



1625 North Market Blvd.
Suite S-200
Sacramento, CA 95834
(916) 574-7830
TTY (800) 326-2297
Fax (916) 574-8625
www.bbs.ca.gov

BOARD MEETING NOTICE November 8, 2012

San Diego Golden Hall
202 C Street, Silver Room
San Diego, CA 92101

8:00 a.m.

FULL BOARD OPEN SESSION – Call to Order & Establishment of a Quorum

- I. Introductions
- II. Discussion and Possible Rulemaking Action Regarding Revisions to California Code of Regulations, Title 16, Sections 1811, 1870, and 1887.3
- III. Discussion and Possible Rulemaking Action Regarding the Implementation of SB 363, Chapter 384, Statutes of 2011
- IV. Discussion and Possible Rulemaking Action Regarding the Implementation of SB 1111
- V. In the Matter of Accusation Against Nancy Chinel Auvil – Further Hearing
- VI. Suggestions for Future Agenda Items
- VII. Public Comment for Items Not on the Agenda

FULL BOARD CLOSED SESSION

- VIII. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION

- IX. Adjournment

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

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov.

NOTICE: The meeting 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 by sending 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.



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

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

To: Board Members **Date:** October 12, 2012
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Proposed Regulations: Advertising, Supervision, and Continuing Education

The Board is currently pursuing a proposal to make amendments to Sections 1811, 1870, and 1887.3 of Title 16 of the California Code of Regulations (CCR). The proposed amendment would make the following changes:

1. **Advertising:** Currently the Board has identified areas of the law related to advertising which are unclear, such as what abbreviations may be used in an advertisement, and whether a licensee can use the term “psychotherapy” when advertising. In addition, AB 956 (Chapter 166, Statutes of 2011) clarified some of these questions for marriage and family therapy (MFT) interns, but did not address the advertising requirements for the Board’s other license types.

The proposed amendments would require advertisements by the Board’s licensees and registrants to contain more specific information, including requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation, requiring the advertisement to contain the practitioner’s license or registration number, and requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

2. **Supervision of ASWs:** Supervisors of the Board’s MFT interns are required to be licensed for at least two years before they can become a supervisor. This same requirement does not exist for supervisors of the Board’s ASW registrants, even though supervision requirements are otherwise similar.

The proposed amendment would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision.

3. **LPCC Continuing Education (CE):** The Board’s licensed marriage and family therapist (LMFT) and licensed clinical social worker (LCSW) licensees are required to take a continuing education course covering HIV/AIDS, while this same requirement does not exist for the Board’s licensed professional clinical counselor (LPCC) licensees. However, LPCC licensees are just as likely to treat a patient affected by HIV/AIDS.

The proposed amendment would require LPCCs to take a one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS as part of their 36 hour CE coursework requirement.

Past Board Action

The Board has taken the following actions on this regulatory proposal:

1. **Approval of the Language:** The Board approved the language proposed by this regulation package at the following Board meetings:
 - **Advertising:** The Board approved the amendments related to advertising at the August 18, 2011 Board meeting.
 - **Supervision of ASWs:** The Board approved the amendments related to supervision of ASWs at the May 31, 2007 Board meeting.
 - **LPCC Continuing Education:** The Board approved the amendments related to LPCC CE at the February 23, 2011 Board meeting.
2. **Notice of Proposal:** The proposal was then submitted to the Office of Administrative Law (OAL), and published in their Notice Register on June 29, 2012. It was then opened to public comment for a 45-day period.
3. **Public Hearing:** A public hearing was held on August 14, 2012. No public comment was received at the public hearing or during the 45-day public comment period.

Staff is now ready to submit this regulation package to OAL for approval, and is therefore seeking final Board approval of the regulatory proposal in order to do this.

Recommended Action

Direct staff to take all steps necessary to finalize the rulemaking process, including making any non-substantive changes to the rulemaking package, and submitting the final package to the Office of Administrative Law (OAL).

Attachments

Attachment A: Regulatory Proposal

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-0614-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING PUBLICATION DATE JUN 14 '12 JUN 29 '12 Office of Administrative Law NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Behavioral Sciences			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Advertising, Supervision, & Continuing Education		TITLE(S) 16	FIRST SECTION AFFECTED 1811	2. REQUESTED PUBLICATION DATE June 29, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7897	FAX NUMBER (Optional) 916-574-8626
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Advertising, Supervision & Continuing Edu.		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 16		ADOPT N/A AMEND 1811, 1870, and 1887.3 REPEAL N/A	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) N/A			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State		<input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6650)		<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal	
<input checked="" type="checkbox"/> Other (Specify) Denise Brown, Director, Department of Consumer Affairs			
7. CONTACT PERSON Rosanne Helms		TELEPHONE NUMBER 916-574-7897	FAX NUMBER (Optional) _____ E-MAIL (Optional) _____

B. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kim Madsen</i>	DATE
TYPED NAME AND TITLE OF SIGNATORY Kim Madsen Executive Officer	

For use by Office of Administrative Law (OAL) only

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**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
August 14, 2012
1:00pm-2:00pm

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **August 13, 2012** or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.60, and 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4980, 4980.44, 4996.18, 4996.23, 4999.45, and 4999.76 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Amend Section 1811 – Use of License Number in Directories and Advertisements

Section 1811 provides general requirements regarding advertisements for Licensed Marriage and Family Therapists (LMFTs), Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs).

AB 956 (Chapter 166, Statutes of 2011) changed the law relating to advertisements for marriage and family therapy services. AB 956 became effective on January 1, 2012, and any advertisement by or on behalf of a marriage and family therapist registered intern must now include, at a minimum, all of the following (BPC §4980.44(d)):

1. That he or she is a marriage and family therapist registered intern;
2. The intern's registration number;
3. The name of his or her employer; and
4. That he or she is supervised by a licensed person.

In addition, AB 956 prohibits the use of the abbreviation “MFTI” in an advertisement unless the title “marriage and family therapist registered intern” appears in the advertisement. (BPC §4980.44(d)(2)).

The Board is proposing amendments to Section 1811 that would clarify the law related to advertising, and would make the regulations consistent with the requirements of AB 956. Specific changes that would apply to all licensees include the following:

1. Requires an advertisement to contain the complete title of a license or registration, or an acceptable abbreviation. The amendments also spell out acceptable titles and abbreviations.
2. Prohibits the use of “MFTI” or “PCCI” in an advertisement unless the titles “marriage and family therapist registered intern” or “professional clinical counselor registered intern” are used, respectively.
3. Requires an advertisement to contain the practitioner’s license or registration number.
4. Requires a registrant to include the name of his or her employer, or the entity for which he or she volunteers, in any advertisement.
5. Allows use of the words “psychotherapy” or “psychotherapist” in an advertisement as long as all of the other requirements listed in the section are met.

Policy Statement Overview: Adoption of these proposed amendments will protect the public by further clarifying what information can and cannot be contained in an advertisement by a licensee or registrant. It also increases public protection by requiring the practitioner to include their license number in the advertisement, making it easier for the public to look up a practitioner’s license or file a complaint with the Board if necessary.

Amend Section 1870 – Requirements for Associate Clinical Social Worker Supervisors

Section 1870 specifies the requirements for supervisors of associate clinical social workers (ASWs). These requirements currently include a valid California license in good standing, as well as specific education and experience requirements.

The Board is proposing an amendment to this section that would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision. This proposed change would make the requirements for supervisors of ASWs consistent with Section 1833.1, which requires that supervisors of MFT interns be licensed for at least two years prior to performing any supervision.

Policy Statement Overview: Adoption of these proposed amendments would enhance public protection by ensuring that supervisors of ASWs have adequate experience as licensees before they are able to supervise.

Amend Section 1887.3 – Continuing Education Course Requirements

Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to complete thirty-six (36) hours of CE coursework every two years.

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code of Regulation (CCR) Title 16 Section 1887.3(c)).

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS, even though LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing an amendment that would also require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

Policy Statement Overview: Adoption of these proposed amendments will protect consumers by ensuring that all LPCC practitioners have education in the subject of patients who are living with HIV and AIDS.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This proposal is consistent and compatible with existing state regulations. It modifies existing state regulations related to advertising so that they are consistent and compatible with last year's statutory changes to LMFT advertising requirements (AB 965, Chapter 166, Statutes of 2011).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

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

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

- The proposed regulation changes to Section 1811 would not result in an economic or fiscal impact. The proposal would only refine the regulations by specifying certain information that must be disclosed in an advertisement.
- The proposed amendments to Section 1887.3 require LPCC licensees to take a one time, 7-hour CE course covering the assessment and treatment of people living with HIV and AIDS. However, because this course can be counted as part of the 36 hours of CE that is already required for license renewal, it does not represent an additional cost to the licensee.

- The proposed amendments to Section 1870 would have minimal if any impact on individuals and businesses as licensees who supervise MFT Interns and trainees frequently supervise ASWs. Newly licensed individuals and private therapy practices rarely have a large enough client base to employ and take on a supervisee.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- The proposed regulatory amendments to the advertising requirements in Section 1811 specify that certain information must be disclosed in an advertisement. Providing this information would not have an economic impact on licensees.
- The proposed regulatory amendments to Section 1870 requiring supervisors of ASWs to have held a license for at least two years would affect only a small number of individuals, as newly licensed individuals rarely supervise.
- The proposed regulatory amendments to Section 1887.3 requiring LPCC licensees to take a one-time CE course covering assessment and treatment of people living with HIV and AIDS would not have an economic impact on licensees, because the course can be taken as part of the 36 hours of CE that is already required for license renewal. Therefore, there is no additional cost to the licensee above and beyond what they would already pay to take their required CE.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by doing the following:

- Increasing and clarifying the information that must be provided in a licensee or registrant's advertisements;
- Ensuring that supervisors of ASW's have been licensed for two years and therefore have experience as a licensee; and
- Requiring that LPCC practitioners have education relating to patients living with HIV and AIDS.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The public will benefit from the increased protections this proposal provides, as described above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the this Notice under Contact Person listed below, or by accessing the Board's website, www.bbs.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

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

Name: Rosanne Helms
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7897
Fax: 916-574-8626
Email: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Marc Mason
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7828
Fax: 916-574-8626
Email: Marc.Mason@dca.ca.gov

WEBSITE ACCESS

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

PROPOSED REGULATORY AMENDMENTS

§1811. USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS ADVERTISING

~~(a)~~ All persons or referral services regulated by the board who advertise their services shall include ~~their license or registration number in the advertisement unless such advertisement contains the following specific information:~~ all of the following information in any advertisement:

~~(a)~~ (1) The full name of the licensee, registrant, or registered referral service as filed with the board; ~~and~~

~~(b)~~ (2) A designation of the The type of complete title of the license or registration held or an acceptable abbreviation, as follows:

~~(1)~~(A) Licensed Marriage and Family Therapist, or MFT, or LMFT.

~~(2)~~ (B) Licensed Educational Psychologist or LEP.

~~(3)~~ (C) Licensed Clinical Social Worker or LCSW.

(D) Marriage and Family Therapist Registered Intern or MFT Registered Intern.
The abbreviation "MFTI" shall not be used in an advertisement unless the title "marriage and family therapist registered intern" appears in the advertisement.

(E) Registered Associate Clinical Social Worker or Registered Associate CSW.

~~(4)~~ (F) Registered MFT Referral Service.

~~(5)~~ (G) Licensed Professional Clinical Counselor or LPCC.

(H) Professional Clinical Counselor Registered Intern or PCC Registered Intern.
The abbreviation "PCCI" shall not be used in an advertisement unless the title "professional clinical counselor registered intern" appears in the advertisement.

(3) The license or registration number.

~~(c) An unlicensed Marriage and Family Therapist Registered Intern may advertise if such advertisement complies with Section 4980.44(c) of the Code making disclosures required by that section.~~

~~(d) An unlicensed Associate Clinical Social Worker may advertise if such advertisement complies with Section 4996.18 (e) of the Code making disclosures required by that section.~~

~~(e) An unlicensed Professional Clinical Counselor Intern may advertise if such advertisement complies with Section 4999.45(c) of the Code making disclosures required by that section.~~

(b) Registrants must include the name of his or her employer in an advertisement, or if not

employed, the name of the entity for which he or she volunteers.

(c) Licensees may use the words “psychotherapy” or “psychotherapist” in an advertisement provided that all the applicable requirements of subsection (a) are met.

(d) It is permissible for a person to include academic credentials in advertising as long as the degree is earned, and the representations and statements regarding that degree are true and not misleading and are in compliance with Section 651 of the Code. For purposes of this subdivision, “earned” shall not mean an honorary or other degree conferred without actual study in the educational field.

(e) The board may issue citations and fines containing a fine and an order of abatement for any violation of Section 651 of the Code.

(f) For the purposes of this section, “acceptable abbreviation” means the abbreviation listed in subsection (a)(2) of this Section.

Note: Authority cited: Sections 137, 650.4, 651, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 137, 651, 4980, 4980.44, 4996.18, and 4999.45, Business and Professions Code.

§1870. REQUIREMENTS FOR ASSOCIATE CLINICAL SOCIAL WORKER SUPERVISORS

Any person supervising an associate clinical social worker registered with the board (hereinafter called "supervisor") within California shall comply with the requirements set forth below.

(a) Prior to the commencement of any therapy or supervision, the supervisor shall sign under penalty of perjury the “Responsibility Statement for Supervisors of an Associate Clinical Social Worker” (revised 3/10, form #1800 37A-522), hereby incorporated by reference, which requires that:

- (1) The supervisor possesses and will maintain a current valid California license as a licensed clinical social worker or a licensed mental health professional acceptable to the Board as specified in Section 1874.
- (2) The supervisor has been so licensed in California or in any other state for a total of at least two (2) years prior to commencing any supervision.
- ~~(2)~~(3) The supervisor has and will maintain a current license in good standing and will immediately notify the associate of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or any lapse in licensure, that affects the supervisor's ability or right to supervise.
- ~~(3)~~(4) The supervisor has practiced psychotherapy or provided direct supervision of associates, or marriage and family therapist interns or trainees who perform psychotherapy for at least two (2) years within the last five (5) years immediately preceding supervision.
- ~~(4)~~(5) The supervisor has had sufficient experience, training and education in the area of clinical supervision to competently supervise associates.

(A) Persons licensed by the board who provide supervision shall have a minimum of fifteen (15) contact hours in supervision training obtained from a state agency or approved continuing education provider. This training may apply towards the approved continuing education requirements set forth in Sections 4980.54, 4996.22, and 4999.76 of the Code. The content of such training shall include, but not be limited to:

(i) Familiarity with supervision literature through reading assignments specified by course instructors;

(ii) Facilitation of therapist-client and supervisor-therapist relationships;

(iii) Evaluation and identification of problems in therapist-client and supervisor-therapist relationships;

(iv) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(v) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(vi) The practice of clinical social work, including the mandated reporting laws, and knowledge of ethical and legal issues.

~~(5)~~(6) The supervisor knows and understands the laws and regulations pertaining to both supervision of associates and the experience required for licensure as a clinical social worker.

~~(6)~~(7) The supervisor shall do all of the following:

(A) Ensure that the extent, kind and quality of clinical social work performed by the associate is consistent with the training and experience of the person being supervised.

(B) Review client/patient records and monitor and evaluate assessment and treatment decisions of the associate clinical social worker.

(C) Monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served.

(D) Ensure compliance with all laws and regulations governing the practice of clinical social work.

~~(7)~~(8) The supervisor and the associate shall develop the "Supervisory Plan" as described in Section 1870.1. The associate shall submit the original signed plan for each supervisor to the board upon application for licensure.

~~(8)~~(9) The supervisor shall provide the associate with the original, signed "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised 3/10, form #1800 37A-522), prior to commencement of any supervision. The associate shall provide the board with the original signed form for each supervisor upon application for licensure.

~~(9)~~(10) A supervisor shall give at least one (1) week's written notice to an associate of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

~~(10)~~(11) The supervisor shall complete an assessment of the ongoing strengths and limitations of the associate. The assessments shall be completed at least once a year and at the completion or termination of supervision. A copy of all assessments shall be provided to the associate by the supervisor.

~~(11)~~(12) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(b) The board shall not deny hours of experience gained toward licensure by any associate due to the failure of his or her supervisor to complete the training requirements specified in subsection (a)(4)(A).

Note: Authority cited: Section 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4980.54, 4996.22 and 4996.23, Business and Professions Code.

§1887.3 CONTINUING EDUCATION COURSE REQUIREMENTS

- (a) During each renewal period, a licensee shall accrue at least thirty-six (36) hours of continuing education coursework as defined in Section 1887.4. A licensee may accrue no more than eighteen (18) hours of continuing education earned through self-study courses during each renewal period.
- (b) A marriage and family therapist and clinical social worker licensee who started graduate study prior to January 1, 1986, shall take a continuing education course in the detection and treatment of alcohol and other chemical substance dependency during their first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 29 of the Code. This is a one-time requirement for those licensees specified above. Equivalent alcohol and other chemical substance dependency courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.
- (c) Pursuant to Section 32 of the Code, a A marriage and family therapist, and clinical social worker, and professional clinical counselor licensee shall take a continuing education course in the characteristics and methods of assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) during their

first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 32 of the Code. This is a one-time requirement for all licensees. Equivalent HIV and AIDS courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.

- (d) Any person renewing his or her license on and after January 1, 2004 shall complete a minimum of six (6) hours of continuing education in the subject of law and ethics for each renewal period. The six (6) hours shall be considered part of the thirty-six (36) hour continuing education requirement.
- (e) If a licensee teaches a course, the licensee may claim credit for the course only one time during a single renewal period, receiving the same amount of hours of continuing education credit as a licensee who attended the course.
- (f) A licensee may not claim the same course more than once during a single renewal period for hours of continuing education credit.
- (g) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing education requirement.
- (h) Provisions of this section shall apply to licensed educational psychologists as follows:
 - (1) Beginning January 1, 2012 and through December 31, 2012 licensees shall complete at least eighteen (18) hours of continuing education prior to his or her license renewal, in accordance with subdivision (d) through (g).
 - (2) On and after January 1, 2013, licensees shall meet the requirements of subdivision (a) through (g).

Note: Authority Cited: Sections 4980.60, 4989.34, 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 29, 32, 4980.54, 4989.34, 4996.22 and 4999.76 Business and Professions Code.

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**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: August 14, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Requirements for advertising by licensees and registrants, requirements for supervisors of associate clinical social workers (ASWs), and continuing education course requirements.

SECTIONS AFFECTED: Sections 1811, 1870, and 1887.3 of Division 18 of Title 16 of the California Code of Regulations.

IDENTIFICATION OF THE PROBLEM

The Board has identified the following problems which this regulatory proposal addresses:

1. **Advertising:** Currently the Board has identified areas of the law related to advertising which are unclear, such as what abbreviations may be used in an advertisement, and whether a licensee can use the term “psychotherapy” when advertising. In addition, AB 956 (Chapter 166, Statutes of 2011) clarified some of these questions for marriage and family therapy (MFT) interns, but did not address the advertising requirements for the Board’s other license types.
2. **Supervision of ASWs:** Supervisors of the Board’s MFT interns are required to be licensed for at least two years before they can become a supervisor. This same requirement does not exist for supervisors of the Board’s ASW registrants, even though supervision requirements are otherwise similar.
3. **LPCC Continuing Education (CE):** The Board’s licensed marriage and family therapist (LMFT) and licensed clinical social worker (LCSW) licensees are required to take a continuing education course covering HIV/AIDS, while this same requirement does not exist for the Board’s licensed professional clinical counselor (LPCC) licensees. However, LPCC licensees are just as likely to treat a patient affected by HIV/AIDS.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

1. Amend Section 1803 – Advertising

Proposed Change: Section 1811 provides general requirements regarding advertisements for LMFTs, LCSWs, Licensed Educational Psychologists (LEPs), and LPCCs.

The proposed amendments would require advertisements by the Board’s licensees and registrants to contain more specific information, including requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation, requiring the advertisement to contain the practitioner’s license or registration number, and requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

Rationale: These proposed regulation changes are needed to refine and clarify what information a licensee or registrant must provide in an advertisement. The Board already has regulations in place that require certain information in an advertisement, this regulation simply modifies and clarifies what information must be provided, and also makes the regulation consistent with the provisions of AB 956 (Chapter 166, Statutes of 2011) which requires certain information be provided in advertising by MFT interns.

Anticipated Benefit: These amendments will protect the public by clarifying what information can and cannot be contained in an advertisement by a licensee or registrant, and also by requiring the practitioner to include the license number in the advertisement. Inclusion of the license number will make it easier for a consumer to look up a practitioner's license or file a complaint with the Board if necessary.

2. Amend Section 1870 – Supervisors of ASWs

Proposed Change: Section 1870 sets forth the requirements for supervisors of ASWs, including possession of a valid California license in good standing, as well as specific education and experience requirements.

The proposed amendment would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision.

Rationale: This proposed change makes the requirements for supervisors of ASWs consistent with Section 1833.1, which already requires supervisors of MFT interns be licensed for at least two years prior to performing any supervision.

The Board found as a matter of industry practice that licensees who supervise MFT interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs.

It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Anticipated Benefit: These amendments would enhance public protection by ensuring that supervisors of ASWs have adequate experience as licensees before they are able to supervise.

3. Amend Section 1887.3 – LPCC CE

Proposed Change: Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to complete thirty-six (36) hours of CE coursework every two years as a condition of license renewal.

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code

of Regulation (CCR) Title 16 Section 1887.3(c)).

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS.

Rationale: LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing this amendment that would require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

This proposed regulation change would not result in an economic impact because LPCC licensees are already required to take 36 hours of CE as a condition of license renewal.

The one time, 7-hour CE course required by this amendment will count toward a licensee's fulfillment of the 36 hour CE requirement. Therefore, there is no additional cost because the licensee is already required to take a total of 36 CE hours.

Anticipated Benefit: Adoption of this amendment will protect consumers by ensuring that LPCC practitioners have education in the subject of patients who are living with HIV and AIDS.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- The proposed regulatory amendments to the advertising requirements in Section 1811 specify that certain information must be disclosed in an advertisement. Providing this information would not have an economic impact on licensees.
- The proposed regulatory amendments to Section 1870 requiring supervisors of ASWs to have held a license for at least two years would affect only a small number of individuals, as newly licensed individuals rarely supervise.
- The proposed regulatory amendments to Section 1887.3 requiring LPCC licensees to take a one-time CE course covering assessment and treatment of people living with HIV and AIDS would not have an economic impact on licensees, because the course can be taken as part of the 36 hours of CE that is already required for license renewal. Therefore, there is no additional cost to the licensee above and beyond what they would already pay to take their required CE.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not

affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by doing the following:

- Increasing and clarifying the information that must be provided in a licensee or registrant's advertisements;
- Ensuring that supervisors of ASW's have been licensed for two years and therefore have experience as a licensee; and
- Requiring that LPCC practitioners have education relating to patients living with HIV and AIDS.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:

"Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

The public will benefit from the increased protections this proposal provides, as described above.

UNDERLYING DATA

None

BUSINESS IMPACT

Section 1811: None. The proposed regulation changes to advertising requirements will not have an impact as they only affect the content that is required in an advertisement.

Section 1870: None. The Board found as a matter of industry practice that licensees who supervise MFT Interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs. It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Section 1887.3: None. The one-time, 7 hour CE course required by this amendment is

included in, and is not in addition to, the existing requirement of 36 hours of CE for license renewal.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern that these regulations address.
2. Adopt the regulations. The Board has determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.

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**BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS**

Hearing Date: August 14, 2012

Subject Matter of Proposed Regulations: Advertising, Supervision, & Continuing Education

Section(s) Affected: Sections 1811, 1870, and 1887.3 of Division 18 of Title 16 of the California Code of Regulations.

Updated Information

The Initial Statement of Reasons is included in the file (Tab III). No updates have been made to that information.

Objections or Recommendations/Responses to Comments:

The Board did not receive any written comment or any objections or recommendations during the public comment period or at the public hearing.

Comments Received During the 15-Day Period the Modified Text was Available to the Public

The Board did not propose any modifications to the proposed regulations, therefore, a 15-day public comment period was not necessary.

Small Business Impact:

This proposal will not have an adverse economic impact on businesses. This proposal pertains only to the content required in an advertisement and the qualifications of associate social worker supervisors. It also specifies some content for continuing education courses, but does not change the existing requirement of a total of 36 hours of continuing education for license renewal.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative, which would be to not adopt the regulations, would leave areas of concern regarding advertising, supervision, and continuing education requirements unaddressed.

Local Mandate

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

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ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

*TD, 399 (Rev. 12/2008)

See SAM Sections 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Board of Behavioral Sciences	CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7987
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Advertising, Supervision, & Continuing Education		NOTICE FILE NUMBER

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

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

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

h. (cont.) See Attached

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

2. Enter the total number of businesses impacted: See Attachment Describe the types of businesses (Include nonprofits): See AttachmentEnter the number or percentage of total businesses impacted that are small businesses: See Attachment3. Enter the number of businesses that will be created: N/A eliminated: N/AExplain: No businesses will be created or eliminated as a result of this regulatory proposal.4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas) _____5. Enter the number of jobs created: N/A or eliminated: N/A Describe the types of jobs or occupations impacted: This regulatory proposal will not create or eliminate any jobs.

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

 Yes No If yes, explain briefly: _____**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)1. What is the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See Attached

- a. Initial cost for a small business: \$ N/A Annual ongoing cost: \$ N/A Years: N/A
 b. Initial cost for a typical business: \$ N/A Annual ongoing cost: \$ N/A Years: N/A
 c. Initial cost for an individual: \$ N/A Annual ongoing cost: \$ N/A Years: N/A

d. Describe other economic costs that may occur: See Attachment

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

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

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

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: N/A
and the number of units: _____

5. Are there comparable Federal Regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: Regulation of professional licenses issued by the Board of Behavioral Sciences is done at the State level, not at the Federal level.

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

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

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

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: Authority: Business and Professions Code (BPC) Sections 4980.60 and 4990.20.

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

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

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

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation	Benefit: \$	<u>See Attachment</u>	Cost: \$	<u>See Attachment</u>
Alternative 1:	Benefit: \$	<u>See Attachment</u>	Cost: \$	<u>See Attachment</u>
Alternative 2:	Benefit: \$	<u>See Attachment</u>	Cost: \$	<u>See Attachment</u>

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

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

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

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

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

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

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

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

B. FISCAL EFFECT ON STATE GOVERNMENT

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

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other _____

C. FISCAL EFFECT OF FEDERAL FUNDING OF STATE PROGRAMS

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

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current Fiscal State Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other _____

SIGNATURE

TITLE

Kenn Madsen

Executive officer

AGENCY SECRETARY ¹

DATE

APPROVAL/CONCURRENCE

DEPARTMENT OF FINANCE ²

PROGRAM BUDGET MANAGER

DATE

APPROVAL/CONCURRENCE

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

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

ECONOMIC AND FISCAL IMPACT STATEMENT
Board of Behavioral Sciences
Advertising, Supervision, and Continuing Education Regulations

Economic Impact Sections (Impact to Individuals and Businesses)

Section A - # 1 and 2

Section 1811

Section 1811 provides general requirements regarding advertisements for Licensed Marriage and Family Therapists (LMFTs), Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs).

The proposed regulation would require advertisements by the Board's licensees and registrants to contain more specific information, including requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation, requiring the advertisement to contain the practitioner's license or registration number, and requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

These proposed changes would not result in an economic impact because they only specify what information a licensee or registrant must provide in an advertisement. The Board already has regulations in place that require certain information in an advertisement, and this regulation simply modifies and clarifies what information must be provided. It also makes the regulation consistent with the provisions of AB 956 (Chapter 166, Statutes of 2011) which requires certain information be provided in advertising by MFT interns.

Section 1870

Section 1870 sets forth the requirements for supervisors of Associate Clinical Social Workers (ASWs).

Section 1833.1 requires the supervisor of Marriage Family Therapist (MFT) Interns and Trainees be licensed for at least two years before commencing any supervision; currently there is not a comparable requirement for supervision of ASWs.

This proposed regulation would provide consistency and clarity by requiring supervisors of Associate Clinical Social Workers to be licensed for at least two years prior to commencing any supervision and would ensure ASWs are also supervised by experienced and qualified supervisors.

The proposed regulation will have a minimal if any economic impact on individuals and businesses as licensees who supervise MFT interns and trainees frequently supervise ASWs. Newly licensed individuals and private therapy practices rarely have a large enough client base to employ and take on a supervisee.

Section 1887.3

Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to take thirty-six (36) hours of CE coursework every two years as a condition of license renewal

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code of Regulation (CCR) Title 16 Section 1887.3(c)).

Attachment

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS, even though LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing this amendment to require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

This proposed regulation will not have an economic impact, because LPCC licensees are already required to take 36 hours of CE as a condition of license renewal. The one time, 7-hour CE course required by this amendment will count toward a licensee's fulfillment of the 36 hour CE requirement. Therefore, there is no additional cost because the licensee is already required to take a total of 36 CE hours.

Section B - # 1

Section 1811

Currently, licensees who advertise must already ensure that their advertisements meet certain criteria specified by the Board. This proposal would simply clarify some requirements, and require some additional information be included in the advertisement, such as the license or registration number, and the complete title or abbreviation of their license or registration as defined by the Board. There will be no cost for a licensee to include this information in all future advertising.

Section 1870

The Board found as a matter of industry practice that licensees who supervise MFT interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs.

It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Section 1887.3

The proposed regulation will require LPCC licensees to take 7 hours of their total 36 hour CE requirement in a course covering the assessment and treatment of people living with HIV and AIDS. The regulation is not requiring any additional CE above and beyond the 36 hours already required, therefore there will be no additional cost to the licensee.

Section C - # 1 & 3

Section 1811

This section would benefit consumers, because upon viewing an advertisement for a Board licensee or registrant's services they would have access to the practitioner's license or registration number, the employer (if the practitioner is a Board registrant) and the practitioner's full title or a clear abbreviation designated acceptable by the Board. The section will also benefit licensees and registrants who are advertising, as it provides clarity about the information they may or may not use in an advertisement, and makes the advertising regulations consistent with the advertising requirements that are in law for MFT interns.

Section 1870

This proposed regulation would provide consistency between Section 1833.1, which requires the supervisor of Marriage Family Therapist (MFT) Interns and Trainees be licensed for at least two years

Attachment

before commencing any supervision, and Section 1870 which does not have a comparable requirement for supervision of ASWs licenses often supervise both MFT interns and ASWs.

As a benefit to ASWs, the licensees would be ensured supervision from experienced and qualified supervisors.

Section 1887.3

Consumers affected by HIV and AIDS who utilize the services of an LPCC will benefit from this proposed regulation, because it ensures that their practitioner will have education covering HIV and AIDS just as the Board's LMFTs and LCSWs do.

Section D - # 1 & 2

Section 1811

No alternatives were considered.

The proposed regulation would clarify existing law for the Board's licensee's and registrants who wish to advertise. If the proposed regulation were not adopted, current questions about acceptable titles and abbreviations to be used in advertising would remain, and consumers would not have access to advertisements that always contained a license number and the name of the employer (if a registrant).

Section 1870

No alternatives were considered.

The proposed regulation offers clarity and consistency by requiring supervisors of Associate Clinical Social Workers be licensed for at least two years prior to commencing any supervision, therefore ensuring ASWs are supervised by experienced and qualified supervisors.

Section 1887.3

No alternatives were considered.

The proposed regulation will require LPCC licensees to take 7 hours of their total 36 hour CE requirement in a course covering the assessment and treatment of people living with HIV and AIDS, just as LMFT and LCSW licensees are required to. If the requirement were not implemented, LPCCs seeking license renewal would not be required to take this course, even though they have similar scopes of practice and similar clientele as LMFTs and LCSWs.

Fiscal Impact Statement Sections (Impact to Government)

Section B - # 3

Section 1811

The Board already has requirements in regulations relating to advertising. Clarifying and requiring an advertisement contain more specific information will not result in a fiscal impact to the Board, because the Board already has a system in place to deal with licensees who advertise in a manner that violates regulations related to advertising.

Attachment

Section 1870

This proposal does not create a fiscal impact to the Board. The proposed regulation offers clarity and consistency by requiring supervisors of Associate Clinical Social Workers be licensed for at least two years prior to commencing any supervision, just as licensees who supervise MFT interns and trainees are already required to do. The Board is already enforcing this rule for supervisors of MFT interns and trainees, and it will not add a cost burden for the Board to enforce the rule for supervisors of ASWs as well.

Section 1887.3

Requiring LPCC licensees to complete a the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement, will not result in any increased costs to the Board. The Board must already ensure that these licensees complete their 36 hours of CE coursework. The addition of this requirement does not materially affect the CE audit process.

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

To: Board Members

Date: October 12, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed Regulations to Implement SB 363

The Board is currently pursuing a regulatory proposal to make two amendments to Section 1833 of Title 16 of the California Code of Regulations (CCR). The proposal would make the following changes:

1. Amend Section 1833 - Experience

Section 1833 sets forth the experience requirements for an applicant seeking LMFT licensure.

Currently, applicants for LMFT licensure are allowed to obtain no more than a total of 250 experience hours toward the licensure experience requirements performing the following activities (California Code of Regulation (CCR) Title 16 Section 1833(a)(4)):

- Administering and evaluating psychological tests of counselees;
- Writing clinical reports;
- Writing progress notes; and
- Writing process notes.

This regulation is now in direct conflict with a recent statutory change. SB 363 (Chapter 384, Statutes of 2011), which became law on January 1, 2012, addressed concerns that MFT interns were being allowed to gain too many client centered advocacy hours. Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact, professional enrichment activities, and client centered advocacy together to 1,250 hours. SB 363 revised the law to allow up to 500 hours of experience in the following areas:

- Administering and evaluating psychological tests;
- Writing clinical reports;
- Writing progress notes;
- Writing process notes; and
- Client centered advocacy.

The Board is proposing an amendment to strike out Section 1833(a)(4), which allows 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes and writing process notes and which is in direct conflict with the new statute that allows up to a total 500 hours of experience in these areas and in client centered advocacy. The new requirement in law is already clearly specified in Section 4980.43(a)(9) of the Business and Professions Code (BPC), and therefore clarification is no longer needed in regulation.

2. Amend Section 1833 – Telephone Counseling

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies. For example, psychotherapy performed via the telephone or over the internet may both be considered telehealth.

Current law limits the number of experience hours that an applicant for licensure as a marriage and family therapist (LMFT) may gain performing services via telehealth as follows:

Business and Professions Code (BPC) Section 4980.43(a)(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.

However, this statute is in conflict with CCR Title 16, Section 1833(a)(5), which limits an applicant seeking LMFT licensure to count no more than 250 hours of experience gained counseling or crisis counseling on the telephone.

The Board believes that the regulation is outdated, as it only limits counseling via telephone and does not provide for counseling provided over the internet. Therefore, the Board is proposing an amendment to strike out Section 1833(a)(5).

3. Amend Section 1833 – Errant References

In addition to the changes described above, the Board is also proposing an amendment to correct errant references in Sections 1833 (a) and (c) which have occurred as the statutes have changed over time.

Past Board Action

The Board has taken the following actions on this regulatory proposal:

- 1. November 9, 2011 and February 29, 2012:** The Board approved the language proposed by this regulation package. The proposal was then submitted to the Office of Administrative Law (OAL), and opened to public comment for a 45-day period.
- 2. August 14, 2012:** A public hearing was held. No public comment was received at the public hearing or during the 45-day public comment period.

Staff is now ready to submit this regulation package to OAL, and is therefore seeking final Board approval of the regulatory proposal in order to do this.

Recommended Action

Direct staff to take all steps necessary to finalize the rulemaking process, including making any non-substantive changes to the rulemaking package, and submitting the final package to the Office of Administrative Law (OAL).

Attachments

Attachment A: Regulatory Proposal

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**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
August 14, 2012
1:00pm-2:00pm

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on August 13, 2012 or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.35 and 4980.60 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4980.35, 4980.40, 4980.42, and 4980.43, of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

1. Amend Section 1833 - Experience

Section 1833 sets forth the experience requirements for an applicant seeking LMFT licensure.

Currently, applicants for LMFT licensure are allowed to obtain no more than a total of 250 experience hours toward the licensure experience requirements performing the following activities (California Code of Regulation (CCR) Title 16 Section 1833(a)(4)):

- Administering and evaluating psychological tests of counselees;
- Writing clinical reports;
- Writing progress notes; and
- Writing process notes.

This regulation is now in direct conflict with a recent statutory change. SB 363 (Chapter 384, Statutes of 2011), which became law on January 1, 2012, addressed concerns that MFT interns were being allowed to gain too many client centered advocacy hours. Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact,

professional enrichment activities, and client centered advocacy together to 1,250 hours. SB 363 revised the law to allow up to 500 hours of experience in the following areas:

- Administering and evaluating psychological tests;
- Writing clinical reports;
- Writing progress notes;
- Writing process notes; and
- Client centered advocacy.

The Board is proposing an amendment to strike out Section 1833(a)(4), which allows 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes and writing process notes and which is in direct conflict with the new statute that allows up to a total 500 hours of experience in these areas and in client centered advocacy. The new requirement in law is already clearly specified in Section 4980.43(a)(9) of the Business and Professions Code (BPC), and therefore clarification is no longer needed in regulation.

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

2. Amend Section 1833 – Telephone Counseling

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies. For example, psychotherapy performed via the telephone or over the internet may both be considered telehealth.

Current law limits the number of experience hours that an applicant for licensure as a marriage and family therapist (LMFT) may gain performing services via telehealth as follows:

*Business and Professions Code (BPC) Section 4980.43(a)(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.*

However, this statute is in conflict with CCR Title 16, Section 1833(a)(5), which limits an applicant seeking LMFT licensure to count no more than 250 hours of experience gained counseling or crisis counseling on the telephone.

The Board believes that the regulation is outdated, as it only limits counseling via telephone and does not provide for counseling provided over the internet. Therefore, the Board is proposing an amendment to strike out Section 1833(a)(5).

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the amount of experience for licensure that may be obtained via telehealth.

3. Amend Section 1833 – Errant References

In addition to the changes described above, the Board is also proposing an amendment to correct errant references in Sections 1833 (a) and (c) which have occurred as the statutes have changed over time.

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying regulatory references to statute.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Modification and clarification of the content of experience hours required for licensure is not related to the operations of a business.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- The proposed regulatory amendment to strike out Section 1833(a)(4) and (5) simply deletes requirements that are in conflict with statute. An increase in the allowable number of experience hours in certain content areas has no effect in the overall total number of hours required for licensure, and would not have an economic impact on businesses because it does not affect their daily operations.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly

to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's marriage and family therapist licensees. Health and welfare is increased by doing the following:

- Increasing clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None.

Comparable Federal Regulations: None.

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The public will benefit from the increased clarity this proposal provides, as described above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed below (or by accessing the website listed below).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

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

Name: Rosanne Helms
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7897
Fax: 916-574-8626
Email: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Marc Mason
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7828
Fax: 916-574-8626
Email: Marc.Mason@dca.ca.gov

WEBSITE ACCESS

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

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PROPOSED REGULATORY AMENDMENTS

§1833. EXPERIENCE

(a) In order for experience to qualify under Section 4980.40~~(f)~~ of the Code, it must meet the following criteria:

(1) It must have been gained in accordance with Sections 4980.42 through 4980.45 of the Code and the regulations contained in this article.

(2) Experience shall not be credited for more than forty (40) hours in any week.

(3) No more than five hundred (500) hours of experience will be credited for providing group therapy or group counseling.

~~—(4) No more than two hundred fifty (250) hours of experience will be credited for administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes; except that for any person who enrolled in a qualifying degree program prior to January 1, 1990, no more than five hundred (500) hours of experience may be credited for such activities.~~

~~—(5) For any person who enrolls in a qualifying degree program on or after January 1, 1990, no more than two hundred fifty (250) hours of experience will be credited for actual time spent counseling or crisis counseling on the telephone.~~

~~(6)~~(4) For any person who enrolls in a qualifying degree program on or after January 1, 1990, not less than five hundred (500) total hours of experience shall have been gained in diagnosing and treating couples, families, and children.

(b) The term "supervision", as used in this article, includes ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised; reviewing client/patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the intern or trainee; monitoring and evaluating the ability of the intern or trainee to provide services at the site(s) where he or she will be practicing and to the particular clientele being served; and ensuring compliance with laws and regulations governing the practice of marriage and family therapy. Supervision shall include that amount of direct observation, or review of audio or video tapes of therapy, as deemed appropriate by the supervisor. Supervision shall be credited only upon the following conditions:

(1) During each week in which experience is claimed and for each work setting in which experience is gained, an applicant shall have at least one (1) hour of one-on-one, individual, face-to-face supervisor contact or two (2) hours of face-to-face supervisor contact in a group of not more than eight (8) persons receiving supervision. No more than five (5) hours of supervision, whether individual or group, shall be credited during any single week.

(2) The applicant shall have received at least one (1) hour of one-on-one, individual, face-to-face supervisor contact per week for a minimum of fifty-two (52) weeks.

(3) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has

a personal or business relationship which undermines the authority or effectiveness of the supervisor shall not be credited toward the required hours of supervised experience.

(4) In a setting which is not a private practice, the authorized supervisor may be employed by the applicant's employer on either a paid or a voluntary basis. If such employment is on a voluntary basis, a written agreement must be executed between the supervisor and the organization, prior to commencement of supervision, in which the supervisor agrees to ensure that the extent, kind, and quality of counseling performed by the intern or trainee is consistent with the intern or trainee's training, education, and experience, and is appropriate in extent, kind, and quality. The agreement shall contain an acknowledgment by the employer that the employer:

(A) Is aware of the licensing requirements that must be met by the intern or trainee and agrees not to interfere with the supervisor's legal and ethical obligations to ensure compliance with those requirements; and

(B) Agrees to provide the supervisor access to clinical records of the clients counseled by the intern or trainee.

(c) Professional enrichment activities may be credited toward the experience requirement as specified in this article and by Section 4980.43~~(d)(1)~~ of the Code.

(1) No more than two hundred fifty (250) hours of verified attendance, with the approval of the applicant's supervisor, at workshops, seminars, training sessions, or conferences directly related to marriage and family therapy will be credited.

(2) No more than one hundred (100) hours of psychotherapy, which will be triple counted, received as specified in Section 4980.43~~(d)(2)~~ of the Code, will be credited.

(d) Experience gained by interns and trainees shall be subject to the following conditions, as applicable:

(1) When an intern employed in private practice is supervised by someone other than the employer, the supervisor must be employed by and practice at the same site(s) as the intern's employer.

(2) A trainee shall not perform services in a private practice.

(3) Interns and trainees may only perform services as employees or volunteers and not as independent contractors.

(e) Effective January 1, 1991, trainees and interns shall maintain a log of all hours of experience gained toward licensure. The log shall be in the form specified below and shall be signed by the supervisor on a weekly basis. An applicant shall retain all logs until such time as the applicant is licensed by the board. The board shall have the right to require an applicant to submit all or such portions of the log as it deems necessary to verify hours of experience.

[See Barclays Official California Code of Regulations for original illustration]

NOTE: Authority cited: Section 4980.35 and 4980.60, Business and Professions Code. Reference: Sections 4980.35, 4980.40~~(f)~~, and 4980.42 through 4980.45, Business and Professions Code.

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: August 14, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Experience requirements for an applicant seeking licensure as a marriage and family therapist (LMFT).

SECTIONS AFFECTED: Section 1833 of Division 18 of Title 16 of the California Code of Regulations (CCR).

IDENTIFICATION OF THE PROBLEM:

CCR Title 16 Section 1833 sets forth the experience requirements for an applicant seeking LMFT licensure.

The Board has identified a number of inconsistencies in Section 1833 with the Board's licensing statute. These inconsistencies create confusion about the requirements for someone seeking licensure as a marriage and family therapist.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

This regulation package proposes three separate amendments to Section 1833 to remove the inconsistencies in statute mentioned above:

1. Experience:

Problem and Proposed Change: Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact, professional enrichment activities, and client centered advocacy together to 1,250 hours. The Board had concerns that this allowed an intern to potentially obtain too many client centered advocacy hours, when they should be gaining the majority of their hours counseling clients in order to adequately prepare them for licensure.

Due to these concerns, SB 363 (Chapter 384, Statutes of 2011) revised the law to allow up to 500 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes, and client centered advocacy. SB 363 became effective on January 1, 2012.

A conflict now exists between the revised law and Section 1833(a)(4) of the Board's regulations. This section of regulations currently only allows up to 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes. This is in direct conflict with the 500 hours allowed with the revisions of SB 363.

These regulations propose striking CCR Section 1833(a)(4), which is the section in regulations limiting experience gained administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes to 250 hours.

Rationale: The new requirement from SB 363, which allows up to 500 hours, is already clearly specified in Section 4980.43(a)(9) of the code.

Anticipated Benefit: The proposed change will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

2. Telephone Counseling:

Problem and Proposed Change: BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies. For example, psychotherapy performed via the telephone or over the internet may both be considered telehealth.

Current law limits the number of experience hours that an applicant for licensure as a marriage and family therapist (LMFT) may gain performing services via telehealth as follows:

*Business and Professions Code (BPC) Section 4980.43(a)(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.*

However, this statute is in conflict with CCR Title 16, Section 1833(a)(5), which limits an applicant seeking LMFT licensure to count no more than 250 hours of experience gained counseling or crisis counseling on the telephone. Therefore, the Board is proposing an amendment to strike out Section 1833(a)(5).

Rationale: The Board believes that the regulation is outdated, as it only limits counseling via telephone and does not provide for counseling provided over the internet.

Anticipated Benefit: This proposed change will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the amount of experience for licensure that may be obtained via telehealth.

3. Errant References:

Problem and Proposed Change: This proposed amendment corrects errant references in Section 1833 (a) and (c) which have occurred as the statutes have changed over time.

Rationale: The references are incorrect and need to be deleted.

Anticipated Benefit: Increased clarity for consumers and individuals seeking an LMFT license who are using regulations and statute to determine LMFT licensing requirements.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- The proposed regulatory amendment to strike out Section 1833(a)(4) and (5) simply deletes requirements that are in conflict with statute. An increase in the allowable number of experience hours in certain content areas has no effect in the overall total number of hours required for licensure, and would not have an economic impact on businesses because it does not affect their daily operations.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's marriage and family therapist licensees. Health and welfare is increased by doing the following:

- Increasing clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None.

Comparable Federal Regulations: None.

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The public will benefit from the increased clarity this proposal provides, as described above.

UNDERLYING DATA

None

BUSINESS IMPACT

The Board has determined there will be no business impact for these proposed amendments. This is based on the fact that modifying the content of experience hours required for licensure does not affect the operations of a business.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the Board has identified a conflict between statute and regulations which must be addressed in order to maintain clarity and consistency between licensing laws and regulations.
2. Adopt regulations. The Board determined that this alternative is the most feasible because it will provide clarity and consistency between licensing laws and regulations.

**BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS**

Hearing Date: August 14, 2012

Subject Matter of Proposed Regulations: Marriage and Family Therapist Intern Experience

Section(s) Affected: Section 1833 of Division 18 of Title 16 of the California Code of Regulations.

Updated Information

The Initial Statement of Reasons is included in the file (Tab III). No updates have been made to that information.

Objections or Recommendations/Responses to Comments:

The Board did not receive any written comment or any objections or recommendations during the public comment period or at the public hearing.

Comments Received During the 15-Day Period the Modified Text was Available to the Public

The Board did not propose any modifications to the proposed regulations; therefore, a 15-day public comment period was not necessary.

Small Business Impact:

This proposal will not have an adverse economic impact on businesses. This proposal simply deletes regulatory requirements that are in conflict with statute. An increase in the allowable number of experience hours for licensure in certain content areas has no effect in the overall total number of hours required for licensure, and it does not affect the daily operations of businesses.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative, which would be to not adopt the regulations, would leave a conflict between statutes and regulations regarding the number of allowable experience hours that can be gained for licensure in certain content areas.

Local Mandate

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

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

D. 399 (Rev. 12/2008)

See SAM Sections 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Board of Behavioral Sciences	CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7897
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Marriage and Family Therapist Intern Experience		NOTICE FILE NUMBER

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

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

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

h. (cont.) Changing the composition of experience hours required for licensure will not cause an economic impact.

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

2. Enter the total number of businesses impacted: n/a Describe the types of businesses (Include nonprofits): n/aEnter the number or percentage of total businesses impacted that are small businesses: n/aEnter the number of businesses that will be created: n/a eliminated: n/aExplain: n/a4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas) n/a5. Enter the number of jobs created: n/a or eliminated: n/a Describe the types of jobs or occupations impacted: n/a

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

 Yes No If yes, explain briefly: n/a**B. ESTIMATED COSTS** (include calculations and assumptions in the rulemaking record.)1. What is the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ n/aa. Initial cost for a small business: \$ n/a Annual ongoing cost: \$ n/a Years: n/ab. Initial cost for a typical business: \$ n/a Annual ongoing cost: \$ n/a Years: n/ac. Initial cost for an individual: \$ n/a Annual ongoing cost: \$ n/a Years: n/ad. Describe other economic costs that may occur: None.

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

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

- 1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section)
- 2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
Alternative 1: n/a
Alternative 2: n/a
- 3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
Regulation: \$ n/a Cost-effectiveness ratio: n/a
Alternative 1: \$ n/a Cost-effectiveness ratio: n/a
Alternative 2: \$ n/a Cost-effectiveness ratio: n/a

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

- 1. Additional expenditures of approximately \$ n/a in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
 - a. is provided in (Item n/a Budget Act of n/a) or (Chapter n/a Statutes of n/a)
 - b. will be requested in the n/a Governor's Budget for appropriation in Budget Act of n/a
(FISCALYEAR)
- 2. Additional expenditures of approximately \$ n/a in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
 - a. implements the Federal mandate contained in n/a
 - b. implements the court mandate set forth by the n/a court in the case of _____ vs. _____
 - c. Implements a mandate of the people of this State expressed in their approval of Proposition No. n/a at the n/a election;
(DATE)
 - d. is issued only in response to a specific request from the n/a which is/are the local entity(s) affected;
 - e. will be fully financed from the n/a authorized by Section n/a of the n/a Code;
(FEES, REVENUE, ETC.)
 - f. Provides for savings to each affected unit of local government, which will, at a minimum, offset any additional costs to each unit.
- 3. Savings of approximately \$ n/a annually.
- 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
- 5. No fiscal impact exists because the regulation does not affect any local entity or program.
- 6. Other:

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

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)*

1. Additional expenditures of approximately \$ n/a in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the n/a fiscal year.
2. Savings of approximately \$ n/a in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other This regulation proposes technical and clarifying amendments which would change the composition of experience hours required for licensure. The amendments will not result in a fiscal impact to the State.

C. FISCAL EFFECT OF FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)*

1. Additional expenditures of approximately \$ n/a in the current State Fiscal Year.
2. Savings of approximately \$ n/a in the current Fiscal State Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other n/a

SIGNATURE

Kim Madgen

TITLE

Executive Officer

AGENCY SECRETARY ¹

APPROVAL/CONCURRENCE

DATE

DEPARTMENT OF FINANCE ²

PROGRAM BUDGET MANAGER

DATE

APPROVAL/CONCURRENCE

1. *The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*
2. *Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.*

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

To: Board Members **Date:** October 24, 2012
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Proposed Regulations to Implement SB 1111 (Negrete McLeod)

Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe.

Legislative Efforts

SB 1111 (Negrete McLeod) was introduced in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

In 2011-2012, the Senate Business, Professions, and Economic Development Committee sponsored SB 544. This bill contained many of the same provisions as SB 1111, with the intent of improving efficiency and increasing accountability for boards within DCA. SB 544 also failed passage.

Due to the urgent need to protect consumers by streamlining the enforcement process, the Senate Business, Professions, and Economic Development Committee and DCA have asked healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 that do not require new statutory authority.

Proposed Regulatory Items

The DCA legal office identified several components of SB 1111 and SB 544 that may be established through regulations. DCA has asked its healing arts boards to pursue these components through the rulemaking process. The regulatory proposal considered by the Board can be grouped into three categories:

1. Delegation of Certain Functions

Proposed Action: Delegate to the Board's Executive Officer the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license, or allow the Executive Officer to delegate this function to another designee.

Rationale: In cases where a licensee has voluntarily admitted to charges and agreed to the revocation, surrender, or suspension of their license, there is little discretion for the Board not to adopt the agreement. Allowing the Executive Officer to approve such an agreement, instead of requiring a full board vote, will shorten the timeframe for these cases, allowing them to become effective more quickly.

2. Required Actions Against Registered Sex Offenders

Proposed Action: Require that the Board deny or revoke a license or registration if the applicant or licensee is required to register as a sex offender pursuant to Penal Code Section 290. In addition, require that the Board deny any petition to reinstate or reissue a license or registration to a registered sex offender.

Rationale: The Board is already prohibited from issuing a license or registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code. This proposal would clarify that the Board must revoke a license or registration upon finding that an applicant or licensee was convicted of a sex offense, and would clarify that the Board must deny a petition for reinstatement or reissuance.

3. Unprofessional Conduct

Proposed Action: Add the following acts to the definition of unprofessional conduct:

- a. Failing to provide the Board lawfully requested documents within a specified timeframe.
- b. Failure to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's or consumer's constitutional or statutory rights or privilege.
- c. Failure to notify the Board within a specified timeframe of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation.
- d. Failure to comply with a court order, issued in the enforcement of a subpoena, to release records.

Recent Action

The Board has taken the following actions on this regulatory proposal:

1. **August 18, 2011:** the Board approved the regulatory proposal. The proposal was then submitted to the Office of Administrative Law (OAL), and opened to public comment for a 45-day period.
2. **May 1, 2012:** A public hearing was held. The Board received a public comment letter from the California Association of Marriage and Family Therapists (CAMFT). After reviewing these comments, staff proposed a number of technical and clarifying amendments to the originally proposed language.
3. **August 22, 2012:** The Board approved the technical and clarifying amendments that staff proposed. A 15-day public comment period was held from August 29 through September 13, 2012 for the new amendments. No comments were received during this timeframe.

Additional Amendments Needed

- 1. Exemptions for Minor Drug Convictions.** DCA Legal recently informed staff that it is requesting that all boards make an additional amendment to their SB 1111 enforcement regulations.

The requested amendment affects the portion of the unprofessional conduct sections (Sections 1823, 1845, 1858, and 1881) that make it unprofessional conduct to fail to report to the Board within 30 days a conviction of any felony or misdemeanor, or to fail to provide documentation to the Board regarding an arrest.

DCA Legal notes that there are certain types of convictions or arrests that are, by law, exempt from the reporting requirement. These exemptions, found in Penal Code Section 1000.4 and Health and Safety Code Sections 11357 and 11360, apply to minor drug convictions involving marijuana, or arrests following successful completion of a deferred entry of judgment program. DCA Legal advises that the Board needs to include reference to these exceptions in the unprofessional conduct provisions.

- 2. Strike Unprofessional Conduct – Prohibitions in Settlement Agreements Clause.** AB 2570 (Chapter 561, Statutes of 2012) was recently signed by the Governor and will become law on January 1, 2013. This bill allows the Board to pursue disciplinary action on a licensee or registrant who prohibits a consumer, as part of a civil suit, from filing a complaint with or cooperating with the Board or that requires the consumer to withdraw a complaint with the Board.

The language in this bill is duplicative of the unprofessional conduct provision originally proposed by this regulation package, and therefore needs to be deleted.

The Board will need to submit these new amendments for a 15-day public comment period.

Recommended Action

Conduct an open discussion regarding the inclusion of the proposed amendments in the regulations. If the amendments are found acceptable, direct staff to take all steps necessary to finalize the rulemaking process, including modifying the text as approved, submitting modified text for a 15-day public comment period, making any non-substantive changes to the rulemaking package, and submitting the final package to OAL.

Attachments

- A:** Proposed Text Modifications
- B:** Final Statement of Reasons
- C:** CAMFT letter received during 45-day public comment period
- D:** Regulatory Proposal
- E:** AB 2570: Licensees: Settlement Agreements (Chapter 561, Statutes of 2012)

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**ATTACHMENT A
PROPOSED MODIFIED TEXT OF REGULATIONS**

Single underline indicates originally proposed new language.

Double underline indicates proposed modified new language, and double strikeout indicates proposed modified deleted language.

§1803. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's or registrant's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license or registration; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, 4990.04 and 4990.12, Business and Professions Code; and Sections 11415.60 and 11500-11528, Government Code.

§1823. UNPROFESSIONAL CONDUCT

As used in Section 4999.90 of the code, unprofessional conduct includes, but is not limited to:

~~(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:~~

~~(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.~~

~~(b)(a) Failure to provide to the board, as authorized by law, copies of records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the records within this time period for good cause.~~Good

cause includes, but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

~~(e)(b)~~ Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

~~(d)(c)~~ Failure to report to the board within 30 days any of the following:

~~(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~ A conviction of any felony or misdemeanor, which is not subject to Health & Safety Code sections 11357 (b), (c), (d), (e), or 11360 (b). A conviction includes any verdict of guilty, or plea of guilty or no contest.

(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

~~(e)(d)~~ Failure to provide, within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant, except for records of convictions or arrests protected under Penal Code section 1000.4, or Health and Safety Code sections 11361.5 and 11361.7.

~~(f)(e)~~ Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Sections 4990.20, 4999.48, Business and Professions Code. Reference: Sections 4990.20, 4999.48, and 4999.90, Business and Professions Code, Section 1000.4, Penal Code, and Sections 11357, 11360, 11361.5 and 11361.7, Health and Safety Code.

§1845. UNPROFESSIONAL CONDUCT

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

(a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

(c) Failing to comply with the child abuse reporting requirements of Penal Code Section 11166.

(d) Failing to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institutions Code Section 15630.

~~(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:~~

~~(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.~~

~~(f)(e) Failure to provide to the board, as authorized by law, copies of records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the records within this time period for good cause. Good cause includes, but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.~~

~~(g)(f) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.~~

~~(h)(g) Failure to report to the board within 30 days any of the following:~~

~~(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor. A conviction of any felony or misdemeanor, which is not subject to Health & Safety Code sections 11357(b), (c), (d), (e) or 11360(b). A conviction includes any verdict of guilty, or plea of guilty or no contest.~~

(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

~~(h)~~ Failure to provide, within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant, except for records of convictions or arrests protected under Penal Code section 1000.4, or Health and Safety Code sections 11361.5 and 11361.7.

~~(i)~~ Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Sections 1000.4 and 11166, Penal Code, Sections 11357, 11360, 11361.5 and 11361.7, Health and Safety Code, and Section 15630, Welfare and Institutions Code.

§1858. UNPROFESSIONAL CONDUCT

The Board may suspend or revoke the license of a licensee who: As used in Section 4989.54 of the code, unprofessional conduct includes, but is not limited to:

(a) Impersonates a licensee or allows another person to use his or her license.

(b) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

~~(c) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:~~

~~(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.~~

~~(c)~~ Failure to provide to the board, as authorized by law, copies of records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the records within this time period for good cause. Good cause includes, but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

~~(d)~~ Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a

consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

~~(f)~~(e) Failure to report to the board within 30 days any of the following:

~~(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor. A conviction of any felony or misdemeanor, which is not subject to Health & Safety Code sections 11357 (b), (c), (d), (e), or 11360 (b). A conviction includes any verdict of guilty, or plea of guilty or no contest.~~

~~(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

~~(e)~~(f) Failure to provide, within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant, except for records of convictions or arrests protected under Penal Code section 1000.4, or Health and Safety Code sections 11361.5 and 11361.7.

~~(h)~~(g) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code, Section 1000.4, Penal Code, and Sections 11357, 11360, 11361.5 and 11361.7, Health and Safety Code.

§1881. UNPROFESSIONAL CONDUCT

~~The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:~~ As used in Section 4992.3 of the code, unprofessional conduct includes, but is not limited to:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the misrepresentation of his or her professional qualifications or affiliations.

(b) Impersonates a licensee or who allows another person to use his or her license.

(c) Aids or abets an unlicensed person to engage in conduct requiring a license.

(d) Intentionally or recklessly causes physical or emotional harm to a client.

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

(f) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of a Licensed Clinical Social Worker.

(g) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(h) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(i) Fails to maintain the confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client during the course of treatment and all information about the client which is obtained from tests or other such means.

(j) Prior to the commencement of treatment, fails to disclose to the client, or prospective client, the fee to be charged for the professional services, or the basis upon which such fee will be computed.

(k) Advertises in a manner which is false or misleading.

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institution Code Section 15630.

~~(q) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:~~

~~_____ (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~_____ (2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.~~

~~(g)~~(g) Failure to provide to the board, as authorized by law, copies of records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the records within this time period for good cause. Good cause includes, but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

~~(r)~~(r) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

~~(s)~~(s) Failure to report to the board within 30 days any of the following:

~~(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor. A conviction of any felony or misdemeanor, which is not subject to Health & Safety Code sections 11357 (b), (c), (d), (e), or 11360 (b). A conviction includes any verdict of guilty, or plea of guilty or no contest.~~

~~(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

~~(t)~~(t) Failure to provide, within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant, except for records of convictions or arrests protected under Penal Code section 1000.4, or Health and Safety Code sections 11361.5 and 11361.7.

~~(u)~~(u) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Sections 1000.4 and 11166, Penal Code, Sections 11357, 11360, 11361.5 and 11361.7, Health and Safety Code, and Section 15630, Welfare and Institution Code.

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

- (a) Except as otherwise provided by law, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:
- 1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
 - 2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.
 - 3) Deny any petition to reinstate or reissue the individual's license or registration.
- (b) This section shall not apply to any of the following:
- 1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
 - 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license or registration under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
 - 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

**ATTACHMENT B
BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS**

Hearing Date: May 1, 2012

Subject Matter of Proposed Regulations: Enforcement

Section(s) Affected: Amend Sections 1803, 1845, 1858, and 1881 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1823 and 1888.1 to Division 18 of Title 16 of the California Code of Regulations.

Updated Information

The Initial Statement of Reasons is included in the file (Tab III). The information contained therein is updated as follows:

1. Sections 1823(a), 1845(e), 1858(c), and 1881(q) were struck from the amendments. These sections proposed making it unprofessional conduct for a licensee or registrant to include in a civil dispute settlement a provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the Board, or a provision requiring the other party to the dispute to withdraw a complaint filed with the Board.

AB 2570 (Chapter 561, Statutes of 2012) was recently signed by the Governor and becomes effective on January 1, 2013. The bill puts this provision into law, making the amendments proposed in these subsections duplicative.

Subsections beneath the provisions that were deleted have been re-numbered accordingly.

2. An amendment was made to the Unprofessional Conduct sections for each of the Board's license types in order to address a concern from the California Association of Marriage and Family Therapists (CAMFT) that some of the terms used in these sections were vague and unclear. The amendment affected Sections 1823(a), 1845(e), 1858(c), and 1881(q) and is as follows:

Failure to provide to the board, as ~~directed~~ authorized by law, lawfully requested copies of documents records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the documents records within this time period for good cause. Good cause includes, including but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release

authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

3. An amendment was made to the Unprofessional Conduct sections for each of the Board's license types in order to address a concern from CAMFT that making it unprofessional conduct for a licensee to fail to report to the Board within 30 days the bringing of an indictment or information charging a felony against a licensee violates due process. The Board struck this clause in Sections 1823(c), 1845(g), 1858(e), and 1881(s). Subsections (2) and (3) beneath (1) were re-numbered (1) and (2), respectively.
4. A technical, clarifying amendment was made to the Unprofessional Conduct sections for each of the Board's license types. These sections make it unprofessional conduct to fail to provide within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant. An additional amendment was also made to include registrants in this provision. The amendment affected Sections 1823(d), 1845(h), 1858(f), and 1881(t) and is as follows:

Failure to provide, within 30 days of a request, documentation ~~requested by~~ to the Board regarding the arrest of the licensee or registrant.

5. A technical, clarifying amendment was made to the first sentence of Section 1888.1(a). The amendment is as follows:

"Except as otherwise provided by law, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:"

6. A clarifying amendment was made to all references of the terms "license", "licensee", or "licensee's" in all sections with proposed amendments in this regulatory proposal (Sections 1803, 1823, 1845, 1858, 1881, and 1888.1). Board staff found that a reference to registrants is also needed when licensees are referenced, in order to ensure it is clear that it is the intent of the Board to apply the proposed amendments not only to Board licensees but to registrants as well.
7. At the request of DCA Legal, an amendment was made to the portions of the unprofessional conduct sections (Sections 1823(c)(1) and (d), 1845(g)(1) and (h), 1858(e)(1) and (f), and 1881(s)(1) and (t)) that make it unprofessional conduct to fail to report to the Board within 30 days a conviction of any felony or misdemeanor, or to fail to provide documentation to the Board regarding an arrest.

DCA Legal notes that there are certain types of convictions or arrests that are, by law, exempt from the reporting requirement. These exemptions, found in Penal Code Section 1000.4 and Health and Safety Code Sections 11357 and 11360, apply to minor drug convictions involving marijuana, or arrests following successful completion of a deferred entry of judgment program. DCA Legal advised that the Board needed to include reference to these exceptions in the unprofessional conduct provisions.

Objections or Recommendations/Responses to Comments:

The Board received a written letter jointly signed by Jill Epstein, Executive Director, and Catherine Atkins, Deputy Executive Director of CAMFT. The comments in the letter, and the Board's responses, are as follows:

1. **COMMENT NO. 1: Demonstrate the Need for New Provisions:** The ISOR states that "many Boards take an average of three years to investigate and prosecute," however no evidence is offered that indicates this statistic applies to the Board. If the statistic does apply to the Board, it is unclear if the delays are due to unavailable or evasive licenses or a lack of resources on the part of the Board's enforcement unit. In addition, it is stated that proposed changes would allow quicker resolution of disciplinary issues. CAMFT argues, however, that quick is not necessarily the best result if the resolution is not fair or effective. CAMFT points out that very few disciplinary actions are taken by the Board each year, and that the proposed changes will not make much difference in enforcement delays.

RESPONSE: The Board rejects this comment. The Board currently takes an average of two years to investigate and prosecute violations of the law. While this is under the three year average cited for all DCA boards, the Board acknowledges that decreasing this timeframe while maintaining proper procedures is necessary for public protection. The most effective way to do this would be to increase the number of enforcement staff, however, that is not an option in the current economic environment. This proposal provides the Board with some additional tools to expedite the enforcement process in some cases, while maintaining due process.

2. **COMMENT NO. 2: Lack of Authority:** CAMFT raised concerns with Section 1845, regarding unprofessional conduct. CAMFT states that the Board lacks the authority to add the additional unprofessional conduct provisions that are proposed in Section 1845. It states that the Board needs to get this authority from the Legislature.

RESPONSE: The Board rejected this comment, and cites Business and Professions Code (BPC) Section 4982, which defines unprofessional conduct and states in part that "Unprofessional conduct includes, but is not limited to, the following:." Therefore, the list defining unprofessional conduct is not exclusive, and thus the Board is authorized to make the law specific via regulations. This proposal is therefore not outside the scope of the statute.

3. **COMMENT NO. 3: Settlement Agreements:** CAMFT raised concerns with Section 1845(e), stating that adding this provision to unprofessional conduct, which prohibits cooperating or filing a complaint with the Board as a term of a settlement agreement, is premature because AB 2570, which contains a similar provision, is currently under consideration at the Legislature. Therefore, CAMFT argues that it is premature to

include this provision in a regulation, and doing so could result in a regulation that is inconsistent and/or duplicative.

RESPONSE: The Board accepts this comment. The Governor recently signed AB 2570 (Chapter 561, Statutes of 2012). It will become effective January 1, 2013. Therefore, this proposed amendment is now duplicative of the law and has been removed.

4. **COMMENT NO. 4: Failure to Provide Documentation:** CAMFT raised two concerns with Section 1845(f), which adds an unprofessional conduct subsection pertaining to failure to provide lawfully requested copies of documents under certain circumstances. CAMFT's two concerns are as follows:
 - a. The subsection is vague and unclear, in violation of Government Code Section 11349(c), because the terms "documents", "as directed," "lawfully requested document", and "good cause" are not clear ; and
 - b. The subsection does not demonstrate necessity, as required by Government Code Section 111349(a). CAMFT states it has seen no evidence from the Board that failure to provide requested documents is a cause for or related to any delays in the enforcement process.

RESPONSE: Regarding CAMFT's first concern, (outlined in (a) above), the Board accepted this portion of the comment and made modifications to clarify the terms that CAMFT identified as vague and unclear. These changes were made in Sections 1845, (licensed marriage and family therapists), 1823 (licensed professional clinical counselors), 1858 (licensed educational psychologists), and 1881 (licensed clinical social workers).

The Board rejected CAMFT's second concern (outlined in (b) above). The Board has had cases in which it had difficulty obtaining lawfully requested records. If the information is not obtained in the three year timeframe allowed by law, then the case must be closed, and this has happened occasionally. Making it unprofessional conduct for failure to provide records gives the Board an additional tool to obtain the records, as the licensee or registrant now has an incentive to provide the records in order to avoid an unprofessional conduct finding.

5. **COMMENT NO. 5: Failure to Cooperate:** CAMFT raised concerns with Section 1845(g), which makes a licensee's or registrant's failure to cooperate and participate in an investigation against that licensee or registrant unprofessional conduct. CAMFT argues that this subsection is vague, unclear, and does not demonstrate necessity, violating Government Code Section 11349(a) and (c). CAMFT cites concern that the Board is granted too much latitude in this provision, and that the terms "cooperation" and "participation" are not defined clearly.

CAMFT also notes that the BBS has provided no evidence that failure to cooperate or participate in investigations has delayed the enforcement process. CAMFT also argues that this provision would best be done legislatively.

RESPONSE: The Board rejected this comment. As established in the response to Comment Number 2 above, the Board does have the authority to establish this unprofessional conduct provision through regulations.

As written, the amendment allows the Board to assess all reasonable circumstances in determining the legitimacy of any excuses provided for not cooperating or participating in an investigation.

This language is designed to improve the way healing arts boards conduct investigations. Not receiving records in a timely manner can be an obstacle to a board's completion of investigations. If an unprofessional conduct finding is made for "failure to cooperate and participate," as referenced in this amendment, then an accusation would be filed. The matter would then come before the Board and it would assess how staff arrived at that decision. The Board believes that to prove "willful noncompliance" it would have to show that the respondent acted with intent, which is difficult to prove.

6. **COMMENT NO. 6: Failure to Report Convictions:** CAMFT raised concerns with this subsection, asserting it does not demonstrate necessity. Specifically, it has concerns with Section 1845(h)(1) and (2), as follows:

- a. 1845(h)(1): CAMFT believes this provision, requiring a licensee to report to the Board within 30 days the bringing of an indictment or information charging a felony against a licensee, violates due process. They state the Board has no legal authority to require reporting prior to a conviction,
- b. 1845(h)(2): This provision requires a conviction to be reported to the Board by the licensee or registrant within 30 days. CAMFT asserts that because the Board currently has the ability to obtain this information on its own, it does not make sense to shift the reporting burden to the licensee or registrant. They argue that a licensee or registrant would have greater difficulty obtaining this information than the Board would. Additionally, they believe any deficiencies in communication between the Board and law enforcement agencies should be fixed at that level and not burden the licensee or registrant.

RESPONSE: The Board accepted CAMFT's comment regarding 1845(h)(1), requiring a licensee or registrant to report within 30 days the bringing of an indictment or information charging them with a felony. Therefore, this provision was struck from the proposed language and the subsections below it were renumbered.

The Board rejected CAMFT's comment regarding 1845(h)(2), which requires a conviction to be reported to the Board by the licensee or registrant within 30 days. The

Board currently receives this information from licensees on their renewal notices. However, renewal is only every two years. The Board does not have the resources to research convictions on every licensee and registrant as they happen. By requiring a conviction to be self-reported within 30 days, the Board can take quicker action than it can by waiting up to two years to find out on the next renewal notice, and therefore the public will be better protected.

7. **COMMENT NO. 7: Failure to Report Arrest:** CAMFT expressed concerns regarding subsection 1845(i), which makes it unprofessional conduct for a licensee or registrant to fail to provide within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee or registrant. CAMFT states that this is a violation of due process and unreasonable given that BBS already has difficulty obtaining this documentation.

RESPONSE: The Board made one technical clarifying amendment to this subsection, as follows:

“Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant”

However, the Board rejected this comment. The Board maintains that requiring the licensee or registrant to provide the arrest records does not violate due process, because the Board will already know of the arrest, as the fingerprint records are on file with the Board and therefore the Department of Justice reports the arrest to the Board. Once the Board knows of an arrest, it is part of its investigative authority to obtain the arrest records. The licensee or registrant is in a better position than the Board to obtain arrest records, because many arresting agencies require the consent of the arrested person before release. There is no violation of due process while the Board investigates the matter, as no action is taken against the licensee or registrant during the investigation. Post-investigation, if warranted, the Board would file an accusation and the resulting administrative hearing is then designed to ensure due process.

8. **COMMENT NO. 8: Delegation to Executive Officer:** CAMFT made a comment regarding the amendments to Section 1803, which propose delegating to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license or registration.

CAMFT believes that this proposal would bypass the checks and balance system of Board approval of the Executive Officer’s settlement negotiations, and would not significantly expedite the enforcement process.

RESPONSE: The Board rejects this comment. The proposed language is limited to settlement agreements where an action to revoke the license or registration has been filed and the licensee or registrant agrees to surrender the license or registration or has agreed to an interim suspension. In these stipulations, cease practice is the only relevant term. The Board itself will continue to consider all other stipulations.

Comments Received During the 15-Day Period the Modified Text was Available to the Public

The modified text was made available to the public from August 29, 2012, through September 13, 2012. No comments were received during this time.

Small Business Impact:

This proposal will not have an adverse economic impact on businesses. This proposal would only affect individuals who are disciplined by the Board.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the BBS would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. The alternative, which would be to not adopt the regulations, would leave areas of concern in the Board's enforcement process unaddressed.

Local Mandate

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

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We're here for You!

April 27, 2012

Rosanne Helms
Board of Behavioral Sciences
1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834

*CAMFT is
dedicated to the
advancement and
understanding of
the profession of
marriage and
family therapy as
both an art
and a science, to
...maintaining high
standards of
professional
ethics and
qualifications,
and to expanding
the recognition
and utilization of
the profession.*

**RE: Amended §§1803 and 1845; and, Proposed §1881.1
TITLE 16. California Code of Regulations
DIVISION 18. Board of Behavioral Sciences**

Dear Ms. Helms:

On behalf of the 30,000 members of the California Association of Marriage and Family Therapists (“CAMFT”) we would like to comment on the amended regulations Title 16 §§1803 and 1845, and proposed regulation Title 16 §1881.1. In the text below, we have identified specific areas in the regulations which lack clarity, necessity, authority, consistency, and are not aligned with community standards of care.

General Concerns:

The Initial Statement of Reasons (“ISOR”) states that “many Boards take more than three years to investigate and prosecute.” We have not seen a report or a compilation that indicates this statistic applies to the BBS . If this statistic does apply to the BBS, we are not clear whether the delays are due to unavailable or evasive licensees or whether they delays are the outcome of a lack of resources and Enforcement staff. Moreover, throughout the ISOR, it is stated that the change would allow for a quicker resolution of complaints and disciplinary actions. We assert that “quick” is not necessarily the best result if it is at the expense of fair and effective procedures. Given the numbers of licensees and the number of actual complaints filed, very few disciplinary actions are taken each year—generally between half of one percent and one percent of the complaints filed. These regulations appear as an effort to make sweeping changes when, relatively speaking, very few persons are actually disciplined and the effect of these changes will likely make very little difference in the current delays experienced by the Boards.

Section 1845:

Lack of Authority

The purpose of regulation is to help implement or interpret the provisions of a statute. (Government Code §11342.2) However, regulation implementation is limited in that no regulation is valid if it would alter or amend the statute or would

California Association
of Marriage and
Family Therapists

7901 Raytheon Road
San Diego, CA 92111
P: (858) 292-2638
F: (858) 292-2666
www.camft.org

enlarge the agency's or department's statutory power. *Harris v. Alcoholic Beverage Control Appeals Board* (1964) 228 Cal.App.2d 1, 6, 39 Cal.Rptr. 192.) The Harris court went on to state that: "In the absence of valid statutory authority, an administrative agency may not, under the guise of a regulation, substitute its judgment for that of the Legislature." (Id.) The various subsections of proposed regulation section 1845, all attempt to expand the current authority of the Board of Behavioral Sciences ("BBS") rather than to interpret or implement what the legislature has already put forward. In fact, in a memorandum from the BBS's Legislative Analyst to the Board (dated July 28, 2011) the Analyst states that the goal of SB 1111 was to "provide healing arts boards under DCA with additional authority" and resources to make the enforcement process more efficient. In referring to SB 544, she says that if SB 544 passed, it would provide the healing arts boards "with additional regulatory tools and authority" for investigating and prosecuting violations of law. The majority of the proposed definitions of unprofessional conduct were taken directly from those proposed bills and inserted into this proposed regulation. The Analyst's statements present clear evidence that the BBS is seeking new authority. The BBS needs to get that authority from the Legislature for each of the following subsections. These proposals, therefore, should be rejected.

Subsection (e): Settlement Agreements

This section is premature given Assembly Bill 2570, which has recently been introduced. AB 2570 prohibits a licensee regulated by the BBS 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 BBS or that requires the other party to withdraw a complaint to the BBS. As articulated above, this addition to the definition of unprofessional conduct, should be put forward through legislation and not regulation. As it is currently being vetted at the Legislature, it is premature to also include in regulation. Moreover, if chaptered, the final language of AB 2570 may be inconsistent and/or duplicative of the proposed regulations, violating Gov. Code section 11349(d) and (f).

Subsection (f): Failure to Provide Documentation

This subsection is vague and unclear, in violation of Gov. Code section 11349(c). The term "documents" is never clarified. One place in the regulation refers to "copies of documents," and then it refers to "the records," and then it refers to the "medical records." Additionally, the term "as directed" in the first sentence is unclear: does the Board request records or do they direct that records be submitted? There are also issues with the term "lawfully requested" document. It would not be uncommon or incorrect for a licensee to contend that the document is not lawfully requested – in other words - the Board is not entitled to the document or perhaps the Board may need to subpoena the document. Finally, the term "good cause" is not defined and it is not clear how "good cause" will be determined.

This subsection does not demonstrate necessity, as required by Gov. Code section 11349(a). There has been no evidence presented, and nothing has been discussed at a BBS public meeting, that indicates that failure to provide requested documents is even a minor cause for the BBS's delays in the enforcement process. Furthermore, there is no documentation that shows these two issues are related.

Subsection (g): Failure to Cooperate

This subsection is vague and unclear, in violation of Gov. Code section 11349(c). This subsection is fraught with problems and provides too much latitude to licensing boards generally. We are concerned with the intent and definition of the terms "cooperation" and "participation". There could be instances, for example, where the questioning becomes abusive or excessive or the licensee is advised by counsel to leave or not answer questions raised and it is not clear whether that action would be considered "failure to cooperate."

This subsection does not demonstrate necessity, as required by Gov. Code section 11349(a). The BBS has made no showing, by evidence or otherwise, that a failure to cooperate or participate has in any significant way delayed enforcement. In fact, it is very common for members of CAMFT to inquire with CAMFT attorneys what they should do after they have not heard back from the Board after two or three months have passed following an investigation. These members have cooperated and participated, but yet no determination has been made by the BBS, indicating a delay on the administrative end, versus any act on the part of the licensee.

Lastly, in ISOR, the BBS states that the anticipated benefit of this regulation is that it will enable the BBS to take action against licensees who refuse to cooperate in Board investigations or licensees who "actively subvert Board investigations." If the law (through legislation) was amended to make it unprofessional conduct to "actively subvert" a BBS investigation, as the BBS apparently desires, we could support such a change in law. But to try to do this by regulation, and to require "cooperation and participation," which remains unclear, is objectionable.

Subsection (h): Failure to Report Convictions

This subsection does not demonstrate necessity, as required by Gov. Code section 11349(a). As to subsection (h)(2), the BBS is currently able to obtain this documentation on their own, and it therefore unclear as to why they are shifting the burden to the licensee. In fact, if the BBS has experienced difficulties obtaining this documentation, certainly a licensee would have at least as much difficulty, if not more in attempting to garner documents from the government. Moreover, if there are any deficiencies in the current communication system between the BBS and the law enforcement agencies, any deficiency needs to be fixed at that level and the burden not be placed upon the licensee.

Subsection (h)(1) is objectionable as to violates due process. While we have no objection to the prompt self-reporting of a conviction of a felony or misdemeanor, there is no legal authority to require a report prior to a conviction. This is not consistent with the presumption of innocence in criminal cases and principles of due process and fundamental fairness. The Board of Psychology has removed this provision from its similar regulatory proposals, which parallel these proposals.

Subsection (i): Failure to Report Arrest

As mentioned above as to (h)(1), we have similar concerns as to this requirement being a violation of due process, as well as an unreasonable request given the existing difficulties the BBS already seems to be having in obtaining this documentation.

Section 1803:

Section 1803 is being amended to delegate to the Executive Officer of the BBS the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license instead of requiring Board approval.

Government Code §11349(a) states that a proposed amendment to a regulation must be necessary and demonstrate by substantial evidence the “need” for that regulation. The rationale for this amendment is to “shorten the timeframe” of the enforcement process. However, bypassing the check-and-balance of the Board’s approval of the Executive Officer’s settlement negotiations does not significantly expedite the enforcement process. The causes for the Board’s exorbitant delays do not hinge on this settlement approval process since most proposed settlements can be reviewed at the next regularly scheduled meeting of the Board, if not sooner. Therefore, removing the Board’s ability to oversee the settlement process and the negotiations of the Executive Officer, simply vacates the oversight but does not remediate the existing problem.

We understand and support the need to protect the public and expeditiously investigate complaints and impose discipline. However, we also believe that licensees’ due process rights should not and cannot be diminished in order to expedite the handling of complaints. Much could be done in the interest of patient protection if improvements were made in the investigation, staffing, and handling of consumer complaints.

Sincerely,



Catherine L. Atkins, J.D.
Deputy Executive Director



Jill Epstein, J.D.
Executive Director

cc: Shannon Government Relations

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-0305-c1	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING PUBLICATION DATE MAR 05 '12 MAR 16 '12 Office of Administrative Law NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Behavioral Sciences			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Enforcement		TITLE(S) 16	FIRST SECTION AFFECTED 1803	2. REQUESTED PUBLICATION DATE March 16, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER (916) 574-7897	FAX NUMBER (Optional) (916) 574-8625
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Enforcement	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) n/a
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Sections 1823, 1888.1
	AMEND Sections 1803, 1845, 1858, 1881
	REPEAL n/a
TITLE(S) 16	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
August 29 - September 13, 2012

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) Denise Brown, Director, Department of Consumer Affairs		

7. CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7897	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kim Madsen</i>	DATE
TYPED NAME AND TITLE OF SIGNATORY Kim Madsen, Executive Officer	

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TITLE 16: BOARD OF BEHAVIORAL SCIENCES

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
May 1, 2012
10:00am – 11:00 am

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 30, 2012 or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, and 4990.20 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Sections 729 of said Code, Section 290 of the Penal Code, Section 11415.60 of the Government Code, and Section 44010 of the Education Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 4990.16 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses and registrations to eligible applicants; investigating complaints against the Board's statutes and regulations, and monitoring registrants and licensees whose licenses have been placed on probation. In order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate, the Board is proposing the following changes:

Amend Section 1803 - Delegation of Certain Functions

Existing law authorizes the Board to hire an Executive Officer. Existing regulations delegate certain functions to its Executive Officer relative to actions taken in connection with the Administrative Procedure Act.

This regulatory proposal would delegate to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Policy Statement Overview: Adoption of this proposed amendment is expected to shorten the timeframe for the settlement of these types of cases, protecting public health and safety and also allowing quicker resolution of these cases for licensees.

Adopt Section 1823; Amend Sections 1845, 1858, and 1881 - Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a registrant or licensee or to deny an application for a license or registration for unprofessional conduct. Existing regulations do not define unprofessional conduct to prohibit a registrant or licensee of the Board from the following activities:

- (1) Including or permitting to be included in a civil settlement agreement provisions that prevent a person from contacting, cooperating with, or filing a complaint with the Board, or requiring that a person attempt to withdraw a complaint already filed with the Board;
- (2) Failing to provide the Board lawfully requested documents within a specified timeframe;
- (3) Failing to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's or consumer's constitutional or statutory rights or privilege;
- (4) Failing to notify the Board within a specified timeframe of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation; and
- (5) Failing to comply with a court order, issued in the enforcement of a subpoena, to release records.

This regulatory proposal would define unprofessional conduct in such a manner.

Policy Statement Overview: Adoption of these proposed amendments regarding unprofessional conduct is expected to enhance public protection.

Specifically, this regulatory change will protect the public by enabling the Board to take action against licensees who refuse to cooperate in Board investigations or licensees who actively subvert Board investigations.

Adopt Section 1888.1 - Required Actions against Registered Sex Offenders

Existing law prohibits the Board from issuing a license or registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code.

This regulatory proposal would require the Board to revoke a license or registration upon finding that an applicant or licensee was convicted of a sex offense. It would also require the Board to deny a petition for reinstatement or reissuance if the applicant or licensee was convicted of a sex offense.

Policy Statement Overview: Adoption of this proposed amendment is expected to increase public protection.

Specifically, this regulatory change will protect the public by ensuring that current licensees who are in direct contact with vulnerable populations are ineligible for licensure or renewal of licensure if the Board finds that they have been convicted of a sex offense. This is the same requirement that is currently placed on applicants for licensure.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

This regulatory proposal is consistent and compatible with existing state regulations. Existing regulations currently outline some functions that are delegated to the Executive Officer, outline several unprofessional conduct provisions, and set forth disciplinary guidelines. The proposed regulations expand upon these existing provisions and do not contradict or obstruct them in any way.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

The following relevant data was relied upon when making the above determination:

- The proposed regulatory changes would only affect those licensees or applicants who are the subject of Board disciplinary action, if they commit certain specific violations.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The proposed regulatory action affects licensees or registrants of the Board, or applicants for licensure or registration, who are the subject of Board disciplinary action.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees, if the individual is represented by

legal counsel. The disciplinary order impact varies and could include loss of the licensee or registrant's employment income, if the license or registration is revoked, surrendered, or suspended.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulations do not impose any new requirements on a licensee, registrant, or applicant who is not subject to disciplinary action. The regulation only affects licensees, registrants, or applicants who are already subject to disciplinary action by the Board.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The Board had determined that states with comparable populations place similar requirements on their mental health licensees. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects only licensees and registrants of the Board and applicants for licensure or registration, who are disciplined by the Board. This is a limited population and will only impact approximately 10 percent or less of the Board's licensees.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by improving the efficiency of the enforcement process, and by making clarifications and additions to enforcement provisions to address current weaknesses in the regulations relating to licensees who are in the enforcement process. The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that the impact of this proposed regulation will be limited to those licensees who are the subject of disciplinary action taken by the Board. This is a low percentage of the Board's licensees overall (less than 10 percent), and therefore has little to no impact on occupations or businesses.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:

“Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

The public will benefit from the increased efficiencies and clarifications in the enforcement process that these regulatory amendments provide.

CONSIDERATION OF ALTERNATIVES The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board’s website, www.bbs.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Rosanne Helms
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7897
Fax No.: (916) 574-8625
E-Mail Address: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Marc Mason
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7828
Fax No.: (916) 574-8625
E-Mail Address: Marc.Mason@dca.ca.gov

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

Proposed Language: Enforcement Regulations

§1803. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, 4990.04 and 4990.12, Business and Professions Code; and Sections 11415.60 and 11500-11528, Government Code.

§1823. UNPROFESSIONAL CONDUCT

As used in Section 4999.90 of the code, unprofessional conduct includes, but is not limited to:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, of filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Sections 4990.20, 4999.48, Business and Professions Code. Reference: Sections 4990.20, 4999.48, and 4999.90, Business and Professions Code.

§1845. UNPROFESSIONAL CONDUCT

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

(a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

(c) Failing to comply with the child abuse reporting requirements of Penal Code Section 11166.

(d) Failing to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institutions Code Section 15630.

(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(j) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.

§1858. UNPROFESSIONAL CONDUCT

~~The Board may suspend or revoke the license of a licensee who:~~ As used in Section 4989.54 of the code, unprofessional conduct includes, but is not limited to:

(a) Impersonates a licensee or allows another person to use his or her license.

(b) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(c) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(d) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(e) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(f) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(g) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(h) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code.

§1881. UNPROFESSIONAL CONDUCT

~~The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:~~ As used in Section 4992.3 of the code, unprofessional conduct includes, but is not limited to:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the misrepresentation of his or her professional qualifications or affiliations.

(b) Impersonates a licensee or who allows another person to use his or her license.

(c) Aids or abets an unlicensed person to engage in conduct requiring a license.

(d) Intentionally or recklessly causes physical or emotional harm to a client.

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

(f) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of a Licensed Clinical Social Worker.

(g) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(h) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(i) Fails to maintain the confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client during the course of treatment and all information about the client which is obtained from tests or other such means.

(j) Prior to the commencement of treatment, fails to disclose to the client, or prospective client, the fee to be charged for the professional services, or the basis upon which such fee will be computed.

(k) Advertises in a manner which is false or misleading.

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institution Code Section 15630.

(q) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(r) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(s) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other

constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(t) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(u) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(v) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Section 11166, Penal Code, and Section 15630, Welfare and Institution Code.

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.

3) Deny any petition to reinstate or reissue the individual's license or registration.

(b) This section shall not apply to any of the following:

1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has

otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

- 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
- 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

Hearing Date: May 1, 2012

Subject Matter of Proposed Regulations: Enforcement Regulations

Section(s) Affected: Amend Sections 1803, 1845, 1858, and 1881 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1823 and 1888.1 to Division 18 of Title 16 of the California Code of Regulations.

Introduction

The Board of Behavioral Science's (Board's) highest priority is consumer protection, as mandated by Business and Professions Code (BPC) Section 4990.16. In order to meet this mandate, the Board issues licenses to eligible applicants to practice marriage and family therapy (LMFT), educational psychology (LEP), clinical social work (LCSW), and professional clinical counseling (LPCC). The Board also investigates complaints against its licensees and registrants, disciplines licensees and registrants for violation of state licensing laws, and monitors licensees and registrants whose licenses have been placed on probation.

BPC Section 4990.20 authorizes the Board to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the Business and Professions Code for which it is responsible. Division 18 of Title 16 of the California Code of Regulations (CCR) includes numerous sections relating to education requirements, supervised experience requirements, fees, administrative actions, and disciplinary guidelines of BBS-regulated licensees and registrants.

Over the past three years, there have been several legislative efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe.

SB 1111 (Negrete McLeod) was introduced in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

The Senate Business, Professions, and Economic Development Committee then introduced SB 544 (Price) in 2011. This bill contained many of the same provisions as SB 1111, with the intent of improving efficiency and increasing accountability for boards within DCA. SB 544 also failed passage in the Senate Business, Professions and Economic Development Committee.

Identification of the Problem

Currently, many boards take an average of three years to investigate and prosecute violations of the law. Due to the urgent need to protect consumers by streamlining the enforcement process, the Senate Business, Professions, and Economic Development Committee and DCA have asked healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 that do not require new statutory authority. DCA's goal in requesting healing arts boards to seek these proposed regulatory amendments is to reduce discipline case processing timelines to an average of 12 to 18 months.

Specific Changes and Factual Basis/Rationale:

Delegation of Certain Functions – Amend Section 1803

Proposed Change: The proposed change is to delegate to the Board's Executive Officer the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license, or allow the Executive Officer to delegate this function to another designee.

Rationale: The Board currently has the authority to render decisions on proposed decisions prepared by Administrative Law Judges (ALJ) and settlement agreements prepared by the deputy attorney general (DAG).

In the event of a disciplinary case against a Board licensee, the ALJ issues a proposed decision after a licensee has had an opportunity to dispute the charges at an administrative hearing. However, the licensee and ALJ may negotiate a settlement agreement to resolve the case prior to the hearing. In this case, the licensee admits specific charges and agrees to proposed disciplinary action. Board members must vote to approve all proposed decisions and settlement agreements.

In a case that is resolved with a settlement agreement, a licensee has voluntarily admitted to charges and agreed to the revocation, surrender, or suspension of their license. Therefore, there is little discretion for the Board not to adopt the agreement. Allowing the Executive Officer to approve such an agreement, instead of requiring a full board vote, will shorten the timeframe for these cases, allowing them to take effect more quickly.

Anticipated Benefit: This proposed change will increase public protection by expediting some enforcement agreements.

Unprofessional Conduct – Amend Sections 1845, 1858, and 1881; Add Section 1823

BPC Sections 4982 (LMFTs), 4989.54 (LEPs), 4992.3 (LCSWs), and 4999.90 (LPCCs) define acts that constitute unprofessional conduct. This regulatory change specifies additional acts that constitute unprofessional conduct. The proposed change and rationale for defining each act as unprofessional conduct are as follows:

1. **Proposed Change:** This proposal would further define "Unprofessional Conduct" to prohibit the inclusion of provisions in agreements to settle civil disputes that would forbid

another party to the dispute from contacting, cooperating with, or filing a complaint with the Board, or that would require another party to the dispute to attempt to withdraw a complaint the party has filed with the Board, either before or after the filing of an action to which the licensee or registrant is or expects to be named as a party.

Rationale: The increasing use of provisions in civil dispute settlements prohibiting the other party from contacting, cooperating with, or filing complaints with the Board, hereafter, an “agreement not to pursue,” denies consumers the right to file complaints and prevents the Board from investigating and disciplining licensees or registrants who present a danger to consumers. These licensees or registrants may continue to practice and harm the public because the Board is not aware of civil dispute settlements. This proposal would prevent licensees or registrants who have violated the law from avoiding disciplinary action against their licenses or registrations.

“Agreements not to pursue” can delay and thwart the Board’s effort to investigate possible cases of misconduct, thereby preventing the Board from protecting the public. These clauses delay action by the Board and tarnish the reputation of competent and reputable licensed and registered health care professionals. By allowing repeat offenders who injure patients to hide their legal acts from the Board further prevents the Board from protecting consumers.

It has been argued that a licensee or registrant should not be subject to review by the Board after a civil settlement has been reached. Protection from license or registration disciplinary action does not attach to civil proceedings or subsequent administering proceedings. Criminal, civil, and administrative proceedings each serve entirely different legal functions. No ordinary citizen can claim immunity from one proceeding because he or she already underwent the other. It necessarily follows that Board licensees and registrants should not enjoy any exception to the rule of legal process.

Anticipated Benefit: This regulatory change will increase public protection by protecting consumer’s right to file complaints.

2. Proposed Change: This proposal would also define as “Unprofessional Conduct” failure to provide the Board with lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever occurs later unless the licensee or registrant is unable to comply for good cause. “Good cause” is specified to include physical inability to access the requested records in the time allowed due to an illness or travel.

Rationale: Failure of a licensee or registrant to provide lawfully requested documents delays the Board’s investigation of consumer complaints. The obtaining and inspection of documents is crucial in investigating consumer complaints and taking appropriate action against a licensee or registrant who may cause patient harm.

Anticipated Benefit: This regulatory change will increase public protection by requiring timely delivery of requested documents.

3. Proposed Change: The proposed change is to define as unprofessional conduct the failure to cooperate and participate in a Board investigation, as long as such action does

not infringe upon the licensee's or consumer's constitutional or statutory rights or privilege.

Rationale: Failing to cooperate or participate in a Board investigation obstructs the investigative process and therefore prevents the Board from protecting the public. The proposed amendment includes language that ensures a licensee would not be deprived of any constitutional or statutory rights or privileges.

Anticipated Benefit: This regulatory change will protect the public by enabling the Board to take action against licensees who refuse to cooperate in Board investigations or licensees who actively subvert Board investigations.

4. Proposed Change: The proposed change is to define as unprofessional conduct the failure to notify the Board within 30 days of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation.

Rationale: All Board licensees must submit fingerprints to the Board for the purpose of conducting criminal history background checks through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Typically, the DOJ sends the Board any subsequent arrest and conviction reports. The Board also requires that its licensees report any professional license discipline by another governmental agency and any convictions at the time of biennial license renewal.

Although this system typically allows the Board to find out about convictions and discipline of a licensee, there are some flaws to this system. Sometimes, the Board does not receive the subsequent arrest or conviction notifications from DOJ. In addition, licensees are only required to self-report convictions or disciplinary action on their license renewal form every two years. By requiring a licensee to self-report this information within a 30 day period, the Board will have more current disciplinary information and will be better able to protect the public.

Anticipated Benefit: This proposed regulatory change will increase public protection by requiring that the Board receive notification from the licensee or registrant of any criminal history or disciplinary actions.

5. Proposed Change: The proposed change is to define as unprofessional conduct the failure to comply with a court order, issued in the enforcement of a subpoena, to release records.

Rationale: Failing to comply with a court order to release records hinders the Board's ability to conduct an investigation, and therefore prevents the Board from protecting the public.

Anticipated Benefit: This regulatory change will increase public protection by requiring that the licensee or registrant complies with a court order to provide records needed for an investigation.

Required Actions Against Registered Sex Offenders –Add Section 1888.1

Proposed Change: The proposed change is to require that the Board deny or revoke a license or registration if the applicant or licensee is required to register as a sex offender pursuant to Penal Code Section 290. In addition, the Board would be required to deny any petition to reinstate or reissue a license or registration to a registered sex offender.

Rationale: The Board is already prohibited from issuing a license or registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code. This proposal would clarify that the Board must revoke a license or registration upon finding that an applicant or licensee was convicted of a sex offense, and would clarify that the Board must deny a petition for reinstatement or reissuance.

Anticipated Benefit: This regulatory change would increase public protection by clarifying actions the Board must take when discovering a licensee, registrant, or applicant is a registered sex offender.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulations do not impose any new requirements on a licensee, registrant, or applicant who is not subject to disciplinary action. The regulation only affects licensees, registrants, or applicants who are already subject to disciplinary action by the Board.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The Board had determined that states with comparable populations place similar requirements on their mental health licensees. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects only licensees and registrants of the Board and applicants for licensure or registration, who are disciplined by the Board. This is a limited population and will only impact approximately 10 percent or less of the Board's licensees.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will

benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by improving the efficiency of the enforcement process, and by making clarifications and additions to enforcement provisions to address current weaknesses in the regulations relating to licensees who are in the enforcement process. The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that the impact of this proposed regulation will be limited to those licensees who are the subject of disciplinary action taken by the Board. This is a low percentage of the Board's licensees overall (less than 10 percent), and therefore has little to no impact on occupations or businesses.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:
"Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."
The public will benefit from the increased efficiencies and clarifications in the enforcement process that these regulatory amendments provide.

Underlying Data

None

Business Impact

This proposal will not have adverse economic impact on businesses. This proposal would only affect Board licensees or registrants who are disciplined by the Board

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Consideration of Alternatives

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

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern regarding enhanced protection of consumers.
2. Adopt regulations. The Board determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.

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NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

August 27, 2012

Pursuant to the requirements of Government Code section 11346.8 (c), and Section 44 of Title 1 of the California Code of Regulations, the Board of Behavioral Sciences is providing notice of changes made to proposed regulation Sections 1803, 1823, 1845, 1858, 1881, and 1888.1. These changes are in response to comments received regarding the proposed regulation.

If you have any comments regarding the proposed changes, the Board will accept written comments between **August 29, 2012** and **September 13, 2012 at 5:00pm**. All written comments must be submitted to the Board no later than 5:00pm on September 13, 2012, and addressed to:

Rosanne Helms, Regulation Analyst
Board of Behavioral Sciences
1625 N. Market Blvd. Ste. 200
Sacramento, CA 95834

All written comments received by September 13, 2012, which pertain to the indicated changes will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

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PROPOSED MODIFIED TEXT OF REGULATIONS

Single underline indicates originally proposed new language.

Double underline indicates proposed modified new language, and double ~~strikeout~~ indicates proposed modified deleted language.

§1803. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's or registrant's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license or registration; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, 4990.04 and 4990.12, Business and Professions Code; and Sections 11415.60 and 11500-11528, Government Code.

§1823. UNPROFESSIONAL CONDUCT

As used in Section 4999.90 of the code, unprofessional conduct includes, but is not limited to:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, ~~or~~ or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(b) Failure to provide to the board, as ~~directed~~ authorized by law, ~~lawfully requested~~ copies of ~~documents~~ records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the ~~documents~~ records within this time period for good cause. ~~Good cause includes, including but is not limited~~

to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

(d) Failure to report to the board within 30 days any of the following:

~~_____ (1) The bringing of an indictment or information charging a felony against the licensee.~~

~~_____ (2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~

~~_____ (3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

(e) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee or registrant.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Sections 4990.20, 4999.48, Business and Professions Code. Reference: Sections 4990.20, 4999.48, and 4999.90, Business and Professions Code.

§1845. UNPROFESSIONAL CONDUCT

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

(a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

(c) Failing to comply with the child abuse reporting requirements of Penal Code Section 11166.

(d) Failing to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institutions Code Section 15630.

(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed authorized by law, lawfully requested copies of documents records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the documents records within this time period for good cause. Good cause includes, including but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

(h) Failure to report to the board within 30 days any of the following:

~~=====~~ (1) The bringing of an indictment or information charging a felony against the licensee.

(2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant.

(j) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.

§1858. UNPROFESSIONAL CONDUCT

The Board may suspend or revoke the license of a licensee who: As used in Section 4989.54 of the code, unprofessional conduct includes, but is not limited to:

(a) Impersonates a licensee or allows another person to use his or her license.

(b) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(c) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

_____ (1) A provision that prohibits another party to the dispute from contacting, cooperating, ~~or~~ or filing a complaint with the board.

_____ (2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(d) Failure to provide to the board, ~~as directed authorized by law, lawfully requested~~ copies of ~~documents~~ records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the ~~documents~~ records within this time period for good cause. Good cause includes, ~~including~~ but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

(e) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or

registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

(f) Failure to report to the board within 30 days any of the following:

~~===== (1) The bringing of an indictment or information charging a felony against the licensee.~~

~~(2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~

~~(3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

(g) Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant.

(h) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code.

§1881. UNPROFESSIONAL CONDUCT

~~The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:~~ As used in Section 4992.3 of the code, unprofessional conduct includes, but is not limited to:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the misrepresentation of his or her professional qualifications or affiliations.

(b) Impersonates a licensee or who allows another person to use his or her license.

(c) Aids or abets an unlicensed person to engage in conduct requiring a license.

(d) Intentionally or recklessly causes physical or emotional harm to a client.

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

(f) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of a Licensed Clinical Social Worker.

(g) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(h) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(i) Fails to maintain the confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client during the course of treatment and all information about the client which is obtained from tests or other such means.

(j) Prior to the commencement of treatment, fails to disclose to the client, or prospective client, the fee to be charged for the professional services, or the basis upon which such fee will be computed.

(k) Advertises in a manner which is false or misleading.

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institution Code Section 15630.

(q) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(r) Failure to provide to the board, as directed authorized by law, lawfully requested copies of documents, records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the documents records within this time period for good cause. Good cause includes, including but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

(s) Failure to cooperate and participate in any board investigation pending against the licensee or registrant. This subsection shall not be construed to deprive a licensee, registrant, or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee, registrant, or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

(t) Failure to report to the board within 30 days any of the following:

~~(1) The bringing of an indictment or information charging a felony against the licensee.~~

~~(2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~

~~(3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

(u) Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant.

(v) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Section 11166, Penal Code, and Section 15630, Welfare and Institution Code.

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

(a) Except as otherwise provided by law, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

- 1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- 2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.
- 3) Deny any petition to reinstate or reissue the individual's license or registration.

(b) This section shall not apply to any of the following:

- 1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
- 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license or registration under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
- 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

STATE OF CALIFORNIA – DEPARTMENT OF FINANCE
ECONOMIC AND FISCAL IMPACT STATEMENT
 (REGULATIONS AND ORDERS)

TD 399 (Rev. 12/2008)

See SAM Sections 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Board of Behavioral Sciences	CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7897
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Enforcement		NOTICE FILE NUMBER

ECONOMIC IMPACT STATEMENT

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

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

- | | |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

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

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

Enter the number or percentage of total businesses impacted that are small businesses: n/a

3. Enter the number of businesses that will be created: n/a eliminated: n/a

Explain: This proposal only impacts individuals who are already the subject of Board disciplinary action. Therefore there is no significant impact.

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

5. Enter the number of jobs created: 0 or eliminated: 0 Describe the types of jobs or occupations impacted: n/a

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

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What is the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ n/a

- | | | |
|---|------------------------------------|-------------------|
| a. Initial cost for a small business: \$ <u>n/a</u> | Annual ongoing cost: \$ <u>n/a</u> | Years: <u>n/a</u> |
| b. Initial cost for a typical business: \$ <u>n/a</u> | Annual ongoing cost: \$ <u>n/a</u> | Years: <u>n/a</u> |
| c. Initial cost for an individual: \$ <u>n/a</u> | Annual ongoing cost: \$ <u>n/a</u> | Years: <u>n/a</u> |

d. Describe other economic costs that may occur: This proposal will only impact individuals who are disciplined by our Board. Affected individuals will already be in the disciplinary process, therefore, no additional cost.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: n/a

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements: (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): 0

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: 0
and the number of units: _____

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

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

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

1. Briefly summarize the benefits that may result from this regulation and who will benefit: This regulation will make the enforcement process more efficient. Streamlining the enforcement process will benefit consumers by offering increased public protection.

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority? Explain: The benefits are based on goals for enforcement set by the Department of Consumer Affairs.

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

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

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: The only available alternative is to not adopt the regulations. The result would be no increase in enforcement case processing times, and no increase in public protection.

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>
Alternative 1:	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>
Alternative 2:	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>

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

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

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

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

- 1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section)
- 2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
Alternative 1: _____
Alternative 2: _____
- 3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
Regulation: \$ _____ Cost-effectiveness ratio: _____
Alternative 1: \$ _____ Cost-effectiveness ratio: _____
Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
 - a. is provided in (Item _____ Budget Act of _____) or (Chapter _____ Statutes of _____)
 - b. will be requested in the _____ (FISCALYEAR) Governor's Budget for appropriation in Budget Act of _____
- 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
 - a. implements the Federal mandate contained in _____
 - b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____
 - c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;
 - d. is issued only in response to a specific request from the _____ which is/are the local entity(s) affected;
 - e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;
 - f. Provides for savings to each affected unit of local government, which will, at a minimum, offset any additional costs to each unit.
- 3. Savings of approximately \$ _____ annually.
- 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
- 5. No fiscal impact exists because the regulation does not affect any local entity or program.
- 6. Other: _____

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

B. FISCAL EFFECT ON STATE GOVERNMENT

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

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other _____

C. FISCAL EFFECT OF FEDERAL FUNDING OF STATE PROGRAMS

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

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current Fiscal State Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other _____

SIGNATURE

Kenn Madsen

TITLE

Executive Officer

AGENCY SECRETARY ¹

DATE

APPROVAL/CONCURRENCE

PROGRAM BUDGET MANAGER

DATE

DEPARTMENT OF FINANCE ²

APPROVAL/CONCURRENCE

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

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

Assembly Bill No. 2570

CHAPTER 561

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

[Approved by Governor September 25, 2012. Filed with Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, 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. Existing law prohibits a physician and surgeon from including specified provisions in an agreement to settle a civil dispute arising from his or her practice. Except as specified, existing law authorizes any interested person to petition a state agency requesting the adoption of a regulation.

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, except as specified. 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.

This bill would authorize a board, bureau, or program within the Department of Consumer Affairs to adopt a regulation exempting agreements to settle certain causes of action from these provisions.

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

SECTION 1. Section 143.5 is added to the Business and Professions Code, to read:

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

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

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

(d) Notwithstanding any other law, upon granting a petition filed by a licensee or authorized agent of a licensee pursuant to Section 11340.6 of the Government Code, a board, bureau, or program within the Department of Consumer Affairs may, based upon evidence and legal authorities cited in the petition, adopt a regulation that does both of the following:

(1) Identifies a code section or jury instruction in a civil cause of action that has no relevance to the board’s, bureau’s, or program’s enforcement responsibilities such that an agreement to settle such a cause of action based on that code section or jury instruction otherwise prohibited under subdivision (a) will not impair the board’s, bureau’s, or program’s duty to protect the public.

(2) Exempts agreements to settle such a cause of action from the requirements of subdivision (a).

(e) This section shall not apply to a licensee subject to Section 2220.7.

SEC. 2. (a) Nothing in Section 143.5 of the Business and Professions Code shall be construed as limiting the discretion of a board, bureau, or program to decline to grant a petition or adopt a regulation.

(b) Nothing in Section 143.5 of the Business and Professions Code shall be construed as prohibiting a licensee from including in an agreement to settle a civil dispute any provision that is otherwise not prohibited.