC submits  
4 the request, but in no case shall the effective date be earlier than  
5 January 1, 2008.

6 (C) An FQHC or RHC that does not provide dental hygienist  
7 or dental hygienist in alternative practice services, and later elects  
8 to add these services, shall process the addition of these services  
9 as a change in scope of service pursuant to subdivision (e).

10 (h) If FQHC or RHC services are partially reimbursed by a  
11 third-party payer, such as a managed care entity (as defined in  
12 Section 1396u-2(a)(1)(B) of Title 42 of the United States Code),  
13 the Medicare Program, or the Child Health and Disability  
14 Prevention (CHDP) program, the department shall reimburse an  
15 FQHC or RHC for the difference between its per-visit PPS rate  
16 and receipts from other plans or programs on a contract-by-contract  
17 basis and not in the aggregate, and may not include managed care  
18 financial incentive payments that are required by federal law to  
19 be excluded from the calculation.

20 (i) (1) An entity that first qualifies as an FQHC or RHC in the  
21 year 2001 or later, a newly licensed facility at a new location added  
22 to an existing FQHC or RHC, and any entity that is an existing  
23 FQHC or RHC that is relocated to a new site shall each have its  
24 reimbursement rate established in accordance with one of the  
25 following methods, as selected by the FQHC or RHC:

26 (A) The rate may be calculated on a per-visit basis in an amount  
27 that is equal to the average of the per-visit rates of three comparable  
28 FQHCs or RHCs located in the same or adjacent area with a similar  
29 caseload.

30 (B) In the absence of three comparable FQHCs or RHCs with  
31 a similar caseload, the rate may be calculated on a per-visit basis  
32 in an amount that is equal to the average of the per-visit rates of  
33 three comparable FQHCs or RHCs located in the same or an  
34 adjacent service area, or in a reasonably similar geographic area  
35 with respect to relevant social, health care, and economic  
36 characteristics.

37 (C) At a new entity's one-time election, the department shall  
38 establish a reimbursement rate, calculated on a per-visit basis, that  
39 is equal to 100 percent of the projected allowable costs to the  
40 FQHC or RHC of furnishing FQHC or RHC services during the

1 first 12 months of operation as an FQHC or RHC. After the first  
 2 12-month period, the projected per-visit rate shall be increased by  
 3 the Medicare Economic Index then in effect. The projected  
 4 allowable costs for the first 12 months shall be cost settled and the  
 5 prospective payment reimbursement rate shall be adjusted based  
 6 on actual and allowable cost per visit.

7 (D) The department may adopt any further and additional  
 8 methods of setting reimbursement rates for newly qualified FQHCs  
 9 or RHCs as are consistent with Section 1396a(bb)(4) of Title 42  
 10 of the United States Code.

11 (2) In order for an FQHC or RHC to establish the comparability  
 12 of its caseload for purposes of subparagraph (A) or (B) of paragraph  
 13 (1), the department shall require that the FQHC or RHC submit  
 14 its most recent annual utilization report as submitted to the Office  
 15 of Statewide Health Planning and Development, unless the FQHC  
 16 or RHC was not required to file an annual utilization report. FQHCs  
 17 or RHCs that have experienced changes in their services or  
 18 caseload subsequent to the filing of the annual utilization report  
 19 may submit to the department a completed report in the format  
 20 applicable to the prior calendar year. FQHCs or RHCs that have  
 21 not previously submitted an annual utilization report shall submit  
 22 to the department a completed report in the format applicable to  
 23 the prior calendar year. The FQHC or RHC shall not be required  
 24 to submit the annual utilization report for the comparable FQHCs  
 25 or RHCs to the department, but shall be required to identify the  
 26 comparable FQHCs or RHCs.

27 (3) The rate for any newly qualified entity set forth under this  
 28 subdivision shall be effective retroactively to the later of the date  
 29 that the entity was first qualified by the applicable federal agency  
 30 as an FQHC or RHC, the date a new facility at a new location was  
 31 added to an existing FQHC or RHC, or the date on which an  
 32 existing FQHC or RHC was relocated to a new site. The FQHC  
 33 or RHC shall be permitted to continue billing for Medi-Cal covered  
 34 benefits on a fee-for-service basis until it is informed of its  
 35 enrollment as an FQHC or RHC, and the department shall reconcile  
 36 the difference between the fee-for-service payments and the  
 37 FQHC's or RHC's prospective payment rate at that time.

38 (j) Visits occurring at an intermittent clinic site, as defined in  
 39 subdivision (h) of Section 1206 of the Health and Safety Code, of  
 40 an existing FQHC or RHC, or in a mobile unit as defined by

1 paragraph (2) of subdivision (b) of Section 1765.105 of the Health  
2 and Safety Code, shall be billed by and reimbursed at the same  
3 rate as the FQHC or RHC establishing the intermittent clinic site  
4 or the mobile unit, subject to the right of the FQHC or RHC to  
5 request a scope-of-service adjustment to the rate.

6 (k) An FQHC or RHC may elect to have pharmacy or dental  
7 services reimbursed on a fee-for-service basis, utilizing the current  
8 fee schedules established for those services. These costs shall be  
9 adjusted out of the FQHC's or RHC's clinic base rate as  
10 scope-of-service changes. An FQHC or RHC that reverses its  
11 election under this subdivision shall revert to its prior rate, subject  
12 to an increase to account for all MEI increases occurring during  
13 the intervening time period, and subject to any increase or decrease  
14 associated with applicable scope-of-services adjustments as  
15 provided in subdivision (e).

16 (l) FQHCs and RHCs may appeal a grievance or complaint  
17 concerning ratesetting, scope-of-service changes, and settlement  
18 of cost report audits, in the manner prescribed by Section 14171.  
19 The rights and remedies provided under this subdivision are  
20 cumulative to the rights and remedies available under all other  
21 provisions of law of this state.

22 (m) The department shall, by no later than March 30, 2008,  
23 promptly seek all necessary federal approvals in order to implement  
24 this section, including any amendments to the state plan. To the  
25 extent that any element or requirement of this section is not  
26 approved, the department shall submit a request to the federal  
27 Centers for Medicare and Medicaid Services for any waivers that  
28 would be necessary to implement this section.

29 (n) The department shall implement this section only to the  
30 extent that federal financial participation is obtained.

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**CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES**

**BILL ANALYSIS**

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**BILL NUMBER: AB 1864**                      **VERSION: INTRODUCED FEBRUARY 22, 2012**

**AUTHOR: WAGNER**                              **SPONSOR: AUTHOR**

**RECOMMENDED POSITION: NONE**

**SUBJECT: IMMUNITY: COURT-APPOINTED PROFESSIONALS**

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**Existing Law:**

1. Specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation. (Family Code (FC) §3170(a))
2. States the purposes of a mediation proceeding are as follows: (FC § 3161)
  - a. To reduce acrimony that may exist between the parties.
  - b. To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child.
  - c. To settle the issue of visitation rights of all parties in a manner that is in the best interest of the child.
3. States that mediation of cases involving custody and visitation concerning children is governed by uniform standards of practice adopted by the judicial council. (FC §3162)
4. Allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, for not more than one year if the court makes the following findings (FC §3190(a)):
  - a. The dispute between the parties seeking custody or visitation rights with the child poses a substantial danger to the best interest of the child.
  - b. The counseling is in the best interest of the child.
5. Requires the outpatient counseling with a mental health professional to be specifically designed to do the following (FC §3191):
  - a. Facilitate communication between the parties regarding the child's best interest.
  - b. Reduce conflict regarding custody or visitation.
  - c. Improve the quality of parenting skills of each parent.

6. States that a child custody evaluator must be a licensed marriage and family therapist, licensed clinical social worker, or other specified licensed professional or certified evaluator. (FC §3110.5(c))
7. States that a child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. (FC §3110.5(e))
8. Defines an evaluator as a supervising or associate counselor, a mediator, a child custody evaluator, or a court appointed investigator or evaluator. (FC §1816)

**This Bill:**

1. Prohibits monetary liability or damages against a professional appointed by court order to provide services to the court in a child custody or visitation case or appointed by a court order to provide expert evidence. The prohibition extends to any act, opinion, report, or communication in the performance of the court ordered services as long it is in the scope of services and occurs during the provision of those service (Civil Code (CC) § 43.100)

**Comment:**

- 1) **Author's Intent.** According to the Author, California family courts regularly appoint lawyers, social workers, marriage and family therapists, psychiatrists, or other professionals to serve as neutral fact-finders or expert witnesses. They provide the court with expert testimony or written reports to enable the court to make informed decisions.

While acting as a court appointed neutral professional for these purposes, these professionals are sometimes subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court.

As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

- 2) **Clarification of Immunity.** As written, this bill states that no professional appointed by court order to provide services in a child custody case or appointed by the court to provide expert evidence is liable financially or liable for damages, as long as it the act in question is within the scope of the appointed services and occurs during the provision of the appointed services.

However, a licensed mental health professional that is not acting in a mediator role may be acting under the jurisdiction of the Board. For example, Family Code sections 3190 and 3191 allow the court to require parties of a child custody or visitation dispute to participate in counseling with a licensed mental health professional. A Board licensee acting as a mental health professional may fall under the jurisdiction of the Board if psychotherapy is performed. In addition, the Family Code section 3110.5 specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct.

This bill does not clearly address court-connected child custody evaluators or licensed mental health professionals who are providing certain court ordered services. Staff recommends an amendment to clearly define that the immunity from financial liability or damages only applies to an individual acting as a neutral party while performing specified defined services, and not when performing psychotherapeutic services.

**3) Previous Deputy Attorney General Opinion.** In 2003, the Board's then-deputy attorney general issued an informal opinion that when acting in the capacity of a court appointed child custody mediator/evaluator, the Board does not have jurisdiction based upon the fact that neither the setting nor the services provided are clinical or psychotherapeutic services for which a Board license is required. Therefore, persons being seen by the licensee acting as a mediator or evaluator do not have a psychotherapist client or patient relationship with the mediator/evaluator, even if that person is a licensed psychotherapist.

**4) Support and Opposition.**

*Support:* None on file.

*Opposition:* None on file.

**5) History**

2012

Mar. 1 Referred to Com. on JUD.

Feb. 23 From printer. May be heard in committee March 24.

Feb. 22 Read first time. To print.

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**ASSEMBLY BILL**

**No. 1864**

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**Introduced by Assembly Member Wagner**

February 22, 2012

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An act to add Section 43.100 to the Civil Code, relating to immunity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1864, as introduced, Wagner. Immunity: court-appointed professionals.

Existing law authorizes the court, if it appears that expert evidence is or may be required by the court or any party to the action, to appoint one or more experts to investigate, to render a report, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required, as specified.

Existing law governs family law proceedings. Existing law authorizes or requires, as specified, the court to appoint various professionals to assist in these proceedings, including counsel for the minor, mediators, and child custody evaluators, among others.

This bill would prohibit any monetary liability on the part of, and any cause of action for damages against, any professional appointed by court order to provide services to the court pursuant to the provisions described above, as an expert witness or in connection with family law proceedings, for any act, opinion, report, or communication in the performance of those services, 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:*

1 SECTION 1. It is the intent of the Legislature in enacting this  
2 act to codify, as public policy, the holding of *Howard v. Drapkin*  
3 (1990) 222 Cal.App.3d 843, and to extend the protection and  
4 immunity from civil litigation for damages to all professionals  
5 appointed by the court pursuant to Part 2 (commencing with  
6 Section 3020) of Division 8 of the Family Code or Section 730 of  
7 the Evidence Code.

8 SEC. 2. Section 43.100 is added to the Civil Code, to read:

9 43.100. In addition to the privilege afforded by Section 47,  
10 there shall be no monetary liability on the part of, and no cause of  
11 action for damages shall arise against, any professional appointed  
12 by court order to provide services to the court pursuant to Part 2  
13 (commencing with Section 3020) of Division 8 of the Family Code,  
14 or for any professional appointed by court order to provide services  
15 pursuant to Section 730 of the Evidence Code, for any act, opinion,  
16 report, or communication in the performance of those services, if  
17 the act, opinion, report, or communication is within the scope of  
18 those services and occurs during the provision of those services.

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1904                      **VERSION:** INTRODUCED FEBRUARY 22, 2012

**AUTHOR:** BLOCK, BUTLER, & COOK   **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** MILITARY SPOUSES: TEMPORARY LICENSES

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### Existing Law:

- 1) Allows the Board to issue a license as a marriage and family therapist (LMFT) to a person who, at the time of application, holds a valid license issued by another state if that person has held that license for at least two years, if their education and experience is substantially equivalent to that required by the Board, passes specified Board-administered licensing examinations, and completes certain specified training or coursework. (Business and Professions Code (BPC) §4980.80)
- 2) Allows the Board to issue a license as an educational psychologist (LEP) if the applicant has certain specified education and experience requirements, and passes a Board-administered examination. (BPC §4989.20)
- 3) Allows the Board to issue a clinical social worker license (LCSW) to a person who, at the time of application, holds a valid active clinical social work license in another state if that person has supervised experience that is substantially equivalent to that required by the Board (unless licensed for at least four years), passes specified Board-administered licensing examinations, and completes certain specified training or coursework. (BPC §4996.17)
- 4) Allows the Board to issue a professional clinical counselor license (LPCC) to a person who, at the time of application, holds a valid license as a professional clinical counselor in another jurisdiction if their education and experience is substantially equivalent to that required by the Board, and if the person passes a Board administered California Law and Ethics Examination as well as the National Clinical Mental Health Counselor Examination (NCMHCE). (BPC §§ 4999.53, 4999.58, 4999.59, 4999.60)

### This Bill:

- 1) Allows a Board within the Department of Consumer Affairs (DCA) to issue a temporary license to an applicant who can prove that he or she is married to or in a domestic partnership or other legal union with, an active duty member of the U.S. Armed Forces who is assigned to duty in California under official active duty military orders. The applicant must meet the following conditions (Business and Professions Code (Business and Professions Code (BPC) §115.5(a)):
  - a. Holds a current license in another state whose requirements are determined by the Board to be substantially equivalent to the Board's licensure requirements;

- b. Has not committed any act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license by the Board;
  - c. Has not been disciplined by another licensing entity and is not the subject of any unresolved complaint or disciplinary proceeding by another licensing entity;
  - d. Pays the fees required by the Board; and
  - e. Submits fingerprints and fingerprinting fee as required by the Board.
- 2) Requires the Board to expedite this temporary licensing process. (BPC §115.5(b))
- 3) States that a temporary license is valid for 180 days, but at the discretion of the Board, may be extended for an additional 180 days if the licensee holder applies for an extension. (BPC §115.5(c))
- 4) Allows the Board to adopt regulations to administer the temporary license program. (BPC §115.5(d))

**Comments:**

- 1) **Author's Intent.** The author's office notes that the process of obtaining a state license can cause re-employment delays for military spouses moving between states, and that because of these delays and the expense involved in re-licensure, many of these spouses decide not to practice their profession. They also note that this financial and career-related issue may impact military members' decisions to stay in the military.

This bill is part of a larger federal effort to improve the lives of military families. In February 2012, the U.S. Treasury and the U.S. Department of Defense issued a report titled "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines." This report noted that approximately 35 percent of military spouses work in professions that require state licensure or certification, and recommended the use of temporary licenses to be used to accommodate qualified military spouses while they work toward a permanent license.

- 2) **Current Board Process.** The Board does not currently have a temporary license status. An applicant who has an out of state license can submit an application for examination eligibility. The Board will evaluate the application to ensure the applicant meets the Board's education and experience requirements. If the Board determines that they meet all of the requirements, the Board will deem the applicant eligible to take the required examinations. Upon passage of the Board-required examinations, the Board will issue a license.

The average time it typically takes for the Board to evaluate an examination eligibility application for the four license types over the past several years is summarized below.

**Average Processing Time for Examination Eligibility**

## Applications (in Days)

License Type	Average Processing Time (Days)			
	2008	2009	2010	2011
LMFT	38	58	88	162
LCSW	58	49	55	82
LEP	67	53	63	85

Over the past year, due to furloughs and the State hiring freeze, the Board has experienced a significant increase in processing times. However, as of February 2012, the Board is now fully staffed for the first time since June 2010. The Board expects to be able to significantly reduce the delays in the evaluation of examination eligibility applications, and hopes to be able to return to a processing time of two months or less for most license types, typical of previous years.

- 3) **Objective Needs to be Clarified.** This bill states that a board may issue a temporary license to a military spouse under certain conditions. It later states that the board shall expedite the procedure for issuing a temporary license. It is unclear if the objective of this bill is to allow a board the discretion to consider issuing a temporary license on a case by case basis, or if the intent is to require it be done for all military spouses.
- 4) **Expediting Licenses.** The Board does not currently have a process to expedite licenses. Past suggestions of expediting license in certain circumstances have raised concern among staff, Board members, and the associations that expediting license benefits some but displaces other licensees. It would also take additional staff time to identify which applications require expedition.
- 5) **Passage of Licensing Examinations.** As written, this bill requires that the military spouse hold a current license in another state that the Board determines has substantially equivalent licensing requirements. It says nothing about passage of required Board administered examinations. Each of the Board's four license types is currently required to pass at least one Board-administered examination. Passage of a Board-administered examination ensures that a candidate for licensure has competencies unique to the mental health environment in California. Allowing mental health professionals from other states that have not passed an examination tailored to address the unique mental health environment in California could jeopardize consumer protection.
- 6) **Continuity of Care.** This bill creates a temporary license that is valid for a six month period, with the opportunity to extend the license for a 1 year period. A consumer who seeks mental health services often seeks treatment for an extended period of time. Having a practitioner whose license is only valid for six months could disrupt the continuity of care for their patients.
- 7) **Delayed Implementation Requested.** If this bill becomes law, it will require the Board to modify its database system to accommodate a temporary license type. The Department of Consumer Affairs (DCA) is in the process of implementing a new database system, called BreZE, for its boards and bureaus. Implementation of the BreZE system for this Board is

scheduled for August 2012. However, any new program changes to the database made between now and January 1, 2015 must be made by the BreEZe vendor, at significant additional cost to the Board. Therefore, Board staff requests consideration of a delayed implementation date of January 1, 2015. At this point the department will retain control of the BreEZe system and will be able to make changes to the system internally.

## 8) Support and Opposition.

### Support:

- Department of Defense State Liaison Office

### Opposition:

- None on file.

## 9) History

### 2012

Mar. 27 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (March 27). Re-referred to Com. on APPR.  
Mar. 8 Referred to Com. on B., P. & C.P.  
Feb. 23 From printer. May be heard in committee March 24.  
Feb. 22 Read first time. To print.

## 10) Attachment: Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines, February 2012, U.S. Department of the Treasury and U.S. Department of Defense

**ASSEMBLY BILL**

**No. 1904**

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**Introduced by Assembly Members Block, Butler, and Cook**

February 22, 2012

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An act to add Section 115.5 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1904, as introduced, Block. Professions and vocations: military spouses: temporary licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Under existing law, licensing fees imposed by certain boards within the department are deposited in funds that are continuously appropriated.

This bill would authorize a board within the department to issue a temporary license to an applicant who, among other requirements, holds an equivalent license in another jurisdiction, as specified, and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders. The bill would require a board to expedite the process for issuing these temporary licenses. The bill would require the applicant to pay any fees required by the board and would require that those fees be deposited in the fund used by the board to administer its licensing program. To the extent that the bill would

increase the amount of money deposited into a continuously appropriated fund, the bill would make an appropriation.

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

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

- 1 SECTION 1. Section 115.5 is added to the Business and
- 2 Professions Code, to read:
- 3 115.5. (a) A board within the department may issue a
- 4 temporary license to an applicant who meets all of the following
- 5 requirements:
- 6 (1) Submits an application in the manner prescribed by the
- 7 board.
- 8 (2) Supplies evidence satisfactory to the board that the applicant
- 9 is married to, or in a domestic partnership or other legal union
- 10 with, an active duty member of the Armed Forces of the United
- 11 States who is assigned to a duty station in this state under official
- 12 active duty military orders.
- 13 (3) Holds a current license in another state, district, or territory
- 14 of the United States with the requirements that the board determines
- 15 are substantially equivalent to those established under this code
- 16 for that occupation.
- 17 (4) Has not committed an act in any jurisdiction that would have
- 18 constituted grounds for denial, suspension, or revocation of the
- 19 license under this code at the time the act was committed.
- 20 (5) Has not been disciplined by a licensing entity in another
- 21 jurisdiction and is not the subject of an unresolved complaint,
- 22 review procedure, or disciplinary proceeding conducted by a
- 23 licensing entity in another jurisdiction.
- 24 (6) Pays any fees required by the board. Those fees shall be
- 25 deposited in the applicable fund or account used by the board to
- 26 administer its licensing program.
- 27 (7) Submits fingerprints and any applicable fingerprinting fee
- 28 in the manner required of an applicant for a regular license.
- 29 (b) A board shall expedite the procedure for issuing a temporary
- 30 license pursuant to this section.
- 31 (c) A temporary license issued under this section shall be valid
- 32 for 180 days, except that the license may, at the discretion of the

- 1 board, be extended for an additional 180-day period on application
- 2 of the license holder.
- 3 (d) A board may adopt regulations necessary to administer this
- 4 section.

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**U.S. Department of the Treasury**



**U.S. Department of Defense**

## **Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines**

February 2012

*“We’re redoubling our efforts to help military spouses pursue their educations and careers...We’re going to help spouses get that degree, find that job, or start that new business. We want every company in America to know our military spouses and veterans have the skills and the dedication, and our nation is more competitive when we tap their incredible talents.”*

*- President Barack Obama, January 24, 2011*



February 15, 2012



The President and his administration have taken the initiative to make the care and well-being of our nation's veterans, service members, and military families a priority across all agencies of the government. Last year, the President unveiled *Strengthening Our Military Families: Meeting America's Commitment* – a document that outlined the commitment of 16 separate agencies to 47 initiatives designed to improve the lives of military families. First Lady Michelle Obama and Dr. Jill Biden have also made it their personal priority to support our nation's veterans, service members, and military families through their Joining Forces initiative.

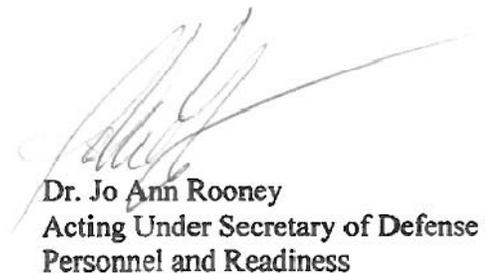
As a result of the President's advocacy, and in response to conversations that the First Lady and Dr. Biden have had with military spouses, the Departments of Treasury and Defense have co-authored this report to highlight the impact of state occupational licensing requirements on the careers of military spouses. The report shows that military spouses are especially affected by state occupational licensing requirements. About 35 percent of military spouses work in professions that require state licenses or certification. They move across state lines far more frequently than the general population. These moves present administrative and financial challenges, as illustrated in a case study of nursing licensing requirements. The report identifies best practices that states and licensing bodies can adopt through legislation, as well as current Department of Defense initiatives that address this issue.

We believe the best practices described in this report provide a baseline for further improvements, and hope it is a call to action to support our military spouses while still maintaining professional standards that ensure public safety. We are asking state governments, licensing boards, and professional associations to join us in finding more efficient ways for military spouses and other mobile professionals to fulfill these state and professional licensing and certification requirements.

Our military spouses support the well-being and safety of our nation, and we can best appreciate their sacrifices and unique challenges by adopting practices that lessen the burdens of their frequent moves. They have a compelling need and we are suggesting tangible solutions. All that is needed is the willingness to take action.



Dr. Janice Eberly  
Assistant Secretary of the Treasury  
for Economic Policy



Dr. Jo Ann Rooney  
Acting Under Secretary of Defense  
Personnel and Readiness

## Executive Summary

On January 24, 2011, President Obama, First Lady Michelle Obama, and Dr. Jill Biden presented *Strengthening Our Military Families: Meeting America's Commitment* – a document that responded to the Presidential Study Directive calling on all Cabinet Secretaries and other agency heads to find better ways to provide our military families with the support they deserve. The directive was initiated to establish a coordinated and comprehensive federal approach to supporting military families, and it contains nearly 50 commitments by federal agencies in pursuit of this goal.

State licensing and certification requirements are intended to ensure that practitioners meet a minimum level of competency. Because each state sets its own licensing requirements, these requirements often vary across state lines. Consequently, the lack of license portability – the ability to transfer an existing license to a new state with minimal application requirements – can impose significant administrative and financial burdens on licensed professionals when they move across state lines. Because military spouses hold occupational licenses and often move across state lines, the patchwork set of variable and frequently time-consuming licensing requirements across states disproportionately affect these families. The result is that too many military spouses looking for jobs that require licenses are stymied in their efforts.

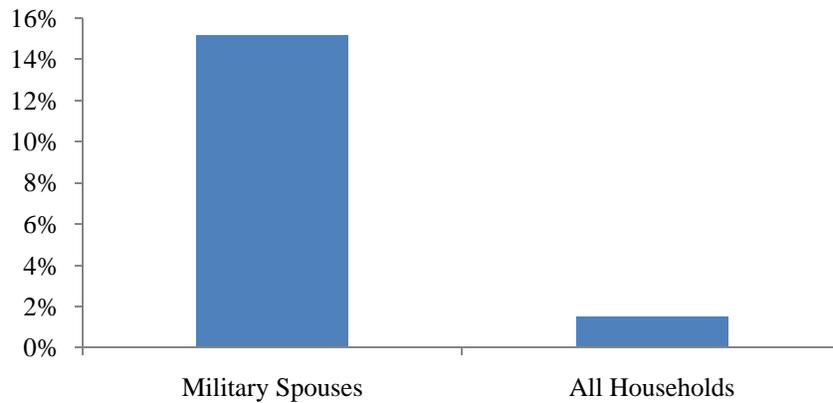
A spouse's employment plays a key role in the financial and personal well-being of military families, and their job satisfaction is an important component of the retention of service members. Without adequate support for military spouses and their career objectives, the military could have trouble retaining service members.

The Department of the Treasury and the Department of Defense (DoD) have conducted an analysis to highlight the importance of state occupational licensing requirements in the lives of licensed military spouses. The report demonstrates that military spouses often work in occupations that require a license or certification and that they have a relatively high rate of interstate mobility compared to the general population. The report also examines a case study of nursing licensing requirements to illustrate the administrative and financial burdens that licensed military spouses face when they move across state lines, and highlights current DoD initiatives that address these licensing issues. Finally, the report identifies best practices that states and licensing bodies can adopt to help reduce barriers for military spouses moving across state lines.

This report finds that:

- **Nearly 35 percent of military spouses in the labor force require licenses or certification for their profession.**
- **Military spouses are ten times more likely to have moved across state lines in the last year compared to their civilian counterparts.**

### Percent of Adult Population that Moved Across State Lines in the Last Year



In a 2008 Defense Manpower Data Center (DMDC) survey of military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40 percent of those respondents who had moved indicated that “easier state-to-state transfer of certification” would have helped them.

This report highlights best practices that states can pursue to help licensed military spouses. These best practices to help make licenses more portable come at little cost to states, but could make a meaningful difference in the lives of many military families. These best practices include:

- *Facilitating endorsement of a current license* from another jurisdiction as long as the requirements for licensure in that jurisdiction are substantially equivalent to those in the licensing state, and the applicant:
  - Has not committed any offenses that would be grounds for suspension or revocation of the license in the other jurisdiction, and is otherwise in good standing in that jurisdiction; and
  - Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units, having had sufficient recent experience (in a full or part time, paid or volunteer position), or by working under supervision for a prescribed period.
- *Providing a temporary or provisional license* allowing the military spouse to practice while fulfilling requirements needed to qualify for endorsement in the licensing state, or awaiting verification of documentation supporting an endorsement. Temporary licenses should require minimum documentation, such as proof of holding a current license in good standing and marriage to an active duty Service member who is assigned to the state.

- *Expediting application procedures* so that:
  - The director overseeing licensing within the state has authority to approve license applications for the boards; and/or
  - The individual licensing boards have authority to approve a license based simply on an affidavit from the applicant that the information provided on the application is true and that verifying documentation has been requested.

DoD, through the DoD-State Liaison Office (DSLO), has an on-going program to address key issues with state policymakers. This program, USA4 Military Families, covers 10 key issues, including occupational licensing and eligibility for unemployment compensation benefits. As of February 2012, thirteen states have introduced bills addressing the aforementioned best practices, and DSLO is working with these legislators. Although DoD continues to work on these issues on behalf of military spouses, more work remains to be done.

## Introduction

Military spouses not only play an enormous role in supporting our armed forces, but they also endure recurring absences of their service member spouse, frequent relocations, and extended periods of single-parenting and isolation from friends and family.<sup>i</sup> Research suggests that the effects of these challenging circumstances can be mitigated by employment. Unfortunately, military spouses earn less than their civilian counterparts and are less likely to be employed, on average.<sup>ii,iii</sup> A RAND study found that nearly two-thirds of military spouses felt that being a military spouse negatively affected their opportunity to work because of the “frequent and disruptive moves” associated with a military lifestyle.<sup>iv</sup>

### **CIVILIAN SPOUSES OF ACTIVE DUTY SERVICE MEMBERS<sup>v</sup>**

**Number:** 612,709

- Army: (40%)
- Navy: (24%)
- Marine Corps: (13%)
- Air Force: (24%)

**Gender:**

- Female: 95%
- Male: 5%

**Average age:** 32

Average years married: 7.8 years

**Race/Ethnicity:**

- Non-Hispanic White: 68%
- Non-Hispanic Black: 9%
- Hispanic: 12%

**Education:**

- No College: 16%
- Some College: 49%
- Bachelor’s Degree: 25%
- Advanced Degree: 10%

**Employment:**

- Labor participation rate: 57%
- Unemployment rate: 26%

**Age of Children\*:**

- Have children 5 & under: 54%
- Have children 6-12: 30%
- Have children 13-17: 15%

\*72% have children

Research on military spouses finds that employment positively affects their general well-being – both directly and indirectly. Specifically, satisfaction with career development prospects has a direct and statistically significant effect on military spouses’ well-being.<sup>vi</sup> However, many military spouses are not satisfied with their career prospects. One military spouse said, “as time passes and I am unable to find work, my career dies and I feel like I have to abandon my personal and professional goals because my spouse is [the] military.”<sup>vii</sup> Although many military families depend on two incomes, they often face difficulties in career maintenance: “having to leave an excellent job behind, be unemployed for months, then underemployed...all of this affects our family’s finances.”<sup>viii</sup>

Military spouse employment and the associated financial and personal well-being is also an important component of the retention of service members. More than half of all active duty military personnel are married, and 91 percent of employed military spouses indicated that they wanted to work and/or needed to work.<sup>ix</sup> Research suggests that spouse dissatisfaction with the ability to pursue career objectives may hinder re-enlistment. Not only are military spouses highly influential regarding re-enlistment decisions, but more than two-thirds of married service members reported that their decision to re-enlist was largely or moderately affected by their spouses’ career prospects.<sup>x</sup>

Complicated state occupational licensing requirements contribute to the difficulties that spouses of military personnel face in the workforce. State licensing and

certification requirements are intended to ensure that practitioners meet a minimum level of competency and to help “protect the public from unqualified providers.”<sup>xi,xii</sup> Because each state sets its own licensing requirements, these requirements often vary across state lines.

Consequently, the lack of license portability – the ability to transfer an existing license to a new

state with minimal requirements – can impose significant administrative and financial burdens on licensed professionals when they move across state lines. Because nearly 35 percent of military spouses work in licensed or certified professions and are 10 times as likely to move across state lines than their civilian counterparts, military spouses are more frequently affected by the lengthy background checks, exams, fees, and other burdens associated with the lack of licensing portability.

Military spouses have expressed their frustration with the lack of licensing portability. According to a May 2010 survey of military spouses conducted by Blue Star Families, a military family support group, almost half of respondents felt that being a military spouse negatively affected their ability to pursue a career, while one in five respondents cited difficulties arising from the lack of licensing portability.<sup>xiii</sup> One military spouse said, “moving from one state to another, with different licensing requirements, has been a challenge. My career, while fairly portable, has still been difficult to maintain.”<sup>xiv</sup> Another military spouse, a real estate broker, explained the challenges of transferring licenses when she and her husband moved across state lines:

I was a real estate broker in North Carolina when I met my husband. When we [moved] to Texas, my license was no longer valid...In order to reinstate my license, I would have had to attend Texas real estate school and pay Texas licensure fees. The cost to get my license and restart my business would have been more than I could have earned in the 18 months we lived there before [moving] to Kentucky. In Kentucky, I would have had to do it all over again.<sup>xv</sup>

Given the volunteer nature of our military, the sacrifices military families make for this country, and the importance of retaining these families to maintain the readiness of our military, ensuring that licensing procedures do not needlessly hinder military spouses is critically important.

The first section of this report uses the Current Population Survey to demonstrate that military spouses often work in occupations that require a license or certification and that they have a relatively high rate of interstate mobility compared to the general population. The second section illustrates the administrative and financial burdens that military spouses face when they move across state lines by examining a case study of nursing licensing requirements. Finally, the third section highlights current DoD initiatives that address these licensing issues and discusses best practices that states and licensing bodies can adopt to help reduce barriers for military spouses moving across state lines.

## Part 1: Licensing and Mobility

This section uses data from the Annual Social and Economic (ASEC) supplement of the Current Population Survey (CPS) to demonstrate that military spouses often work in state licensed occupations and that they have a relatively high rate of interstate mobility compared to the general population. The CPS is the basis for official government labor force statistics, including the unemployment rate.<sup>xvi</sup> While the CPS does not survey military barracks, the data do include civilian spouses of service members even if they live on-base in civilian housing.

We constructed a sample of approximately 2,800 spouses of active duty, Guard and Reserve service members, by combining CPS labor force data from 2007 through 2011. Table 1 presents summary statistics for our sample of military spouses. Due to data constraints, we exclude dual-military families (in which both spouses are enlisted) from the analysis. About 95 percent of military spouses in our sample are female, which is consistent with personnel data from DoD.<sup>xvii</sup>

**Table 1: Gender and Population Estimate of Military Spouses**

	Population estimate	Sample size	Percent of Total
Women	670,280	2,609	94.2%
Men	43,511	162	5.8%

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS.

Table 2 presents labor force statistics for military spouses and civilian spouses. Data from the CPS show that the labor force participation rate for military spouses has been about 57 percent over the past five years, with an unemployment rate of 9.3 percent.

**Table 2: Labor Force Participation and Unemployment Rate of Military and Civilian Spouses**

	Military Spouses	Civilian Spouses
Labor Force Participation Rate	56.8%	72.8%
Unemployment Rate	9.3%	4.9%

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Civilian spouse statistics are weighted to be comparable with the gender distribution of military spouses. Data are restricted to respondents aged 18 to 45.

Table 3 presents educational attainment for military spouses and civilian spouses using CPS data. Almost 44 percent of military spouses have “some college” but not a four-year degree, compared to 28 percent of civilian spouses. “Some college” includes receiving a degree or certificate from a community college or other short-term training program. In our sample, 38 percent of civilian spouses have at least a bachelor’s degree, compared to 31 percent of military spouses.

**Table 3: Educational Attainment of Military and Civilian Spouses**

	Military Spouses	Civilian Spouses
Less than high school	2.9%	9.9%
High school diploma (or equiv.)	22.7%	24.9%
Some college	43.4%	27.8%
Bachelor's degree or higher	31.0%	37.3%

Notes: Averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Civilian spouse statistics are weighted to be comparable with the gender distribution of military spouses. Data are restricted to respondents aged 18 to 45.

### *Occupations of Military Spouses*

Table 4 presents the top 20 occupations among our sample of military spouses. Teaching is the most common occupation among military spouses, followed by child care services, and nursing. While many of the common occupations among military spouses are not licensed, some of the most popular professions, including teaching and nursing, do require licensure.

In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40 percent of those respondents who had moved indicated that “easier state-to-state transfer of certification” would have helped them. This is not surprising given that a third of the respondents had “recently been employed” in an occupation with potential licensure requirements, and nearly half of the respondents suggested that they were interested in pursuing careers in licensed fields.<sup>xviii</sup> These responses are consistent with our findings in the CPS, which suggest that nearly 35 percent of military spouses in the labor force require licenses or certification for their profession.<sup>xix</sup>

**Table 4: Top 20 Occupations for  
Military Spouses in the Labor Force**

Rank	Occupation	Percent of total
1	Teachers (Pre-Kindergarten - 12th Grade)**	5.2
2	Child care workers*	3.9
3	Registered nurses**	3.7
4	Retail salespersons	3.6
5	Secretaries and administrative assistants	3.5
6	Waiters and waitresses	3.0
7	Receptionists and information clerks	2.8
8	Cashiers	2.8
9	First-line supervisors/managers of retail sales workers	2.5
10	Customer service representatives	1.8
11	First-line supervisors/managers of office and administrative support workers	1.6
12	Accountants and auditors**	1.6
13	Nursing, psychiatric, and home health aides*	1.5
14	Managers, all other	1.3
15	Tellers	1.3
16	Dental assistants*	1.2
17	Financial managers	1.2
18	Postsecondary teachers	1.2
19	Stock clerks and order fillers	1.2
20	Other teachers and instructors	1.2
<u>Memo</u>		
	Other categories	53.9

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Data include unemployed workers. Double asterisks (\*\*) denote occupations that require licenses; single asterisk (\*) denotes occupations that have certification.

### *Military Spouse Mobility*

The ASEC supplement also asks respondents if they moved in the past year. Military spouses are approximately ten times more likely to have moved across state lines in the last year compared to the total population.<sup>xx</sup> Table 5 presents mobility rates for military spouses and for the total population. On average, 15 percent of military spouses reported moving across state lines in the twelve months before the CPS survey, compared to only 1.5 percent of all CPS respondents.

**Table 5: Annual Percent of Adult Population  
Who Moved Across State Lines**

	Percent Moved
Military Spouse	15.2
Civilian Spouse	1.1
Single / Unmarried	1.8
<u>Memo</u>	
All households	1.5

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS, but reflect relocation in the year before the survey. Those who moved from overseas locations are excluded from this table.<sup>xxi</sup>

Because military spouses frequently hold occupations that have licensing requirements and because they move across state lines much more than the general population, complicated licensing processes are disproportionately burdensome for them. The next section will examine state licensing requirements for nurses as a case study of the difficulties that military spouses face when transferring their license across state lines.

## **Part 2: Nurse Licensing Case Study**

### **Registered Nursing License Portability**

Nursing is among the most popular professions for military spouses, and registered nurses must meet licensure requirements in each of the states where they practice. Even though the nursing profession has standardized several aspects of its licensing procedures, transferring a license when moving remains a complicated process because of variability in state licensing requirements. These problems are not unique to the nursing profession, and many licensed professionals face similar challenges when attempting to transfer their license across state lines.

To illustrate the administrative and financial burdens that licensed military spouses face when they move across state lines, this section examines a case study of nursing licensing requirements. This section documents the process for obtaining a new nursing license in any state, lists the standardized aspects of moving a nursing license to another state, and demonstrates the variability in licensure requirements across state lines.

#### *Initial Licensing Hurdles*

To obtain an initial license as a registered nurse (RN) in any state, applicants must satisfy a large set of requirements. According to the Bureau of Labor Statistics, a nursing student must complete either a bachelor's degree, an associate's degree, or receive a diploma from an approved nursing program.<sup>xxii</sup> After completing a degree from an accredited program, an applicant for a registered nursing license must take the National Council Licensure Examination for Registered Nurses (NCLEX-RN). This nationally recognized test is administered by the National Council of State Boards of Nursing (NCSBN) and "measures the competencies needed to perform safely and effectively as a newly licensed, entry-level nurse."<sup>xxiii, xxiv</sup> Passing a background check is also a requirement for nursing licensure in all states.

#### *Standardized Aspects of the Nursing "Licensure by Endorsement" Process*

In general, a nurse changing his or her state of permanent residence must apply to the new state's licensing board for "licensure by endorsement," which is the process of transferring an existing nursing license to a new state. This process includes the application for and receipt of a temporary license while the application for a permanent license is processed. While a nurse waits for a temporary license, he or she may be unable to practice. The Nurse Licensure Compact (NLC) and the NURSYS online database help to address this inflexibility and facilitate the license transferring process by providing elements of standardization.

The NCSBN created the NLC in 1997.<sup>xxv</sup> Twenty-four states are members of the NLC. If a nurse changes his or her permanent residence from one compact state to another, the compact allows the nurse to practice using the previous state's license for up to 30 days. A change in residence requires that the nurse obtain a temporary or permanent license in the new state of residence in order to practice there for longer than 30 days. The NLC website states that nurses transferring their licenses when moving across state lines must "apply for licensure by endorsement, pay any applicable fees, and complete a declaration of primary state of residency in

the new home state, whereby a new multistate license is issued and the former license is inactivated.”<sup>xxvi</sup> In other words, the 30-day privilege granted by this compact is separate from the temporary and permanent licenses granted through licensure by endorsement with the state nursing board. The compact agreement fills the gap between the time when the nurse moves and when a temporary license can be issued by the receiving state’s nursing board.

The “licensure by endorsement” process has many components. A major part of this process is the verification of licensure in the previous state of residence. To this end, the NCSBN created an online data clearinghouse called NURSUS. Forty-six state nursing boards participate in NURSUS for verification of previous RN licensure.<sup>xxvii</sup> If a nurse needs license verification from a state that does not participate in NURSUS, he or she must contact the latter state’s nursing board for a state-specific verification. There is a \$30 fee for the use of the NURSUS system.<sup>xxviii</sup>

Although the NLC and NURSUS provide some standardization to the licensure by endorsement process, they do not ensure straightforward license portability for nurses moving across state lines and do not eliminate many of the non-uniform aspects of the application process, which are discussed below.

#### *Variability Among States in the “Licensure by Endorsement” Process*

While states frequently employ “licensure by endorsement” in nursing licensure, many states have additional requirements. Some states require “current experience”; this requirement mandates that prospective state license holders hold a current license and have worked as a nurse for some period specified by the state licensure board. The “current license” requirement often presents a significant complication when the license holder moves back to the United States after living overseas, as many military spouses do.

To allow nurses to continue practicing while their application for permanent licensure by endorsement is being processed, many state nursing boards offer temporary licenses after a preliminary background and qualifications checks. A clean record is usually required for a temporary license to be issued.<sup>xxix</sup>

Table 6 lists the 10 states with the largest active duty military populations and illustrates the variability in state nursing board requirements regarding license portability. For example, the wait time for a temporary license varies from as little as ten days in Virginia and Texas to up to six weeks in California. The time period for which a temporary license is valid also varies, from 30 days in Virginia to six months in California, Kentucky and North Carolina.<sup>xxx</sup> The waiting time for a permanent license is often not published by the state nursing board, but in most states an application expires if not completed within one year of the start date. Application fees also vary: among the 10 states examined, the fee ranged from \$43 in Colorado to \$200 in Texas.<sup>xxxi</sup>

#### *Other Factors*

There are other factors that both facilitate and slow the licensure by endorsement process. Some states offer automated procedures for submission of fingerprints, transcripts and fees, but others do not.<sup>xxxii</sup> Variability exists in the state board requirements for nursing licenses as well. Some

states automatically accept nursing degrees issued by a nationally approved program operated in another state, while others require that a nurse fulfill specific course requirements prior to licensure by endorsement.<sup>xxxiii</sup> There is also variation in state licensure requirements on training about time-varying issues such as infection control, abuse, privacy, and medical records.<sup>xxxiv</sup>

Although license portability for nurses is generally more straightforward than for other professions, nurses moving across state lines still have to go through a rigorous application process to practice nursing in another state. The variability of these processes and the associated need to continually relicense through examination poses difficulties for military spouses in licensed occupations. Other professions popular among military spouses, such as teaching, have even more complicated license portability requirements. One aspect of teacher licensing is discussed in Box 1, below.

**Box 1: Teacher Testing Requirements**

License portability in teaching is very complicated. There are several tiers of licensing in teaching, and course requirements vary widely based on the state and the subject being taught. Even the relatively standardized portions of teaching license requirements, such as the required Praxis II subject tests, have very different state standards. The table below demonstrates how the Praxis II cutoff scores vary among states.<sup>xxxv</sup>

**Praxis II Passing Scores in States with Large Military Populations**

	Mathematics	English Language, Literature, and Composition	Social Studies	Biology	Chemistry
Colorado	156	162	150	..	..
Hawaii	136	164	154	151	154
Kentucky	125	160	151	146	147
Virginia	147	172	161	155	153
Difference between the highest and lowest passing scores	31	12	11	9	7

In addition to the variability in Praxis II cutoff scores, many states with large military populations have their own individual examinations. Re-taking exams due to inconsistent cutoff scores or additional state tests pose time-consuming and expensive barriers to license portability.

**Table 6: Requirements for Transferring Nursing Licenses to a New State**

State	Does the state participate in NLC and NURSYS?	Application fee?	NCLEX Standardized Test	Temporary license valid for:	Wait time for temporary license:	Degree from accredited nursing education program needed?	Need Current Experience for Endorsement?
California	No (accepts verification from NURSYS, but does not provide information through NURSYS)	\$100 or \$151, depending on which fingerprinting method chosen	Yes, or SBTPE	6 months	4-6 weeks	Yes	No
Colorado	Yes	\$43	Yes, or SBTPE	4 months	--	Yes	No
Florida	NURSYS only	\$223	Yes, or SBTPE	--	--	Yes	Requires that the applicant worked as a nurse for 2 of the past 3 years
Georgia	No (accepts verification from NURSYS, but does not provide information through NURSYS)	\$60	Yes, or SBTPE	Does not typically provide temporary licenses	--	Yes	Requires that the applicant worked as a nurse for 3 months or 500 hours in the past 4 years
Hawaii	No (accepts verification from NURSYS, but does not provide information through NURSYS)	\$135-\$180	Yes (minimum score: 1600), or SBTPE (minimum score: 350)	3 months	--	Yes	No
Kentucky	Yes	\$169.25	Yes, or SBTPE	6 months	2 weeks	Yes	No
North Carolina	Yes	\$188	Yes (minimum score: 1600), or SBTPE (minimum score: 350)	6 months	2 weeks	Yes	No
Texas	Yes	\$200	Yes, or SBTPE (minimum score: 350)	120 days	10 days	Yes	Requires that the applicant worked as a nurse or passed the appropriate RN exam in the past 4 years
Virginia	Yes	\$190	Yes, or SBTPE	30 days (may be extended at discretion of the board)	10 days	Yes	No
Washington	NURSYS only	\$92	Yes, or SBTPE	--	--	Yes	No

Note: '--' indicates unavailable information. Source: Web sites of the listed state's Board of Nursing. Contact information for each State Board is posted on the web site of the National Council of State Boards of Nursing, under a link for Boards of Nursing. See [www.ncsbn.org](http://www.ncsbn.org).

## **Part 3: Best Practices and Department of Defense Initiatives**

### **Best Practices to Facilitate Licensure Portability**

DoD has identified best practices that states could adopt to facilitate license portability. Although DoD initially focused on promoting specific national compacts and national certifications for two career areas (teachers and nurses), the Department has recently shifted to initiatives easing the overall licensing process in a state to affect a broader population of licensed military spouses. The Nurse Licensure Compact, described earlier in this report, which gives nurses a more streamlined approach to transferring a current license to a member state, provided DoD the key concepts (temporary licenses and endorsements) to use with states for expediting licensure in other occupations, particularly if the state boards adopt methods that can expedite the application and approval process.

#### *Licensure by Endorsement*

DoD and independent studies have consistently found that “licensure by endorsement” significantly eases the process of transferring a license from one state to another. Standard “licensure through examination” requires the applicant to go through numerous state reviews in addition to passing national or state examinations and may include a supervised practicum or apprenticeship. Licensure by endorsement streamlines the application and state verification process for applicants with active out-of-state licenses, helping licensed military spouse professionals return to work more quickly. Obtaining a license by endorsement usually only requires that the license from the previous state is based on requirements similar to those in the receiving state, and without a disciplinary record. However, in some cases, applicants must also show they have recently worked in the occupation (such as two out of the past four years) as a way of demonstrating current experience or proficiency. This latter requirement can pose a problem for military spouses who have been unable to practice due to assignment overseas or in other locations. If a spouse does not meet these requirements, they will, at a minimum, have to undergo further scrutiny than the endorsement process generally requires, and in some cases, go through the full “licensure through examination” process.

In its efforts to promote a broad-based model for licensure by endorsement, DoD worked closely with the Colorado Department of Regulatory Agencies (DORA) and interested state legislators, who subsequently passed Colorado House Bill (HB) 1175 in 2010. The legislation requires the licensure through endorsement process be considered for all 77 occupations regulated by DORA and allows the Director of DORA, rather than the individual licensing boards, to determine what is required to demonstrate competency for endorsement. This eliminates delays in waiting for boards to convene. Moreover, the legislation allows for alternative demonstrations of current experience, where required, such as accepting continuing education as a substitute when there are gaps in employment. This last provision especially helps military spouses who have been at an overseas duty station for an extended period of time and unable to practice.

Two other states enacted legislation in 2011 facilitating licensure by endorsement, each with a somewhat different approach to accommodating the needs of military spouses:

- Arizona enacted Senate Bill (SB) 1458 in 2011, which allows a military spouse applicant to qualify for endorsement with one year of experience in most occupations. For those few that require more than one year, it allows the applicant to be licensed if supervised by a licensed professional.
- Texas SB 1733, enacted in 2011, is similar to Colorado HB 1175 in that it allows the board to establish alternatives to current experience for proof of occupational competency. The bill also allows military spouses who had been licensed in Texas to reinstate their license if it expired less than five years ago and they spent at least six months of that time out of the state.

### *Temporary or Provisional Licensing*

Temporary or provisional licensure is another way to ease state-to-state transitions for military spouses. Typically, these licenses are valid for anywhere between 3 and 12 months. To apply, the applicant usually has to provide proof of a current license, obtain a background check, and submit an application and fee. These licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications, and additional fees. Typically, temporary or provisional licenses are managed separately by each occupational area within a state, as is true for the Nurse Licensure Compact, discussed earlier in this report.

Colorado also provided DoD's first opportunity to gain support for temporary/provisional licensing for military spouses. In 2008, Colorado enacted HB 1162 which provides interim authorization to a military spouse with a current teaching license from another state to work within a school district for one year and allows the school district to provide an induction program which will help the military spouse obtain a professional educator license.

In 2010, DoD worked with state legislators in Florida to develop legislation supporting temporary licensure that encompasses multiple occupations. Florida HB 713 impacts commercial occupations, such as Veterinarians and Certified Public Accountants, providing the military spouse a six month temporary license as long as the spouse is married to an active member of the military assigned in Florida, has a current license, submits fingerprints for a background investigation, and pays a fee for the temporary license. Moreover, the bill allows military spouses to retain their Florida licenses if they move out of state for military reasons, and to practice without renewing the license upon return as part of a military move. Florida extended these provisions to healthcare occupations in 2011 with the enactment of HB 1319.

Four other states (Alaska, Kentucky, Missouri, and Tennessee) enacted legislation in 2011 to provide temporary/provisional licenses to military spouses, primarily using the Florida model. Notably, Kentucky HB 301 and Tennessee HB 968 provide licensure by endorsement if the spouse is qualified and temporary licensure if the spouse must fulfill additional state requirements to obtain a license (by endorsement or examination).

### *Expedited Application Processes*

Approximately half of the states use a regulatory agency, such as the Department of Regulatory Agencies, while the others regulate through individual occupational boards and do not have an umbrella agency to expedite the application process. Different approaches were required to streamline the process in these states.

Through internal agreements with individual licensing boards, the Colorado Director of DORA has the authority to expedite the endorsement process by interceding to approve applications that fulfill the boards' criteria. Two states which do not have structures analogous to that in Colorado found other ways to expedite the application process:

- Montana provided an innovative approach in HB 94 that allows boards to approve an application (for an endorsement or temporary license) based on an affidavit stating that the information provided is true and accurate and that the necessary documentation is forthcoming. Boards review the documentation upon receipt and can take disciplinary action if there are discrepancies.
- Utah HB 384 allows their occupational boards to approve the use of out-of-state licenses for “the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:
  - (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
  - (ii) the license is current and the spouse is in good standing in the state of licensure.”

While the Utah provision is the most inclusive and least intrusive for a military spouse, DoD will monitor its implementation to see if out-of-state licenses are accepted by employers as equal in quality to in-state licenses. In developing expedited approaches that save military spouses time and money, DoD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.

The 2011 legislative activity is now the baseline for further developments in 2012. Legislators, regulators, and boards have been innovative and have shown an overall willingness to address the core concern that military spouses have only a short time in a location to establish their households, obtain new licenses, find employment within their professions, and progress in their skills and abilities. 2012 may provide additional innovation and opportunities to improve licensure portability for military spouses around the following integrated set of concepts:

- *Facilitating endorsement of a current license* from another jurisdiction as long as the requirements for licensure in that jurisdiction are substantially equivalent to those in the licensing state, and the applicant:
  - Has not committed any offenses that would be grounds for suspension or revocation of the license in the other jurisdiction, and is otherwise in good standing in that jurisdiction; and

- Can demonstrate competency in the occupation through various methods as determined by the Board, such as having completed continuing education units, having had sufficient recent experience (in a full or part time, paid or volunteer position), or by working under supervision for a prescribed period.
- *Providing a temporary or provisional license* allowing the military spouse to practice while fulfilling requirements needed to qualify for endorsement in the licensing state, or awaiting verification of documentation supporting an endorsement. Temporary licenses should require minimum documentation, such as proof of holding a current license in good standing and marriage to an active duty Service member who is assigned to the state.
- *Expediting application procedures* so that:
  - The director overseeing licensing within the state has authority to approve license applications for the boards; and/or
  - The individual licensing boards have authority to approve a license based simply on an affidavit from the applicant that the information provided on the application is true and that verifying documentation has been requested.

## **Other Department of Defense Initiatives**

### *DoD Military Spouse Discussion Board*

Although these current licensure initiatives appear very promising, DoD is reaching out to military spouses for their input on how best to alleviate the hindrances created by licensure requirements. Spouses have been encouraged to share their stories and concerns about the licensure process and provide examples of real world solutions. DoD posted a discussion board on Facebook.com to facilitate the aggregation of these stories and issues.

DoD also recognizes that best practices developed thus far with states may not cover all occupations and all impediments. With the exception of legislation passed in Colorado in 2008 for teachers entering the state, DoD is not aware of changes improving licensure for military spouses in this particular profession. Similarly, the legislation recently passed has specifically excluded attorneys. DoD launched specific discussion board sessions to learn more about the processes for obtaining teaching or law licenses and the barriers faced in maintaining these licenses while moving with the military. To further this discussion, DoD has invited interested military spouses who are teachers and attorneys to join groups to continue this dialogue.

Spouses who are attorneys have responded through the Military Spouse JD Network (MSJDN), an organization established by military spouses to advocate for provisional bar membership, to educate the legal community about military spouses, and to build a network to support improved career opportunities. DoD is working with the JD Spouse Network to achieve accommodations for attorneys.

### *MyCareer Advancement Account (MyCAA) Program*

DoD currently operates the MyCAA program, which provides flexible, self-managed education and training accounts that enable military spouses of junior service members to gain the skills needed to successfully enter, navigate, and advance in portable careers. The accounts offer up to \$4,000 to eligible spouses for pursuit of an Associate's degree, or license or credential leading to a portable career. Accounts are available to military spouses married to service members serving on active duty in the junior Enlisted, Warrant Officer and Officer grades.<sup>xxxvi</sup> Funds may be used by eligible military spouses entering the workforce or transitioning between jobs and careers, and to incumbent workers in need of new skills to remain employed or move up the career ladder. Accounts must be used to pay for expenses directly related to the attainment of an Associate's degree, license, or industry-recognized credential. The accounts have helped build the financial stability of military families. In FY11, approximately 38,000 spouses applied for and were provided MyCAA financial assistance.

### *Military Spouse Employment Partnership (MSEP)*

The Military Spouse Employment Partnership (MSEP) is a targeted recruitment and employment partnership solution that connects corporate partners with military spouses who are seeking fulfilling portable careers. MSEP supports spouses of members on active duty, in the National Guard, and Reserves from all Services. MSEP partners offer flexible job opportunities that can withstand relocations, deployments, and other aspects of military life that have made career advancement so difficult for spouses in the past. MSEP now has almost 100 vetted "Fortune 500 Plus" employers participating, with over 150,000 jobs posted to its web portal ([www.MSEPJobs.com](http://www.MSEPJobs.com)) and 10,000 spouses who have been hired. As an MSEP Partner, a company agrees to:

- Identify and promote career opportunities for military spouses;
- Post job openings and a corporate human resources employment page on the MSEP Web portal;
- Offer transferable, portable career opportunities to relocating military spouse employees;
- Mentor incoming MSEP corporate partners;
- Participate in an annual MSEP meeting; and
- Document and provide employment data on military spouses hired.

MSEP's goal is to level the playing field and help military spouses connect with companies that are searching for skilled employees. Moreover, the impact of MSEP goes beyond just reducing the unemployment rate for military spouses by connecting employers to a large and diverse body of exceptionally capable, dedicated, and motivated workers. MSEP provides meaningful career opportunities that are compatible with the spouse's military service, which supports families remaining in the military.

### *Unemployment Compensation Eligibility*

Military spouses face many challenges associated with frequent mobility, including the loss of income associated with the relocation process. In 2004, DoD began working with states to

enable military spouses who become unemployed because of their service member's reassignment to be eligible for unemployment compensation. Prior to DoD's involvement in this issue, most state statutes and policies viewed a spouse leaving a job due to a military move as a "voluntary" separation despite the fact that their departures are involuntary. Thirty-nine states now provide military spouses eligibility for unemployment compensation when they leave employment because of a military move, nearly triple the number of states in 2004. Eighty-five percent of military spouses live in these 39 states (plus the District of Columbia). The states granting unemployment compensation eligibility to working spouses in transition provide a much-needed financial bridge for military families during mandatory moves and allow licensed spouses the cushion to obtain new credentials and seek employment in their new state.

## **Part 4: Conclusion**

Occupational licensing requirements place a significant and undue burden on military spouses, a population that makes great sacrifices for this country. Because many military spouses hold occupational licenses and often move across state lines, the patchwork set of variable and frequently time-consuming licensing requirements across states disproportionately affect these families.

A spouse's employment plays a key role in the financial and personal well-being of military families, and their job satisfaction is an important component of the retention of service members. Without adequate support for military spouses and their career objectives, the military could have trouble retaining service members.

Although further research will be conducted to pinpoint the most effective ways to help licensed military spouses when they transition across state lines, DoD has already identified several best practices that states can implement to ease job transitions for this population. These best practices — licensure by endorsement, temporary licensing, and expedited application processes — come at little cost to states, but would make an enormous difference in the lives of licensed military spouses.

DoD, through the DoD-State Liaison Office (DSLO), has an ongoing program to address key issues with state policymakers. This program, USA4 Military Families, covers 10 key issues, which include occupational licensing and eligibility for unemployment compensation benefits. As of February 2012, thirteen states have introduced bills addressing the aforementioned best practices, and DSLO is working with these legislators. This is encouraging and shows that states are willing to consider this valuable change. The Administration encourages all states to examine these best practice initiatives and work with DoD on their implementation. DoD will track the enactment of legislation to measure the change in processes and continue to request feedback from military spouses to ensure these processes meet their needs.

For additional information on these initiatives or to contact the DSLO, please visit [www.usa4militaryfamilies.org](http://www.usa4militaryfamilies.org) and click on the licensure issue. Although DoD continues to work on these issues on behalf of military spouses, more work remains to be done.

## **Appendix 1: Licensing and Certification**

There are two major types of occupational skill verification: certification and licensing. Certification is less stringent than licensing, and is meant to ensure that practitioners meet a minimum standard of knowledge about their field. Professions as varied as car mechanics and travel agents are certified. Licensing gives the practitioner a “right to practice,” which differs from certification in that it is illegal to practice without a license.<sup>xxxvii</sup> Possessing a license indicates that the practitioner has satisfied government requirements by passing exams, completing education requirements, satisfying background checks, completing administrative paperwork, and paying fees.<sup>xxxviii</sup> A wide range of professions are licensed, including secondary school teachers, healthcare professionals (including nurses, doctors and medical technicians), lawyers, and social workers.

For most licensed professions, state boards administer the licensure process. Because of the variability in the licensing requirements from state to state, groups that are highly mobile and work largely in licensed fields frequently face administrative difficulties due to the lack of licensing portability.

**Appendix 2: Top 20 States With the Most Active Duty Military Spouses**

State	Number of Military Spouses (total)	Military Spouses per 1000 Civilian Spouses
Hawaii	25,875	119.7
Alaska	12,025	103.4
Virginia	65,889	46.2
North Carolina	55,563	33.8
Kentucky	25,896	30.2
Washington	32,553	27.6
Colorado	23,292	27.1
Kansas	15,183	26.7
Georgia	38,563	24.9
North Dakota	3,030	22.1
New Mexico	6,309	18.5
South Carolina	13,730	17.5
Texas	66,936	16.8
Oklahoma	11,301	15.7
Wyoming	1,610	15.2
Nevada	5,387	14.4
Maryland	13,883	14.0
California	72,422	12.3
Delaware	1,819	11.9
Louisiana	9,423	11.6

Note: Location of spouses is based on the assignment of the service member. Service members stationed in the District of Columbia are omitted. Numbers are as of September 30, 2011.

## References and Notes

- <sup>i</sup>In this report, "military spouses" refer to the civilian spouses of military personnel.
- <sup>ii</sup>Lim, Nelson, Daniela Golinelli, and Michelle Cho. "Working Around the Military" Revisited: Spouse Employment in the 2000 Census Data. Santa Monica, CA: RAND, 2007.
- <sup>iii</sup>Where the civilian population is adjusted for the gender composition of the military spouse population
- <sup>iv</sup>Lim, Nelson, Daniela Golinelli, and Michelle Cho. "Working Around the Military" Revisited: Spouse Employment in the 2000 Census Data. Santa Monica, CA: RAND, 2007.
- <sup>v</sup>DMDC (2011). 2010 Military Family Life Project: Administration, datasets, and codebook (Report No. 2010-031). Arlington, VA: DMDC. All data are from 2010.
- <sup>vi</sup>Rosen, Leora N., Jeannette R. Ickovics, and Linda Z. Moghamdam. "Employment and Role Satisfaction." *Psychology of Women Quarterly* 14 (1990): 371-85
- <sup>vii</sup>Blue Star Families. "2010 Military Family Lifestyle Survey." *Blue Star Families*. 07 Jan. 2011.
- <sup>viii</sup>Blue Star Families. "2010 Military Family Lifestyle Survey." *Blue Star Families*. 07 Jan. 2011.
- <sup>ix</sup>Defense Manpower Data Center, *2008 DMDC Survey of Active Duty Spouses*. Available: <https://www.dmdc.osd.mil/appj/dwp/index.jsp>
- <sup>x</sup>Defense Manpower Data Center, *2008 DMDC Survey of Active Duty Spouses*. Available: <https://www.dmdc.osd.mil/appj/dwp/index.jsp>
- <sup>xi</sup>See Appendix 1 for the difference between 'certification' and 'licensing.'
- <sup>xii</sup>Krueger, Alan B. "Do You Need a License to Earn a Living? You Might Be Surprised at the Answer." *The New York Times*. 02 Mar. 2006. Web. 07 Jan. 2011.
- <sup>xiii</sup>Blue Star Families. "2010 Military Family Lifestyle Survey." *Blue Star Families*. 07 Jan. 2011. The Blue Star Families survey was an informal survey of military spouses.
- <sup>xiv</sup>Blue Star Families. "2010 Military Family Lifestyle Survey." *Blue Star Families*. 07 Jan. 2011.
- <sup>xv</sup>Blue Star Families. "2010 Military Family Lifestyle Survey." *Blue Star Families*. 07 Jan. 2011.
- <sup>xvi</sup>The CPS consists of a representative sample of about 60,000 households a month, and labor force questions are asked concerning all working-age adult members in the household. The ASEC CPS supplement includes detailed questions on the occupation of all working-age adults.
- <sup>xvii</sup>Department of Defense Personnel Files; this does not include spouses who are themselves a part of the military.
- <sup>xviii</sup>Defense Manpower Data Center, *2008 DMDC Survey of Active Duty Spouses*. Available: <https://www.dmdc.osd.mil/appj/dwp/index.jsp>
- <sup>xix</sup>Using CPS and a list of licensed occupations from Kleiner, Morris M., and Alan B. Krueger. "The Prevalence and Effects of Occupational Licensing." *British Journal of Industrial Relations* 48.4 (2010): 676-87.
- <sup>xx</sup>Excludes moves from overseas.
- <sup>xxi</sup>These data are from 2006-2010 because questions regarding mobility are asked of the previous year. These data were compiled using pooled data from 2007 to the 2011 ASEC CPS supplement.
- <sup>xxii</sup>"Registered Nurses." U.S. Bureau of Labor Statistics. 17 Dec. 2009. Web. 22 Jan. 2012.
- <sup>xxiii</sup>Before 1982, this test was called the State Board Test Pool Examination (SBTPE), and results from this older version of the test are still accepted by state nursing boards.
- <sup>xxiv</sup>National Council of State Boards of Nursing. "What Is NCLEX?" Web. 22 Jan. 2012.
- <sup>xxv</sup>Broun, Caroline N. "About NCLA." Nurse Licensure Compact Administrators. 2010. Web. 07 Jan. 2011.
- <sup>xxvi</sup>National Council of State Boards of Nursing. "Nurse Licensure Compact: Fact Sheet for Licensees and Nursing Students." NCLA.
- <sup>xxvii</sup>National Council of State Boards of Nursing. "NURSYS." Nursys.com. 2011. Web. 22 Jan. 2012
- <sup>xxviii</sup>National Council of State Boards of Nursing. "Frequently Asked Questions." NURSYS, 2011. Web. 7 Jan. 2011.
- <sup>xxix</sup>Prior convictions and disciplinary actions are often reviewed by state boards on a case-by-case basis, taking into account the severity of prior offenses and any remedial activities that may have been required. Telephone conversation with Danny Cope, California Department of Consumer Affairs Board of Registered Nursing call center operator, October 20, 2010.
- <sup>xxx</sup>Web sites of the listed state's Board of Nursing. Contact information for each State Board is posted on the web site of the National Council of State Boards of Nursing, under a link for Boards of Nursing. See [www.ncsbn.org](http://www.ncsbn.org).
- <sup>xxxi</sup>Web sites of the listed state's Board of Nursing. See [www.ncsbn.org](http://www.ncsbn.org).
- <sup>xxxii</sup>Telephone conversation with Danny Cope, California Department of Consumer Affairs Board of Registered Nursing call center operator, October 20, 2010.

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<sup>xxxiii</sup>Telephone conversation with Diane Tompkins, Assistant Director of Certifications, American Nurses' Credentials Center, October 21, 2010.

<sup>xxxiv</sup>Email correspondence with Anne Tumbarello, Director of the BSN Program at Mount St. Mary's College in Los Angeles, California.

<sup>xxxv</sup>Educational Testing Service. "The Praxis Series Passing Scores by Test and State." Ets.org. 2010. Web. 12 Feb. 2012. The table lists four of the ten states with the largest active duty military populations for which Praxis cut off scores are available.

<sup>xxxvi</sup>Eligible military spouses include those who are married to Service members on active duty and those who are married to members of the Guard and Reserve who are on Federal orders. The junior grades covered are Enlisted grades E1 – E5, Warrant Officer grades W1 and W2, and Officer grades O1 and O2.

<sup>xxxvii</sup>Kleiner, Morris M., and Alan B. Krueger. "The Prevalence and Effects of Occupational Licensing." *British Journal of Industrial Relations* 48.4 (2010): 676-87.

<sup>xxxviii</sup>Kleiner, Morris M., and Alan B. Krueger. "The Prevalence and Effects of Occupational Licensing." *British Journal of Industrial Relations* 48.4 (2010): 676-87.

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1932                      **VERSION:** INTRODUCED FEBRUARY 22, 2012

**AUTHOR:** COOK                              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** UNITED STATES ARMED SERVICES: HEALING ARTS BOARDS

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### Existing Law:

- 1) Requires healing arts boards under the Department of Consumer Affairs (DCA) to provide methods of evaluating education, training, and experience obtained in military service if the training is applicable to the requirements of the profession. (Business and Professions Code (BPC) §710)
- 2) Defines an acceptable supervisor of a marriage and family therapist intern as someone who meets the following requirements (BPC §4980.03(g)):
  - a. Has been licensed by a state regulatory agency for at least two years as a marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology;
  - b. If a licensed professional clinical counselor, meets specified additional training and education requirements specified in law;
  - c. Has not provided therapeutic services to the intern;
  - d. Has a current valid license not under suspension or probation; and
  - e. Complies with supervision requirements established by the Board of Behavioral Sciences (Board) in regulations.
- 3) States that for persons who apply for marriage and family therapist licensure or registration on or after January 1, 2014, the Board shall accept education and experience gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education and experience is substantially equivalent to the Board's requirements, and if holding a foreign degree, the applicant proves the education is substantially equivalent by providing the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service. (BPC §§4980.74, 4980.76)
- 4) Defines "substantially equivalent" LMFT and LPCC education and experience, as follows (BPC §§4980.78, 4999.62)
  - a. A degree is obtained from a school accredited as defined in law, consists of at least 48 semester or 72 quarter units, and meets specified practicum and course content requirements;

- b. The applicant completes any units and course content required under California law not already completed;
  - c. The applicant completes a course in California Law and Professional ethics covering specified topic areas.
- 5) Defines an approved supervisor of a professional clinical counselor intern as someone who meets the following requirements (BPC §4999.12(h):
- a. Has two documented 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 certified in psychiatry by the American Board of Psychiatry and Neurology.
  - b. Has received professional training in supervision;
  - c. Has not provided therapeutic services to the clinical counselor intern; and
  - d. Has a current valid license that is not under suspension or probation.
- 6) States that for persons who apply for professional clinical counselor licensure or registration on or after January 1, 2014, who do not already hold an out of state license, the Board shall accept education and experience gained outside of California to satisfy license or registration requirements if the education and experience is substantially equivalent to the Board's requirements, and if holding a foreign degree, the applicant provides proof that the degree is equivalent to a degree from an accredited institution by providing the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service. (BPC §4999.61)
- 7) Defines "accredited school of social work" as a school that is accredited by the Commission on Accreditation of the Council on Social Work Education. (BPC §4991.2)
- 8) Requires an applicant for social work licensure or registration to have a master's degree from an accredited school of social work. (BPC §4996.2(b))
- 9) Defines an acceptable supervisor of an associate social worker (ASW) as a licensed mental health professional who, at the time of supervision, has possessed a valid license for at least two years as a psychologist, marriage and family therapist, licensed professional clinical counselor or physician certified in psychiatry by the American Board of Psychiatry and Neurology. (California Code of Regulations (CCR) Title 16, §1874)
- 10) States that experience gained outside of California shall be accepted toward the licensing requirements for a clinical social worker if it is substantially equivalent to the requirements in the state of California. (BPC §4996.17)

**This Bill:**

- 1) Beginning January 1, 2014, requires each healing arts board to annually issue a written report to the Department of Veterans Affairs that details the board's method of evaluating education, training, and experience obtained in military service. The report must also state whether the military education, training, and experience can be applied toward the board's licensing requirements. (BPC § 710.2)

- 2) Requires the report submitted to the Department of Veterans Affairs to include information about the number of military service members who have applied for and have used their military education, training and experience to fulfill the board's licensing requirements. (BPC §710.2)

**Comment:**

- 1) **Author's Intent.** The author's office states that although the law currently requires all state boards that license health care workers to provide for methods of evaluating education, training, and experience obtained in military service, there is no clear, consistent answer being provided about what military training can be used to satisfy civilian licensing requirements. The author's office would like to require state agencies to identify which requirements are satisfied by military training and what additional training is required. The goal is to reduce the amount of time and money wasted forcing veterans to repeat their medical training from scratch.
- 2) **Current Board Procedure.** The Board has very specific requirements for education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board conducts a review to determine whether or not it was substantially equivalent to current licensing requirements. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience.

The Board is not aware of specific circumstances in which an individual had military education or experience. This is not tracked by the Board and there is not a common provider of military education or experience that the Board sees cited on incoming applications. Occasionally, the Board sees supervised experience that was obtained out of the country. This experience may be accepted by the Board if the Board can determine that the supervision was substantially equivalent, and upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years in his or her current jurisdiction and is in good standing.

- 3) **Behavioral Health Professionals in the Military.** The U.S. Army Medical Service Corps lists two types of behavioral health job descriptions on its web site. These are included as Attachment A.

- a) **Social Workers:** According to the web site, "army social workers practice within a broad spectrum of practice areas and settings that include: medical inpatient and outpatient treatment, mental health, family advocacy, combat stress, substance abuse, program management and prevention and primary care. The Army Medical Service Corps offers you significant opportunities to expand into areas beyond your traditional clinical roles, including research, teaching, and administration."

Appointment as a social worker requires a master's degree in social work with emphasis in clinical practice from a program accredited by the Council on Social Work Education. The social worker must also have a state license in social work that allows clinical independent practice.

- b) **Clinical Psychologist:** The web site states that "army clinical psychology officers provide a full range of psychological services to Soldiers, family members and military retirees. Assignment options include major medical centers, community hospitals and clinics.

Appointment as a clinical psychologist requires a doctorate in clinical or counseling psychology, a clinical psychology internship at an APA accredited program, and an unrestricted license to practice clinical or counseling psychology in the U.S.

Aside from utilizing social workers or clinical psychologists who are already state-licensed, it is unclear if the military offers any training programs to those seeking licensure as a psychotherapist. The Board has not been made aware of any such programs. If such a program were presented to the Board, it would need to be evaluated to see if the education and experience gained meet licensing requirements.

The military did recently enter into a partnership with Fayetteville State University to establish a master of social work program at Fort Sam Houston military installation in Texas. This program is designed to allow soldiers to earn a master's degree in social work from an accredited university while in active duty military service, in an effort to increase the number of social workers in military service.

- 4) **Reporting Requirements Unclear.** Staff recommends an amendment to this bill which clarifies the Board's reporting requirement to the Department of Veterans Affairs. Currently, the report is required to "clearly detail the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board's requirements for licensure."

Military education and experience is evaluated by the Board on a case-by-case basis if a military applicant applies for licensure or registration. For example, if an active duty applicant with a master's in social work from Fayetteville State University applied for licensure, the Board would evaluate the education and experience to see if the requirements are met. The case-by-case evaluation is needed in order to protect the public by ensuring qualified licensees. The Board would be able to provide the Department of Veterans Affairs with information about findings from past evaluations of military schools and military experience settings, and would also be able to provide information about Board licensing requirements. However, it is not possible for the Board to evaluate all possible scenarios of military education and experience if the Board is not aware of them.

- 5) **Support and Opposition.**

*Support:*

- None

*Opposition:*

- None

- 6) **History**

2012

Mar. 8	Referred to Coms. on B., P. & C.P. and V.A.
Feb. 23	From printer. May be heard in committee March 24.
Feb. 22	Read first time. To print.

- 7) **Attachments**

- **Attachment A:** Army Medical Service Corps: Social Worker and Clinical Psychologist Job Descriptions
- **Attachment B:** United States Army Article: "Soldiers Can Earn Master's Degree in Social Work," April 21, 2008
- **Attachment C:** Fayetteville State University Web Page: FSU Social Work Department Receives Army Contract

**ASSEMBLY BILL**

**No. 1932**

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**Introduced by Assembly Member Cook**

February 22, 2012

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An act to add Section 710.2 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1932, as introduced, Cook. United States armed services: healing arts boards.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Existing law requires the rules and regulations of these healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board. Under existing law, the Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans.

This bill would require, by January 1, 2014, and annually thereafter, every healing arts board to issue a specified written report to the Department of Veterans Affairs that clearly details the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board's requirements for licensure. The bill would declare the intent of the Legislature in this regard.

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 710 of the Business and Professions Code  
2 was enacted in 1969 and because healing arts boards have not  
3 demonstrated significant compliance with that section, it is the  
4 intent of the Legislature to establish an annual reporting  
5 requirement to compel these boards to provide information about  
6 the methods of evaluating education, training, and experience  
7 obtained in military service in order to meet the needs of the  
8 upcoming wave of armed service members returning to civilian  
9 life.

10 SEC. 2. Section 710.2 is added to the Business and Professions  
11 Code, to read:

12 710.2. By January 1, 2014, and annually thereafter, every  
13 healing arts board described in this division shall issue a written  
14 report to the Department of Veterans Affairs that clearly details  
15 the methods of evaluating the education, training, and experience  
16 obtained in military service and whether that education, training,  
17 and experience is applicable to the board’s requirements for  
18 licensure. This written report shall include, but not be limited to,  
19 quantitative information about the number of service members  
20 who have applied for and have used their military education,  
21 training, and experience to fulfill the board’s requirements for  
22 licensure.

## ARMY MEDICAL SERVICE CORPS

Health Professions Loan Repayment Program: Provides up to \$120,000 for repayment of educational loans for qualified pharmacists. Payment is paid in annual increments of \$40,000 for each year of active duty service, up to the total amount.

### ARMY PODIATRISTS MAKE SURE OUR SOLDIERS STAY ON THEIR FEET

As an Army podiatrist and member of the Army Health Care Team, your main responsibility is to provide professional podiatric medicine and surgical services to Soldiers. You will broaden your experience through caring for family members and military retirees.

Also, practicing podiatry as an officer in the Army Medical Service Corps allows you to apply for such schools as Air Assault, Airborne and Jungle Training, among others. There are also excellent opportunities to participate in administration.

#### ELIGIBILITY

Appointment as a podiatrist in the Army Medical Service Corps requires that you:

- ★ Have a Doctorate of Podiatric Medicine degree from an accredited program acceptable to the surgeon general.
- ★ Have an active license to practice podiatry in the United States.
- ★ Have completed a two-year surgical podiatric residency before direct accession or be accepted for one of our podiatric surgical residency programs.

#### INCENTIVE PROGRAMS

- ★ Podiatric Surgical Residency Program: a 36-month training program for qualifying podiatrists.
  - Complete core clinical competencies at Eisenhower Army Medical Center (12 months)
  - Complete surgery-focused residency at Womack Army Medical Center (24 months)
  - The active duty service obligation is 84 months including time spent in the residency program
- ★ Non-Physician Health Care Provider Board Certification Pay is available to podiatrists having current board certification in podiatry. The amount of the pay is based on years of creditable service.

### BEHAVIORAL SCIENTISTS MAKE IMPORTANT CONTRIBUTIONS TO THE WELL-BEING OF OUR SOLDIERS

#### SOCIAL WORKER

The primary mission of an Army social worker is to provide professional and comprehensive services through a broad range of individual, family, command and community interventions, programs and services. Their goal is to sustain, restore or enhance the social well-being and functioning of individuals, families, units and the Army community.

Army social workers practice within a broad spectrum of practice areas and settings that include: medical inpatient and outpatient treatment, mental health, family advocacy, combat stress, substance abuse, program management and prevention and primary care. The Army Medical Service Corps offers you significant opportunities to expand into areas beyond your traditional clinical roles, including research, teaching and administration.

#### ELIGIBILITY

Appointment as a social worker in the Army Medical Service Corps requires that you:

- ★ Have a minimum of a master's degree in social work, with emphasis in clinical practice from a program accredited by the Council on Social Work Education.
- ★ Possess a state license in social work and possess a clinical license allowing independent practice (licensed clinical social worker or equivalent).
- ★ Doctoral-level social workers with a clinical concentration are also desired and are eligible for appointment at the grade of captain.

#### INCENTIVE PROGRAMS

- ★ The Child and Family Fellowship is a two-year specialized advanced clinical and didactic training program available to experienced social work officers. The focus of this program is assessment and treatment of military children and families.
- ★ Long Term Health Education Training is a fully funded educational program to obtain a doctoral degree in social work. This educational opportunity is available to social work officers after their initial service obligation. Applicants for the training must meet the criteria for doctoral training and admission to a graduate school.
- ★ Non-Physician Health Care Provider Board Certification Pay is available to social workers having a post baccalaureate degree and current board certification in social work. The amount of the pay is based on years of creditable service.

## ARMY MEDICAL SERVICE CORPS

### CLINICAL PSYCHOLOGIST

The Army offers many exciting opportunities to practice clinical psychology in a variety of settings in the United States, Europe and other overseas locations. Army clinical psychology officers provide a full range of psychological services to Soldiers, family members and military retirees. Assignment options include major medical centers, community hospitals and clinics.

Army clinical psychologists are afforded the opportunity to be involved with a wide range of professional challenges, including teaching, research and administration.

#### ELIGIBILITY

Appointment as a clinical psychologist in the Army Medical Service Corps requires that:

- ★ You have completed a doctorate in clinical or counseling psychology and a clinical psychology internship program from an APA accredited program.
- ★ You have an unrestricted license to practice clinical or counseling psychology in the United States.

#### INCENTIVE PROGRAMS

- ★ Health Professions Scholarship Program (HPSP): provides one- and two-year scholarships in accredited clinical psychology doctoral programs. It includes full tuition, a monthly stipend of more than \$2,000 and payment of required fees.
- ★ Clinical Psychology Internship Program (CPIP): a 12-month training program at Walter Reed Army Medical Center in Washington, D.C.; Tripler Army Medical Center in Honolulu, Hawaii; Eisenhower Army Medical Center in Augusta, Georgia; Madigan Army Medical Center, Tacoma, Wash.; or San Antonio Military Medical Center, San Antonio, Texas. It is available to graduate students in psychology.
- ★ Psychology Diplomate Pay is available to psychologists who have been awarded the diplomate in psychology by the American Board of Professional Psychology.

### OUR LABORATORY SCIENTISTS AND RESEARCH PSYCHOLOGISTS ARE AT THE CUTTING EDGE OF EMERGING TECHNOLOGIES

Army laboratory science officers are in four broad biomedical career fields: biochemistry, clinical laboratory, microbiology and research psychology. Academic training can be in medical technology, biochemistry, physiology, chemistry, toxicology, clinical microbiology, parasitology, virology, immunology, molecular biology, research psychology or related biomedical and physical science fields.

As a laboratory science officer in the Army, you will engage in active multi-disciplinary programs in medical research and development labs, medical centers, clinical labs, and blood banks and forensic toxicology labs in the United States and overseas.

The emphasis in medical research is on drugs and vaccines to protect Soldiers against endemic diseases and chemical and biological warfare agents. You may also conduct research on combat casualty care, combat stress, blood products and physical performance in extreme environments. As an officer in the Army, you will develop the skills to lead, direct and manage research and clinical laboratories and biomedical programs critical to the Army's mission.

#### ELIGIBILITY

- ★ Biochemistry and microbiology career specialties require a minimum of a master's degree to fulfill clinical duties, although a doctoral degree is required to work in research and development, and be competitive for senior officer promotion. Graduate training programs are generally available on a competitive basis.
- ★ Clinical laboratory officers must have medical technology training and be certified by the American Society of Clinical Pathologists or the National Certification Agency for Medical Laboratory Personnel.
- ★ Research psychology requires a doctoral degree in psychology or a research subspecialty.

### IN PREVENTIVE MEDICINE SCIENCES, YOUR SKILLS CAN HAVE A REAL IMPACT ON FORCE MEDICAL PROTECTION

#### NUCLEAR MEDICAL SCIENCE OFFICER

Army nuclear medical science officers provide operational and consultative health physics support to occupational, environmental and public health entities in the areas of ionizing and non ionizing radiation protection, research, teaching and medical aspects of nuclear weapons effects.

#### ELIGIBILITY

Appointment as a nuclear medical science officer in the Army Medical Service Corps requires that you:

- ★ Have a master's degree or doctorate in health physics, radiobiology, radiochemistry, nuclear physics, radiological physics, applied atomic physics, nuclear engineering, laser or microwave physics.

## Soldiers Can Earn Master's Degree In Social Work

April 21, 2008

By **Elaine Wilson**

0

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FORT SAM HOUSTON, Texas -- A new graduate program at the Army Medical Department Center and School is opening doors for aspiring social workers.

Starting in June, Soldiers will have the opportunity to earn their master's degree in social work from an accredited university while still carrying out their active-duty military commitment.

"My heart is still pounding," said Col. Yvonne Tucker-Harris, social work consultant to the Army surgeon general, of the program coming to fruition. "This is such a great investment for the Army."

The program was made possible through an Army partnership with Fayetteville State University in North Carolina. As Soldiers complete the graduate course at the AMEDDC&S, they will be awarded a master's degree from FSU. While several universities sent in proposals in response to the Army's solicitation, FSU was selected as the partnering university because it represented the best fit for both the Army and the university.

"I see this as a win-win situation," said Terri Moore Brown, FSU's Social Work Department chair, in town to tour the AMEDDC&S facilities. "Our students will benefit from symposiums and workshops given by the faculty at Fort Sam Houston. We'll be able to expose our students to the wonderful resources here."

The partnership with FSU also opens the door to research collaborations, which can lead to better social work programs throughout the world, said Col. Joseph Pecko, director, Army-Fayetteville State MSW Program and Soldier and Family Support Branch.

"We're looking forward to joint efforts between the students and faculty here and at Fayetteville," Pecko said.

By starting an MSW program, Army leaders hope to boost the number of social workers, which has been depleted in the wake of the Global War on Terrorism.

Up until now, the Army relied on availability of MSW graduates from civilian universities who had gone on to acquire an independent practice license from their state of choice.

"The depletion of social workers has occurred due to the lack of available qualified, competent and committed social workers who have an understanding and desire to serve on active duty," said Dr. Dexter Freeman, assistant director, Army-Fayetteville State MSW Program. "Army social workers must ... be able to accept that their lives will involve multiple deployments in addition to helping Soldiers and Families cope with the stress of war."

The program is considered a force multiplier, Freeman said. "We're trying to increase our number of social workers," he said, adding that the social work force is undermanned by about 26 percent. "The best way to fix the problem is with our own master's of social work program that targets Soldiers who are in the force and qualified to enter the program."

The benefits clearly outweigh the cost, said Pecko. "Not only does the program take care of retention, but by recruiting and creating Army social workers, they'll know exactly what they're getting into and be more likely to stay in for a full career."

The first class of 19 Soldiers will begin in June with a faculty comprising three active-duty and four civil-service instructors, all with their doctorate in social work. The course will include two tracks: a 13-month track for Soldiers with a non-social work bachelor's degree, and an eight-month advanced standing track for students with a degree in social work from an accredited program. Students graduate with an MSW and will take their initial license before they leave Fort Sam Houston.

During the class, students will learn to understand the dynamics of human behavior in the context of their social environment, particularly in relation to the military experience. After graduation, students will be assigned to behavioral health departments throughout the world where they will conduct assessments and provide interventions to individuals and groups under the supervision of a licensed clinical social worker.

As social workers in the Army, graduates will provide individual counseling for Soldiers and their Families, whether it's concerning substance abuse, physical or emotional abuse, or just help with daily challenges. In two years, they will have the opportunity to test for their independent practitioner license to become a LCSW.

"Through curriculum development we can give students military-unique training and set them up for success in the military," said Pecko, whose branch develops the post traumatic stress disorder training for the Army. "We will incorporate lessons from Operations Iraqi and Enduring Freedom into the program curriculum, as well as our experiences with combat-related emotional issues, such as PTSD."

Tucker-Harris said the investment in the Army's own will pay dividends in the future.

"It took a lot to get to this point, but we've had amazing support from Army leadership and we're looking forward to great success."

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## Department of Social Work



### FSU Social Work Department Receives Army Contract

The Department of Social Work received a U.S. Army four-year contract for the Master of Social Work Program (MSW) at Fayetteville State University (FSU) to establish an off-campus MSW Program at the Fort Sam Houston military installation, which is located in Texas. Several major universities submitted proposals in response to the Army solicitation; however, FSU was selected as the partnering university. Dr. Brown is the Social Work Department Chair at FSU. The off-campus FSU MSW Program site is housed in the Army Medical Department Center and School (AMEDD C&S). This contract is the result of the Army Surgeon General's, LTG Eric Schoomaker, request to establish a MSW Program that is accredited by the Council on Social Work Education (CSWE). The MSW Program at FSU has been accredited by CSWE since 2006. Opening the doors for FSU to establish an off-campus MSW Program site at Fort Sam Houston demonstrates how much the U.S. Army values the social work profession and that it views its relationship with FSU as an investment for the Army.

This is the first time the U. S. Army has partnered with a university within the University of North Carolina (UNC) system, and with a historically black college and university (HBCU) to establish an academic program at AMEDD C&S. In addition, the off-campus FSU MSW Program is the first social work academic degree program that is strictly for Army service members that is offered on a military installation.

On June 23, 2008, history was made when eighteen Army officers were inaugurated into the Fayetteville State University MSW Program during a ceremony at the Wood Auditorium, which is located in the U.S. Army Medical Command Building at Fort Sam Houston.

This award stems from the recognition that there is a dearth of social work officers in the current active duty Army inventory. The off-campus FSU MSW Program was developed as a result of the expressed desires of the U.S. Army to house an accredited MSW program that would increase the number of uniformed social work officers. The number of social workers in the Army has significantly decreased as a result of the recurring deployments related to the War on Terror. As the War on Terror continues, the immediate need for social work officers has become more pronounced. Active duty Army social workers are needed to effectively respond to the wounds of war that are inflicted on soldiers and their families. The U.S. Army's recognition of soldiers and military dependents' needs and the roles social workers can play in addressing some of those needs are notable.

Fayetteville State University currently has articulation agreements with Fort Bragg and Seymour Johnson Air Force Base to allow undergraduate and graduate students to pursue degrees. Because of the close proximity of FSU to Fort Bragg and Seymour Johnson Air Force Base, much of the military culture is embedded in Fayetteville State University. We understand deployments, military family advocacy programs, and different issues. i.e. separation, post-traumatic stress disorders, battle mind, etc. that troops and their families; As a result, one of the major objectives of the MSW Program is to integrate throughout the social work curriculum the culture and core values of soldiers and military families. These characteristics distinguish us from other MSW Programs in the country and will serve as an asset to the U.S. Army. Active duty Army soldiers, who are interested

in the off-campus FSU MSW Program, must meet the admission requirements of Fayetteville State University and Army Long-term Health Education and Training.

For more information, please contact Dr. Dexter Freeman, Assistant Director, Army Medical Department Center & School, Fort Sam Houston, Texas at 210-221-6815 or email:

[dfreema3@uncfsu.edu](mailto:dfreema3@uncfsu.edu) or Dr. Terri Moore Brown, Social Work Department Chair, at 910-672-1210/1853 or [tmbrown@uncfsu.edu](mailto:tmbrown@uncfsu.edu).

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2570                      **VERSION:** INTRODUCED FEBRUARY 24, 2012

**AUTHOR:** HILL                                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** LICENSEES: SETTLEMENT AGREEMENTS

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### **Existing Law:**

1. Subjects an attorney to suspension, disbarment, or other disciplinary action for seeking the following in a settlement agreement (Business and Professions Code (BPC) §6090.5) :
  - a. A provision requiring that professional misconduct not be reported to the disciplinary agency;
  - b. A provision requiring a plaintiff to withdraw a disciplinary complaint or refuse to cooperate with an investigation or prosecution being conducted by a disciplinary agency; and
  - c. A provision requiring that a record of civil action for professional misconduct must be sealed from review by a disciplinary agency.
2. Requires that protection of the public is the highest priority for the Board when exercising its licensing, regulatory, and disciplinary functions. Public protection shall be paramount when inconsistent with other interests. (BPC §4990.16)

### **This Bill:**

1. Prohibits a licensee regulated by the Department of Consumer Affairs (DCA) from including or allowing inclusion of the following provisions in a settlement agreement of a civil dispute (BPC §143.5(a)):
  - a. A provision prohibiting the other party in the dispute from contacting, filing a complaint with, or cooperating with DCA or a board, bureau or program; and
  - b. A provision that requires the other party in the dispute to withdraw a complaint from DCA or a board, bureau or program.
2. States that a licensee who includes or permits inclusion of such a provision is subject to disciplinary action by the board, bureau or program. (BPC §143.5(a))
3. States that a board, bureau or program under DCA that takes disciplinary action against a licensee based on a complaint that has also been the subject of a civil action that was settled for monetary damages may not require the disciplined licensee to pay any additional sums of money to the plaintiff. (BPC §146.5(b))

## Comments:

- 1) **Intent.** The intent of this bill is to close a loophole in current law that allows a licensee or registrant regulated by DCA to prohibit a consumer that settles a civil suit with that licensee or registrant from filing a complaint or cooperating in an investigation with the licensee or registrant's regulatory board.

Previous supporters of similar bills have argued that the increasing use of these "regulatory gag clauses" are problematic because they are often used to intimidate victims into refusing to cooperate with investigations. This may prevent a regulatory board from taking disciplinary action against a negligent licensee or registrant. These licensees or registrants may continue to practice and harm the public because the Board is not aware of a civil dispute settlement.

One example cited in an analysis of similar past legislation is a case in which a doctor required a gag clause in 25 patients' cases, prohibiting them from complaining to or cooperating with any investigation by the Medical Board of California.

- 2) **Existing Law for Attorneys.** This bill is modeled after a similar provision in the Business and Professions Code which prohibits attorneys from including in a settlement agreement any provisions requiring that misconduct not be reported to a disciplinary agency or any provisions requiring withdrawal of a complaint or refusing to cooperate with a disciplinary agency's investigation.
- 3) **Previous Legislation and Board Position.** AB 320 (Correa, 2004) and AB 446 (Negrete McLeod, 2005) were both very similar to this bill and would also have prohibited regulatory gag clauses. The Board took a position of "support" on AB 446. Both bills were vetoed by Governor Schwarzenegger. The Governor provided the following veto message for AB 446:

I am returning Assembly Bill 446 without my signature.

I vetoed a similar bill last year because of the negative effect it would have had on the California economy. This bill further erodes the ability to do business in California by creating more uncertainty regarding litigation by prohibiting any licensee or professional overseen by the Department of Consumer Affairs from including in a civil settlement agreement a provision that prohibits the other party from contacting or filing a complaint with the regulatory agency. When parties who are in dispute agree to settle, there should be some assurances that the dispute has been resolved in a satisfactory and final manner for both parties .

Supporters of this prior legislation have argued that the clause in the bill prohibiting a board from ordering additional monetary damages when it takes disciplinary action against a licensee for a complaint that has also been the subject of a civil action settled for monetary damages addresses the Governor's stated concerns about subjecting a plaintiff to multiple disciplinary actions, or a "double jeopardy." Supporters also argued that the concept of such "double jeopardy" is only applicable to criminal cases, not civil cases, and that while the purpose of the civil disciplinary system is to compensate defendants for injuries caused, the administrative disciplinary system serves an entirely different purpose, which is to protect consumers from future harm by incompetent or dishonest professionals.

SB 1111 (Negrete McLeod, 2010) and SB 544 (Price, 2011) were both part of an effort by DCA to provide healing arts boards with additional regulatory tools and with additional authority for investigating and prosecuting violations of the law. Both bills contained a provision similar to the one in this bill. The Board did not take a position on SB 1111, and took a “support if amended” position on SB 544. The amendments requested by the Board in order to achieve a “support” position were unrelated to the proposed settlement agreement provisions. SB 1111 and SB 544 both died in the Senate Business, Professions, and Economic Development Committee.

- 4) Current Regulations.** On March 16, 2012, the Board filed a notice with the Office of Administrative Law to proceed with a regulation package. One of the provisions of this regulation package proposes amending Board regulations to include a provision that would make it unprofessional conduct for a Board licensee to include, or permit inclusion, of a provision in a civil settlement agreement that prohibits another party from contacting, cooperating, or filing a complaint with the Board, or a provision that requires another party to withdraw or attempt to withdraw a complaint that has been filed with the Board.

These proposed regulations are currently in the 45-day public comment period. The public hearing is set for May 1, 2012.

#### **5) Support and Opposition.**

**Support:**

- None on file.

**Oppose:**

- None on file.

#### **6) History**

2012

Mar. 19 Referred to Com. on B., P. & C.P.

Feb. 27 Read first time.

Feb. 26 From printer. May be heard in committee March 27.

Feb. 24 Introduced. To print.

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**ASSEMBLY BILL**

**No. 2570**

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**Introduced by Assembly Member Hill**  
(Coauthor: Senator Correa)

February 24, 2012

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An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, as introduced, Hill. Licensees: settlement agreements.

Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency.

This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil

action to pay additional moneys to the benefit of any plaintiff in the civil action.

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 143.5 is added to the Business and  
2 Professions Code, to read:

3 143.5. (a) No licensee who is regulated by a board, bureau, or  
4 program within the Department of Consumer Affairs, nor an entity  
5 or person acting as an authorized agent of a licensee, shall include  
6 or permit to be included a provision in an agreement to settle a  
7 civil dispute, whether the agreement is made before or after the  
8 commencement of a civil action, that prohibits the other party in  
9 that dispute from contacting, filing a complaint with, or cooperating  
10 with the department, board, bureau, or program or that requires  
11 the other party to withdraw a complaint from the department,  
12 board, bureau, or program. A provision of that nature is void as  
13 against public policy, and any licensee who includes or permits to  
14 be included a provision of that nature in a settlement agreement  
15 is subject to disciplinary action by the board, bureau, or program.

16 (b) Any board, bureau, or program within the Department of  
17 Consumer Affairs that takes disciplinary action against a licensee  
18 or licensees based on a complaint or report that has also been the  
19 subject of a civil action and that has been settled for monetary  
20 damages providing for full and final satisfaction of the parties may  
21 not require its licensee or licensees to pay any additional sums to  
22 the benefit of any plaintiff in the civil action.

23 (c) As used in this section, “board” shall have the same meaning  
24 as defined in Section 22, and “licensee” means a person who has  
25 been granted a license, as that term is defined in Section 23.7.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1134

**VERSION:** AMENDED MARCH 28, 2012

**AUTHOR:** YEE

**SPONSOR:** CALIFORNIA ASSOCIATION OF  
MARRIAGE AND FAMILY THERAPISTS  
(CAMFT)

**RECOMMENDED POSITION:** NONE

**SUBJECT:** PERSONS OF UNSOUND MIND: PSYCHOTHERAPIST DUTY TO PROTECT

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### Existing Law:

- 1) Requires a therapist who determines, according to professional standards that a patient presents a serious danger of violence to another, to use reasonable care to protect the intended victim(s) against such danger. This includes warning the intended victim(s), the police, or taking whatever other steps are reasonably necessary under the circumstances. (Tarasoff, supra, 17 Cal.3d)
- 2) Allows no monetary liability or cause of action to arise against a psychotherapist who fails to **warn of and protect** from a patient's threatened violent behavior, or who fails to predict and **warn of and protect** from a patient's violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. (Civil Code (CC) §43.92(a))
- 3) States that there can be no monetary liability or cause of action against a psychotherapist who discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim(s) and to a law enforcement agency. (CC §43.92(b))
- 4) Defines "confidential communication between patient and psychotherapist" as: (Evidence Code (EC) §1012)
  - Information obtained from examining a patient;
  - Information transmitted between a patient and psychotherapist in confidence and to no one else except those who are present to further the interest of the patient, or those to whom disclosure is reasonable necessary for the accomplishment of the purpose for which the psychotherapist is consulted.
- 5) Requires a mental health professional to breach confidentiality when the professional has reasonable cause to believe that the patient is dangerous to his or her self or the person or property of another. (EC §1024)
- 6) Requires a therapist to warn a potential victim(s) if information communicated to the therapist leads the therapist to believe that the patient poses a serious risk of grave bodily injury to another. (Ewing v. Goldstein (2004), Cal.App.4<sup>th</sup>)
- 7) Defines a communication from a family member to the patient's therapist, made for the purpose of advancing a patient's therapy, as a "patient communication." (Ewing v. Goldstein (2004), Cal.App.4<sup>th</sup>)

- 8) Outlines instructions to a jury to determine if there is a cause of action for professional negligence against a psychotherapist for failure to protect a victim from a patient's act of violence. (Judicial Council of California Civil Jury Instructions, Section 503A, "Psychotherapist's Duty to Protect Intended Victim from Patient's Threat")

### **This Bill:**

- 1) This bill would remove a psychotherapist's (including LMFTs, LCSWs, and LPCCs) duty to warn and provide that there can be no monetary liability or cause of action against a psychotherapist unless the psychotherapist fails to discharge his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency. (Civil Code (CC) §43.92)

### **Comment:**

- 1) **Author's Intent.** According to the author's office, this bill renames the duty of a psychotherapist, defined in Section 43.92 of the Civil Code, from "duty to warn and protect" to "duty to protect." If this change is made, it will make the law consistent with changes made in 2007 to the Judicial Council of California Civil Jury Instructions, Section 503A, which renamed the therapist's duty a "duty to protect" and eliminated the reference of "duty to warn."

This clarification is intended to make the law as clear as possible about the duty of a psychotherapist with respect to Civil Code Section 43.92.

- 2) **Removal of the Duty to Warn.** The author's office argues that the term "duty to warn" is no longer necessary, because steps needed for a therapist to avoid liability are spelled out in CC Section 43.92(b). Additionally, they note that the term "duty to warn" may cause confusion and danger, as warning victims "may precipitate preemptive violence rather than preventing it." (Thomas Gutheil, M.D.)
- 3) **Previous Legislation.** AB 733 (Chapter 136, Statutes of 2005), clarified that the actions specified in CC 43.92(b) are required to be taken in order to obtain immunity from liability. However, the actions do not need to be taken in every case. This change in law was made in order to correct the prior California Civil Jury Instructions, which implied that if the actions taken in (b) were not taken, the psychotherapist would always be liable.

### **4) Support and Opposition.**

*Support:*  
None on file.

*Opposition:*  
None on file.

### **5) History**

#### **2012**

- Mar. 28 From committee with author's amendments. Read second time and amended.  
Re-referred to Com. on JUD.  
Mar. 1 Referred to Com. on JUD.  
Feb. 22 From printer. May be acted upon on or after March 23.

Feb. 21 Introduced. Read first time. To Com. on RLS. for assignment. To print.

**6) Attachments**

- (Judicial Council of California Civil Jury Instructions, Section 503A, "*Psychotherapist's Duty to Protect Intended Victim from Patient's Threat*")

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**Introduced by Senator Yee**

February 21, 2012

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An act to amend Section 43.92 of the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 1134, as amended, Yee. Persons of unsound mind: psychotherapist duty to protect.

Existing law provides that no monetary liability and no cause of action arises against a psychotherapist, as defined, for failing to warn and protect from a patient's threatened violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. Existing law also specifies that no monetary liability and no cause of action shall arise against a psychotherapist who, under those circumstances, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

This bill would revise these provisions by removing any duty to warn ~~and by providing that no monetary liability and no cause of action will arise against a psychotherapist for failing to protect from a patient's threatened violent behavior, except if the patient has communicated to the therapist a serious threat of physical violence against a reasonably identifiable victim or victims. In those circumstances, this bill would provide that there will be no monetary liability and no cause of action against the psychotherapist if the psychotherapist discharges his or her duty to protect by making reasonable efforts to communicate the threat to the intended victim or victims and to a law enforcement agency.~~

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

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

1 SECTION 1. Section 43.92 of the Civil Code is amended to  
 2 read:  
 3 43.92. (a) There shall be no monetary liability on the part of,  
 4 and no cause of action shall arise against, any person who is a  
 5 psychotherapist as defined in Section 1010 of the Evidence Code  
 6 in failing to protect from a patient’s threatened violent behavior  
 7 or failing to predict and protect from a patient’s violent behavior  
 8 except—~~where~~ *if* the patient has communicated to the  
 9 psychotherapist a serious threat of physical violence against a  
 10 reasonably identifiable victim or victims.  
 11 (b) There shall be no monetary liability on the part of, and no  
 12 cause of action shall arise against, a psychotherapist who, ~~where~~  
 13 ~~the patient has communicated a serious threat of violence as~~  
 14 ~~specified in subdivision (a)~~, *under the limited circumstances*  
 15 *specified in subdivision (a)*, discharges his or her duty to protect  
 16 by making reasonable efforts to communicate the threat to the  
 17 victim or victims and to a law enforcement agency.

# Judicial Council of California Civil Jury Instructions

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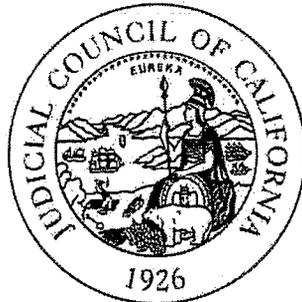
**CACI\***

\* Pronounced "Casey"

As approved at the  
December 13, 2011, Judicial Council Meeting

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Series 100–2500



**Judicial Council of California  
Advisory Committee on Civil Jury Instructions**

Hon. H. Walter Croskey, Chair

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### 503A. Psychotherapist's Duty to Protect Intended Victim From Patient's Threat

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[Name of plaintiff] claims that [name of defendant]'s failure to protect [name of plaintiff/decedent] was a substantial factor in causing [injury to [name of plaintiff]/the death of [name of decedent]]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] was a psychotherapist;
2. That [name of patient] was [name of defendant]'s patient;
3. That [name of patient] communicated to [name of defendant] a serious threat of physical violence;
4. That [name of plaintiff/decedent] was a reasonably identifiable victim of [name of patient]'s threat;
5. That [name of patient] [injured [name of plaintiff]/killed [name of decedent]];
6. That [name of defendant] failed to make reasonable efforts to protect [name of plaintiff/decedent]; and
7. That [name of defendant]'s failure was a substantial factor in causing [[name of plaintiff]'s injury/the death of [name of decedent]].

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Derived from former CACI No. 503 April 2007

#### Directions for Use

Read this instruction for a *Tarasoff* cause of action for professional negligence against a psychotherapist for failure to protect a victim from a patient's act of violence after the patient made a threat to the therapist against the victim. (See *Tarasoff v. Regents of Univ. of Cal.* (1976) 17 Cal.3d 425 [131 Cal.Rptr. 14, 551 P.2d 334].) The liability imposed by *Tarasoff* is modified by the provisions of Civil Code section 43.92(a). First read CACI No. 503B, *Affirmative Defense—Psychotherapist's Warning to Victim and Law Enforcement*, if the therapist asserts that he or she is immune from liability under Civil Code section 43.92(b) by having made reasonable efforts to warn the victim and a law enforcement agency of the threat.

In a wrongful death case, insert the name of the decedent victim where applicable.

### Sources and Authority

- Civil Code section 43.92(a) provides:

“There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient’s threatened violent behavior or failing to predict and warn of and protect from a patient’s violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.”
- “[T]herapists cannot escape liability merely because [the victim] was not their patient. When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.” (*Tarasoff, supra*, 17 Cal.3d at p. 431.)
- Civil Code section 43.92 was enacted to limit the liability of psychotherapists under *Tarasoff* regarding a therapist’s duty to warn an intended victim. (*Barry v. Turek* (1990) 218 Cal.App.3d 1241, 1244–1245 [267 Cal.Rptr. 553].) Under this provision, “[p]sychotherapists thus have immunity from *Tarasoff* claims except where the plaintiff proves that the patient has communicated to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.” (*Barry, supra*, 218 Cal.App.3d at p. 1245.)
- “When the communication of the serious threat of physical violence is received by the therapist from a member of the patient’s immediate family and is shared for the purpose of facilitating and furthering the patient’s treatment, the fact that the family member is not technically a ‘patient’ is not crucial to the statute’s purpose.” (*Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 817 [15 Cal.Rptr.3d 864].)
- “Section 43.92 strikes a reasonable balance in that it does not compel the therapist to predict the dangerousness of a patient. Instead, it requires the therapist to attempt to protect a victim under limited circumstances, even though the therapist’s disclosure of a patient confidence will potentially

disrupt or destroy the patient's trust in the therapist. However, the requirement is imposed upon the therapist only after he or she determines that the patient has made a credible threat of serious physical violence against a person." (*Calderon v. Glick* (2005) 131 Cal.App.4th 224, 231 [31 Cal.Rptr.3d 707].)

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1050, 1051

26 California Forms of Pleading and Practice, Ch. 304, *Insane and Other Incompetent Persons*, § 304.93 (Matthew Bender)

11 California Points and Authorities, Ch. 117, *Insane and Incompetent Persons: Actions Involving Mental Patients*, § 117.30 (Matthew Bender)

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1183                      **VERSION:** AMENDED MARCH 26, 2012

**AUTHOR:** LIEU                                      **SPONSOR:** EQUALITY CALIFORNIA

**RECOMMENDED POSITION:** NONE

**SUBJECT:** MARRIAGE AND FAMILY THERAPISTS: CONTINUING EDUCATION

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### Existing Law:

- 1) Requires the director of the Department of Consumer Affairs to establish, by regulation, guidelines to prescribe components for mandatory continuing education programs administered by any board within the department. The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. (Business and Professions Code §166)
- 2) Requires licensees of the Board of Behavioral Sciences (Board), upon renewal of their license, to certify to the Board that he or she has completed at least 36 hours of approved continuing education in or relevant to their field of practice. (BPC §§4980.54(c), 4989.34(a), 4996.22(a), 4999.76(a)).
- 3) States that the system of continuing education shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served. (BPC §§ 4980.54(i), 4996.22(g), 4999.76(g))
- 4) Requires a provider of continuing education to ensure that the content of a course is relevant to the practice of marriage and family therapy, educational psychology, professional clinical counseling, or clinical social work and meets the requirements of each profession's particular licensing law. The content of a course must also be related to direct or indirect patient/client care. (California Code of Regulation (CCR) Title 16, §1187.4)
- 5) Defines direct patient/client care courses as covering specialty areas of therapy (for example, theoretical frameworks for clinical practice, intervention techniques with individuals, couples or groups). (CCR Title 16, §1887.4)
- 6) Defines indirect patient/client care courses as covering pragmatic aspects of clinical practice (for example, legal or ethical issues, consultation, office management) (CCR Title 16, §1887.4)

### This Bill:

- 1) Amends the law to prohibit training, education, or coursework by approved providers of continuing education to licensed marriage and family therapists (LMFTs) from including sexual orientation change efforts. (BPC§4980.54(i))
- 2) Defines sexual orientation change efforts as practices aimed at changing an individual's sexual orientation. (BPC §4980.54(i))

## **Comments:**

- 1) Background.** Over the past year, questions have been raised concerning the nature of the Board's continuing education course (CE) content requirements. Current law states that a continuing education course must be relevant to the profession, related to direct/indirect care and shall incorporate specific aspects of the discipline. By not requiring CE to meet standards usually utilized by accrediting bodies, such as requiring content to be derived from relevant peer-reviewed research literature, more innovative, and California specific CE may be presented. However, this approach also allows for CE providers to offer courses for Board credit that may include content not necessarily found to be best practices in the profession or scientifically based.

In July of this year the Board began receiving complaints from the public regarding the Board approved CE Provider National Association of Research and Therapy of Homosexuality (NARTH). Hundreds of emails were received from individuals protesting the approval of an organization that proffers "reparative" or "conversion" therapy for individuals that have unwanted homosexual tendencies.

NARTH received approval from the Board to offer continuing education courses in 1998. Since then, that approval has been renewed on a biennial basis. Renewal requires payment of \$200, but no additional paperwork. NARTH's CE provider approval expired October 31, 2010 and it was not renewed. Therefore, NARTH no longer possesses a valid provider number and is unable to provide CE courses to Board licensees for credit.

- 2) Board Discretion over CE Providers.** The Board's ability to deny an application as a CE provider is governed by regulations which say the provider must ensure its coursework is relevant to a licensee's practice and is related to direct or indirect patient care. The Board can only deny an application if it does not meet those standards.

According to current law, after receiving Board approval, providers can add new courses without submitting additional paperwork. There is nothing in laws and regulations to compel a provider to notify the Board when it adds new courses.

- 3) Formation of Continuing Education Committee.** At its November 9, 2011 meeting, the Board voted to form a Continuing Education Committee in order to examine the above issues, as well as other issues that have been raised with the Board's continuing education regulations. The first public meeting of the CE Committee was on April 18, 2012.
- 4) Update from Author's Office.** During a recent discussion with the author's office, Board staff learned that significant amendments are planned to this bill, including possibly extending the proposed provisions to areas of licensing law beyond CE, and the inclusion of all mental health professionals, not just LMFTs.

## **5) Support and Opposition.**

### **Support:**

- None on file.

### **Oppose:**

- None on file.

## 6) History

### 2012

Mar. 29 Re-referred to Com. on B., P. & E.D.

Mar. 26 From committee with author's amendments. Read second time and amended.  
Re-referred to Com. on RLS.

Mar. 1 Referred to Com. on RLS.

Feb. 23 From printer. May be acted upon on or after March 24.

Feb. 22 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE MARCH 26, 2012

**SENATE BILL**

**No. 1183**

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**Introduced by Senator Lieu**

February 22, 2012

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An act to amend Section ~~7503~~ 4980.54 of the Business and Professions Code, relating to ~~repossessors~~ *healing arts*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1183, as amended, Lieu. ~~Repossessors: licensure. Marriage and family therapists: continuing education.~~

*Existing law provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences and imposes continuing education requirements for license renewal. Existing law requires the board to approve continuing education providers and authorizes the board to revoke or deny the right of a provider to offer coursework if the provider fails to comply with specified requirements.*

*This bill would prohibit training regarding sexual orientation change efforts from being included in the approved continuing education coursework.*

~~Existing law, the Collateral Recovery Act, authorizes the Bureau of Security and Investigative Services to license and regulate the persons engaged in the business of repossessing personal property. Existing law provides that a person who declares as true any material matter relative to the submission of an application for licensure, a qualification certificate, or application for registration that he or she knows to be false is guilty of a misdemeanor, and requires an applicant to sign his or her application for licensure and qualification certificate.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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

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

1     SECTION 1. Section 4980.54 of the Business and Professions

2     Code is amended to read:

3     4980.54. (a) The Legislature recognizes that the education and  
4     experience requirements in this chapter constitute only minimal  
5     requirements to assure that an applicant is prepared and qualified  
6     to take the licensure examinations as specified in subdivision (d)  
7     of Section 4980.40 and, if he or she passes those examinations, to  
8     begin practice.

9     (b) In order to continuously improve the competence of licensed  
10    marriage and family therapists and as a model for all  
11    psychotherapeutic professions, the Legislature encourages all  
12    licensees to regularly engage in continuing education related to  
13    the profession or scope of practice as defined in this chapter.

14    (c) Except as provided in subdivision (e), the board shall not  
15    renew any license pursuant to this chapter unless the applicant  
16    certifies to the board, on a form prescribed by the board, that he  
17    or she has completed not less than 36 hours of approved continuing  
18    education in or relevant to the field of marriage and family therapy  
19    in the preceding two years, as determined by the board.

20    (d) The board shall have the right to audit the records of any  
21    applicant to verify the completion of the continuing education  
22    requirement. Applicants shall maintain records of completion of  
23    required continuing education coursework for a minimum of two  
24    years and shall make these records available to the board for  
25    auditing purposes upon request.

26    (e) The board may establish exceptions from the continuing  
27    education requirements of this section for good cause, as defined  
28    by the board.

29    (f) The continuing education shall be obtained from one of the  
30    following sources:

31    (1) An accredited school or state-approved school that meets  
32    the requirements set forth in Section 4980.36 or 4980.37. Nothing  
33    in this paragraph shall be construed as requiring coursework to be  
34    offered as part of a regular degree program.

1 (2) Other continuing education providers, including, but not  
2 limited to, a professional marriage and family therapist association,  
3 a licensed health facility, a governmental entity, a continuing  
4 education unit of an accredited four-year institution of higher  
5 learning, or a mental health professional association, approved by  
6 the board.

7 (g) The board shall establish, by regulation, a procedure for  
8 approving providers of continuing education courses, and all  
9 providers of continuing education, as described in paragraphs (1)  
10 and (2) of subdivision (f), shall adhere to procedures established  
11 by the board. The board may revoke or deny the right of a provider  
12 to offer continuing education coursework pursuant to this section  
13 for failure to comply with the requirements of this section or any  
14 regulation adopted pursuant to this section.

15 (h) Training, education, and coursework by approved providers  
16 shall incorporate one or more of the following:

17 (1) Aspects of the discipline that are fundamental to the  
18 understanding or the practice of marriage and family therapy.

19 (2) Aspects of the discipline of marriage and family therapy in  
20 which significant recent developments have occurred.

21 (3) Aspects of other disciplines that enhance the understanding  
22 or the practice of marriage and family therapy.

23 (i) *Training, education, or coursework by approved continuing*  
24 *education providers shall not include sexual orientation change*  
25 *efforts. For purposes of this subdivision, sexual orientation change*  
26 *efforts, also known as conversion therapy or reparative therapy,*  
27 *means practices aimed at changing an individual's sexual*  
28 *orientation.*

29 (i)

30 (j) A system of continuing education for licensed marriage and  
31 family therapists shall include courses directly related to the  
32 diagnosis, assessment, and treatment of the client population being  
33 served.

34 (j)

35 (k) The board shall, by regulation, fund the administration of  
36 this section through continuing education provider fees to be  
37 deposited in the Behavioral Sciences Fund. The fees related to the  
38 administration of this section shall be sufficient to meet, but shall  
39 not exceed, the costs of administering the corresponding provisions  
40 of this section. For purposes of this subdivision, a provider of

1 continuing education as described in paragraph (1) of subdivision  
2 (f) shall be deemed to be an approved provider.

3 ~~(k)~~

4 (l) The continuing education requirements of this section shall  
5 comply fully with the guidelines for mandatory continuing  
6 education established by the Department of Consumer Affairs  
7 pursuant to Section 166.

8 SECTION 1. ~~Section 7503 of the Business and Professions~~  
9 ~~Code is amended to read:~~

10 ~~7503. An application for a repossession agency license shall~~  
11 ~~be made in writing to, and filed with, the bureau in the form that~~  
12 ~~may be required by the director and shall be accompanied by the~~  
13 ~~original license fee prescribed by this chapter. The director may~~  
14 ~~require the submission of any other pertinent information, evidence,~~  
15 ~~statements, or documents.~~

16 ~~Every application for a repossession agency license shall be~~  
17 ~~signed by the applicant and state, among other things that may be~~  
18 ~~required, the name of the applicant and the name under which the~~  
19 ~~applicant will do business, the location by number and street and~~  
20 ~~city of the office of the business for which the license is sought,~~  
21 ~~and the usual business hours the business will maintain. An~~  
22 ~~applicant who declares as true any material matter pursuant to this~~  
23 ~~section that he or she knows to be false is guilty of a misdemeanor.~~  
24 ~~The residence address, residence telephone number, and driver's~~  
25 ~~license number of each licensee, principal owner of each licensee,~~  
26 ~~and any applicant for a license, if requested, shall be confidential~~  
27 ~~pursuant to the Information Practices Act of 1977 (Chapter 1~~  
28 ~~(commencing with Section 1798) of Title 1.8 of Part 4 of Division~~  
29 ~~3 of the Civil Code) and shall not be released to the public.~~

30 ~~No license shall be issued in any fictitious name which may be~~  
31 ~~confused with or which is similar to any federal, state, county, or~~  
32 ~~municipal governmental function or agency, or in any name that~~  
33 ~~may tend to describe any business function or enterprise not~~  
34 ~~actually engaged in by the applicant, or in any name that is the~~  
35 ~~same as or so similar to that of any existing licensee as would tend~~  
36 ~~to deceive the public, or in any name that would otherwise tend~~  
37 ~~to be deceptive or misleading.~~

38 ~~The application form shall contain a statement informing the~~  
39 ~~applicant that a false or dishonest answer to a question may be~~

- 1 ~~grounds for denial or subsequent suspension or revocation of a~~
- 2 ~~repossession agency license.~~

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1238                      **VERSION:** INTRODUCED FEBRUARY 23, 2012

**AUTHOR:** PRICE                              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** PROFESSIONS: BOARD OF PSYCHOLOGY: BOARD OF BEHAVIORAL SCIENCES

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### Existing Law

- 1) Provides for the licensure and regulation of educational psychologists, clinical social workers, professional clinical counselors, and marriage and family therapists by the Board of Behavioral Sciences (Board) within the Department of Consumer Affairs until January 1, 2013.
- 2) Specifies the composition of the Board and authorizes the Board to employ an Executive Officer (Business and Professions Code (BPC) §§4990, 4990.04)

### This Bill:

- 1) Extends the operation of the Board until January 1, 2017, and specifies that the Board is subject to review by the appropriate policy committees of the Legislature. (BPC §§4990, 4990.04)

### Comment:

- 1) **Background.** In 1994, the legislature enacted the “sunset review” process, which permits the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The Joint Legislative Sunset Review Committee (Joint Committee) was tasked with performing the sunset reviews. The sunset review process was in part built on an assumption in law that if a board is operating poorly, and lesser measures have been ineffective in rectifying the problems, the board should be allowed to sunset.

Boards notified by the Joint Committee were requested to provide a detailed report regarding the board’s operations and programs. Following submission of the report to the Joint Committee, a hearing was scheduled with the Joint Committee to discuss the report and any recommendations of the Joint Committee. If it was determined that a board should not continue to regulate the profession, the board would sunset. Boards within the Department of Consumer Affairs (DCA) that were required to sunset became a bureau under DCA, reporting directly to the DCA director. The Board of Behavioral Sciences went through sunset review successfully in 1997, 2005, and 2006. Since 2006, the Legislature had not conducted any sunset review hearings.

- 2) **March 2012 Sunset Review Hearing.** In May 2011, the Senate Committee on Business, Professions, and Economic Development (Committee) notified the Board that it would be one of nine boards reviewed in 2012. The Committee requested the Board prepare a

comprehensive report containing information regarding the Board's history, activities, statistical information, and current issues. This report was submitted to the Committee on November 1, 2011.

The Board's sunset hearing before the Senate Committee on Business, Professions, and Economic Development was held on March 19, 2012. Based on the findings of the Committee it was recommended that the Board's sunset date be extended for four years, to January 1, 2017.

**3) Previous Legislation.** SB 294 (Chapter 695, Statutes of 2010) extended the Board's sunset date from January 1, 2011 until January 1, 2013.

**4) Support and Opposition.**

*Support:*

- None on File.

*Opposition:*

- None on File.

**5) History.**

**2012**

Mar. 8 Referred to Com. on B., P. & E.D.

Feb. 24 From printer. May be acted upon on or after March 25.

Feb. 23 Introduced. Read first time. To Com. on RLS. for assignment. To print.

**Introduced by Senator Price**

February 23, 2012

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An act to amend Sections 2920, 2933, 4990, and 4990.04 of the Business and Professions Code, relating to professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1238, as introduced, Price. Professions: Board of Psychology: Board of Behavioral Sciences.

Existing law provides for the licensure and regulation of psychologists by the Board of Psychology. Existing law provides for the licensure and regulation of educational psychologists, social workers, and marriage and family therapists by the Board of Behavioral Sciences within the Department of Consumer Affairs. Existing law specifies the composition of each board and authorizes each board to employ an executive officer. Existing law repeals these provisions on January 1, 2013. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of these provisions until January 1, 2017. This bill would specify that each board is subject to review by the appropriate policy committees of the Legislature.

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 2920 of the Business and Professions
- 2 Code is amended to read:

1 2920. (a) The Board of Psychology shall enforce and  
2 administer this chapter. The board shall consist of nine members,  
3 four of whom shall be public members.

4 ~~This~~

5 (b) *This section shall remain in effect only until January 1, ~~2013~~  
6 2017, and as of that date is repealed, unless a later enacted statute,  
7 that is enacted before January 1, ~~2013~~ 2017, deletes or extends  
8 that date. Notwithstanding any other provision of law, the repeal  
9 of this section renders the board subject to review by the  
10 appropriate policy committees of the Legislature.*

11 SEC. 2. Section 2933 of the Business and Professions Code is  
12 amended to read:

13 2933. Except as provided by Section 159.5, the board shall  
14 employ and shall make available to the board within the limits of  
15 the funds received by the board all personnel necessary to carry  
16 out this chapter. The board may employ, exempt from the State  
17 Civil Service Act, an executive officer to the Board of Psychology.  
18 The board shall make all expenditures to carry out this chapter.  
19 The board may accept contributions to effectuate the purposes of  
20 this chapter.

21 This section shall remain in effect only until January 1, ~~2013~~  
22 2017, and as of that date is repealed, unless a later enacted statute,  
23 that is enacted before January 1, ~~2013~~ 2017, deletes or extends  
24 that date.

25 SEC. 3. Section 4990 of the Business and Professions Code is  
26 amended to read:

27 4990. (a) There is in the Department of Consumer Affairs, a  
28 Board of Behavioral Sciences that consists of the following  
29 members:

- 30 (1) Two state licensed clinical social workers.
  - 31 (2) One state licensed educational psychologist.
  - 32 (3) Two state licensed marriage and family therapists.
  - 33 (4) Commencing January 1, 2012, one state licensed professional  
34 clinical counselor.
  - 35 (5) Seven public members.
- 36 (b) Each member, except the seven public members, shall have  
37 at least two years of experience in his or her profession.
- 38 (c) Each member shall reside in the State of California.
- 39 (d) The Governor shall appoint five of the public members and  
40 the six licensed members with the advice and consent of the Senate.

1 The Senate Committee on Rules and the Speaker of the Assembly  
2 shall each appoint a public member.

3 (e) Each member of the board shall be appointed for a term of  
4 four years. A member appointed by the Speaker of the Assembly  
5 or the Senate Committee on Rules shall hold office until the  
6 appointment and qualification of his or her successor or until one  
7 year from the expiration date of the term for which he or she was  
8 appointed, whichever first occurs. Pursuant to Section 1774 of the  
9 Government Code, a member appointed by the Governor shall  
10 hold office until the appointment and qualification of his or her  
11 successor or until 60 days from the expiration date of the term for  
12 which he or she was appointed, whichever first occurs.

13 (f) A vacancy on the board shall be filled by appointment for  
14 the unexpired term by the authority who appointed the member  
15 whose membership was vacated.

16 (g) Not later than the first of June of each calendar year, the  
17 board shall elect a chairperson and a vice chairperson from its  
18 membership.

19 (h) Each member of the board shall receive a per diem and  
20 reimbursement of expenses as provided in Section 103.

21 (i) This section shall remain in effect only until January 1, ~~2013~~  
22 2017, and as of that date is repealed, unless a later enacted statute,  
23 that is enacted before January 1, ~~2013~~ 2017, deletes or extends  
24 that date.

25 (j) *Notwithstanding any other provision of law, the repeal of*  
26 *this section renders the board subject to review by the appropriate*  
27 *policy committees of the Legislature.*

28 SEC. 4. Section 4990.04 of the Business and Professions Code  
29 is amended to read:

30 4990.04. (a) The board shall appoint an executive officer. This  
31 position is designated as a confidential position and is exempt from  
32 civil service under subdivision (e) of Section 4 of Article VII of  
33 the California Constitution.

34 (b) The executive officer serves at the pleasure of the board.

35 (c) The executive officer shall exercise the powers and perform  
36 the duties delegated by the board and vested in him or her by this  
37 chapter.

38 (d) With the approval of the director, the board shall fix the  
39 salary of the executive officer.

1 (e) The chairperson and executive officer may call meetings of  
2 the board and any duly appointed committee at a specified time  
3 and place. For purposes of this section, “call meetings” means  
4 setting the agenda, time, date, or place for any meeting of the board  
5 or any committee.

6 (f) This section shall remain in effect only until January 1, ~~2013~~  
7 2017, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before January 1, ~~2013~~ 2017, deletes or extends  
9 that date.

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
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www.bbs.ca.gov

**To:** Committee Members

**Date:** April 4, 2012

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject: Enforcement Regulations – Disciplinary Guidelines**

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At its November 9, 2011 meeting, the Board approved several amendments to the Disciplinary Guidelines. The Disciplinary Guidelines are incorporated by reference into Board regulations. The proposed amendments were based on suggestions from the Board's enforcement unit. Staff is now in the process of preparing a regulatory package to make the proposed amendments.

The enforcement unit has proposed two additional amendments to the Disciplinary Guidelines. Because a regulatory proposal can take up to one year to obtain approval from the Office of Administrative Law (OAL), and because only one proposal affecting any particular regulatory code section can be run at a time, staff recommends that these additional proposals be considered for inclusion in the existing regulatory proposal to amend the Disciplinary Guidelines. The additional amendments are as follows:

1. Recommended Language for Tolling of Probation
2. Recommended Language for Disciplinary Orders

### **Recommended Language for Tolling of Probation**

The Board's Disciplinary Guidelines (Revised March 2010) contain specific language for standard terms and conditions of probation, which are included in all disciplinary decisions.

Two of the standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident," allow a registrant or licensee to "toll" their probation if they are not practicing. Tolling probation stops the clock on a practitioner's probation term until they resume practice. The tolled period is then added to the end of the probation and extends the expiration date.

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

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

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

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

### **Recommended Language for Disciplinary Orders**

The "Board Policies and Guidelines" section of the current Disciplinary Guidelines (Revised March 2010) contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders. Staff proposes adding language to address the granting of other registrations or licenses by the Board and the application of probation for those other registrations and licenses.

### **Recommendation**

Direct staff to make any decided-upon changes and any non-substantive changes to the proposed language. Recommend that the Board direct staff to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011.

### **Attachments**

- A. Proposed Changes to Title 16, CCR §1888, and Disciplinary Guidelines (as approved by the Board at the November 9, 2011 meeting)

**ATTACHMENT A  
PROPOSED AMENDMENTS FOR DISCIPLINARY GUIDELINES**

**1. RECOMMENDED LANGUAGE FOR TOLLING OF PROBATION**

**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, 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, 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, 4996.9, or 4999.20 of the Business and Professions Code.~~

## 21. Failure to Practice

In the event 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. 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 4908.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and 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; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent's license/registration shall be automatically cancelled if respondent's period of non-practice total two years.

## **2. RECOMMENDED LANGUAGE FOR DISCIPLINARY ORDERS**

### **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~~ granted a subsequent registration, ~~or becomes licensed, or is granted another registration or license regulated by the Board~~ 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~~ granted a subsequent registration, ~~or becomes licensed, or is granted another registration or license regulated by the Board~~ during the probationary period.

### **Recommended Language for Licensees**

IT IS HEREBY ORDERED THAT \_\_\_\_\_ License 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 granted another registration or license regulated by the Board.

## **§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. ~~March 2010~~ [October 2011](#)] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

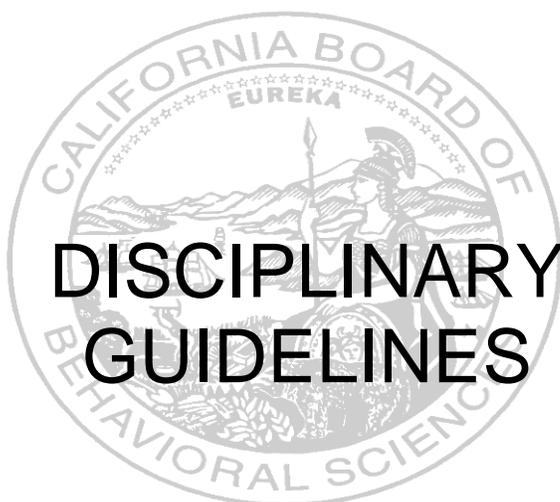
Note: Authority cited: Sections 4980.60, 4987, and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 4982, 4986.70, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

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***State of California***

**Department of Consumer Affairs**

**Board of Behavioral Sciences**



# DISCIPLINARY GUIDELINES

Revised: ~~March 2010~~ October 2011

## 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.

<p align="center"><b>Statutes and Regulations</b></p> <p>Business and Professions Code: (B&amp;P)  Title 16, California Code of Regulations: (CCR)  General Provisions: (GP)  Penal Code: (PC)  Welfare and Institutions Code: (WI)</p>	<p align="center"><b>Violation Category</b></p>	<p align="center"><b>Minimum Penalty</b></p>	<p align="center"><b>Maximum Penalty</b></p>
MFT: B&P § 4982.26(k) 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	<ul style="list-style-type: none"> <li>Revocation / Denial of license or registration</li> <li>Cost recovery.</li> </ul>	<ul style="list-style-type: none"> <li>Revocation / Denial of license or registration</li> <li>Cost recovery.</li> </ul> <p>The law requires revocation/denial of license or registration.</p>
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(xy)(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. <b>or</b> 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.	<ul style="list-style-type: none"> <li>Revocation / Denial of license or registration</li> <li>Cost recovery.</li> </ul> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>	<ul style="list-style-type: none"> <li>Revocation / Denial of license or registration</li> <li>Cost recovery.</li> </ul> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>
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)	<ul style="list-style-type: none"> <li>Revocation stayed</li> <li>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</li> <li>Take and pass licensure examinations as a condition precedent to resumption of practice</li> <li>7 years probation</li> <li>Standard terms and conditions</li> <li>Psychological/psychiatric evaluation as a condition precedent to resumption of practice</li> <li>Supervised practice</li> </ul>	<ul style="list-style-type: none"> <li>Revocation / Denial of license or registration</li> <li>Cost recovery.</li> </ul> <p>(See B&amp;P 4982.26, 4989.58, 4992.33)</p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>

		<ul style="list-style-type: none"> <li>• Psychotherapy</li> <li>• Education</li> <li>• Take and pass licensure examination</li> <li>• Reimbursement of probation program</li> </ul> <p>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples; restricted practice, reimbursement of probation program costs.</p>	
<p>MFT: B&amp;P § 4982(k)  LCSW: B&amp;P § 4992.3(k),  CCR § 1881(f)  LEP: B&amp;P § 4989.54(n)  LPCC: B&amp;P § 4999.90(k)  GP: B&amp;P § 480</p>	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• Psychotherapy</li> <li>• 5 years probation; standard terms and conditions</li> <li>• Psychological/psychiatric evaluation as a condition precedent to the resumption of practice</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
<p>MFT: B&amp;P § 4982(c),  4982.1  LCSW: B&amp;P § 4992.3(c),  4992.35  LEP: <a href="#">B&amp;P § 4989.26, 4989.54(c)</a>  LPCC: B&amp;P § 4999.90(c)  GP: B&amp;P § 480, 820</p>	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• 5 years probation; standard terms and conditions</li> <li>• Supervised practice</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul> <p><u>In addition:</u></p> <ul style="list-style-type: none"> <li>• MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

		<ul style="list-style-type: none"> <li>• PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice</li> <li>• 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.</li> </ul>	
<p>MFT: B&amp;P § 4982(c), 4982.1  LCSW: B&amp;P § 4992.3(c), 4992.35  LEP: B&amp;P § 4989.54(c), 4989.56  LPCC: B&amp;P § 4999.90(c)  GP: B&amp;P § 480</p>	<p>Chemical Dependency / Use of Drugs With Client While Performing Services</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Psychological/psychiatric evaluation</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Rehabilitation program</li> <li>• Abstain from controlled substances</li> <li>• Submit to biological fluid test and samples</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, psychotherapy; restricted practice</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
<p>MFT: B&amp;P § 4982(i)  LCSW: B&amp;P § 4992.3(h), CCR § 1881(d)  LEP: B&amp;P § 4989.54(m)  LPCC: B&amp;P § 4999.90(i)  GP: B&amp;P § 480</p>	<p>Intentionally / Recklessly Causing Physical or Emotional Harm to Client</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 90-120 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Take and pass licensure examinations</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration application</li> <li>• Cost recovery</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension; 5 years probation</li> <li>• Standard terms and conditions; supervised practice</li> <li>• Education</li> <li>• Take and pass licensure examinations</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs;</li> </ul> And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Cost recovery; reimbursement of probation program</li> </ul> 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.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

<p align="center"><b>Statutes and Regulations</b></p> <p>Business and Professions Code: (B&amp;P)  Title 16, California Code of Regulations: (CCR)  General Provisions: (GP)  Penal Code: (PC)  Welfare and Institutions Code: (WI)</p>	<p align="center"><b>Violation Category</b></p>	<p align="center"><b>Minimum Penalty</b></p>	<p align="center"><b>Maximum Penalty</b></p>
<p>MFT: B&amp;P § 4980.40(h)(e), 4982(a)  LCSW: B&amp;P § 4992.3(a), 4996.2(d), 4996.18(ab)  LEP: B&amp;P § 4989.20(a)(3), 4989.54(a)  LPCC: B&amp;P § 4999.90(a)  GP: B&amp;P § 480, 490, 493</p>	<p>Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense).</li> </ul> <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(hk) 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Law and ethics course</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(lm) 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Determine the appropriate penalty by comparing the violation under the other state with California law.</li> </ul> And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
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	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration application;</li> <li>• Cost recovery.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: take and pass licensure examinations.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(ql) - 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(gh), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) LPCC: B&P § 4999.90(g) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension</li> <li>• 5 years probation</li> <li>• Supervised practice</li> <li>• Standard terms and conditions</li> <li>• Psychological/psychiatric evaluation</li> <li>• Psychotherapy</li> <li>• Cost recovery</li> <li>• Reimbursement of probation costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(hj) 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-90 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: supervised practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(mn) CCR § 1881(i) LEP: B&P § 4989.54 (q) LPCC: B&P § 4999.90(m) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Take and pass licensure exams</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 728 LCSW: B&P § 728 LPCC: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(fs) LEP: <a href="#">B&amp;P § 4989.54(ab)</a> , CCR § <del>4884(h)</del> - <del>1858(b)</del> LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-90 days actual suspension</li> <li>• 2 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: supervised practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(ef), 4992.3(fs) 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• Registration on probation until exams are passed and license issued</li> <li>• License issued on probation for one year</li> <li>• Rejection of all illegally acquired hours</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(ep), 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> <li>• Law and Ethics course</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(og), CCR § 1881(j) LEP: B&P § 4989.54(o) LPCC: B&P § 4999.90 (n)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 2 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(pg), CCR § 1881(k) LEP: B&P § 4989.54(e) LPCC: B&P § 4999.90(p) <del>ALL: CCR § 1814</del> GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(v) LCSW: B&P § 4992.3( <del>et</del> ) LEP: B&P § 4989.54( <del>h</del> )(j) LPCC: B&P § 4999.90(v)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>
MFT: B&P § 4982(y) LCSW: B&P § 4992.3( <del>w</del> )(w) 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	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>
MFT: B&P § 4982(z) LCSW: B&P § 4992.3( <del>w</del> )(x) <a href="#">LEP: B&amp;P § 4990.54(d)</a> <a href="#">LPCC: B&amp;P § 4990.90(ac)</a>	Failure To Comply With Section 2290.5 (Telemedicine)	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery;</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>

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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.~~~~12.~~ Physical Evaluation
- ~~14.~~~~13.~~ Monitor Billing System
- ~~15.~~~~14.~~ Monitor Billing System Audit
- ~~16.~~~~15.~~ 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~~ 15 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, 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. [The respondent shall ensure that the Board receives quarterly written reports from the rehabilitation program addressing the respondent's progress in the program.](#)

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.~~

**13-12. 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.

#### **14-13. Monitor Billing System**

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 independent billing systems which monitor and document the dates and times of client visits. Respondent shall obtain the services of the independent billing system monitoring program within fifteen (15) days after notification of the board's approval of such program. 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.

#### **15-14. 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.

#### **16-15. 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, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 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:

- [17-16](#). Obey All Laws
- [18-17](#). File Quarterly Reports
- [19-18](#). Comply with Probation Program
- [20-19](#). Interviews with the Board
- [21-20](#). Residing or Practicing Out-of-State
- [22-21](#). Failure to Practice- California Resident
- [23-22](#). Change of Place of Employment or Place of Residence
- [24-23](#). Supervision of Unlicensed Persons
- [25-24](#). Notification to Clients
- [26-25](#). Notification to Employer
- [27-26](#). Violation of Probation
- [28-27](#). Maintain Valid License
- [29-28](#). License Surrender
- [30-29](#). Instruction of Coursework Qualifying for Continuing Education
- [31-30](#). Notification to Referral Services
- [31](#). [Reimbursement of Probation Program](#)
- 32. Cost Recovery

### **Specific Language for Standard Terms and Conditions of Probation**

(To be included in all Decisions)

#### **[17-16](#). 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.

#### **[18-17](#). 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.

#### **19-18. 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.

#### **20-19. 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.

#### **21-20. 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, 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, 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.

#### **22-21. 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, 4996.9, or 4999.20 of the Business and Professions Code.

#### **23-22. 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.

#### **24-23. Supervision of Unlicensed Persons**

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

#### **25-24. 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).*

#### **26-25. 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.

#### **27-26. 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.

### **28-27. 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.

### **29-28. 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 and experience requirements, and taking and passing any and all examinations required of new applicants.

### **30-29. 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.

### **31-30. 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.

### **31. Reimbursement of Probation Program**

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

### **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 [and experience](#) 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, 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.

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**To:** Committee Members

**Date:** March 27, 2012

**From:** Kim Madsen  
Executive Officer

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

**Subject: Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts**

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## Background

For many years Board licensees have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role a Board licensee may serve as a child custody recommending counselor (formerly known as mediators), as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

## Child Custody Recommending Counselor

A child custody recommending counselor may be a member of the professional staff of the family court, probation department, or mental health services agency or any other person or agency designated by the court. (Family Code Section 3164) The child custody recommending counselor is not required to possess a license with the Board. However, they must meet specific educational and training requirements set forth in Family Code Section 1815.

The role of the child custody recommending counselor is to assist parents in resolving their differences and to develop a plan agreeable to both parties. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation. Family Code Section 3183 permits the child custody recommending counselor to submit either the plan or the recommendation to the court. The time appropriated for this service is not extensive and does not require an in depth assessment of the situation.

## Court Connected or Private Child Custody Evaluator

A court connected child custody evaluator or a private child custody evaluator has a more extensive role and must be licensed as a Marriage and Family Therapist, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry [Family Code Section 3110.5(c)(1)(2)(3)(4)]. The evaluator has the task of conducting a comprehensive assessment (commonly referred to as an evaluation) to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation requires a significant amount of time. The Rules of the Court (Rule 5.220) specify the content each evaluation must include as well as a description of the work completed by the evaluator. Upon the conclusion of the evaluator's work, the evaluator prepares a written report that is submitted to the court. The court will base their decision regarding custody and visitation on this report.

Pursuant to Family Code Section 3025.5, the report submitted by the evaluator is considered confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney
- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator
- Counsel appointed for the child pursuant to Family Code Section 3150
- Any other person upon order of the court for good cause

An individual releasing this report may be subject to sanctions by the Court [Family Code section 3111(d)].

Family Code section 3110.5(e) states *a child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that license.*

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Each court has its own procedures for filing a complaint. Further, the individual may express their complaint to the judge at the time of their hearing.

The individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board. The Board of Behavioral Sciences is one of the state licensing boards listed.

### BBS Role and Impact

The Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a mediator, due their limited role. The Board will investigate complaints involving evaluators.

In all complaints, the source of the complaint alleges the licensee's conduct/recommendation is unprofessional or is unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board's statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator's report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of a Subject Matter Expert and at times, assistance from the Division of Investigation.

Board staff observes significant challenges associated with these cases. The inability to obtain all of the relevant documentation requires the Board to close an investigation. This outcome increases the individual's frustration not only with the courts, but also the Board.

Moreover, the Board has learned that its investigation of these cases is a concern for the courts in that licensees were alarmed that their reports may be subject to a Board investigation. Many licensees expressed an unwillingness to continue their role as an evaluator. Consequently, the courts became concerned about decreasing resources to perform this service.

## Discussions with the Administrative Office of the Courts

In the summer of 2011, Board staff initiated discussions with the Administrative Office of the Courts (AOC) to exchange information each entity's process, and to explore possible solutions to resolve the current issues. During the initial meeting, the Board was informed that current law did not allow the Board access to the evaluator's report. The AOC explained that the report is confidential and could only be released to the Board by the court. To obtain the report, the Board is required to file a petition or subpoena with the court.

At subsequent meetings, the Board was provided with contact information for each court to provide to individuals who had a complaint about an evaluator and their report.

## Case Discussion

In one particular case, the Board received three complaints involving a licensee who served as a private child custody evaluator. In each complaint, the parent alleged the licensee engaged in unprofessional conduct and ethical violations. In all three complaints the Board received sufficient documentation to investigate the allegations, including the confidential evaluation report. This report was provided to the Board or its investigator by the parent as well as the licensee.

The Board's investigation revealed potential violations of the Board's statutes and regulations. The investigation was forwarded to a Subject Matter Expert for review and opinion. The Subject Matter Expert opined that the licensee provided inaccurate and incomplete information to the court.

The Board referred the case to the Attorney General for disciplinary action. The Deputy Attorney General assigned to the case determined it was in the Board's best interest to seek formal release of this document from the court to the Board. Therefore, a motion was filed in Superior Court seeking the release of this document to the Board for the upcoming administrative hearing. The judge denied the Board's request.

As a result, the document that served as the basis for the Board's action against the licensee would be inadmissible in the upcoming administrative hearing. Thus, the Board had no other alternative than to withdraw its action against the licensee.

## Discussion with the AOC Regarding Future Board Investigations

The Board met with the AOC to discuss this case and the inability to fully investigate allegations of licensee misconduct if the Board cannot obtain the relevant documentation to use in an administrative hearing. Both the Board and the AOC agree that it is essential that the courts receive accurate information from the child custody evaluator in order to determine the best interest of the child. Further, the AOC and the Board agree that a solution to this issue requires a legislative proposal to revise existing law.

## Recommendation

Conduct an open discussion regarding the Board's role in the investigation of complaints involving child custody evaluators. If the committee determines the Board should continue to investigate these complaints, direct staff to draft a legislative proposal that allows the Board access to the confidential report for investigative purposes.

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CALIFORNIA CODES  
**FAMILY . CODE**  
SECTION 3160-3165

3160. Each superior court shall make a mediator available. The court is not required to institute a **family** conciliation court in order to provide mediation services.

3161. The purposes of a mediation proceeding are as follows:

- (a) To reduce acrimony that may exist between the parties.
- (b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with Sections 3011 and 3020.
- (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

3162. (a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.

(b) The standards of practice shall include, but not be limited to, all of the following:

- (1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents, consistent with Sections 3011 and 3020.
- (2) Facilitation of the transition of the **family** by detailing factors to be considered in decisions concerning the child's future.
- (3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.

(d) The Judicial Council shall offer training with respect to the standards to mediators.

3163. Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

**3164.** (a) The mediator may be a member of the professional staff of a **family** conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court.

(b) The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1815.

3165. Any person, regardless of administrative title, hired on or after January 1, 1998, who is responsible for clinical supervision of

evaluators, investigators, or mediators or who directly supervises or administers the **Family** Court Services evaluation or mediation programs shall meet the same continuing education requirements specified in Section 1816 for supervising and associate counselors of conciliation.

CALIFORNIA CODES  
**FAMILY . CODE**  
SECTION 1810-1820

1810. Each superior court shall exercise the jurisdiction conferred by this part. While sitting in the exercise of this jurisdiction, the court shall be known and referred to as the "**family** conciliation court."

1811. The presiding judge of the superior court shall annually, in the month of January, designate at least one judge to hear all cases under this part.

1812. (a) The judge of the **family** conciliation court may transfer any case before the **family** conciliation court pursuant to this part to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the **family** conciliation court the transfer is necessary to expedite the business of the **family** conciliation court or to ensure the prompt consideration of the case.

(b) When a case is transferred pursuant to subdivision (a), the judge to whom it is transferred shall act as the judge of the **family** conciliation court in the matter.

1813. (a) The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the **family** conciliation court to act as judge of the **family** conciliation court during any period when the judge of the **family** conciliation court is on vacation, absent, or for any reason unable to perform the duties as judge of the **family** conciliation court.

(b) The judge appointed under subdivision (a) has all of the powers and authority of a judge of the **family** conciliation court in cases under this part.

1814. (a) In each county in which a **family** conciliation court is established, the superior court may appoint one supervising counselor of conciliation and one secretary to assist the **family** conciliation court in disposing of its business and carrying out its functions. In counties which have by contract established joint **family** conciliation court services, the superior courts in contracting counties jointly may make the appointments under this subdivision.

(b) The supervising counselor of conciliation has the power to do all of the following:

(1) Hold conciliation conferences with parties to, and hearings in, proceedings under this part, and make recommendations concerning the proceedings to the judge of the **family** conciliation court.

(2) Provide supervision in connection with the exercise of the counselor's jurisdiction as the judge of the **family** conciliation court may direct.

(3) Cause reports to be made, statistics to be compiled, and

records to be kept as the judge of the **family** conciliation court may direct.

(4) Hold hearings in all **family** conciliation court cases as may be required by the judge of the **family** conciliation court, and make investigations as may be required by the court to carry out the intent of this part.

(5) Make recommendations relating to marriages where one or both parties are underage.

(6) Make investigations, reports, and recommendations as provided in Section 281 of the Welfare and Institutions **Code** under the authority provided the probation officer in that **code**.

(7) Act as domestic relations cases investigator.

(8) Conduct mediation of child custody and visitation disputes.

(c) The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, associate counselors of conciliation and other office assistants as may be necessary to assist the **family** conciliation court in disposing of its business. The associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

(d) The classification and salaries of persons appointed under this section shall be determined by:

(1) The board of supervisors of the county in which a noncontracting **family** conciliation court operates.

(2) The board of supervisors of the county which by contract has the responsibility to administer funds of the joint **family** conciliation court service.

**1815.** (a) A person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have all of the following minimum qualifications:

(1) A master's degree in psychology, social work, marriage, **family** and child counseling, or other behavioral science substantially related to marriage and **family** interpersonal relationships.

(2) At least two years of experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the **family** conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in **family** law cases.

(4) Knowledge of other resources in the community that clients can be referred to for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(7) Training in domestic violence issues as described in Section 1816.

(b) The **family** conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) This section does not apply to any supervising counselor of conciliation who was in office on March 27, 1980.

1816. (a) For purposes of this section, the following definitions apply:

(1) "Eligible provider" means the Administrative Office of the Courts or an educational institution, professional association, professional continuing education group, a group connected to the courts, or a public or private group that has been authorized by the Administrative Office of the Courts to provide domestic violence training.

(2) "Evaluator" means a supervising or associate counselor described in Section 1815, a mediator described in Section 3164, a court-connected or private child custody evaluator described in Section 3110.5, or a court-appointed investigator or evaluator as described in Section 3110 or Section 730 of the Evidence Code.

(b) An evaluator shall participate in a program of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to that evaluator. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(c) Areas of basic instruction shall include, but are not limited to, the following:

- (1) The effects of domestic violence on children.
- (2) The nature and extent of domestic violence.
- (3) The social and **family** dynamics of domestic violence.
- (4) Techniques for identifying and assisting families affected by domestic violence.

(5) Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence.

(6) The legal rights of, and remedies available to, victims.

(7) Availability of community and legal domestic violence resources.

(d) An evaluator shall also complete 16 hours of advanced training within a 12-month period. Four hours of that advanced training shall include community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the **family** being evaluated may reside. Twelve hours of instruction, as approved by the Administrative Office of the Courts, shall include all of the following:

(1) The appropriate structuring of the child custody evaluation process, including, but not limited to, all of the following:

(A) Maximizing safety for clients, evaluators, and court personnel.

(B) Maintaining objectivity.

(C) Providing and gathering balanced information from the parties and controlling for bias.

(D) Providing separate sessions at separate times as described in Section 3113.

(E) Considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence.

(2) The relevant sections of local, state, and federal laws, rules, or regulations.

(3) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, all of the following:

(A) Shelters for battered women.

(B) Counseling, including drug and alcohol counseling.

- (C) Legal assistance.
- (D) Job training.
- (E) Parenting classes.
- (F) Resources for a victim who is an immigrant.

(4) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, all of the following:

(A) Certified treatment programs described in Section 1203.097 of the Penal **Code**.

- (B) Drug and alcohol counseling.
- (C) Legal assistance.
- (D) Job training.
- (E) Parenting classes.

(5) The unique issues in a **family** and psychological assessment in a domestic violence case, including all of the following:

(A) The effects of exposure to domestic violence and psychological trauma on children, the relationship between child physical abuse, child sexual abuse, and domestic violence, the differential **family** dynamics related to parent-child attachments in families with domestic violence, intergenerational transmission of familial violence, and manifestations of post-traumatic stress disorders in children.

(B) The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence.

(C) Current legal, psychosocial, public policy, and mental health research related to the dynamics of **family** violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships.

(D) The assessment of **family** history based on the type, severity, and frequency of violence.

(E) The impact on parenting abilities of being a victim or perpetrator of domestic violence.

(F) The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases.

(G) The influence of alcohol and drug use and abuse on the incidence of domestic violence.

(H) Understanding the dynamics of high conflict relationships and relationships between an abuser and victim.

(I) The importance of and procedures for obtaining collateral information from a probation department, children's protective services, police incident report, a pleading regarding a restraining order, medical records, a school, and other relevant sources.

(J) Accepted methods for structuring safe and enforceable child custody and parenting plans that ensure the health, safety, welfare, and best interest of the child, and safeguards for the parties.

(K) The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against a **family** member.

(e) After an evaluator has completed the advanced training described in subdivision (d), that evaluator shall complete four hours of updated training annually that shall include, but is not limited to, all of the following:

(1) Changes in local court practices, case law, and state and federal legislation related to domestic violence.

(2) An update of current social science research and theory, including the impact of exposure to domestic violence on children.

(f) Training described in this section shall be acquired from an

eligible provider and that eligible provider shall comply with all of the following:

(1) Ensure that a training instructor or consultant delivering the education and training programs either meets the training requirements of this section or is an expert in the subject matter.

(2) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants.

(3) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child.

(4) Develop a procedure to verify that an evaluator completes the education and training program.

(5) Distribute a certificate of completion to each evaluator who has completed the training. That certificate shall document the number of hours of training offered, the number of hours the evaluator completed, the dates of the training, and the name of the training provider.

(g) (1) If there is a local court rule regarding the procedure to notify the court that an evaluator has completed training as described in this section, the evaluator shall comply with that local court rule.

(2) Except as provided in paragraph (1), an evaluator shall attach copies of his or her certificates of completion of the training described in subdivision (d) and the most recent updated training described in subdivision (e).

(h) An evaluator may satisfy the requirement for 12 hours of instruction described in subdivision (d) by training from an eligible provider that was obtained on or after January 1, 1996. The advanced training of that evaluator shall not be complete until that evaluator completes the four hours of community resource networking described in subdivision (d).

(i) The Judicial Council shall develop standards for the training programs. The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence and child abuse and shall seek to develop training programs that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

1817. The probation officer in every county shall do all of the following:

(a) Give assistance to the **family** conciliation court that the court may request to carry out the purposes of this part, and to that end shall, upon request, make investigations and reports as requested.

(b) In cases pursuant to this part, exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

1818. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. The court shall not allow ex parte communications, except as authorized by Section 216. All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information within the meaning of Section 1040 of the Evidence **Code**.

(b) The files of the **family** conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement, and any court order made in the matter may be opened to inspection by a party or the party's counsel upon the written authority of the judge of the **family** conciliation court.

1819. (a) Except as provided in subdivision (b), upon order of the judge of the **family** conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old.

(b) Records described in subdivision (a) of child custody or visitation mediation may be destroyed when the minor or minors involved are 18 years of age.

(c) In the judge's discretion, the judge of the **family** conciliation court may order the microfilming of any record, paper, or document described in subdivision (a) or (b).

1820. (a) A county may contract with any other county or counties to provide joint **family** conciliation court services.

(b) An agreement between two or more counties for the operation of a joint **family** conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of the joint services, and that the treasurer may make payments from the moneys upon audit of the appropriate auditing officer or body of the county of that treasurer.

(c) An agreement between two or more counties for the operation of a joint **family** conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the **family** conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the **family** conciliation court including the supervising counselor, but excluding the judges of the **family** conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For other matters that are necessary or proper to effectuate the purposes of the **Family** Conciliation Court Law.

(d) The provisions of this part relating to **family** conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint **family** conciliation court services.

CALIFORNIA CODES  
**FAMILY . CODE**  
SECTION 3175-3188

3175. If a matter is set for mediation pursuant to this chapter, the mediation shall be set before or concurrent with the setting of the matter for hearing.

3176. (a) Notice of mediation and of any hearing to be held pursuant to this chapter shall be given to the following persons:

(1) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.

(2) Where a stepparent or grandparent seeks visitation rights, to the stepparent or grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.

(b) Notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address.

(c) Notice of mediation pursuant to Section 3188 shall state that all communications involving the mediator shall be kept confidential between the mediator and the disputing parties.

3177. Mediation proceedings pursuant to this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information within the meaning of Section 1040 of the Evidence **Code**.

3178. An agreement reached by the parties as a result of mediation shall be limited as follows:

(a) Where mediation is required to settle a contested issue of custody or visitation, the agreement shall be limited to the resolution of issues relating to parenting plans, custody, visitation, or a combination of these issues.

(b) Where a stepparent or grandparent seeks visitation rights, the agreement shall be limited to the resolution of issues relating to visitation.

3179. A custody or visitation agreement reached as a result of mediation may be modified at any time at the discretion of the court, subject to Chapter 1 (commencing with Section 3020), Chapter 2 (commencing with Section 3040), Chapter 4 (commencing with Section 3080), and Chapter 5 (commencing with Section 3100).

3180. (a) In mediation proceedings pursuant to this chapter, the mediator has the duty to assess the needs and interests of the child involved in the controversy, and is entitled to interview the child where the mediator considers the interview appropriate or necessary.

(b) The mediator shall use his or her best efforts to effect a

settlement of the custody or visitation dispute that is in the best interest of the child, as provided in Section 3011.

3181. (a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.

(b) Any intake form that an agency charged with providing **family** court services requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.

3182. (a) The mediator has authority to exclude counsel from participation in the mediation proceedings pursuant to this chapter if, in the mediator's discretion, exclusion of counsel is appropriate or necessary.

(b) The mediator has authority to exclude a domestic violence support person from a mediation proceeding as provided in Section 6303.

**3183.** (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, if the mediator has first provided the parties and their attorneys, including counsel for any minor children, with the recommendations in writing in advance of the hearing. The court shall make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing. If the mediator is authorized to submit a recommendation to the court pursuant to this subdivision, the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor." Mediators who make those recommendations are considered mediators for purposes of Chapter 11 (commencing with Section 3160), and shall be subject to all requirements for mediators for all purposes under this **code** and the California Rules of Court. On and after January 1, 2012, all court communications and information regarding the child custody recommending counseling process shall reflect the change in the name of the process and the name of the providers.

(b) If the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the

controversy.

3184. Except as provided in Section 3188, nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed, pursuant to Chapter 10 (commencing with Section 3150), to represent the minor child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

3185. (a) If issues that may be resolved by agreement pursuant to Section 3178 are not resolved by an agreement of all the parties who participate in mediation, the mediator shall inform the court in writing and the court shall set the matter for hearing on the unresolved issues.

(b) Where a stepparent or grandparent requests visitation, each natural or adoptive parent and the stepparent or grandparent shall be given an opportunity to appear and be heard on the issue of visitation.

3186. (a) An agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but before the agreement is reported to the court.

(b) An agreement may not be confirmed or otherwise incorporated in an order unless each party, in person or by counsel of record, has affirmed and assented to the agreement in open court or by written stipulation.

(c) An agreement may be confirmed or otherwise incorporated in an order if a party fails to appear at a noticed hearing on the issue involved in the agreement.

3188. (a) Any court selected by the Judicial Council under subdivision (c) may voluntarily adopt a confidential mediation program that provides for all of the following:

(1) The mediator may not make a recommendation as to custody or visitation to anyone other than the disputing parties, except as otherwise provided in this section.

(2) If total or partial agreement is reached in mediation, the mediator may report this fact to the court. If both parties consent in writing, where there is a partial agreement, the mediator may report to the court a description of the issues still in dispute, without specific reference to either party.

(3) In making the recommendation described in Section 3184, the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

(4) If the parties have not reached agreement as a result of the initial mediation, this section does not prohibit the court from requiring subsequent mediation that may result in a recommendation as to custody or visitation with the child if the subsequent mediation is conducted by a different mediator with no prior involvement with the case or knowledge of any communications, as defined in Section 1040 of the Evidence Code, with respect to the initial mediation. The court, however, shall inform the parties that the mediator will make

a recommendation to the court regarding custody or visitation in the event that the parties cannot reach agreement on these issues.

(5) If an initial screening or intake process indicates that the case involves serious safety risks to the child, such as domestic violence, sexual abuse, or serious substance abuse, the court may provide an initial emergency assessment service that includes a recommendation to the court concerning temporary custody or visitation orders in order to expeditiously address those safety issues.

(b) This section shall become operative upon the appropriation of funds in the annual Budget Act sufficient to implement this section.

(c) This section shall apply only in four or more counties selected by the Judicial Council that currently allow a mediator to make custody recommendations to the court and have more than 1,000 **family** law case filings per year. The Judicial Council may also make this section applicable to additional counties that have fewer than 1,000 **family** law case filings per year.

CALIFORNIA CODES  
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SECTION 3110-3118

**3110.** As used in this chapter, "court-appointed investigator" means a probation officer, domestic relations investigator, or court-appointed evaluator directed by the court to conduct an investigation pursuant to this chapter.

**3110.5.** (a) No person may be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 5.220 and 5.230 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence **Code**, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the **Code** of Civil Procedure.

(A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(B) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a **family** setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and **family** dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.

(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person may be a child custody evaluator under this chapter, Section 730 of the Evidence **Code**, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the **Code** of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions **Code** and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions **Code**.

(3) He or she is licensed as a marriage and **family** therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions **Code**.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions **Code**.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) does not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator may not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions **Code** or Section 1514.5 of the Probate **Code**. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions **Code**, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions **Code**.

(c) 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.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

3112. (a) Where a court-appointed investigator is directed by the court to conduct a custody investigation or evaluation pursuant to this chapter or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent, guardian, or other person able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent, guardian, or other person to repay the court the amount the court determines proper.

(b) The repayment shall be made to the court. The court shall keep suitable accounts of the expenses and repayments and shall deposit the collections as directed by the Judicial Council.

3113. Where there has been a history of domestic violence between the parties, or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the court-appointed investigator separately and at separate times.

3114. Nothing in this chapter prohibits a court-appointed investigator from recommending to the court that counsel be appointed pursuant to Chapter 10 (commencing with Section 3150) to represent the minor child. In making that recommendation, the court-appointed investigator shall inform the court of the reasons why it would be in the best interest of the child to have counsel appointed.

3115. No statement, whether written or oral, or conduct shall be held to constitute a waiver by a party of the right to cross-examine the court-appointed investigator, unless the statement is made, or the conduct occurs, after the report has been received by a party or his or her attorney.

3116. Nothing in this chapter limits the duty of a court-appointed investigator to assist the appointing court in the transaction of the business of the court.

3117. The Judicial Council shall, by January 1, 1999, do both of the following:

(a) Adopt standards for full and partial court-connected evaluations, investigations, and assessments related to child custody.

(b) Adopt procedural guidelines for the expeditious and cost-effective cross-examination of court-appointed investigators, including, but not limited to, the use of electronic technology whereby the court-appointed investigator may not need to be present in the courtroom. These guidelines shall in no way limit the requirement that the court-appointed investigator be available for the purposes of cross-examination. These guidelines shall also provide for written notification to the parties of the right to cross-examine these investigators after the parties have had a reasonable time to review the investigator's report.

3118. (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse, the court shall require an evaluation, investigation, or assessment pursuant to this section. When the court has determined that there is a serious allegation of child sexual abuse, any child custody evaluation, investigation, or assessment conducted subsequent to that determination shall be considered by the court only if the evaluation, investigation, or assessment is conducted in accordance with the minimum requirements set forth in this section in determining custody or visitation rights, except as specified in paragraph (1). For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on statements made by the child to law enforcement, a

child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court-appointed personnel, or that is supported by substantial independent corroboration as provided for in subdivision (b) of Section 3011. When an allegation of child abuse arises in any other circumstances in any proceeding involving child custody or visitation rights, the court may require an evaluator or investigator to conduct an evaluation, investigation, or assessment pursuant to this section. The order appointing a child custody evaluator or investigator pursuant to this section shall provide that the evaluator or investigator have access to all juvenile court records pertaining to the child who is the subject of the evaluation, investigation, or assessment. The order shall also provide that any juvenile court records or information gained from those records remain confidential and shall only be released as specified in Section 3111.

(1) This section does not apply to any emergency court-ordered partial investigation that is conducted for the purpose of assisting the court in determining what immediate temporary orders may be necessary to protect and meet the immediate needs of a child. This section does apply when the emergency is resolved and the court is considering permanent child custody or visitation orders.

(2) This section does not prohibit a court from considering evidence relevant to determining the safety and protection needs of the child.

(3) Any evaluation, investigation, or assessment conducted pursuant to this section shall be conducted by an evaluator or investigator who meets the qualifications set forth in Section **3110.5**.

(b) The evaluator or investigator shall, at a minimum, do all of the following:

(1) Consult with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.

(2) Review and summarize the child welfare services agency file. No document contained in the child welfare services agency file may be photocopied, but a summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded by the evaluator or investigator, except for the identity of the reporting party. The evaluator's or investigator's notes summarizing the child welfare services agency information shall be stored in a file separate from the evaluator's or investigator's file and may only be released to either party under order of the court.

(3) Obtain from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(4) Review the results of a multidisciplinary child interview team (hereafter MDIT) interview if available, or if not, or if the evaluator or investigator believes the MDIT interview is inadequate for purposes of the evaluation, investigation, or assessment, interview the child or request an MDIT interview, and shall wherever possible avoid repeated interviews of the child.

(5) Request a forensic medical examination of the child from the appropriate agency, or include in the report required by paragraph (6) a written statement explaining why the examination is not needed.

(6) File a confidential written report with the clerk of the court

in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. This report may not be made available other than as provided in this subdivision. This report shall include, but is not limited to, the following:

(A) Documentation of material interviews, including any MDIT interview of the child or the evaluator or investigator, written documentation of interviews with both parents by the evaluator or investigator, and interviews with other witnesses who provided relevant information.

(B) A summary of any law enforcement investigator's investigation, including information obtained from the criminal background check of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(C) Relevant background material, including, but not limited to, a summary of a written report from any therapist treating the child for suspected child sexual abuse, excluding any communication subject to Section 1014 of the Evidence **Code**, reports from other professionals, and the results of any forensic medical examination and any other medical examination or treatment that could help establish or disprove whether the child has been the victim of sexual abuse.

(D) The written recommendations of the evaluator or investigator regarding the therapeutic needs of the child and how to ensure the safety of the child.

(E) A summary of the following information: whether the child and his or her parents are or have been the subject of a child abuse investigation and the disposition of that investigation; the name, location, and telephone number of the children's services worker; the status of the investigation and the recommendations made or anticipated to be made regarding the child's safety; and any dependency court orders or findings that might have a bearing on the custody dispute.

(F) Any information regarding the presence of domestic violence or substance abuse in the **family** that has been obtained from a child protective agency in accordance with paragraphs (1) and (2), a law enforcement agency, medical personnel or records, prior or currently treating therapists, excluding any communication subject to Section 1014 of the Evidence **Code**, or from interviews conducted or reviewed for this evaluation, investigation, or assessment.

(G) Which, if any, **family** members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.

(H) Any other information the evaluator or investigator believes would be helpful to the court in determining what is in the best interests of the child.

(c) If the evaluator or investigator obtains information as part of a **family** court mediation, that information shall be maintained in the **family** court file, which is not subject to subpoena by either party. If, however, the members of the **family** are the subject of an ongoing child welfare services investigation, or the evaluator or investigator has made a child welfare services referral, the evaluator or investigator shall so inform the **family** law judicial officer in writing and this information shall become part of the **family** law file. This subdivision may not be construed to authorize or require a mediator to disclose any information not otherwise authorized or required by law to be disclosed.

(d) In accordance with subdivision (d) of Section 11167 of the Penal **Code**, the evaluator or investigator may not disclose any

information regarding the identity of any person making a report of suspected child abuse. Nothing in this section is intended to limit any disclosure of information by any agency that is otherwise required by law or court order.

(e) The evaluation, investigation, or assessment standards set forth in this section represent minimum requirements of evaluation and the court shall order further evaluation beyond these minimum requirements when necessary to determine the safety needs of the child.

(f) If the court orders an evaluation, investigation, or assessment pursuant to this section, the court shall consider whether the best interests of the child require that a temporary order be issued that limits visitation with the parent against whom the allegations have been made to situations in which a third person specified by the court is present or whether visitation will be suspended or denied in accordance with Section 3011.

(g) An evaluation, investigation, or assessment pursuant to this section shall be suspended if a petition is filed to declare the child a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions **Code**, and all information gathered by the evaluator or investigator shall be made available to the juvenile court.

(h) This section may not be construed to authorize a court to issue any orders in a proceeding pursuant to this division regarding custody or visitation with respect to a minor child who is the subject of a dependency hearing in juvenile court or to otherwise supersede Section 302 of the Welfare and Institutions **Code**.

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SECTION 3020-3032

3020. (a) The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

(b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

(c) Where the policies set forth in subdivisions (a) and (b) of this section are in conflict, any court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all **family** members.

3021. This part applies in any of the following:

- (a) A proceeding for dissolution of marriage.
- (b) A proceeding for nullity of marriage.
- (c) A proceeding for legal separation of the parties.
- (d) An action for exclusive custody pursuant to Section 3120.
- (e) A proceeding to determine physical or legal custody or for visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).

In an action under Section 6323, nothing in this subdivision shall be construed to authorize physical or legal custody, or visitation rights, to be granted to any party to a Domestic Violence Prevention Act proceeding who has not established a parent and child relationship pursuant to paragraph (2) of subdivision (a) of Section 6323.

(f) A proceeding to determine physical or legal custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(g) A proceeding to determine physical or legal custody or visitation in an action brought by the district attorney pursuant to Section 17404.

3022. The court may, during the pendency of a proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper.

3022.3. Upon the trial of a question of fact in a proceeding to

determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the **Code** of Civil Procedure.

3022.5. A motion by a parent for reconsideration of an existing child custody order shall be granted if the motion is based on the fact that the other parent was convicted of a crime in connection with falsely accusing the moving parent of child abuse.

3023. (a) If custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.

(b) If there is more than one contested issue and one of the issues is the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

3024. In making an order for custody, if the court does not consider it inappropriate, the court may specify that a parent shall notify the other parent if the parent plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal. The notice shall be given before the contemplated move, by mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent's counsel of record. To the extent feasible, the notice shall be provided within a minimum of 45 days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody. This section does not affect orders made before January 1, 1989.

3025. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

3025.5. In any proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section **3110**) of this part, a recommendation made to the court pursuant to Section 3183, and a written statement of issues and contentions pursuant to subdivision (b) of Section 3151, that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to

the following persons:

- (a) A party to the proceeding and his or her attorney.
- (b) A federal or state law enforcement officer, judicial officer, court employee, or **family** court facilitator for the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.
- (c) Counsel appointed for the child pursuant to Section 3150.
- (d) Any other person upon order of the court for good cause.

3026. **Family** reunification services shall not be ordered as a part of a child custody or visitation rights proceeding. Nothing in this section affects the applicability of Section 16507 of the Welfare and Institutions **Code**.

3027. (a) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions **Code**.

(b) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions **Code**. Upon completion of the investigation, the agency shall report its findings to the court.

3027.1. (a) If a court determines, based on the investigation described in Section 3027 or other evidence presented to it, that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

3027.5. (a) No parent shall be placed on supervised visitation, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, solely because the parent (1) lawfully reported suspected sexual abuse of the child, (2)

otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.

(b) The court may order supervised visitation or limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made. Any limitation of custody or visitation, including an order for supervised visitation, pursuant to this subdivision, or any statute regarding the making of a false child abuse report, shall be imposed only after the court has determined that the limitation is necessary to protect the health, safety, and welfare of the child, and the court has considered the state's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Section 3020.

3028. (a) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility or when a parent has been thwarted by the other parent when attempting to exercise custody or visitation rights contemplated by a custody or visitation order, including, but not limited to, an order for joint physical custody, or by a written or oral agreement between the parents.

(b) The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent's failure to assume caretaker responsibility or (2) the reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent's thwarting of the parent's efforts to exercise custody or visitation rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.

(c) The compensation may be requested by noticed motion or an order to show cause, which shall allege, under penalty of perjury, (1) a minimum of one hundred dollars (\$100) of expenses incurred or (2) at least three occurrences of failure to exercise custody or visitation rights or (3) at least three occurrences of the thwarting of efforts to exercise custody or visitation rights within the six months before filing of the motion or order.

(d) Attorney's fees shall be awarded to the prevailing party upon a showing of the nonprevailing party's ability to pay as required by Section 270.

3029. An order granting custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the **Family** Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions **Code**) for the maintenance of the child shall include an order pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this **code**, directing the noncustodial parent to pay any amount necessary for the support of the child, to the extent of the noncustodial parent's ability to pay.

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal **Code** where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal **Code**, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal **Code**, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal **Code**, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal **Code**.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal **Code** and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal **Code**, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence **Code**, that the convicted parent experiences intimate partner battering.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the **Family Code** and Division 17 (commencing with Section 17000) of this **code**.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

3030.5. (a) Upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with, a child may be modified or terminated if either of the following circumstances has occurred since the order was entered, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record:

(1) The person who has been granted physical or legal custody of, or unsupervised visitation with the child is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal **Code**.

(2) The person who has been granted physical or legal custody of, or unsupervised visitation with, the child resides with another person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal **Code**.

(b) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal **Code**, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal **Code**.

(c) The court shall not modify an existing custody or visitation order upon the ex parte petition of one party pursuant to this section without providing notice to the other party and an opportunity to be heard. This notice provision applies only when the motion for custody or visitation change is based solely on the fact that the child is allowed unsupervised contact with a person required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal **Code** and does not affect the court's ability to remove a child upon an ex parte motion when there is a showing of immediate harm to the child.

3031. (a) Where the court considers the issue of custody or visitation the court is encouraged to make a reasonable effort to ascertain whether or not any emergency protective order, protective order, or other restraining order is in effect that concerns the parties or the minor. The court is encouraged not to make a custody or visitation order that is inconsistent with the emergency protective order, protective order, or other restraining order,

unless the court makes both of the following findings:

(1) The custody or visitation order cannot be made consistent with the emergency protective order, protective order, or other restraining order.

(2) The custody or visitation order is in the best interest of the minor.

(b) Whenever custody or visitation is granted to a parent in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the custody or visitation order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all **family** members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(c) When making an order for custody or visitation in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any custody or visitation arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether custody or visitation shall be suspended or denied.

3032. (a) The Judicial Council shall establish a state-funded one-year pilot project beginning July 1, 1999, in at least two counties, including Los Angeles County, pursuant to which, in any child custody proceeding, including mediation proceedings pursuant to Section 3170, any action or proceeding under Division 10 (commencing with Section 6200), any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), and any proceeding for dissolution or nullity of marriage or legal separation of the parties in which a protective order as been granted or is being sought pursuant to Section 6221, the court shall, notwithstanding Section 68092 of the Government **Code**, appoint an interpreter to interpret the proceedings at court expense, if both of the following conditions are met:

(1) One or both of the parties is unable to participate fully in the proceeding due to a lack of proficiency in the English language.

(2) The party who needs an interpreter appears in forma pauperis, pursuant to Section 68511.3 of the Government **Code**, or the court otherwise determines that the parties are financially unable to pay the cost of an interpreter. In all other cases where an interpreter is required pursuant to this section, interpreter fees shall be paid as provided in Section 68092 of the Government **Code**.

(3) This section shall not prohibit the court doing any of the following when an interpreter is not present:

(A) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(B) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

(C) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing, including notice of

the requirement to have an interpreter present, along with information about obtaining an interpreter.

(b) The Judicial Council shall submit its findings and recommendations with respect to the pilot project to the Legislature by January 31, 2001. Measurable objectives of the program may include increased utilization of the court by parties not fluent in English, increased efficiency in proceedings, increased compliance with orders, enhanced coordination between courts and culturally relevant services in the community, increased client satisfaction, and increased public satisfaction.

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**To:** Committee Members

**Date:** April 4, 2012

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject:** 90-Day Rule Legislative Proposal

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## Background

Under current law, an applicant for marriage and family therapy (MFT) or professional clinical counselor (PCC) intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern (Business and Professions Code (BPC) §§ 4980.43(g), 4999.46(d)). This allowance in the law is commonly referred to as “the 90-day rule.”

There is no 90-day rule for applicants for associate social worker (ASW) registration. They may not gain supervised experience hours until registered as an ASW (BPC § 4996.23(f)).

## Proposal to Eliminate the 90-Day Rule

At its November 9, 2011 meeting, the Board approved amendments to eliminate the 90-day rule for MFT and PCC intern applicants, and directed staff to seek Board-sponsored legislation. The need for this bill was based on the following:

### 1. Need for Increased Consumer Protection

There are concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board's enforcement process.

Under the 90-day rule, an applicant who has a previous conviction can submit an application for intern registration within 90 days of the degree being granted. They then have up to one year to submit their conviction records (considered a deficiency) to the Board for review. Although most submit the information quickly, an applicant with a serious conviction will occasionally try to delay, taking their one year period to submit the requested information. Occasionally, they also decide during this time period that they want to abandon their application. However, because they have followed the 90-day rule, they may then gain supervised experience during this one-year time period without any restrictions the Board might place on them due to their prior conviction. Once the Board's enforcement division obtains the conviction information and decides to deny or restrict the registration, they have already been gaining experience hours toward licensure.

If a consumer or the supervisor were to file a complaint against such a practitioner during this time, the Board would have no jurisdiction to investigate the complaint and take action, as they are not yet a registered intern.

## 2. Decreased Application Processing Times at the Board

The 90-day rule was put into place many years ago when applicants for licensure were required to submit fingerprints on paper cards (called "hard cards") to the Board so that their criminal background could be checked. These hard cards were then processed by the Board and then physically sent to the Department of Justice (DOJ) and then to the FBI so that a background check could be performed by both of these agencies. This entire process could take up to three months before the Board received the results.

Today, the Board uses Livescan fingerprinting, which is an electronic fingerprinting system. An applicant submits electronic fingerprints, which are then sent to the DOJ and the FBI for the background check. The Board now receives the results of electronic fingerprints in approximately three to seven days.

The adoption of Livescan fingerprinting has significantly decreased the time it takes for the Board to process an application. Therefore, requiring an applicant to wait to gain hours until they are issued a registration number (currently 38-43 days on average) is now less cumbersome than in the past, when it would be a several month wait just to get the hard card fingerprinting results.

### **Status of the 90-Day Rule Legislative Proposal**

Due to concerns cited by stakeholders, the Board agreed to revisit the 90-day rule proposal at its February 29, 2012 Board meeting. At this meeting, stakeholders noted that there are no statistics available to show how often an applicant who followed the 90-day rule and is gaining hours is referred to the Board's Enforcement division and, upon further investigation, is denied the registration or issued a restricted registration.

Board staff approached several legislative offices in January and February about authoring the 90-day rule proposal. Although several offices were interested and stated that they may be interested in running this bill in 2013, this same concern about lack of statistics was cited by several legislative staff members.

The Board has not kept statistics on this particular scenario in the past. The amendments to eliminate the 90-day rule were proposed after the Board's enforcement division raised concerns that they were noticing that sometimes applicants with a criminal history follow the 90-day rule, and then may gain hours while the enforcement division investigates their application. Upon request for information from enforcement, they have one year to provide the information, and some of these applicants wait until the end of their one-year period to submit the requested information to the Board.

At the February 29, 2012 Board meeting, the Board decided to send this proposal back to the Policy and Advocacy Committee for further discussion of available options.

### **Recommendation**

Staff recommends that the enforcement division gather data over a one-year time period in order to allow the Board to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule. Data on the following instances should be gathered:

1. Number of applicants with a criminal conviction who, while gaining hours, wait until the end of their one-year deficiency period (defined as the last two months) to submit any information requested by the Board's enforcement division.

2. Number of instances in which an applicant follows the 90-day rule and begins gaining hours, only to have their registration denied due to the findings of the enforcement division.
3. Number of instances in which a denial of an application, due to enforcement division findings, is appealed and the applicant subsequently is granted a registration with restrictions.
4. In cases where a registration was denied or restricted due to enforcement division findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

In order to proceed with this recommendation, the committee would need to recommend that the Board do the following:

- Rescind the November 9, 2011 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule; and
- Direct staff to collect data on the four instances outlined above, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting.

### **Attachments**

Attachment A: Board-Approved Proposed Amendments

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**Attachment A**  
**Proposed Amendments**

**Licensed Marriage and Family Therapist**

**§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 doctoral degree.

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral 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 doctoral 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 may be 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 1,000 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.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:

(A) Experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(B) Client centered advocacy.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For 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 telehealth 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.

This subdivision shall only apply to hours gained on and after January 1, 2010.

(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 doctoral degree and is thereafter granted the intern registration by the board. Postdegree experience shall not be gained until the applicant has been registered as a marriage and family therapist intern.~~

(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.

## **Licensed Professional Clinical Counselor**

### **§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 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. Postdegree experience shall not be gained until the applicant has been registered as a professional clinical counselor intern.~~

(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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**To:** Committee Members

**Date:** April 4, 2012

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject:** Legislative Update

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The Board is currently pursuing the following legislative proposals:

**SB 632 (Emmerson) Marriage and Family Therapist Trainee Practicum**

Board-sponsored SB 363 (Chapter 384, Statutes of 2011) became law on January 1, 2012. It allows a trainee to counsel clients while not enrolled in practicum only if the lapse in enrollment is less than 90 days and is immediately preceded and followed by enrollment in practicum.

Because the requirement to be enrolled in practicum to counsel clients only applies to specified MFT trainees, (individuals that begin graduate study after August 1, 2012; individuals that begin graduate study before August 1, 2012 but do not complete that study before December 31, 2018; and, individuals that attend a graduate program that meets the enhanced requirements required by Business and Professions Code Section 4980.36) an exception from the requirement should have only applied to those specific MFT trainees. However, the effect of the language signed into law with SB 363 instead requires all trainees to be enrolled in practicum to counsel clients regardless of when that individual began graduate study.

This bill is an urgency measure which will amend this section of licensing law and restore the original intent of requiring only specified MFT trainees to enroll in practicum to counsel clients.

**SB 1527 (Negrete McLeod) Social Workers: Licensing**

As part of the Board's examination restructure which becomes effective on January 1, 2013, each associate social worker (ASW) will be required to take and pass a California law and ethics examination. This bill proposal adds a requirement, similar to the ones in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics. This bill proposal was approved by the Board at its November 9, 2011 meeting.

The Board is also seeking an amendment to this bill that would clarify the acceptability of older licensing exam scores. Under the examination restructure, the Board may use national examinations as the clinical examinations, if the Board determines that they meet California standards. However, SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained. In

order to address the question about the acceptability of older exam scores, this amendment will propose the following:

- For applicants who do not hold an out of state license, allows a passing score on the clinical exam to be accepted by the Board for seven years.
- For applicants who already hold a valid license in good standing in another state, who had passed the exam the Board is requiring as part of their requirements for licensure in that other state, the Board may accept that exam score regardless of age.

This amendment was approved by the Board at its February 29, 2012 meeting.

**SB 1575 (Senate Business, Professions, and Economic Development Committee) Omnibus Legislation**

This bill proposal, approved by the Board at its November 9, 2011 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

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**To:** Committee Members

**Date:** March 28, 2012

**From:** Rosanne Helms  
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**Telephone:** (916) 574-7897

**Subject:** Rulemaking Update

#### APPROVED BY OFFICE OF ADMINISTRATIVE LAW (OAL)

*Title 16, CCR Sections 1832.5, 1889.2, Technical and Nonsubstantive Regulatory Changes*

This proposal made technical and non-substantive amendments to Board regulations that were needed due to recent statutory changes. This proposal was approved by the Board at its meeting on August 18, 2011. It was approved by OAL and filed with the Secretary of State on March 7, 2012.

#### SUBMITTED TO OAL

*Title 16, CCR Sections 1803, 1845, 1858, 1881; Add Sections 1823, 1888.1, SB 1111 Enforcement Regulations*

This proposal is part of an effort by DCA for healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 (part of DCA's Consumer Protection Enforcement Initiative) that do not require statutory authority.

The intent of SB 1111, which failed passage in 2010, and SB 544, which failed passage in 2011, was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. These regulations propose delegation of certain functions to the executive officer, required actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort.

This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking was submitted to OAL and published in its California Regulatory Notice Register on March 16, 2012. The proposal is now in the 45-day public comment period. The public hearing for this proposal will be held on May 1, 2012.

#### PENDING REGULATORY PROPOSALS

*Title 16, CCR Section 1887.3, HIV/AIDS Continuing Education Course for LPCCs*

This proposal revises current Board regulations to include LPCCs in the requirement to take a one-time, seven hour continuing education course covering the assessment and treatment of people living with HIV/AIDS. The Board approved the proposed text at its February 23, 2011

meeting and directed staff to submit a regulation package to make the proposed change. This rulemaking will be submitted to OAL for initial notice in spring 2012.

*Title 16, CCR Section 1811, Revision of Advertising Regulations*

This proposal revises the regulatory provisions related to advertising by Board Licensees. The Board approved the originally proposed text at its meeting on November 18, 2008. Due to changes in regulations from the LPCC regulation package as well as other changes to the proposed text, staff obtained approval to a revised version of this rulemaking proposal at the August 18, 2011 Board meeting. This rulemaking will be submitted to OAL for initial notice in spring 2012.

*Title 16, CCR Sections 1870, 1874, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs)*

This proposal, approved by the Board in June 2007, requires supervisors of ASWs to be licensed for two years prior to commencing any supervision. This rulemaking will be submitted to OAL for initial notice by in spring 2012.

*Title 16, CCR Sections 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Section 1825, Regulations to Implement SB 704*

This proposal revises current Board regulations in order to be consistent with the statutory changes made by SB 704 (Chapter 387, Statutes of 2011), which restructures the examination process for LMFT, LCSW, and LPCC applicants. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in spring 2012.

*Title 16, CCR Section 1833, Regulations to Implement SB 363*

SB 363 (Chapter 384, Statutes of 2011) limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

This proposal deletes a provision of Board regulations which conflicts with SB 363 and that is no longer needed due to the new legislative provisions enacted by SB 363. This amendment was approved by Board at its meeting on November 9, 2011. This proposal also deletes an outdated provision in Section 1833 regarding crisis counseling on the telephone, which directly conflicts with telehealth provisions in LMFT licensing law. This amendment was approved by the Board at its meeting on February 29, 2012.

This regulatory proposal will be submitted to OAL for initial notice in spring 2012.

*Title 16, CCR Section 1888 and Disciplinary Guidelines, Enforcement Regulations*

This proposal makes several revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in summer 2012.

*Title 16, CCR Sections 1820, 1820.1, 1820.2, 1820.3, Exemptions for Sponsored Free Health Care Events*

As a result of AB 2699 (Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in spring 2012.