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BOARD MEETING NOTICE August 27-28, 2014

Department of Consumer Affairs
Hearing Room
2005 Evergreen Street
Sacramento, CA 95815

***Wednesday, August 27th
8:30 a.m.***

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

- I. Petition for Modification of Probation for Kwamina Amonoo-Neizer, LCS 26843
- II. Petition for Modification of Probation for Megan Harris, ASW 35916
- III. Petition for Early Termination of Probation for Pamela Moore-Jones, LCS 25462
- IV. Petition for Reinstatement of License for Mary Eichel, MFC 43826
- V. Suggestions for Future Agenda Items
- VI. Public Comment for Items not on the Agenda

FULL BOARD CLOSED SESSION

- VII. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and to Take Action on Disciplinary Matters
- VIII. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board's Executive Officer

FULL BOARD OPEN SESSION

- IX. Adjournment



Governor
Edmund G. Brown Jr.
State of California

Business, Consumer Services
and Housing Agency

Department of
Consumer Affairs

Thursday, August 28th
8:30 a.m.

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

- X. Introductions*
- XI. Approval of the May 21-22, 2014 Board Meeting Minutes
- XII. Approval of the June 26, 2014 Board Meeting Minutes
- XIII. Executive Officer's Report
 - a. Budget Report
 - b. Operations Report
 - c. Personnel Update
 - d. BreEZe Update
- XIV. Strategic Plan Update
- XV. Supervision Committee Update
- XVI. Policy and Advocacy Committee Report
 - a. Discussion and Possible Rulemaking Action to Implement Senate Bill 704, Statutes of 2011, Chapter 387 – Examination Restructure
 - b. Discussion and Possible Rulemaking Action Regarding Proposed Revisions to California Code of Regulations, Title 16, Division 18, Article 9 Board of Behavioral Sciences Disciplinary Guidelines – Uniform Standards
- XVII. Discussion and Possible Action Regarding Other Legislation Affecting the Board
- XVIII. Legislative Update
- XIX. Rulemaking Update
- XX. Presentation of the Association of Social Work Boards National Examination
- XXI. Board Meeting Dates 2015
- XXII. Suggestions for Future Agenda Items
- XXIII. Public Comment for Items not on the Agenda
- XXIV. Adjournment

**Introductions are voluntary for members of the public.*

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. 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 send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



BOARD MEETING MINUTES
June 26, 2014

Department of Consumer Affairs
HQ2 Hearing Room
1747 North Market Blvd.
Sacramento, CA 95834

The Board of Behavioral Sciences met via teleconference at the following locations:

6767 Green Valley Road Placerville, CA 95667	68-1400 Mauna Lani Drive Kohala Coast, HI 96743
2400 Moorpark Avenue #300 San Jose, CA 95128	5506 Ranchito Avenue Sherman Oaks, CA 91401
4801 Airport Plaza Drive 8 th Floor, IAO-826W Conference Room Long Beach, CA 90815	30622 Via Pared Thousand Palms, CA 92276

Members Present

Christina Wong, Chair, LCSW Member
Samara Ashley, Public Member
Betty Connolly, LEP Member
Sarita Kohli, LMFT Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Dr. Christine Wietlisbach, Public Member

Staff Present

Steve Sodergren, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Laura Freedman, Legal Counsel
Christina Kitamura, Administrative Analyst

Guest List

On file

Members Absent

Eileen Colapinto, Public Member
Dr. Leah Brew, LPCC Member
Deborah Brown, Vice Chair, Public Member
Dr. Peter Chiu, Public Member
Dr. Harry Douglas, Public Member
Patricia Lock-Dawson, Public Member

Christina Wong, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 10:16 a.m. Christina Kitamura called roll, and a quorum was established.

I. Introductions

The Board Members, Board staff, and guests introduced themselves.

1 **II. Discussion and Possible Rulemaking Action Regarding Proposed Revisions to California**
2 **Code of Regulations, Title 16, Division 18, Article 8 Board of Behavioral Sciences**
3 **Continuing Education Requirements**
4

5 In 2012 and 2013, the Board formed a committee to revise its regulations related to continuing
6 education (CE). The resulting proposed regulations remove the Board’s authority to directly
7 approve and license CE providers and, instead, recognize “approval agencies” that have
8 already established stringent requirements for CE providers. The Board also proposes
9 recognizing a limited number of entities as CE providers, allowing these named entities to offer
10 CE courses directly to Board licensees without approval from an approval agency.
11

12 At its meeting in August 2013, the Board approved the latest version of the CE regulations. The
13 regulations were then noticed with Office of Administrative Law (OAL), and a 45-day public
14 comment period was held.
15

16 In its final review, OAL requested several changes to the proposed language. Rosanne Helms
17 presented these proposed changes to the Board for approval:
18

- 19 1. Continuing Education Course Content Language. OAL had concerns that language in
20 Section 1887.4.0(b)(2) stating that course content shall be “supported using established
21 research procedures and scientific scrutiny” was not specific enough and difficult to quantify.
22

23 After consultation with Department of Consumer Affairs (DCA) Legal Division and OAL, this
24 subsection was replaced with language that CE courses must “be supported using research
25 practices and procedures which are generally accepted in mental health research and which
26 have been subjected to external peer review.”
27

28 Due to this change in Section 1887.4.0(b)(2), subsection (d) has been deleted. This
29 subsection had stated that “courses shall not predominately reflect the commercial views of
30 the provider or any other person giving financial assistance to the provider.”
31

32 OAL was concerned that the term “commercial views” was subjective and unclear. It is
33 believed that the changes to subsection (b)(2) now provide sufficient protection against
34 courses that are not scientifically accepted.
35

- 36 2. Records of Course Completion. Section 1887.11.0 discusses the types of information a CE
37 provider must include on a record of course completion. OAL requested that subsection (d)
38 be amended because the term “provider identification” was unclear, and because requiring
39 the name of a board-recognized provider was redundant with subsection (c).
40

41 Subsection (d) was amended to state that the provider must include the board-recognized
42 approval agency name, or a statement that the provider is one of the entities recognized by
43 the Board to provide CE pursuant to Section 1887.4.3.
44

- 45 3. Adjustment of Phase-Out Period and Implementation Dates. A phase-out period is needed
46 for the Board’s existing CE approval system.
47

48 Due to the delay of the regulation package making the changes requested by OAL, staff
49 decided to change the implementation dates to allow the Board more time to provide
50 outreach and to allow providers more time to seek approval from recognized approval
51 entities. The proposed timelines are:
52

- 53 • January 1, 2015 – The Board will begin accepting documentation from entities pursuing
54 Board recognition as an approval agency. At this time, the Board will also cease
55 accepting applications for new Board-approved CE provider numbers.

- 1 • July 1, 2015 – Language implementing the Board’s existing CE approval program will
2 sunset. Board-approved CE providers will no longer be renewed. Language has also
3 been added to ensure that those CE providers expiring after July 1, 2015, cannot be
4 renewed early to avoid this deadline. All Board-approved CE providers with a number
5 that expires after July 1, 2015, may continue providing CE coursework until the provider
6 number expires.
7

8 4. Miscellaneous Technical Changes: OAL requested a number of minor, technical, or
9 nonsubstantive changes to the language in the regulatory proposal. These changes are:

- 10
- 11 • Minor technical, nonsubstantive changes to titles, text, and authority and reference
12 footnotes;
 - 13 • Renumbering certain sections to ensure numbering is correct for continuity;
 - 14 • Insertion of a proper citation for the Americans with Disabilities Act;
 - 15 • Elimination of Section 1887.5 from the regulation proposal. The regulation package
16 makes no changes to this section, and therefore, it does not need to be included. This
17 section will remain a part of the Board’s regulations.
18

19 Betty Connolly expressed concern regarding the CE course content language. She explained
20 that in the Licensed Educational Psychologist (LEP) profession, research, practice and
21 procedures do not only come out of the mental health field, but from the educational field as
22 well.
23

24 Renee Lonner added to Ms. Connolly’s comment, pointing out that the CE courses must be
25 supported using research practices and procedures which have been subjected to external peer
26 review. She suggested changing the language to omit the external peer review requirement.
27

28 Steve Sodergren stated that the language in Section 1887.4.0(b)(2) includes “or” and believes
29 this addresses Ms. Connolly and Ms. Lonner’s concerns.
30

31 Ms. Lonner still has concerns with the external peer review.
32

33 Ms. Helms suggested replacing the language in subsection (b)(2) with the following: “be
34 supported using practices and procedures which are generally accepted in mental health
35 research.” This will omit the external peer review requirement.
36

37 When asked why this requirement was included in the language, Ms. Helms replied that the
38 committee’s intent was to ensure that the courses were based on well-established mental health
39 practices.
40

41 Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), stated that
42 subsection (b)(2) uses the term “supported” which is very important and there could be
43 implications if it is removed.
44

45 Laura Freedman replied that (b)(2) was written as an “or” to subsections (b)(1) and (b)(3). As
46 written, it is an alternative to (b)(1) and (b)(3).
47

48 Ms. Connolly expressed that she does not want to make this so stringent that it would be difficult
49 for the approval agencies to offer coursework.
50

51 Ms. Lonner suggested dropping (b)(2). Ms. Connolly supported the suggestion. Ms. Helms and
52 Ms. Freedman indicated that they are comfortable with omitting (b)(2).
53

1 Ms. Helms suggested changing the term “beginning” to “effective” in Section 1887.13(b) and (c).

2
3 Ms. Epstein expressed a concern regarding the deletion of Section 1887.7(d) and asked what
4 implications would result from this deletion.

5
6 Ms. Helms responded that OAL felt that it was difficult to define “commercial,” and the
7 subsection was unclear. Based on the changes proposed for CE course content to be
8 supported using practices and procedures which are generally accepted mental health
9 research, OAL felt that would prevent modalities for commercial reasons. Therefore, OAL
10 suggested removing subsection (d). Ms. Helms felt comfortable with the stringent review
11 process. She also noted that if this becomes a problem in the future, the Board can go back
12 and make an amendment.

13
14 Ms. Freedman stated that the language with the revision, and prior to the revision, does not
15 necessarily prohibit a commercial message. The language requires research-based,
16 practice/knowledge-based course content.

17
18 ***Dr. Christine Wietlisbach moved to accept the changes discussed under Sections***
19 ***1887.4.0(b)(2) and 1887.15(b) and (c); to approve the proposed modified text for a 15-day***
20 ***public comment period; to delegate to the Executive Officer the authority to adopt the***
21 ***regulatory changes as modified if there are no adverse comments regarding the changes***
22 ***made in the 15-day public comment period; and to delegate to the Executive Officer the***
23 ***authority to make any technical or nonsubstantive changes that may be required in***
24 ***completing the rulemaking file. Sarita Kohli seconded. Via roll call, the Board voted***
25 ***unanimously (7-0) to pass the motion.***

26
27 **III. Discussion and Possible Action Regarding Assembly Bill 186 (Maienschein) -**
28 **Professions and Vocations: Military Spouses: Temporary Licenses**

29
30 AB 186 would require a board within the DCA to issue a temporary license to a spouse of a
31 military member who is already eligible for an expedited license.

32
33 Current law requires a board within DCA to expedite the licensing process for an applicant who
34 is married to, or in a domestic partnership with, an active member of the U.S. military who is
35 assigned to active duty in California. Current law also states that in order for the license to be
36 expedited, the military spouse must hold a current license in another state in the same
37 profession for which he or she is seeking a California license.

38
39 This bill:

- 40 1. Requires a board within DCA to, after appropriate investigation, issue a temporary license to
41 an applicant who meets certain conditions:
- 42 • The applicant can provide evidence that he or she is married/in a domestic
43 partnership/legal union with an active duty member of the armed forces of the United
44 States who is assigned to active duty in California.
 - 45 • The applicant holds a current license in another state for the same profession or
46 vocation.
 - 47 • The applicant submits a signed affidavit to the board that he or she meets all
48 requirements for the temporary license.
 - 49 • The applicant submits written verification from his or her licensing jurisdiction that the
50 license is in good standing.

- 1 • The applicant has not committed any act in his or her current licensing jurisdiction that
2 would be grounds for denial, suspension, or revocation of the license.
- 3 • The applicant has not been disciplined by a licensing entity in another jurisdiction and is
4 not the subject of an unresolved complaint or disciplinary proceeding.
- 5 • The applicant submits fingerprints to the board.
- 6
- 7 2. States that the temporary license expires 12 months after issuance, or upon issuance of an
8 expedited license, or upon denial of the application for an expedited license, whichever
9 occurs first.
- 10
- 11 3. Allows the board to investigate the applicant for the purpose of denying or revoking a
12 temporary license, including conducting a criminal background check.
- 13
- 14 4. Allows a temporary license to be terminated immediately upon a finding that the temporary
15 licensee failed to meet any of the requirements for a temporary license or provided
16 inaccurate information.
- 17
- 18 5. Requires an applicant seeking a temporary license as an engineer, land surveyor, geologist
19 or geophysicist to successfully pass the appropriate California-specific examinations
20 required for licensure.
- 21
- 22 6. Allows a board to require an applicant to successfully pass a California law and ethics exam
23 prior to issuing a temporary license, if passing such an exam is a requirement for licensure.
- 24
- 25 7. Exempts the California Architects Board and the State Board of Chiropractic Examiners from
26 these provisions.
- 27

28 To obtain a temporary license, this bill requires that the military spouse must hold a current
29 license in the same profession in another state. It does not require:

- 30 • That the licensing requirements in the other state in which the person holds a license be
31 substantially equivalent to the requirements in California; or
- 32 • That the applicant passes all required Board administered examinations. (The bill has been
33 amended so that the Board may require passage of the California Law and Ethics
34 Examination.)
- 35

36 Staff has concerns regarding continuity of care. This bill creates a temporary license that is
37 valid for a 12-month period, or until the expedited license is issued or denied, whichever occurs
38 first. If the Board finds that the temporary licensee does not qualify for licensure, then the
39 provisional license expires. In addition, if the applicant has not passed the required Board
40 licensing exam(s) during the 12-month period, then the temporary license would expire. If this
41 happened, the applicant would no longer be able to see his or her patients. A consumer who
42 seeks mental health services often seeks treatment for an extended period of time and having a
43 practitioner whose temporary license suddenly expires could disrupt the continuity of care.

44

45 In addition, staff has concerns regarding staffing and the BreEZe database. The Board does
46 not currently have a provisional license status. It is unclear how quickly the department could
47 create one, as boards under DCA are transitioning to the new BreEZe database system. In
48 addition, the reprogramming costs would represent a significant fiscal impact to the Board.

49

50 At its May 2013 meeting, the Board took a “support if amended” position on this bill, requesting
51 the following amendments:

- 1 • An amendment requiring that the temporary license applicant to provide a transcript to the
2 Board;
- 3 • An amendment requiring the applicant to pass the California Law and Ethics Examination
4 prior to issuance of a temporary license; and
- 5 • An amendment allowing delayed implementation to accommodate DCA's transition to the
6 BreEZe database system.
7

8 Ms. Helms noted that an amendment has been made to require the applicant to pass the
9 California Law and Ethics Examination prior to issuance of a temporary license. However,
10 amendments have not been made to require the applicant to provide a transcript or to allow
11 delayed implementation.
12

13 Ms. Epstein expressed that it is problematic to allow the applicants to bypass requirements; they
14 are already receiving an expedited application process. Existing applicants have been waiting
15 for long periods of time, due to backlogs, to get their applications processed.
16

17 Samara Ashley suggested that BBS be removed from this bill. Ms. Wong agreed.
18

19 Ms. Freedman stated that if it is the Board's desire to be removed from the bill, an "oppose
20 unless amended" position is warranted. Logically, a "support unless amended" position leaves
21 the Board open to address other concerns within the bill even if the Board is removed from the
22 bill.
23

24 ***Renee Lonner moved to oppose AB 186 unless amended to remove the Board of***
25 ***Behavioral Sciences from the bill. Sarita Kohli seconded. Via roll call, the Board voted***
26 ***unanimously (7-0) to pass the motion.***
27

28 **IV. Suggestions for Future Agenda Items**

29

30 Ms. Epstein suggested a future discussion regarding fees that interns must pay to maintain their
31 registration number while waiting for their applications to be evaluated.
32

33 **V. Public Comment for Items Not on the Agenda**

34 No public comments.
35

36 **VI. Adjournment**

37 The Board adjourned at 11:25 a.m.

2013/2014 Budget

The 2013/2014 budget for the Board is \$8,240,648. As of June 30, 2014, the Board has spent \$6,934,179 reflecting 84% of the total budget. The chart below provides a breakdown of expense categories and percentages. Final expenditures for 2013-2014 will be received in mid-August. After receiving these final expenditures, the Board estimates an unencumbered balance of \$118,656.

Expense Category	Amount	Percentage
Personnel	\$ 3,084,328	37%
OE&E	\$ 2,300,673	28%
Enforcement	\$ 940,634	11%
Minor Equipment <i>Includes LPCC category</i>	\$ 608,544	7%
Total Expenses	\$ 6,934,179	84%

As of June 30, 2014, total revenue collected is \$7,739,443. This number reflects all final figures for 2013-2014.

Month	FY 10/11	FY 11/12	FY 12/13	FY 13/14
July	\$762,284.90	\$636,305.00	\$865,553.99	\$817,394.34
August	\$612,879.75	\$614,882.97	\$605,609.87	\$641,178.70
September	\$888,896.00	\$1,002,602.57	\$1,130,230.37	\$1,349,479.66
October	\$560,370.10	\$723,621.83	\$631,685.86	\$480,531.87
November	\$393,690.35	\$601,895.03	\$545,880.97	\$600,316.56
December	\$560,118.27	\$816,772.93	\$514,784.93	\$516,264.24
January	\$527,079.68	\$1,180,871.34	\$452,850.71	\$625,528.05
February	\$409,637.17	\$646,040.15	\$541,115.50	\$559,755.55
March	\$597,687.20	\$576,972.25	\$593,123.75	\$655,619.38
April	\$512,561.91	\$437,016.67	\$569,381.90	\$670,839.44
May	\$322,487.96	\$317,204.07	\$360,131.06	\$663,732.55
June	\$432,003.03	\$383,326.67	\$421,329.60	\$158,802.68
FM 13	(\$59,968.77)	(\$1,375.78)	(\$266.97)	

2014/2015 Budget

The Board's budget for fiscal year 2014-15 is \$ 9,139,000.

Board Fund Condition

The Board's fund condition reflects 3.5 months in reserve.

General Fund Loans

The Board's loan balance to the General Fund is \$10.9 million dollars. This figure reflects the \$1.4 million dollar repayment received in FY 2013-2014. The Board is scheduled to receive a \$800,000 dollar loan repayment fiscal year 2014-2015. This repayment is reflected in the current fund condition; leaving a General Fund loan balance of \$10.1 million dollars at the end of fiscal year 2014-2015.

0773 - Behavioral Science

Analysis of Fund Condition

Prepared 8/5/2013

(Dollars in Thousands)

Governor's Budget

NOTE: \$6.0 M GF Loan (2002/03) \$3.0M (2008/09)
\$3.3M (2011/12)

Governor's
Budget

NOTE: \$8.1M GF Loan Repayments Deferred to After 2016-17

	ACTUAL 2011-12	CY 2012-13	BY 2013-14	BY +1 2014-15	BY +2 2015-16	BY +3 2016-17
BEGINNING BALANCE	\$ 4,528	\$ 1,798	\$ 1,290	\$ 2,231	\$ 2,445	\$ 2,596
Prior Year Adjustment	\$ 99	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 4,627	\$ 1,798	\$ 1,290	\$ 2,231	\$ 2,445	\$ 2,596

REVENUES AND TRANSFERS

Revenues:

125600 Other regulatory fees	\$ 83	\$ 70	\$ 76	\$ 76	\$ 76	\$ 76
125700 Other regulatory licenses and permits	\$ 3,142	\$ 2,818	\$ 2,698	\$ 2,698	\$ 2,698	\$ 2,698
125800 Renewal fees	\$ 4,478	\$ 4,608	\$ 4,734	\$ 4,734	\$ 4,734	\$ 4,734
125900 Delinquent fees	\$ 68	\$ 62	\$ 65	\$ 65	\$ 65	\$ 65
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 2	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 10	\$ 4	\$ 9	\$ 5	\$ 5	\$ 5
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
161400 Miscellaneous revenues	\$ 6	\$ 7	\$ 7	\$ 7	\$ 7	\$ 7
Totals, Revenues	\$ 7,791	\$ 7,571	\$ 7,591	\$ 7,587	\$ 7,587	\$ 7,587

Transfers from Other Funds

F00683 Teale Data Center (CS 15.00, Bud Act of 2005)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
F00001 GF loan repayment per item 1170-011-0773 BA of 2002	\$ -	\$ -	\$ 1,400	\$ 800	\$ 900	\$ 1,100
F00001 GF loan repayment per item 1110-011-0773 BA of 2008	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Transfers to Other Funds

T00001 GF loan per item 1170-011-0773 BA of 2002	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 GF loan per item 1110-011-0773 BA of 2008	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 GF loan per item 1110-011-0773 BA of 2011	\$ -3,300	\$ -	\$ -	\$ -	\$ -	\$ -

Totals, Revenues and Transfers	\$ 4,491	\$ 7,571	\$ 8,991	\$ 8,387	\$ 8,487	\$ 8,687
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Totals, Resources	\$ 9,118	\$ 9,369	\$ 10,281	\$ 10,618	\$ 10,932	\$ 11,283
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EXPENDITURES

Disbursements:

8860 FSCU (State Operations)	\$ 9	\$ 9	\$ -	\$ -	\$ -	\$ -
8880 Financial Information System for California	\$ 21	\$ 43	\$ 37	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 7,290	\$ 8,027	\$ 8,013	\$ 8,173	\$ 8,336	\$ 8,503
Total Disbursements	\$ 7,320	\$ 8,079	\$ 8,050	\$ 8,173	\$ 8,336	\$ 8,503

FUND BALANCE

Reserve for economic uncertainties	\$ 1,798	\$ 1,290	\$ 2,231	\$ 2,445	\$ 2,596	\$ 2,780
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Months in Reserve	2.7	1.9	3.3	3.5	3.7	3.8
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NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2014-15 AND ON-GOING.
- ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR IN 2014-15 AND ON-GOING.
- ASSUMES INTEREST RATE AT 0.3%.

BBS EXPENDITURE REPORT FY 2013/14

OBJECT DESCRIPTION	12/13	FY 2013/14			
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 6/30/14	PROJECTIONS	UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	1,742,679	2,109,422	1,929,925	2,260,000	(150,578)
Salary & Wages (Stat Exempt)	86,941	91,152	93,888	94,000	(2,848)
Temp Help (907)(Seasonals)	41,657	0	0	0	0
Temp Help (915)(Proctors)		444		0	444
Board Memb (Per Diem)	23,000	12,900	16,400	25,000	(12,100)
Overtime	3,161	1,500	18,025	19,000	(17,500)
Totals Staff Benefits	957,923	1,080,258	1,026,090	1,175,000	(94,742)
Salary Savings					
TOTALS, PERSONAL SERVICES	2,855,361	3,295,676	3,084,328	3,573,000	(277,324)
OPERATING EXP & EQUIP					
Fingerprint Reports	11,099	14,827	15,291	16,000	(1,173)
General Expense	75,835	78,724	62,726	80,000	(1,276)
Printing	61,667	58,000	88,970	90,000	(32,000)
Communication	12,972	11,513	13,228	13,500	(1,987)
Insurance	0	325		0	325
Postage	99,352	89,489	48,855	70,000	19,489
Travel, In State	79,289	55,684	73,570	85,000	(29,316)
Travel, Out-of-State	13,665	72,000	17,835	25,000	47,000
Training	1,990	20,463	450	1,500	18,963
Facilities Operations	246,574	227,925	264,911	364,000	(136,075)
Utilities	0	4,330		0	4,330
C&P Services - Interdept.	39,717	14,939	14,442	62,000	(47,061)
C&P Services-External Contracts	19,854	207,978	0	80,000	127,978
DEPARTMENTAL PRORATA					
DP Billing (424.03)	735,792	860,256	177,994	860,256	0
Indirect Distribution Costs (427)	342,050	435,137	435,137	435,137	0
Public Affairs (427.34)	19,703	19,567	19,567	19,567	0
D of I Prorata (427.30)	15,946	13,934	13,934	13,934	0
Consumer Relations Division (427.3)	25,118	16,765	16,765	16,765	0
OPP Support Services (427.01)	0	490	0	490	0
Interagency Services (OER IACs)	200,552	325,065	194,448	236,700	88,365
Consolidated Data Services (428)	2,035	24,096	674	24,096	0
Data Proc (Maint,Supplies,Cont) (432)	15,110	10,448	16,602	10,448	0
Statewide Pro Rata (438)	434,880	361,763	361,764	361,763	0
EXAM EXPENSES					
Exam Site Rental	32,907	99,630	31,724	43,000	56,630
Exam Contract (PSI) (404.00)	505,834	358,659	311,718	350,000	8,659
C/P Svs - Expert Examiners (404.01)	0	45,000		0	45,000
C/P Svs - External Subj Matter (404.	145,870	365,260	120,068	175,000	190,260
ENFORCEMENT					
Attorney General	817,778	801,588	750,078	765,000	36,588
Office of Admin. Hearing	111,244	154,926	101,296	110,000	44,926
Court Reporters	7,041	0	9,120	10,000	(10,000)
Evidence/Witness Fees	27,482	94,955	19,304	30,000	64,955
Division of Investigation	86,357	60,836	60,836	60,836	0
LPCC	457,325		480,075		0
Minor Equipment (226)	36,685	21,400	128,469	139,000	(117,600)
Equipment, Replacement (452)	0	0	0	0	0
Equipment, Additional (472)	0	0	0	0	0
Vehicle Operations	0	19,000	0	0	19,000
TOTAL, OE&E	4,681,723	4,944,972	3,849,851	4,548,992	395,980
TOTAL EXPENDITURES	\$7,537,084	\$8,240,648	\$6,934,179	\$8,121,992	\$118,656

	FY 12/13	Budget	Current
Reimbursements	Actuals	Alotment	as of 6/30/14
Fingerprints	(10,969)	(24,000)	(11,040)
Other Reimbursements	(8,620)	(26,000)	(9,685)
Unscheduled Reimbursements	(123,771)		(140,234)
Total Reimbursements	(143,360)	(50,000)	(160,959)

BLUE PRINT INDICATES THE ITEMS ARE SOMEWHAT DISCRETIONARY.

Board Statistics

Board staff continues to experience challenges in obtaining statistical data to compile quarterly statistics. Board staff has observed that some of the reports do not appear to capture all of the requisite data that is necessary to provide accurate statistics. These errors have been reported to the BreEZe team and efforts are underway to correct these errors. Additionally, the BreEZe team has created a Reports Users Group that will work to improve the existing reports and develop new ones for statistical reporting. Board staff is participating in this group.

Attached for your review is the Quarterly Enforcement Performance Measures Report (QEPMR). This report is compiled by the Department of Consumer Affairs. The data in this report appears to be reasonable when compared to previous reports prior to BreEZe. However, due to discrepancies in the two reports used for the QEPMR, Board staff has been unable to validate the underlying data. The BreEZe team is aware of the discrepancies and is working to resolve the concerns expressed by BreEZe Release One boards.

Facilities

Construction to remodel the Board's suite is complete. A total of thirteen new spaces were added to accommodate the new staff. Additionally, the Board relocated its file room to another location steps away from the current office suite. The new file room provides the Board with a much larger storage area and allows the Board to consolidate all of its supplies. To date the remodel costs total \$172,000. A few invoices remain outstanding, but the total cost will not exceed \$200,000.

Staffing

Licensing Unit

The additional licensing staff has already made a positive impact on the Board's licensing backlogs. Since May 27, 2014, the licensing staff has reduced the examination application backlog by nearly four months for LMFT applicants and nearly three months for LCSW applicants.

As of August 4, 2014, the licensing staff is evaluating LMFT examination applications received the week of January 2, 2014 and LCSW examination applications received the week of January 7, 2014.

Two positions remain to be filled in the licensing unit. One is a full time permanent position. Interviews for this position were conducted the last week of July. An offer of employment will be made after all of the appropriate approvals have been received. The second position is a two year limited term position in the licensing unit. Recruitment for this position will begin this month.

Enforcement Unit

Recruitment is underway for the remaining three positions received this fiscal year. The positions include an additional probation monitor, an enforcement analyst, and a support position.

Outreach Activities

Board staff will attend the Sacramento MFT Consortium meeting on August 22, 2014.

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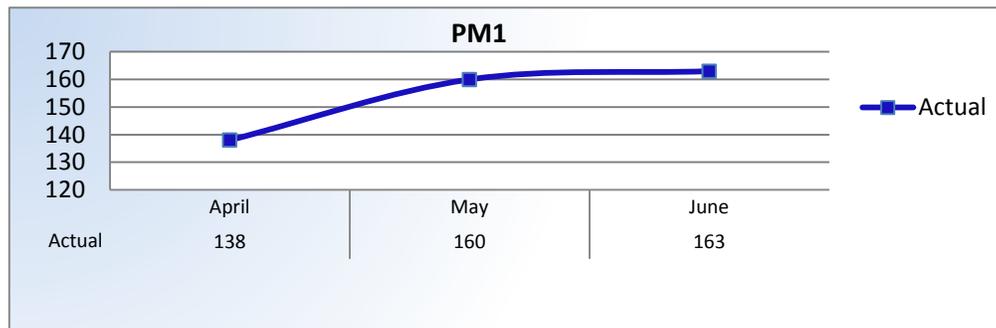
Performance Measures

Q4 Report (April - June 2014)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

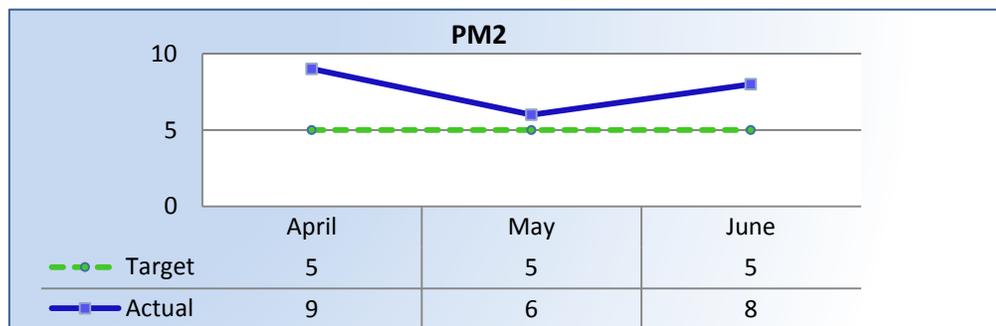


Total Received: 461 Monthly Average: 154

Complaints: 382 | Convictions: 79

PM2 | Intake

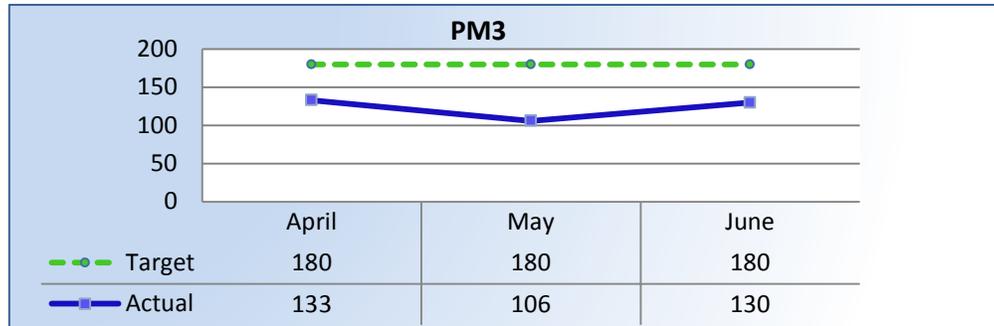
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 5 Days | Actual Average: 8 Days

PM3 | Intake & Investigation

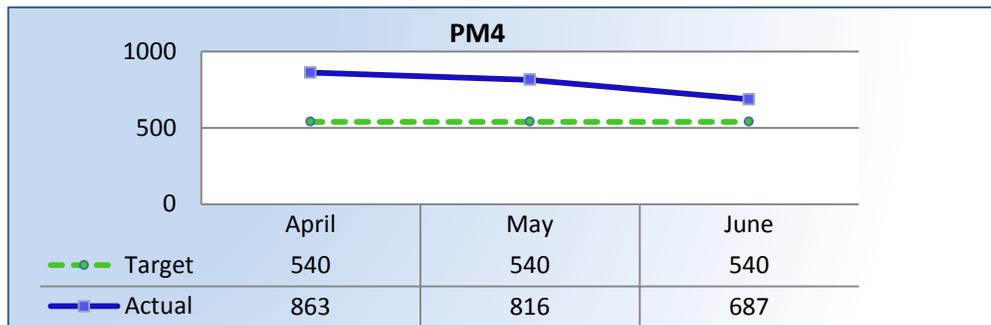
Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.



Target Average: 180 Days | Actual Average: 124 Days

PM4 | Formal Discipline

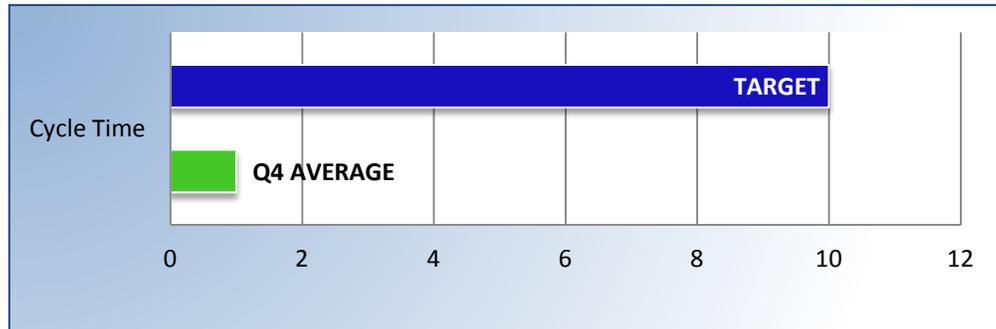
Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board and prosecution by the AG).



Target Average: 540 Days | Actual Average: 846 Days

PM7 | Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 10 Days | Actual Average: 1 Day

PM8 | Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board did not report any new probation violations this quarter.

Target Average: 7 Days | Actual Average: N/A

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To: Board Members

Date: August 13, 2014

From: Laurie Williams
Human Resources Liaison

Telephone: (916) 574-7850

Subject: Personnel Update

New Employees:

The Board submitted to DCA Human Resources (OHR) Request for Personnel Action (RPA) hiring packets requesting to fill for the following positions. The Board acquired the positions through the Budget Change Proposal Fiscal Year 2014-15.

- **Staff Services Analyst (SSA) (Full-time) – Enforcement Program** – The Board hired Jason Glasspiegel to fill this SSA vacancy in the Criminal Conviction & Probation Unit. Jason is new to state service and his first day of employment with the Board was July 14, 2014. Jason worked in the private sector as an Insurance Investigator for Travelers Insurance and he graduated with a Bachelor's Degree in Communications from Sonoma State University. The SSA will act as an additional Subsequent Arrest Analyst and will independently conduct analysis of applicant background investigations.
- **Associate Governmental Program Analyst (AGPA) (Full-time) – Enforcement Program**
This AGPA will serve as the Discipline Analyst and for the Consumer Complaint and Investigations Unit and the Expert Reviewer Coordinator for the Enforcement Program. With this request packet the Board has decided to also reassign the duties of Gena Beaver an AGPA within the Criminal Conviction and Probation Unit. Gena was acting as the Lead Analyst for the Enforcement Program but with the hiring of the new manager Gina Bayless in May 2014 the Board no longer needs a lead analyst to assist this capacity. Gena will be assigned the duties of the Discipline Analyst and the Discipline Actions Reporter for the Criminal Conviction & Probation Unit. This RPA is being reviewed by the DCA Office of Human Resources and we expect a response from the reviewing Classification & Pay Analyst within a few weeks.
- **Associate Governmental Program Analyst (AGPA) (Part-time) – Enforcement Program**
The AGPA will work in the capacity of a part-time (0.5) Probation Case Analyst. This incumbent is being hired to assist with one (1) current Probation Case Analyst. The Probation Analyst will also be responsible for the Petition to Revoke Probation & Surrender License Cases and the Petition for Modification. In addition, the Probation Analyst will ensure the probationers that require random drug testing as a term and condition of probation are compliant with their Stipulated Settlement and Disciplinary Order. This RPA is being reviewed by the DCA Office of Human Resources and we expect a response from the reviewing Classification & Pay Analyst within a few weeks.

- Office Technician (OT) (Full-time) – Enforcement Program
This OT will provide additional Enforcement Unit support pertaining to complaints, clerical support for the Enforcement Unit staff and the Expert Reviewer Program support. This RPA is being reviewed by the DCA Office of Human Resources and we expect a response from the reviewing Classification & Pay Analyst within a few weeks.
- Management Services Technician (MST) (Limited-Term 2-year) – Licensing Program
This MST will be hired to assist in the application processes for the Marriage and Family Therapists and Licensed Clinical Social Work. The staff will provide assistance to alleviate the backlogs associated with the increased application volumes and processing times. This RPA is will be submitted for review to the DCA Office of Human Resources within the next week.

Effective May 21, 2014, Melissa Lara was promoted to the SSA vacancy in the Criminal Conviction & Probation Unit within the Enforcement Program. She acted an ASW and LSCW Evaluator for the Board prior to her promotion. Melissa will be graduating from Sacramento State University with a Bachelor's Degree in Criminal Justice in October 2014. The SSA will act as an additional Subsequent Arrest Analyst and will independently conduct analysis of applicant background investigations.

The Board hired Christina Hansens' to fill the Licensing Evaluator vacancy behind Melissa Lara. Christina has been functioning has an Office Technician with the DCA-Board of Accountancy for five (5) years. She has experience with evaluating applications for in-state and out-of-state exam candidates applying to take the Certified Public Accountant exam. She will act as a Licensed Clinical Social Worker (LCSW) Evaluator for the Board.

Departures:

No departures from the Board at this time.

Vacancies:

The Board will begin the recruitment process for the positions noted below once approval to hire is received by the DCA Office of Human Resources:

- Associate Governmental Program Analyst (AGPA) (Full-time) – Enforcement Program
- Associate Governmental Program Analyst (AGPA) (Part-time) – Enforcement Program
- Office Technician (OT) (Full-time) – Enforcement Program
- Management Services Technician (MST) (Limited-Term 2-year) – Licensing Program

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To: Board Members

Date: August 8, 2014

From: Steve Sodergren
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: BreEZe Update

It has been nearly a year since the Board went live with the BreEZe system. Board staff is continuing to work with the BreEZe team in order to address functionality issues that are discovered. These issues are being resolved with subsequent releases.

The Board opted for a delayed release of the online features to minimize the impact to staff and stakeholders. Currently, consumers may file a complaint online and Board licensees and registrants may create an account on BreEZe that allows them to view basic information about their license or applications. Online renewals were expected to go live in August, but because of priority of more critical fixes, this feature is now expected to be in place in November.

Board staff is continuing to collaborate with the BreEZe team in an effort to develop and correct BreEZe reporting functions in an effort to ensure that correct data is available for year-end reporting.

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Memo

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To: Board Members

Date: August 8, 2014

From: Steve Sodergren
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: Strategic Plan Update

Management and staff continue to address the strategic goals and objectives. Attached for your review is the Strategic Plan update for August 2014.

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Licensing	DUE DATE	STATUS
<i>Establish licensing standards to protect consumers and allow reasonable and timely access to the profession.</i>		
1.1 Identify and implement improvements to the licensing process to decrease application processing times.	Q1 2015	Manager worked with lead evaluator to create a more comprehensive training process for new evaluators. Manager created excel spreadsheet tool to automate calculations of experience hours.
1.2 Complete the processing of Licensed Professional Clinical Counselor grandfathered licensing application.	Q1 2014	Completed October 1, 2013
1.3 Review the current eligibility process for Licensed Marriage and Family Therapists and Licensed Professional Clinical Counselors to identify and reduce barriers and implement process improvements.	Q4 2018	On June 27 th , 2014 the second supervision committee meeting was conducted. The next meeting will be on August 29 th , 2014.
1.4 Explore development of uniform clinical supervision standards to ensure consistent supervision of registrants and trainees.	Q4 2015	On June 27 th , 2014 the second supervision committee meeting was conducted. The next meeting will be on August 29 th , 2014.
1.5 Investigate the use of technology for record keeping and therapeutic services and its effects on patient safety and confidentiality and establish best practices for licensees.	Q4 2016	
1.6 Determine feasibility of license portability and pursue legislation if needed.	Q3 2020	
1.7 Establish ongoing process to evaluate requirements for all license types to promote parity between licensing programs as appropriate.	Q4 2016	

1.8 Evaluate the feasibility of online application submission through the Breeze system and implement if possible. **Q2 2016**

Examinations	DUE DATE	STATUS
<i>Administer fair, valid, comprehensive, and relevant licensing examinations.</i>		
2.1 Implement recommendations made by the Exam Program Review Committee to restructure the examination process and promulgate regulations as necessary.	Q1 2016	Rulemaking package presented at February 2014 Policy meeting. Regulations are expected to be in place by Fall 2015. Board staff members are currently meeting to plan for implementation.
2.2 Establish a recruitment process for Subject Matter Experts to ensure a diverse pool on which to draw for examination development.	Q2 2016	
2.3 Create a process for evaluating the performance of Subject Matter Experts assisting with exam development.	Q4 2015	

Enforcement <i>Protect the health and safety of consumers through the enforcement of laws and regulations.</i>	DUE DATE	STATUS
3.1 Establish a recruitment process for Subject Matter Experts to ensure a diverse pool on which to draw for case evaluations.	Q4 2014	A proposed recruitment process consisting of the following has been formulated: creating a list of expertise that is needed, revising recruitment links to increase visibility, create and distribute a recruitment flyer to the various associations and email subscribers, partnering with associations to disseminate recruitment processes. Recruitment of an analyst who will be responsible for these duties has begun.
3.2 Develop a training program, including uniform standards for reports and evaluations, for all enforcement Subject Matter Experts.	Q1 2015	
3.3 Improve internal process to regularly consult with the Attorney General’s office to advance pending disciplinary cases.	Q4 2014	An enforcement analyst has been reassigned to perform the duties of the Board’s AG liaison. The enforcement manager has begun training the liaison on their new duties.
3.4 Establish uniform standards and templates for reports and evaluations submitted to the Board related to disciplinary matters.	Q2 2015	
3.5 Create a process for evaluating the performance of Subject Matter Experts assisting on enforcement cases.	Q2 2015	

<p>3.6 Identify and implement improvements to the investigation process to decrease enforcement processing times.</p>	<p>Q1 2015</p>
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Legislation and Regulation	DUE DATE	STATUS
<i>Ensure that statutes, regulations, policies, and procedures strengthen and support the Board's mandate and mission.</i>		
4.1 Adopt regulations to incorporate <u>Uniform Standards for Substance Abusing Licensees</u> to align with other healing arts boards.	Q4 2014	Rulemaking package submitted to Board for approval March 2014. Will be submitted to DCA and AOL for final approval in Fall 2014.
4.2 Modify regulations to shift oversight of continuing education providers to Approval Agencies.	Q4 2014	OAL expected to complete final review of this proposal in August/September 2014.
4.3 Pursue legislation to implement the recommendations of the Out of State Education Review Committee to ensure parity with California educational requirements.	Q4 2014	AB 2213 introduced February 2014. Expected to be considered by the Governor in September 2014.
4.4 Pursue legislation to resolve the conflict in law that prohibits the Board's access to information necessary for investigations regarding child custody reports.	Q4 2014	AB 1843 introduced February 2014. Bill has passed all legislative committees. Expected to be considered by the Governor in September 2014.
4.5 Review regulatory parameters for exempt settings and modify, if necessary, to ensure adequate public protection.	Q4 2017	

Organizational Effectiveness <i>Build an excellent organization through proper Board governance, effective leadership, and responsible management.</i>	DUE DATE	STATUS
5.1 Pursue adequate staffing levels across all functional areas within the Board.	Q3 2015	Received 8 new positions in FY 14/15 budget. The Board is currently recruiting and in the process of filling new and vacant positions and plans to be fully staffed by the Fall of 2014.
5.2 Evaluate internal procedures to identify areas for improvement to ensure prompt and efficient work processes.	Q1 2016	Staff has asked the Department's SOLID Planning Solutions to assist with Process Improvement activities. SOLID will not be available to assist until Fall of 2014. The Board continues to identify and implement processes and procedures that assist in efficient processing.
5.3 Enhance Board employee recognition program to reward exceptional performance and service.	Q4 2014	
5.4 Implement an internal training and education program for all Board staff to enhance skills and abilities for professional development.	Q3 2015	
5.5 Establish standing Board committees that align with the Board's strategic goal areas.	Q4 2014	

Outreach and Education <i>Engage stakeholders through continuous communication about the practice and regulation of the professions.</i>	DUE DATE	STATUS
6.1 Implement cost-effective ways to educate applicants and licensees on current requirements.	Q1 2015	In June 2014 an ASW video tutorial was completed to assist applicants in navigating through the process of becoming licensed. This will be posted to the website in September. Similar videos are in the process of being developed.
6.2 Enhance the Board’s outreach program by redesigning publications and the Board’s website, leveraging new technologies and exploring the use of social media.	Q3 2015	Review has begun of the board website and phone tree system in order to ensure efficient communication and better access to licensing information.
6.3 Partner with the Office of Statewide Planning Health and Development and other external stakeholder groups to encourage more diversity within the mental health professions.	Q4 2019	Completed service on OSHPD WET Committee. Report due early 2014.

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To: Board Members

Date: August 9, 2014

From: Steve Sodergren
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: Supervision Committee Update

The second meeting of the Supervision Committee was held on June 27, 2014 at the Phillips Graduate Institute in Chatsworth, California. Topics of discussion included:

- Review of current supervised experience requirements for California applicants
- Presentation of an examination eligibility application evaluation
- Discussion and review of other state's supervised experience requirements for Licensed Marriage and Family Therapists, Licensed Clinical Social Workers, and Licensed Professional Clinical Counselors
- Discussion and review of proposed survey questions for supervisees and supervisors.

The discussion revolved around streamlining the "buckets", or various required categories of supervised hours, that must be satisfied for licensure. There was also discussion about the supervision ratios. The consensus of the committee and stakeholders was that changes should be made to the current requirements in order to streamline the "buckets".

The committee directed the staff to;

- Research and estimate the percentage of Marriage and Family Interns that were claiming the maximum hours available for couples and family therapy supervised hours;
- Research and address in draft language the concept of triadic-supervision
- Draft language that would streamline the "buckets"
- Make suggested changes to the supervisee and supervisor draft survey

This information will be presented and discussed at the next Committee meeting scheduled for August 29, 2014 at DCA headquarters in Sacramento.

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To: Board Members **Date:** August 6, 2014
From: Christy Berger **Telephone:** (916) 574-7817
Regulatory Analyst
Subject: **Examination Restructure: Discussion and Recommendations for Possible
Rulemaking Action to Implement SB 704, Statutes of 2011, Chapter 387**

1. Introduction

Effective January 1, 2016, the Board's examination process will be changing. LCSW and LMFT applicants will be required to pass two new exams that replace the existing exams. Additionally, for LCSW, LMFT and LPCC applicants, the timing of when examinations must be taken changes.

The Board approved the examination restructure in 2010 and sponsored legislation¹ that allows for those changes. In order to fully implement the restructured program, the Board needs to revise its regulations to incorporate the new requirements and to ensure that the regulations are consistent with the examination process authorized by the new law.

2. Background

The Board's current examination program requires applicants for licensure to pass two examinations upon completion of all other licensure requirements. Once an applicant passes a standard written examination, they are eligible to take a clinical vignette examination.

In February 2008, the Board initiated an extensive analysis of its examination program through the Board's Examination Program Review Committee (EPRC). The EPRC conducted a holistic, open-ended inquiry and analysis of the Board's examination program.

The purpose of the review was to gather information, assess how mental health practice competencies are represented in the examinations, and provide stakeholders the opportunity to provide input and express concerns. In December 2009, the EPRC made a number of recommendations for modification of the examination process.

¹ SB 704 (Chapter 387, Statutes of 2011) and SB 821 (Chapter 473, Statutes of 2013)

3. How the Exam Restructure Affects the LMFT, LPCC, & LCSW Licensure Process

A. Exam Types

Effective January 1, 2016, those pursuing licensure as a LMFT, LPCC or LCSW must pass the following two exams:

- **A California Law and Ethics exam** designed to assess the applicant's knowledge of and ability to apply legal and ethical standards relating to the practice of professional clinical counseling.
- **A Clinical exam** designed to assess an applicant's knowledge of psychotherapeutic (LCSW: psychosocial) principles and methods in treatment and their application, and the ability to make judgments about appropriate techniques, methods and objectives as applicable to the profession's scope of practice. This may be a national or board-developed exam (a national exam is already in place for the LPCC program, and will be implemented for the LCSW program²).

These new exams replace the Standard Written and the Clinical Vignette exams currently in place for the LCSW and LMFT licensing programs. The LPCC program already uses a law and ethics exam.

B. Timing of Exams for Registrants

Currently, applicants take both exams upon completion of all other requirements for licensure. Under the new exam sequence, registered interns and associates will now be required to take the law and ethics exam while a registrant, and to take the exam a minimum of once per one-year renewal cycle until passed. The clinical exam will be taken after completion of all other licensure requirements.

C. Impact on Registrant Renewals and Issuance of Subsequent Registration Numbers

A registrant will not be permitted to renew his or her registration without having taken the law and ethics exam during the prior renewal period (unless the registrant has already passed). Subsequent intern or associate registration numbers will no longer be issued unless the applicant has passed the exam.

D. Law and Ethics Course for Registrants

Registrants who did not take and pass the law and ethics exam will be required to take a 12-hour continuing education course on law and ethics in order to continue to be eligible to take the law and ethics exam.

E. Differences for Registrants vs. Applicants who are Not Registrants

A "registrant" means an individual who holds a current or delinquent registration. The requirements under the exam restructure are different for a registrant than for an applicant who is not a registrant. The differences are indicated in the following tables:

² The Board voted on November 4, 2010 to accept the Association of Social Work Boards (ASWB) Clinical Level Examination for those seeking licensure with the Board and is currently working on a contract with ASWB to offer its exam. The Board will continue working with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) to determine the viability of using its exam for LMFT licensure in California.

REGISTRANTS California <u>Law & Ethics</u> Exam Requirement		
Who	When Must Exam be Taken?	Notes
1. New Registrants	Within the first year of registration as an intern or associate.	
2. Existing Registrants	Within the registrant's first renewal period that follows January 1, 2016	Pending legislation ³ would allow registrants with an expiration date prior to June 30, 2016, to renew without first taking the exam within a <u>6-month grace period</u> that begins January 1, 2016 and ends June 30, 2016,.
3. All Registrants <i>Exception: Cancelled Registrants (see Non-Registrant table)</i>	During every one-year renewal cycle until passed	If the registrant <u>does not take</u> the exam during a renewal cycle, the intern or associate registration cannot be renewed until it has been taken. If a registrant <u>does not pass</u> the exam during a renewal cycle, she or he must complete a 12-hour law and ethics course in order to be eligible to retake the exam during the next renewal cycle.
4. Registrants with an Approved Application for Licensure	Within one year after approval of the registrant's licensure application	#3 above also applies to this group, since the intern or associate registration is maintained.

REGISTRANTS <u>Clinical</u> Exam Requirement		
Who	When Must Exam be Taken?	Notes
All Registrants	Upon completion of all other licensure requirements	

³ BBS 2014 Omnibus Bill, SB 1466 (Senate Business, Professions and Economic Development Committee)

NON-REGISTRANTS

California Law & Ethics Exam Requirement

Who	When Must Exam be Taken?	Notes
1. Cancelled Registrants	Upon request	<p>Once an intern or associate has reached the maximum registration time limit of six years, he or she will be required to <u>pass</u> the law and ethics exam in order to obtain a subsequent registration number.</p> <p>Pending legislation would provide a <u>one-year grace period</u> between 01/01/2016 and 12/31/2016 to permit an individual to be issued a subsequent registration without passing the exam. However, the registrant must pass the exam before the registration can be renewed.</p>
2. Other Non-Registrants <i>(those who have completed their hours and have an approved application for licensure)</i>	Within one year of being made eligible to take the exam	<p>Non-Registrants are not required to take the 12-hour law and ethics course if they fail the exam.</p> <p>The 12-hour course is <u>only</u> required of Registrants who do not pass, as it is assumed they are practicing and seeing clients.</p>

NON-REGISTRANTS

Clinical Exam Requirement

Who	When Must Exam be Taken?	Notes
All Non-Registrants	Within one year of passing the law and ethics exam	

4. Pending Legislation: Grace Periods

The Board's 2014 Omnibus Bill, SB 1466 (Senate Business, Professions and Economic Development Committee), would provide the following grace periods:

- Permits those with an intern or associate registration that expires prior to 06/30/2016, to renew between 01/01/2016 and 06/30/2016 without first taking the law and ethics exam.
- Permits those who apply for a second (or third, etc.) intern or associate registration, between 01/01/2016 and 12/31/2016, to obtain that registration without first passing the law and ethics exam. These applicants may be issued a new registration, but must pass the exam before that registration may be renewed.

5. Regulatory Proposal

Regulations are necessary in order to implement the examination restructure. The Board approved earlier versions of the regulatory proposal at its November 2011 and February 2013 meetings. However, since that time, the restructure's effective date was delayed to 2016. Additionally, staff have been meeting regularly to work out potential unforeseen implementation issues that could arise, as well as needed technical changes. Therefore, staff is requesting reconsideration of this updated proposal. At its meeting in August 2014, the Policy and Advocacy Committee considered the proposed regulations and recommended that staff take the proposal to the Board for consideration.

6. Proposed Regulatory Changes

In accordance with the exam restructure, the Board's regulations need to be revised for consistency and clarity, as follows:

- Changes the names of the exams and describes what the new examinations are designed to assess.
- Clarifies the criteria for eligibility to take the law and ethics exam to indicate that the applicant must either:
 - Hold a current, delinquent or cancelled intern registration OR
 - Have an approved examination eligibility (licensure) application
- Clarifies the time frames during which a registrant or applicant must take the California Law and Ethics examination.
- Clarifies the waiting periods between exam attempts.
- Changes application abandonment criteria to fit the new application process.
- Incorporates language allowing the Board to accept the national examinations for LMFT and LCSW licensure, if the examinations are determined to be acceptable by the Board.
- Makes technical amendments such as removing obsolete language, correcting authority and reference citations, and adding "licensed" to references to marriage and family therapists.

Recommendation

Conduct an open discussion of the proposed regulatory amendments. Direct staff to make any discussed changes, and any non-substantive changes to the attached amendments, and to run as a regulatory proposal.

Attachments

Attachment A: Proposed Amendments to Examination Restructure Regulations

Attachment B: Pertinent Statutes - Examination Restructure
(includes pending legislative amendments pertaining to grace periods)

ATTACHMENT A
PROPOSED AMENDMENTS TO
EXAMINATION RESTRUCTURE REGULATIONS
Title 16, Division 18, California Code of Regulations
(Effective Date: 01/01/2016)
Revised 08/06/14

AMEND § 1805. APPLICATIONS

(a) Applications submitted to the board for registration or licensure shall be on a form prescribed by the board.

~~(b) A 180-day waiting period is required between examinations for any applicant retaking an examination. In the event special or unusual circumstances occur that impact the examination, the Board's Executive Officer may allow for a lesser period of time, as long as the integrity of the examination or examination security is not compromised.~~

Note: Authority Cited: Sections 4980.60, ~~4988.2~~, and 4990.20 (a), Business and Professions Code. Reference: Sections 4980.30, 4980.40, ~~4980.44, 4980.50~~, 4989.20, 4992, ~~4992.1~~, 4996.2, ~~4996.18, 4999.42~~, 4999.50 and ~~4999.54, 4999.53~~, Business and Professions Code.

ADD §1805.01. DEFINITIONS

For purposes of this division, the following definitions apply:

(a) "Application for licensure" means the following:

(1) The individual submits documentation of completed education and experience required for licensure to the Board for review; and,

(2) By submitting this information, seeks to be made eligible to take the required examinations.

(b) "Registrant" means an individual who holds a current or delinquent intern registration.

Note: Authority Cited: Sections 4980.60 and 4990.20(a), Business and Professions Code. Reference: Sections 4980.03(b), 4980.30, 4980.40, 4980.44, 4984.01, 4989.20, 4992, 4996.2, 4996.28, 4999.45, 4999.46, 4999.50, Business and Professions Code.

ADD §1805.05. REEXAMINATION

(a) A 90-day waiting period is required between attempts for applicants retaking a California law and ethics examination.

(b) A 180-day waiting period is required between attempts for applicants retaking a clinical examination.

(c) Waiting periods for national examinations that are accepted by the board shall be determined by that national testing entity.

(d) The Board's Executive Officer may allow for a lesser waiting period, as long as the integrity of the examination or examination security is not compromised.

Note: Authority Cited: Sections 4980.60 and 4990.20(a), Business and Professions Code. Reference: Sections 4980.50, 4984.72, 4989.22, 4992.1, 4996.4, 4999.52, 4999.54 and 4999.64, Business and Professions Code.

AMEND § 1806. ABANDONMENT OF APPLICATION

An application shall be deemed abandoned under any of the following circumstances:

(a) The application has not been completed by the applicant within one (1) year after it has been filed. An application shall be deemed complete when all documents and information required have been submitted to the board.

(b) The applicant does not submit information required in order to correct the deficiencies specified in a deficiency letter within one (1) year from the date of the deficiency letter.

~~(c) The applicant fails to sit for the standard written examination within one (1) year after being notified of initial eligibility to take the standard written examination.~~

(c) Applications for licensure shall be deemed abandoned if the applicant fails to take or retake an examination within the following time frames:

(1) The applicant fails to sit for the California law and ethics examination within one (1) year after being notified of initial eligibility to take the examination.

(2) The applicant does not retake the California law and ethics examination within one (1) year after being notified of failing the examination.

~~(d)~~(3) The applicant fails to sit for the clinical vignette examination within one (1) year of being notified of passing the standard written examination.

(4) The applicant fails to sit for the clinical examination within one (1) year of being notified of passing the California law and ethics examination.

(5) An applicant does not retake the clinical examination or the licensed educational psychologist written examination within one (1) year from the date the applicant was notified of failing the examination.

~~(e) The applicant fails to sit for the jurisprudence and ethics examination required in Section 4999.52 and 4999.54 of the Code within one (1) year after being notified of initial eligibility to take the jurisprudence and ethics examination.~~

~~(f) The applicant fails to sit for the examination required in 4999.54 (b) (2) of the Code within one (1) year after being notified of initial eligibility to take the examination.~~

~~(g) The applicant fails to sit for an examination required in 4999.52 (c) (5) of the Code within one (1) year after being notified of initial eligibility to take that examination.~~

~~(h) An applicant fails to retake an examination within one (1) year from the date the applicant was notified of failing an examination.~~

~~(i)~~(d) The applicant fails to pay the initial license fee within one (1) year after notification by the board of successful completion of examination requirements.

An application submitted after an a previous application has been abandoned shall be treated as a new application, including requiring the applicant to pay any fees required, and to meet current requirements.

An application submitted after a previous application has been abandoned shall be treated as a new application, requiring the applicant to pay any fees required, and to meet current requirements.

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4980.30, 4980.35, [4980.397\(a\)](#), [4980.398](#), [4980.399](#), [4980.40](#), [4980.44](#), [4980.72](#), [4984.01](#), 4984.7, [4984.72](#), 4989.20, [4989.22\(b\)](#) 4989.68, 4992, [4992.05\(a\)](#), [4992.07](#), [4992.09](#), [4996.1](#), 4996.3, [4996.4](#), [4996.17](#), [4996.18](#), [4996.28](#), [4999.42](#), 4999.50, ~~4999.52~~, [4999.53](#), 4999.54, [4999.55](#), [4999.60](#), [4999.61](#), [4999.64](#), [4999.100](#), and 4999.120, Business and Professions Code.

AMEND § 1816. RENEWAL FEES

- (a) The annual renewal fee for marriage and family therapist intern registration is seventy-five dollars (\$75.00).
- (b) The annual renewal fee for associate clinical social worker registration is seventy-five dollars (\$75.00).
- ~~(c) The fee for associate clinical social worker extension is fifty dollars (\$50.00).~~
- ~~(d)~~[\(c\)](#) The annual renewal fee for professional clinical counselor interns is one hundred dollars (\$100.00).
- ~~(e)~~[\(d\)](#) The biennial active renewal fee for a [licensed](#) marriage and family therapist is one hundred thirty dollars (\$130.00).
- ~~(f)~~[\(e\)](#) The biennial active renewal fee for a licensed educational psychologist is eighty dollars (\$80.00).
- ~~(g)~~[\(f\)](#) The biennial active renewal fee for a licensed clinical social worker is one hundred dollars (\$100.00).
- ~~(h)~~[\(g\)](#) The biennial active renewal fee for a licensed professional clinical counselor is one hundred seventy-five dollars (\$175.00).
- ~~(i) The annual renewal fee for licenses issued pursuant to Section 4999.54 (a)(1) of the Code is one hundred fifty dollars (\$150.00).~~
- ~~(j) The biennial renewal fee for a board approved continuing education provider is two hundred dollars (\$200.00).~~
- ~~(k) For the period of January 1, 2001 through December 31, 2002, the biennial renewal fee for a marriage and family therapist is twenty five dollars (\$25.00).~~
- ~~(l) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed educational psychologist is twenty five dollars (\$25.00).~~
- ~~(m) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed clinical social worker is twenty five dollars (\$25.00).~~

Note: Authority Cited: Sections ~~4980.54~~, 4980.60, and 4990.20 (a), Business and Professions Code. Reference: Sections ~~4980.54~~, 4984.7, 4989.68, 4996.3, ~~4996.6~~, ~~4996.18~~, ~~4996.22~~, and 4999.120, Business and Professions Code.

AMEND § 1816.2. EXAMINATION FEES

- (a) The licensed clinical social worker ~~standard written~~ [California law and ethics](#) examination fee shall be one hundred dollars (\$100.00).
- (b) The [board administered](#) licensed clinical social worker ~~written~~ clinical [vignette](#) examination fee shall be one hundred dollars (\$100.00).

~~(c) The marriage and family therapist standard written examination fee shall be one hundred dollars (\$100.00).~~

~~(d) The marriage and family therapist written clinical vignette examination fee shall be one hundred dollars (\$100.00).~~

(b) The licensed marriage and family therapist California law and ethics examination fee shall be one hundred dollars (\$100.00).

(c) The board administered licensed marriage and family therapist clinical examination fee shall be one hundred dollars (\$100.00).

~~(e)~~(d) The licensed educational psychologist written examination fee shall be one hundred dollars (\$100.00).

~~(f)~~(e) The licensed professional clinical counselor jurisprudence California law and ethics examination shall be one hundred dollars (\$100.00).

~~(g)~~(f) The licensed professional clinical counselor examination described in Section 4999.54(b) of the Code shall be one hundred dollars (\$100.00).

~~(h) The fee for the licensed professional clinical counselor written examination shall be one hundred and fifty dollars (\$150.00).~~

Note: Authority Cited: 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4989.68, 4996.3~~(a)~~, ~~4996.4~~, ~~4999.54~~, and 4999.120, Business and Professions Code.

AMEND § 1816.3. EXAMINATION RESCORING FEES

The fee for rescoring any board administered licensed marriage and family therapist, licensed clinical social worker, ~~or~~ licensed educational psychologist, or licensed professional clinical counselor written examination shall be twenty dollars (\$20.00).

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4984.7, 4989.68, ~~and~~ 4996.3, and 4999.120, Business and Professions Code.

AMEND § 1816.4. EXAMINATION ELIGIBILITY APPLICATION FEES

(a) The fee for the licensed marriage and family therapist examination eligibility application shall be one hundred dollars (\$100.00).

(b) The fee for the licensed clinical social worker examination eligibility application shall be one hundred dollars (\$100.00).

(c) The fee for the licensed educational psychologist examination eligibility application shall be one hundred dollars (\$100.00).

(d) The fee for the licensed professional clinical counselor examination eligibility application shall be one hundred and eighty dollars (\$180.00).

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4989.68, 4996.3, and 4999.120, Business and Professions Code.

AMEND § 1816.5. REPLACEMENT AND CERTIFICATION FEES

(a) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars (\$20.00).

(b) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25.00).

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4984.7, 4989.68, ~~and 4996.63, and 4999.120~~, Business and Professions Code.

AMEND § 1816.6. INACTIVE LICENSE FEES

- (a) The fee for issuance or renewal of an inactive licensed marriage and family therapist license shall be sixty-five dollars (\$65.00).
- (b) The fee for issuance or renewal of an inactive licensed clinical social worker license shall be fifty dollars (\$50.00).
- (c) The fee for issuance or renewal of an inactive licensed educational psychologist license shall be forty dollars (\$40.00).
- (d) The fee for issuance or ~~biennial~~ renewal of an inactive licensed professional clinical counselor license shall be eighty seven dollars and fifty cents (\$87.50).
- ~~(e) The fee for issuance or annual renewal of an inactive license issued pursuant to Section 4999.54(a)(1) of the Code shall be seventy five dollars (\$75.00).~~

Note: Authority Cited: Sections 4980.60 and 4990.20 (a), Business and Professions Code. Reference: Sections 4984.7, 4984.8, 4989.44, ~~4989.68, 4996.3~~, 4997, ~~and~~ 4999.112 and 4999.120, Business and Professions Code.

AMEND § 1816.7. DELINQUENT FEES

- (a) The delinquency fee for the licensed marriage and family therapist license shall be sixty-five dollars (\$65.00).
- (b) The delinquency fee for the licensed clinical social worker license shall be fifty dollars (\$50.00).
- (c) The delinquency fee for the licensed educational psychologist license shall be forty dollars (\$40.00).
- (d) The delinquency fee for the licensed professional clinical counselor license shall be eighty seven dollars and fifty cents (\$87.50).
- ~~(e) The delinquency fee for the license issued pursuant to Section 4999.54(a)(1) of the Code shall be seventy five dollars (\$75.00).~~
- ~~(f) The delinquency fee for the continuing education provider approval shall be one hundred dollars (\$100).~~

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 163.5, 4984.7, ~~4989.60 4989.68, 4996.6 4996.3~~, and ~~4999.404, 4999.120~~ Business and Professions Code.

ADD § 1822.50. REQUIRED EXAMINATIONS - LPCC

- (a) The written examinations shall test for minimum acceptable competency to practice professional clinical counseling without causing harm to the public health, safety or welfare, and shall consist of the following:
 - (1) A California law and ethics examination designed to assess the applicant's knowledge of and ability to apply legal and ethical standards relating to the practice of professional clinical counseling.
 - (2) A clinical examination designed to assess an applicant's knowledge of psychotherapeutic principles and methods in treatment and their application, and the ability

to make judgments about appropriate techniques, methods and objectives as applicable to the professional clinical counselor scope of practice.

(b) The clinical examination as described in subsection (a)(2) may be a board administered examination or a national examination determined by the board to be acceptable.

(c) This section shall become operative on January 1, 2016.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Sections 4999.52, 4999.53, and 4999.55, Business and Professions Code.

ADD § 1822.51. ELIGIBILITY FOR LAW AND ETHICS EXAMINATION - LPCC

(a) Notwithstanding any other provision of law, eligibility to take the California law and ethics examination requires an applicant to, at minimum, meet one of the following:

(1) The applicant holds a current, delinquent or cancelled intern registration, submits a request and pays the fee to take the examination.

(A) When a registrant who holds a current or delinquent registration takes the examination and does not pass, the registrant shall complete a 12-hour course on California law and ethics as specified in section 4999.55(e) of the Code, in order to be eligible to take the examination during the next renewal cycle.

(2) The applicant currently has an approved application for licensure.

(b) This section shall become operative on January 1, 2016.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Sections 4999.52, 4999.53, 4999.55, and 4999.100, Business and Professions Code.

ADD § 1822.52. TIME FRAMES - LAW & ETHICS EXAMINATION - LPCC

(a) An applicant for licensure shall take the California law and ethics examination during the following time frames in accordance with section 1806:

(1) Within one year from the date the applicant was notified of initial eligibility to take the examination.

(2) Within one year from the date the applicant was notified of failing the examination.

(b) Registrants shall take the California law and ethics examination during the following time frames:

(1) A registrant whose intern registration is issued on or after January 1, 2016 shall take the examination prior to the registration's first expiration date, and shall continue to take the examination a minimum of once during each renewal cycle until passed.

(2) A registrant whose intern registration was issued prior to January 1, 2016, shall take the examination a minimum of once during each renewal cycle until passed.

(3) Should a registrant fail to take the examination as specified in (1) or (2) above, he or she will not be permitted to renew his or her registration until the examination has been taken, except during the grace period specified in section 4999.55(c) of the Code.

(4) Registrants who are eligible to retake the California law and ethics examination may do so after the required waiting period upon submission of the following:

(A) A request to take the examination including the required fee.

(B) If required, proof of completion of the 12-hour California law and ethics course as described in section 4999.55(e) of the Code.

(c) A registrant who has an approved application for licensure shall be subject to subdivisions (a) and (b).

(e)(d) This section shall become operative on January 1, 2016.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4999.52, 4999.53, 4999.55 and 4999.100, Business and Professions Code.

AMEND § 1829. EXAMINATIONS - LMFT

The written examinations shall consist of the following:

(a) A standard written examination designed to determine an applicant's knowledge, familiarity with the field, and practical understanding of the principles, techniques, objectives, theory and laws under which he or she must operate; and

(b) A written clinical vignette examination designed to assess the applicant's judgment, knowledge of the application of psychosocial and psychotherapeutic methods and measures in treatment, and ability to assume professional responsibilities.

(c) This section shall become inoperative on January 1, 2016.

Note: Authority cited: Sections 4980.40 and 4980.60, Business and Professions Code. Reference: Section 4980.40, Business and Professions Code.

ADD § 1829.1. REQUIRED EXAMINATIONS - LMFT

(a) The written examinations shall test for minimum acceptable competency to practice marriage and family therapy without causing harm to the public health, safety or welfare, and shall consist of the following:

(1) A California law and ethics examination designed to assess the applicant's knowledge of and ability to apply legal and ethical standards relating to the practice of marriage and family therapy.

(2) A clinical examination designed to assess an applicant's knowledge of psychotherapeutic principles and methods in treatment and their application, and the ability to make judgments about appropriate techniques, methods and objectives as applicable to the marriage and family therapist scope of practice.

(b) The clinical examination as described in subsection (a)(2) may be a board administered examination or a national examination determined by the board to be acceptable.

(c) This section shall become operative on January 1, 2016.

Note: Authority cited: Sections 4980.40 and 4980.60, Business and Professions Code. Reference: Sections 4980.397, 4980.398, 4980.399, 4980.50, Business and Professions Code.

ADD § 1829.2. ELIGIBILITY FOR LAW AND ETHICS EXAMINATION - LMFT

(a) Notwithstanding any other provision of law, eligibility to take the California law and ethics examination requires an applicant to, at minimum, meet one of the following:

(1) The applicant holds a current, delinquent or cancelled intern registration, submits a request and pays the fee to take the examination.

(A) When a registrant who holds a current or delinquent registration takes the examination and does not pass, the registrant shall complete a 12-hour course on California law and ethics as specified in section 4980.399(e) of the Code, in order to be eligible to take the examination during the next renewal cycle.

(2) The applicant currently has an approved application for licensure.

(b) This section shall become operative on January 1, 2016.

Note: Authority cited: Sections 4980.60 and 4990.20(a), Business and Professions Code. Reference: Sections 4980.397, 4980.398, 4980.399, 4980.50, and 4984.01, Business and Professions Code.

ADD § 1829.3. TIME FRAMES - LAW & ETHICS EXAMINATION - LMFT

(a) An applicant for licensure shall take the California law and ethics examination during the following time frames in accordance with section 1806:

(1) Within one year from the date the applicant was notified of initial eligibility to take the examination.

(2) Within one year from the date the applicant was notified of failing the examination.

(b) Registrants shall take the California law and ethics examination during the following time frames:

(1) A registrant whose intern registration is issued on or after January 1, 2016 shall take the examination prior to the registration's first expiration date, and shall continue to take the examination a minimum of once during each renewal cycle until passed.

(2) A registrant whose intern registration was issued prior to January 1, 2016, shall take the examination a minimum of once during each renewal cycle until passed.

(3) Should a registrant fail to take the examination as specified in (1) or (2) above, he or she will not be permitted to renew his or her registration until the examination has been taken, except during the grace period specified in section 4980.399(c) of the Code.

(4) Registrants who are eligible to retake the California law and ethics examination may do so after the required waiting period upon submission of the following:

(A) A request to take the examination including the required fee.

(B) If required, proof of completion of the 12-hour California law and ethics course as described in section 4980.399(e) of the Code.

(c) A registrant who has an approved application for licensure shall be subject to subdivisions (a) and (b).

(e)(d) This section shall become operative on January 1, 2016.

Note: Authority cited: Sections 4980.60 and 4990.20(a), Business and Professions Code. Reference: Sections 4980.397, 4980.398, 4980.399, 4980.50, and 4984.01, Business and Professions Code.

AMEND § 1877. EXAMINATIONS - LCSW

The written examinations shall consist of the following:

- (a) A standard written examination designed to determine an applicant's knowledge, familiarity with the field, and practical understanding of the principles, techniques, objectives, theory and laws under which he or she must operate; and
- (b) A written clinical vignette examination designed to assess the applicant's judgment, knowledge of the application of psychosocial and psychotherapeutic methods and measures in treatment, and ability to assume professional responsibilities.

(c) This section shall become inoperative on January 1, 2016.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Section 4992.1, Business and Professions Code.

ADD § 1877.1. REQUIRED EXAMINATIONS - LCSW

(a) The written examinations shall test for minimum acceptable competency to practice clinical social work without causing harm to the public health, safety or welfare, and shall consist of the following:

(1) A California law and ethics examination designed to assess the applicant's knowledge of and ability to apply legal and ethical standards relating to the practice of clinical social work.

(2) A clinical examination designed to assess an applicant's knowledge of psychosocial principles and methods in treatment and their application, and the ability to make judgments about appropriate techniques, methods and objectives as applicable to the clinical social worker scope of practice.

(b) The clinical examination as described in subsection (a)(2) may be a board administered examination or a national examination determined by the board to be acceptable.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4992.1, 4992.05, 4992.07 and 4992.09, Business and Professions Code.

ADD § 1877.2. ELIGIBILITY FOR LAW AND ETHICS EXAMINATION - LCSW

(a) Notwithstanding any other provision of law, eligibility to take the California law and ethics examination requires an applicant to, at minimum, meet one of the following:

(1) The applicant holds a current, delinquent or cancelled associate registration, submits a request and pays the fee to take the examination.

(A) When a registrant who holds a current or delinquent registration takes the examination and does not pass, the registrant shall complete a 12-hour course on California law and ethics as specified in section 4992.09(e) of the Code, in order to be eligible to take the examination during the next renewal cycle.

(2) The applicant currently has an approved application for licensure.

(b) This section shall become operative on January 1, 2016.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Sections 4992.05, 4992.07, 4992.09, 4992.1, and 4996.28 Business and Professions Code.

ADD § 1877.3. TIME FRAMES - LAW & ETHICS EXAMINATION - LCSW

(a) An applicant for licensure shall take the California law and ethics examination during the following time frames in accordance with section 1806:

(1) Within one year from the date the applicant was notified of initial eligibility to take the examination.

(2) Within one year from the date the applicant was notified of failing the examination.

(b) Registrants shall take the California law and ethics examination during the following time frames:

(1) A registrant whose associate registration is issued on or after January 1, 2016 shall take the examination prior to the registration's first expiration date, and shall continue to take the examination a minimum of once during each renewal cycle until passed.

(2) A registrant whose associate registration was issued prior to January 1, 2016, shall take the examination a minimum of once during each renewal cycle until passed.

(3) Should a registrant fail to take the examination as specified in (1) or (2) above, he or she will not be permitted to renew his or her registration until the examination has been taken, except during the grace period specified in section 4992.09(c) of the Code.

(4) Registrants who are eligible to retake the California law and ethics examination may do so after the required waiting period upon submission of the following:

(A) A request to take the examination including the required fee.

(B) If required, proof of completion of the 12-hour California law and ethics course as described in section 4992.09(e) of the Code.

(c) A registrant who has an approved application for licensure shall be subject to subdivisions (a) and (b).

(d) This section shall become operative on January 1, 2016.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Sections 4992.05, 4992.07, 4992.09, 4992.1, 4996.4 and 4996.28 Business and Professions Code.

Attachment B

PERTINENT STATUTES EXAM RESTRUCTURE

LMFT STATUTES

§4980.397. REQUIRED EXAMINATIONS; EFFECTIVE JANUARY 1, 2016

- (a) Effective January 1, 2016, an applicant for licensure as a marriage and family therapist shall pass the following two examinations as prescribed by the board:
- (1) A California law and ethics examination.
 - (2) A clinical examination.
- (b) Upon registration with the board, a marriage and family therapist intern shall, within the first year of registration, take an examination on California law and ethics.
- (c) A registrant may take the clinical examination only upon meeting all of the following requirements:
- (1) Completion of all required supervised work experience.
 - (2) Completion of all education requirements.
 - (3) Passage of the California law and ethics examination.
- (d) This section shall become operative on January 1, 2016.

§4980.398. EXAMINATION RESTRUCTURE TRANSITION SCENARIOS; EFFECTIVE JANUARY 1, 2016

- (a) Each applicant who had previously taken and passed the standard written examination but had not passed the clinical vignette examination shall also obtain a passing score on the clinical examination in order to be eligible for licensure.
- (b) An applicant who had previously failed to obtain a passing score on the standard written examination shall obtain a passing score on the California law and ethics examination and the clinical examination.
- (c) An applicant who had obtained eligibility for the standard written examination shall take the California law and ethics examination and the clinical examination.
- (d) This section shall become operative on January 1, 2016.

§4980.399. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

- (a) Except as provided in subdivision (a) of Section 4980.398, each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.
- (b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.
- (c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by the section shall be taken through a board-approved continuing education provider, a county, state or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative on January 1, 2016.

§4980.40. QUALIFICATIONS; OPERATIVE JANUARY 1, 2016

To qualify for a license, an applicant shall have all of the following qualifications:

(a) Meet the educational requirements of Section 4980.36 or both Sections 4980.37 and 4980.41, as applicable.

(b) Be at least 18 years of age.

(c) Have at least two years of experience that meet the requirements of Section 4980.43.

(d) Effective January 1, 2016, successfully pass a California law and ethics examination and a clinical examination. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

(e) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(f) This section shall become operative on January 1, 2016.

§4980.50. EXAMINATION; ISSUANCE OF LICENSE; EXAMINATION RECORD RETENTION; SEVEN YEAR LIMITATION ON CLINICAL EXAMINATION; EFFECTIVE JANUARY 1, 2016

Effective January 1, 2016, the following shall apply:

(a) Every applicant who meets the educational and experience requirements and applies for a license as a marriage and family therapist shall be examined by the board. The examinations shall be as set forth in subdivision (d) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(c) The board shall not deny any applicant, whose application for licensure is complete, admission to the clinical examination, nor shall the board postpone or delay any applicant's clinical examination or

delay informing the candidate of the results of the clinical examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

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

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

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

(g) Effective January 1, 2016, no applicant shall be eligible to participate in the clinical examination if he or she fails to obtain a passing score on the clinical examination within seven years from his or her initial attempt, unless he or she takes and obtains a passing score on the current version of the California law and ethics examination.

(h) A passing score on the clinical examination shall be accepted by the board for a period of seven years from the date the examination was taken.

(i) An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage and family therapist in the form that the board may deem appropriate.

(j) This section shall become operative on January 1, 2016.

§4984.01. INTERN REGISTRATION; DURATION; RENEWAL; EFFECTIVE JANUARY 1, 2016

(a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

- (1) Apply for renewal on a form prescribed by the board.
- (2) Pay a renewal fee prescribed by the board.
- (3) Participate in the California law and ethics examination pursuant to Section 4980.399 each year until successful completion of this examination.
- (4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.

(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4980.399. An applicant who is issued a subsequent intern

registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(d) This section shall become operative on January 1, 2016.

§4984.7. LICENSING AND EXAM FEES SCHEDULE; EFFECTIVE JANUARY 1, 2016

(a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

- (1) The application fee for an intern registration shall be seventy-five dollars (\$75).
- (2) The renewal fee for an intern registration shall be seventy-five dollars (\$75).
- (3) The fee for the application for examination eligibility shall be one hundred dollars (\$100).
- (4) The fee for the clinical examination shall be one hundred dollars (\$100). The fee for the California law and ethics examination shall be one hundred dollars (\$100).

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

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

- (5) The fee for rescoring an examination shall be twenty dollars (\$20).
- (6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars (\$180).
- (7) The fee for license renewal shall be a maximum of one hundred eighty dollars (\$180).
- (8) The fee for inactive license renewal shall be a maximum of ninety dollars (\$90).
- (9) The renewal delinquency fee shall be a maximum of ninety dollars (\$90). A person who permits his or her license to expire is subject to the delinquency fee.
- (10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).
- (11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).
- (12) The fee for issuance of a retired license shall be forty dollars (\$40).

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

(c) This section shall become operative on January 1, 2016.

§4984.72. FAILED CLINICAL EXAMINATION; REEXAMINATION; NEW APPLICATION REQUIREMENT; EFFECTIVE JANUARY 1, 2016

(a) Effective January 1, 2016, an applicant who fails the clinical examination may, within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees.

(b) This section shall become operative on January 1, 2016.

LCSW STATUTES

§4992.05. REQUIRED EXAMINATIONS; EFFECTIVE JANUARY 1, 2016

(a) Effective January 1, 2016, an applicant for licensure as a clinical social worker shall pass the following two examinations as prescribed by the board:

- (1) A California law and ethics examination.
- (2) A clinical examination.

(b) Upon registration with the board, an associate social worker registrant shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination only upon meeting all of the following requirements:

- (1) Completion of all education requirements.
- (2) Passage of the California law and ethics examination.
- (3) Completion of all required supervised work experience.

(d) This section shall become operative on January 1, 2016.

§4992.07. EXAMINATION RESTRUCTURE TRANSITION SCENARIOS; EFFECTIVE JANUARY 1, 2016

(a) An applicant who had previously taken and passed the standard written examination but had not passed the clinical vignette examination shall also obtain a passing score on the clinical examination in order to be eligible for licensure.

(b) An applicant who had previously failed to obtain a passing score on the standard written examination shall obtain a passing score on the California law and ethics examination and the clinical examination.

(c) An applicant who had obtained eligibility for the standard written examination shall take the California law and ethics examination and the clinical examination.

(d) This section shall become operative on January 1, 2016.

§4992.09. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

(a) Except as provided in subdivision (a) of Section 4992.07, an applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except for as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a board-approved continuing education provider, a county, state or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative on January 1, 2016.

§4992.1. ELIGIBILITY FOR EXAMINATION; EXAMINATION RECORD RETENTION; SEVEN YEAR LIMITATION ON CLINICAL EXAMINATION; EFFECTIVE JANUARY 1, 2016

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

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

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

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

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

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

(g) Effective January 1, 2016, no applicant shall be eligible to participate in the clinical examination if he or she fails to obtain a passing score on the clinical examination within seven years from his or her initial attempt, unless he or she takes and obtains a passing score on the current version of the California law and ethics examination.

(h) A passing score on the clinical examination shall be accepted by the board for a period of seven years from the date the examination was taken.

(i) This section shall become operative on January 1, 2016.

§4996.1. ISSUANCE OF LICENSE; EFFECTIVE JANUARY 1, 2016

(a) Effective January 1, 2016, the board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and who successfully passes a California law and ethics examination and a clinical examination. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

(b) This section shall become operative on January 1, 2016.

§4996.3. LICENSING AND EXAM FEES; EFFECTIVE JANUARY 1, 2016

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

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

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

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

(4) The fee for the clinical examination shall be one hundred dollars (\$100). The fee for the California law and ethics examination shall be one hundred dollars (\$100).

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

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

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

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

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

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

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

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

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

(12) The fee for issuance of a retired license shall be forty dollars (\$40).

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

(c) This section shall become operative on January 1, 2016.

§4996.4. FEE FOR REEXAMINATION; EFFECTIVE JANUARY 1, 2016

(a) Effective January 1, 2016, an applicant who fails the clinical examination may, within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all required fees.

(b) This section shall become operative on January 1, 2016.

LPCC STATUTES

§4999.45. INTERN EMPLOYMENT; DUTIES, RESPONSIBILITIES AND LIMITATIONS; EFFECTIVE JANUARY 1, 2016

(a) An intern employed under this chapter shall:

(1) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(2) Not be employed or volunteer in a private practice until registered as an intern.

(3) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(4) Renew annually for a maximum of five years after initial registration with the board.

(b) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(c) This section shall become operative on January 1, 2016.

§4999.50. ISSUANCE OF LICENSE; REQUIREMENTS; EFFECTIVE JANUARY 1, 2016

(a) The board may issue a professional clinical counselor license to any person who meets all of the following requirements:

(1) He or she has received a master's or doctoral degree described in Section 4999.32 or 4999.33, as applicable.

(2) He or she has completed at least 3,000 hours of supervised experience in the practice of professional clinical counseling as provided in Section 4999.46.

(3) He or she provides evidence of a passing score, as determined by the board, on the examinations designated in Section 4999.53.

(b) An applicant who has satisfied the requirements of this chapter shall be issued a license as a professional clinical counselor in the form that the board may deem appropriate.

(c) This section shall become operative on January 1, 2016.

§4999.52. EXAMINATION; BOARD DETERMINATION; EXAMINATION ADMISSION DENIAL; EFFECTIVE JANUARY 1, 2016

(a) Except as provided in Section 4999.54, every applicant for a license as a professional clinical counselor shall be examined by the board. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

- (b) The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine.
- (c) The board shall not deny any applicant who has submitted a complete application for examination admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.
- (d) The board shall not deny any applicant whose application for licensure is complete admission to the examinations specified by paragraph (2) of subdivision (a) of Section 4999.53, nor shall the board postpone or delay this examination for any applicant or delay informing the candidate of the results of this examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.
- (e) If an applicant for the examination specified by paragraph (2) of subdivision (a) of Section 4999.53, who has passed the California law and ethics examination, is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take this examination, but may notify the applicant that licensure will not be granted pending completion of the investigation.
- (f) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the California law and ethics examination, or the examination specified by paragraph (2) of subdivision (a) of Section 4999.53, permission to retake either examination pending completion of the investigation of any complaints against the applicant.
- (g) Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, respectively, or the application has been denied in accordance with subdivision (b) of Section 485.
- (h) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.
- (i) On and after January 1, 2016, the examination specified by paragraph (2) of subdivision (a) of Section 4999.53 shall be passed within seven years of an applicant's initial attempt.
- (j) A passing score on the clinical examination shall be accepted by the board for a period of seven years from the date the examination was taken.
- (k) No applicant shall be eligible to participate in the examination specified by paragraph (2) of subdivision (a) of Section 4999.53, if he or she fails to obtain a passing score on this examination within seven years from his or her initial attempt. If the applicant fails to obtain a passing score within seven years of initial attempt, he or she shall obtain a passing score on the current version of the California law and ethics examination in order to be eligible to retake this examination.
- (l) This section shall become operative on January 1, 2016.

§4999.53. REQUIRED EXAMINATIONS; EFFECTIVE JANUARY 1, 2016

(a) Effective January 1, 2016, a clinical counselor intern applying for licensure as a clinical counselor shall pass the following examinations as prescribed by the board:

(1) A California law and ethics examination.

(2) A clinical examination administered by the board, or the National Clinical Mental Health Counselor Examination if the board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California.

(b) Upon registration with the board, a clinical counselor intern shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination or the National Clinical Mental Health Counselor Examination, as established by the board through regulation, only upon meeting all of the following requirements:

(1) Completion of all required supervised work experience.

(2) Completion of all education requirements.

(3) Passage of the California law and ethics examination.

(d) This section shall become operative on January 1, 2016.

§4999.55. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

(a) Each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application, except as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a board-approved continuing education provider, a county, state, or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative January 1, 2016.

§4999.64. REEXAMINATION

(a) Effective January 1, 2016, an applicant who fails the examination specified in paragraph (2) of subdivision (a) of Section 4999.53 may, within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees.

(b) This section shall become operative on January 1, 2016.

§4999.100. EXPIRATION OF INTERN REGISTRATION; RENEWAL OF UNEXPIRED REGISTRATION; EFFECTIVE JANUARY 1, 2016

(a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

(4) Participate in the California law and ethics examination pursuant to Section 4999.53 each year until successful completion of this examination.

(c) The intern registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(d) This section shall become operative on January 1, 2016.

§4999.120. FEES

The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall be up to two hundred fifty dollars (\$250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars (\$150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars (\$180).

(d) The fee for the board-administered clinical examination, if the board chooses to adopt this examination in regulations, shall be up to two hundred fifty dollars (\$250).

(e) The fee for the law and ethics examination shall be up to one hundred fifty dollars (\$150).

- (f) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars (\$100).
- (g) The fee for the issuance of a license shall be up to two hundred fifty dollars (\$250).
- (h) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars (\$150).
- (i) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars (\$250).
- (j) The fee for issuance of a retired license shall be forty dollars (\$40).
- (k) The fee for rescoring an examination shall be twenty dollars (\$20).
- (l) The fee for issuance of a replacement license or registration shall be twenty dollars (\$20).
- (m) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).

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To: Board Members **Date:** August 8, 2014
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
**Subject: Proposed Regulations Incorporating Uniform Standards for Discipline of
Substance Abusing Healing Arts Licensees**

This is a regulatory proposal that the Department of Consumer Affairs (DCA) and the Legislature are asking all healing arts licensing boards to run. It creates uniform standards for discipline that the boards must abide by in cases of licensee or registrant substance abuse.

The Board has considered and approved these regulations several times, most recently at its March 6, 2014 meeting. The proposed language was then submitted to the Office of Administrative Law (OAL) for notice, and the regulations have gone through the required 45-day public comment period.

However, DCA has requested additional amendments in order to gain its approval, which is required for the regulations to continue to move forward. The amendments requested by DCA are as follows:

1. **Amendment to Section 1888.** Subsection (b) of Section 1888 outlines the circumstances in which the Uniform Standards related to substance abuse would apply. The language had stated that in the case of a substance abuse violation, the Uniform Standards must apply without deviation if the licensee or registrant does not rebut the violation. The language also allowed deviation from the Uniform Standards if the licensee, registrant, or the Board established that appropriate public protection could be provided with modification or omission of a specific standard.

DCA states that if a licensee or registrant has a substance abuse violation, and he or she does not rebut that the violation is a substance abuse violation, then the law allows no deviation from the Uniform Standards. Therefore, language stating that the licensee, registrant or Board has discretion to modify or omit a specific uniform standard is prohibited.

Due to this change, staff has also rearranged some language in Section 1888, because while deviation from the Disciplinary Guidelines is permitted, it is not permitted for the Uniform Standards.

2. **Amendment to “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”, page 4, 1st paragraph.** Like Section 1888, this section also outlines the cases in which the Uniform Standards related to substance abuse would apply. It contained similar

language, allowing deviation from the Uniform Standards if the licensee, registrant, or the Board establishes that appropriate public protection can be provided with modification or omission of a specific uniform standard.

Due to DCA's determination that such deviation is not allowed, this discretion has been removed. However, language used in Section 1888, allowing a licensee or registrant to rebut the violation is a substance abuse violation has been added, as DCA is permitting that language.

These additional amendments are shown with double underline and double strikeout in **Attachment A**, and are in red text.

Recommendation

Conduct an open discussion regarding the new amendments. Direct staff to make any discussed or any non-substantive changes and to do the following:

1. Approve the modified text for a 15-day public comment period and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified.
2. Delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

Attachments

- A. Proposed revisions to CCR Section 1888 and Disciplinary Guidelines
- B. Background of the SB 1441 Regulations
- C. Uniform Standards Regarding Substance Abusing Healing Arts Licensees – Report prepared by DCA Substance Abuse Coordination Committee, April 2011
- D. SB 1441 Text

Board of Behavioral Sciences Proposed Modified Text of Regulations

NOTE: Single underline indicates originally proposed new language. Single strikeout indicates originally proposed modified deleted language.

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

§1888. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall ~~consider the disciplinary guidelines entitled “Board of Behavioral Sciences consider the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” [Rev. December 2012 OAL to insert effective date]~~ consider the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” [Rev. December 2012 OAL to insert effective date] which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards Related to Substance Abuse apply to cases of substance abuse. ~~Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.~~

~~(a)(b) Notwithstanding subsection (a), if the conduct found to be a violation involves drugs and/or alcohol, the violation is a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not rebut that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply without deviation. ~~unless the licensee, registrant, or the Board establishes that, in that particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.~~~~

~~(b) Notwithstanding subsection (a), ~~Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems. Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.~~~~

(c) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

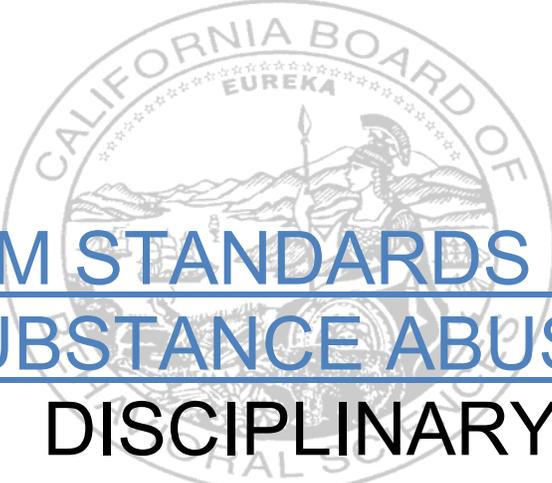
Note: Authority cited: Sections 315, 315.2, 315.4, 4980.60 and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 4982, 4989.54, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

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State of California

Department of Consumer Affairs

Board of Behavioral Sciences

The seal of the California Board of Behavioral Sciences is a circular emblem. It features a central figure, likely a personification of Justice or a similar allegorical figure, holding a scale and a sword. The figure is set against a background of a landscape with mountains and a sun. The words "CALIFORNIA BOARD OF" are arched across the top, and "EUREKA" is written in the center. The bottom of the seal is partially obscured by the text below.

UNIFORM STANDARDS RELATED
TO SUBSTANCE ABUSE AND
DISCIPLINARY
GUIDELINES

Revised: December 2012 (OAL to Insert Effective Date)

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California, or from its web site at www.bbs.ca.gov.

INTRODUCTION

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

These guidelines consist of ~~two~~[four](#) parts:

[I. Uniform Standards Related to Substance Abuse – for those licensees and registrants with a violation related to alcohol and/or a controlled substance, or whose license or registration is on probation due to a substance abuse violation;](#)

[II. Penalty Guidelines - an identification of the types of violations and range of penalties, for which discipline may be imposed;](#) ~~(Penalty Guidelines); and~~

[III. ~~Model~~ Disciplinary Orders - language for proposed terms and conditions of probation](#) ~~(Model Disciplinary Orders); and~~

[IV. Board Policies and Guidelines – for various enforcement actions.](#)

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

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

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I. Uniform Standards Related to Substance Abuse

Uniform Standards For Licensees Or Registrants Whose License Or Registration Is On Probation Due To A Substance Abuse Violation

The following standards shall apply in all cases in which a license or registration is placed on probation due, in part, to a substance abuse violation, unless the licensee, or registrant, or the Board establishes that, in that particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation, rebuts that the violation is a substance abuse violation.

Clinical Diagnostic Evaluations

Whenever a licensee or registrant is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.
2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

Clinical Diagnostic Evaluation Report

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee or registrant has a substance abuse problem, whether the licensee or registrant is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice, restrictions, or other recommendations related to the licensee or registrant's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, business or professional relationship with the licensee or registrant. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee or registrant is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 calendar days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant's history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

When determining if the licensee or registrant should be required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license or registration type, licensee or registrant's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee or registrant is a threat to himself or herself or others.

Supervisor Requirements

If the Board determines that a supervisor is necessary for a particular licensee or registrant, the supervisor must meet the following requirements to be considered for approval by the Board:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee or registrant's supervisor be an employee or supervisee of the licensee or registrant.

2. The supervisor's license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no supervisor with like scope of practice is available.
3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant's disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.
2. Interview other staff in the office regarding the licensee or registrant's behavior, if applicable.
3. Review the licensee or registrant's work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:
 - a. the licensee or registrant's name;
 - b. license or registration number;
 - c. supervisor's name and signature;
 - d. supervisor's license number;
 - e. worksite location(s);
 - f. dates licensee or registrant had face-to-face contact with supervisor;
 - g. worksite staff interviewed, if applicable;
 - h. attendance report;
 - i. any change in behavior and/or personal habits; and

- j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

Chemical Dependency Support or Recovery Group Meetings

If the Board requires a licensee or registrant to participate in chemical dependency support or recovery group meetings, the Board shall take the following into consideration when determining the frequency of required group meeting attendance:

1. the licensee or registrant's history;
2. the documented length of sobriety;
3. the recommendation of the clinical diagnostic evaluator;
4. the scope and pattern of substance abuse;
5. the licensee or registrant's treatment history; and
6. the nature, duration, and severity of substance abuse.

The group meeting facilitator of a chemical dependency support or recovery group that a Board licensee or registrant is required to participate in must meet the following requirements:

1. Have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
2. Be licensed or certified by the state or other nationally certified organizations to provide substance abuse recovery services;
3. Does not have a financial, personal, business or professional relationship with the licensee or registrant within the last year;
4. Must provide the Board a signed document showing the licensee or registrant's name, the group name, the date and location of the meeting, the licensee or registrant's attendance, and the licensee or registrant's level of participation and progress.
5. Must report to the Board any unexcused absence of a Board licensee or registrant being required to participate within 24 hours.

Major and Minor Violations

Major violations include, but are not limited to, the following:

1. Failure to complete any Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing more than one minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;

5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to report for drug and alcohol testing when ordered;
7. Testing positive for alcohol and/or a controlled substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a supervisor and/or monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or registrant or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate. The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

Positive Test for Alcohol and/or a Controlled Substance

If a licensee or registrant tests positive for alcohol and/or a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;

- Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and
- Immediately notify the licensee or registrant's employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for alcohol and/or a controlled substance is evidence of prohibited use:

- Consult the specimen collector and the laboratory;
- Communicate with the licensee or registrant and/or treating physician; and
- Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

Drug Testing Standards

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.
2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.
4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.
5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
8. Collection of specimens shall be observed.
9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

Drug Testing Frequency Schedule

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

<u>Level</u>	<u>Year of Probation</u>	<u>Minimum Range Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II</u>	<u>Years 2 through 5</u>	<u>36-104 per year</u>
<u>III</u>	<u>After Year 5</u>	<u>Once per month*</u>

*If no positive drug tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

Drug Testing Frequency Schedule Exceptions

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. Licensee or Registrant Demonstrates Previous Testing and Sobriety

The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.

2. Violations Outside of Employment

A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. Not Employed in Health Care Field

The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. Tolling

The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. Substance Use Disorder Not Diagnosed

If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.

Criteria to Petition to Return to Practice

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;
3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and
4. Complete compliance with the other terms and conditions of his or her program.

Criteria to Petition for Reinstatement to Unrestricted License or Registration

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);
2. Demonstrated successful completion of a rehabilitation program (if required);
3. Demonstration of a consistent and sustained participation in activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated ability to practice safely; and
5. Continuous sobriety for at least three (3) to five (5) years.

II. Penalty Guidelines

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

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

<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
MFT: B&P § 4982.26(k) LCSW: B&P § 4992.33 LEP: B&P § 4989.58 LPCC: B&P § 4999.90(k) GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p>The law requires revocation/denial of license or registration.</p>
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(y)(1) LEP: B&P § 4989.54(y)(1) LPCC: B&P § 4999.90(z)(1)	Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(l), 4992.33 CCR § 1881(f) LEP B&P § 4989.58 B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480, 726	Sexual Misconduct (Anything other than as defined in B&P Section 729)	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Take and pass licensure examinations as a condition precedent to resumption of practice • 7 years probation • Standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to resumption of practice • Supervised practice 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p>(See B&P 4982.26, 4989.58, 4992.33)</p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>

		<ul style="list-style-type: none"> • Psychotherapy • Education • Take and pass licensure examination • Reimbursement of probation program <p>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid/drug and alcohol testing-and samples; restricted practice, reimbursement of probation program costs.</p>	
<p>MFT: B&P § 4982(k) LCSW: B&P § 4992.3(l) CCR § 1881(f) LEP: B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480</p>	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: , 4989.54(c) LPCC: B&P § 4999.90(c) GP: B&P § 480, 820</p>	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery • Reimbursement of probation program costs. <p><u>In addition:</u></p> <ul style="list-style-type: none"> • MENTAL ILLNESS: Psychological/psychiatric 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

		<p>evaluation; psychotherapy.</p> <ul style="list-style-type: none"> • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Random drug and alcohol testing, psychological/psychiatric/clinical diagnostic evaluation; supervised practice; therapy; rehabilitation program; abstain from controlled substances/use of alcohol; submit to biological fluid tests and samples; and if warranted: restricted practice. 	
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.54(c), 4989.56 LPCC: B&P § 4999.90(c) GP: B&P § 480</p>	<p>Chemical Dependency / Use of Drugs With Client While Performing Services</p>	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric clinical diagnostic evaluation and to implement any recommendations from that evaluation • Random drug and alcohol testing • 5 years probation • Standard terms and conditions • Psychological/psychiatric/clinical diagnostic evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances/use of alcohol • Submit to biological fluid test and samples • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychotherapy; restricted practice</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(i) LCSW: B&P § 4992.3(j) CCR § 1881(d) LEP: B&P § 4989.54(m) LPCC: B&P § 4999.90(i) GP: B&P § 480</p>	<p>Intentionally / Recklessly Causing Physical or Emotional Harm to Client</p>	<ul style="list-style-type: none"> • Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application • Cost recovery

		And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.	
Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: B&P § 4989.54(k) LPCC: B&P § 4999.90(d) GP: B&P § 480	Gross Negligence / Incompetence	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid drug and alcohol testing; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4989.54 CCR § 1858 LPCC: B&P § 4999.90 GP: B&P § 125.6 480, 821	General Unprofessional Conduct	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid drug and alcohol testing; restricted practice, law and ethics course.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
<p>MFT: B&P § 4980.40(e), 4982(a) LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(b) LEP: B&P § 4989.20(a)(3), 4989.54(a) LPCC: B&P § 4999.90(a) GP: B&P § 480, 490, 493</p>	<p>Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant</p>	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Random drug and alcohol testing, Psychological/psychiatric/clinical diagnostic evaluation; psychotherapy; supervised practice, rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(k) CCR § 1881(e) LEP: B&P § 4989.54(g) LPCC: B&P § 4999.90(j) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(m) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4989.14 4989.54(r) 1858(b) CCR § LPCC: B&P § 4999.90(l), 4999.90(s) 4999.90(t) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4989.54(h), 4989.54(i) LPCC: B&P § 4990.38 GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	<ul style="list-style-type: none"> • Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P §4992.7 LEP: B&P § 4989.54(b) LPCC: B&P § 4999.90 (b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application; • Cost recovery. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980, 4982(f) CCR § 1845(a), LCSW: B&P § 4992.3(f), 4996 1845(b) CCR § 1881(a) LEP: B&P § 4989.54(l) LPCC: B&P § 4999.90(f) GP: B&P § 480	Misrepresentation of License / Qualifications	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: take and pass licensure examinations.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(r) - CCR § 1881(l) LEP: B&P § 4989.54(s) LPCC: B&P § 4999.90(q) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	<ul style="list-style-type: none"> • Revocation stayed • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(h), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) LPCC: B&P § 4999.90(g) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 5 years probation • Supervised practice • Standard terms and conditions • Psychological/psychiatric evaluation • Psychotherapy • Cost recovery • Reimbursement of probation costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(i) CCR § 1881(c) LEP: B&P § 4989.54 (t) LPCC: B&P § 4999.90(h) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(n) CCR § 1881(i) LEP: B&P § 4989.54 (q) LPCC: B&P § 4999.90(m) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Take and pass licensure exams • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 728 LCSW: B&P § 728 LPCC: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> • Revocation stayed • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(s) LEP: B&P § 4989.54(ab), CCR § LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u) 1858(b)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(f), 4992.3(s) LEP: B&P § 4989.54(f) LPCC: B&P § 4999.90(e) GP: 4999.90(u) B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	<ul style="list-style-type: none"> • Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(p) CCR § 1881(n) LEP: B&P § 4989.54(p) LPCC: B&P § 4999.90 (o) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	<ul style="list-style-type: none"> • Revocation stayed • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs • Law and Ethics course 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(o) CCR § 1881(j) LEP: B&P § 4989.54(o) LPCC: B&P § 4999.90 (n)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program
MFT: B&P § 4980.46, LCSW: B&P § 4992.3(q) CCR § 1881(k) LEP: B&P § 4989.54(e) LPCC: B&P § 4999.90(p) GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(t) LEP: B&P § 4989.54(j) LPCC: B&P § 4999.90(v)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(y) LCSW: B&P § 4992.3(w) LEP: B&P § 4989.54(x)	Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(z) LCSW: B&P § 4992.3(x) LEP: B&P § 4989.54(d) LPCC: B&P § 4999.90(ac)	Failure To Comply With Section 2290.5 (Telehealth)	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery; • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

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III. Model Disciplinary Orders

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

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

Optional Terms and Conditions of Probation

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

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

1. Actual Suspension

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

OR

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

and pass licensure examinations).

Respondent shall be responsible for informing his or her employer of the Board's decision, and the reasons for the length of suspension. Respondent shall submit documentation and/or evidence demonstrating satisfactory compliance with this condition. Prior to the lifting of the actual suspension of the license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

2. Psychological / Psychiatric Evaluation

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

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

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

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

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

3. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 15 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are

unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

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

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

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

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

4. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license or registration shall be automatically suspended for a minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent's license or registration shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

4.5. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in

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

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

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

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

Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities. Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

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

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

5-6. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, -or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

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

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

6-7. Take and Pass Licensure Examinations

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

7-8. Rehabilitation Program

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

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

8-9. Abstain from Controlled Substances / Submit to ~~Biological Fluid~~ Drug and Alcohol Testing and Samples

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

Respondent shall immediately submit to ~~random and directed~~ biological fluid drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. The length of time and frequency will be determined by the Board.—There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

9-10. Abstain from Use of Alcohol / Submit to Biological Fluid Drug and Alcohol Testing and Samples

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

Respondent shall immediately submit to random and directed biological fluid drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. The length of time and frequency will be determined by the Board. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the respondent's Respondent, the Respondent's current employer, and to the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for alcohol and/or a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

40-11. Restricted Practice

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

41-12. Restitution

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

42-13. Physical Evaluation

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

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information

as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

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

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

43-14. Monitor Billing System

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more independent billing systems which monitor and document the dates and times of client visits. Respondent shall obtain the services of the independent billing system monitoring program within fifteen (15) days after notification of the board's approval of such program. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

44-15. Monitor Billing System Audit

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

45-16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education

units required for renewal of licensure.

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

Standard Terms and Conditions of Probation

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

- ~~16-17.~~ Obey All Laws
- ~~17-18.~~ File Quarterly Reports
- ~~18-19.~~ Comply with Probation Program
- ~~19-20.~~ Interviews with the Board
- ~~20-21.~~ Failure to Practice
- ~~21-22.~~ Change of Place of Employment or Place of Residence
- ~~22-23.~~ Supervision of Unlicensed Persons
- ~~23-24.~~ Notification to Clients
- ~~24-25.~~ Notification to Employer
- ~~25-26.~~ Violation of Probation
- ~~26-27.~~ Maintain Valid License
- ~~27-28.~~ License Surrender
- ~~28-29.~~ Instruction of Coursework Qualifying for Continuing Education
- ~~29-30.~~ Notification to Referral Services
- ~~30-31.~~ Reimbursement of Probation Program
- ~~31-32.~~ Cost Recovery

Specific Language for Standard Terms and Conditions of Probation (To be included in all Decisions)

~~16-17.~~ Obey All Laws

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

~~17-18.~~ File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether

he/she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

48-19. Comply with Probation Program

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

49-20. Interviews with the Board

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

20-21. Failure to Practice

In the event respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections [4908.02-4980.02](#), 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent's license/registration shall be automatically cancelled if respondent's period of non-practice total two years.

21-22. Change of Place of Employment or Place of Residence

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

22-23. Supervision of Unlicensed Persons

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

23-24. Notification to Clients

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

satisfactory evidence of compliance with this term of probation.

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

24-25. Notification to Employer

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

The Respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors, and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor regarding the licensee or registrant's work status, performance, and monitoring.

25-26. Violation of Probation

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

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

26-27. Maintain Valid License

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

27-28. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal

acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

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

28-29. Instruction of Coursework Qualifying for Continuing Education

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

29-30. Notification to Referral Services

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

30-31. Reimbursement of Probation Program

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

34-32. Cost Recovery

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

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

IV. BOARD POLICIES AND GUIDELINES

Accusations

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

Statement of Issues

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

Stipulated Settlements

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

Recommended Language for License Surrenders

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

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

Contingency

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

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

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

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

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

Recommended Language for Registration Applicants

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

Recommended Language for Registrants

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

Recommended Language for Licensees

IT IS HEREBY ORDERED THAT _____ License Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if respondent is granted another registration or license regulated by the Board.

Proposed Decisions

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

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

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-~~15~~16) followed by the Standard Terms and Conditions (~~16-31~~17-32) as they may pertain to

the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement / Reduction of Penalty Hearings

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

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

or to conceal the truth concerning facts required to be disclosed.

- (8) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;

F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

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

Attachment B

Background of the SB 1441 Regulations

Background

This regulatory proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for dealing with licensees or registrants who abuse drugs and alcohol.

Senate Bill 1441 (Ridley-Thomas) Statutes of 2008, Chapter 548, was signed in September 2008. The bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA's healing arts boards, was tasked with formulating, by January 1, 2010, uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees.

The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

Summary of the Uniform Standards

SB 1441 outlined 16 separate topic areas for which the SACC formulated uniform standards:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including but not limited to, required qualifications for the providers evaluating the licensee.
2. Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo a clinical diagnostic evaluation and any treatment recommended by the evaluator and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Specific consequences for major violations and minor violations.
11. Criteria that a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.
14. If the board uses a private-sector vendor that provides diversion services, the extent to which licensee participates in that program shall be kept confidential from the public.
15. If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.
16. Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

Proposed Regulations

Based on the standards created by the SACC, Board staff drafted amendments which incorporated the uniform standards into the Disciplinary Guidelines, as appropriate. Standards 13 through 16 were not incorporated. These standards involve either

diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations.

The resulting “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” consists of four parts:

1. **Uniform Standards Related to Substance Abuse:** This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. **Penalty Guidelines:** This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. **Disciplinary Orders:** This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new uniform standards related to substance abuse.
4. **Board Policies and Guidelines:** Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

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Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
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Janelle Wedge
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Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
**Board of Vocational Nursing and
Psychiatric Technicians**

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Susan Geranen
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board’s testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

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Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,

approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have “diversion programs” designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board’s diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those

vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomness, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her

diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing
Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic

evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;

standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,

or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the

diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has

the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) “Board” means the Board of Registered Nursing.

(b) “Committee” means a diversion evaluation committee created by this article.

(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board’s diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the

diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.

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To: Board Members **Date:** August 11, 2014
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Review of Board Sponsored and Monitored Legislation

BOARD-SPONSORED LEGISLATION

Board staff is currently sponsoring the following legislative proposals:

1. **AB 2213 (Eggman): LMFT and LPCC Out-of-State Applicant Requirements**

Licensing requirements for out-of-state LMFT and LPCC applicants were set to change on January 1, 2014. However, the Board had concerns that the new out-of state requirements may be too stringent, restricting portability of these license types to California.

Last year, the Board sponsored AB 451 (Chapter 551, Statutes of 2013), which extended the change to the out-of-state licensing requirements from January 1, 2014 to January 1, 2016. For the past year, the Board's newly formed Out-of-State Education Committee has been working to formulate new out-of-state requirements that better accommodate license portability, while still maintaining consumer protection.

The resulting proposal makes changes to the practicum requirements for out-of-state applicants, as well as allows them to remediate certain coursework through continuing education, instead of requiring all coursework to be from a graduate program. It also allows certain coursework to be remediated while registered as an intern.

Status: This bill is on third reading in the Senate.

2. **SB 1466: Omnibus Legislation (Senate Business, Professions, and Economic Development Committee)**

This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

Status: This bill is on third reading in the Assembly.

3. **AB 1843 (Jones and Gordon): Child Custody Evaluations: Confidentiality**

The Board is seeking statutory authority to access a child custody evaluation report for the purpose of investigating allegations that one of its licensees, while serving as a child custody evaluator, engaged in unprofessional conduct in the creation of the report. Currently, the law does not give the Board

direct access to the child custody evaluation report. This leaves the Board unable to investigate allegations of unprofessional conduct of its licensees while they are serving as a custody evaluator, even though the Board is mandated to do so by law.

Status: This bill has passed the Senate and has been referred to the Assembly for concurrence.

BOARD-SUPPORTED LEGISLATION

AB 809 (Logue): Healing Arts: Telehealth

This bill would correct some deficiencies and make some clarifying amendments to the existing telehealth law.

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill is currently in the Senate Health Committee.

AB 1775 (Melendez): Child Abuse and Neglect Reporting Act: Sexual Abuse

This bill would make downloading, streaming, or accessing through electronic or digital media, material in which a child is engaged in an obscene sexual act a mandated report under the Child Abuse and Neglect Reporting Act (CANRA).

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill is enrolled and is awaiting consideration by the Governor.

AB 2058 (Wilk): Open Meetings

This bill would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if the body is a standing committee with a continuing subject matter jurisdiction, or if the body has a meeting schedule fixed by formal action of a state body.

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill is on third reading in the Senate.

SB 909 (Pavley): Dependent Children: Health Screenings

This bill clarifies that a social worker may authorize a noninvasive initial medical, dental, and mental health screening for a child taken into temporary custody by a county welfare agency due to an immediate danger.

At its May 22, 2014 meeting, the Board adopted a “support” position on this bill.

Status: This bill is now dead.

SB 578 (Wyland): Marriage and Family Therapists: Records Retention

This bill would require a licensed marriage and family therapist to retain patient records for a minimum of seven years from the date therapy is terminated.

At its May 22, 2014 meeting, the Board adopted a “support if amended” position on this bill, requesting that it be amended to include the Board’s other license types. The bill has since been amended to satisfy this request.

Status: This bill has passed the Assembly and has been referred to the Senate for concurrence.

SB 1012 (Wyland): Marriage and Family Therapists: Trainees

This bill would increase the hours of supervised experience that a marriage and family therapist intern (MFT intern) may count toward licensure, from five hours per week to six hours per week.

At its May 22, 2014 meeting, the Board adopted a “support if amended” position on this bill, requesting the following additional amendments:

1. An amendment to the law for licensed professional clinical counselor interns (LPCC interns) to allow them to count six hours per week of supervised experience as well;
2. An amendment to clarify that the amendments apply to interns, not trainees as referenced in the bill; and
3. An amendment stating that the changes made by this bill apply to supervision hours gained on or after January 1, 2009. Making the bill apply to hours gained retroactively six years back ensures that Board evaluators will not have to evaluate hours differently based on when they were gained.

The bill has since been amended to satisfy this request.

Status: This bill is currently on third reading in the Assembly.

THE BOARD IS MONITORING THE FOLLOWING LEGISLATION:

AB 186 (Maienschein): Military Spouses: Temporary Licenses

This bill requires a Board within DCA to issue a temporary license to an applicant who is a spouse of a military member stationed in California and who is already eligible for an expedited license.

At its meeting on June 26, 2014, the Board took an “oppose unless amended” position on this legislation, asking that the Board be removed from the requirements of this bill.

Status: This bill is on third reading in the Senate.

AB 1505 (Garcia): Child Abuse: Mandated Reporters

This bill specifies that consensual acts of sodomy and oral copulation are not acts of sexual assault that must be reported by a mandated reporter, unless it involves either a person over 21 or a minor under 16.

This bill died just before the Board was able to take a position at its May 22, 2014 meeting. However, the bill was discussed at the meeting as its content affects mandated reporting requirements for Board licensees. The author’s office has indicated they are interested in future legislation regarding this topic. Therefore, the Board directed staff to participate in the stakeholder process if there are future legislative efforts.

Status: This bill is dead.

AB 1702 (Maienschein): Professions and Vocations: Incarceration

This bill would prohibit a board under DCA from denying or delaying an application solely on the grounds that some or all of the licensure requirements were completed while the individual was incarcerated.

At its May 22, 2014 meeting, the Board took a “support if amended” position on this bill, and asked that the Board be removed from the bill.

Status: This bill is on third reading in the Senate.

AB 2198 (Levine): Mental Health Professionals: Suicide Prevention Training

This bill would require Board licensees to complete a six-hour training course in suicide assessment, treatment, and management. It would also require new applicants who began graduate study after January 1, 2016 to take a 15-hour course in this subject area.

At its May 22, 2014 meeting, the Board took a “oppose unless amended” position on this bill. The Board requested the bill be amended to form a task force to include members of this Board, its stakeholders, the Board of Psychology, county mental health officials, and university educators.

Status: This bill is on third reading in the Senate.

AB 2396 (Bonta): Expungement: Licenses

This bill would prohibit the Board from denying a license solely based on the applicant having certain types of convictions that have been expunged.

At its May 22, 2014 meeting, the Board took an “oppose” position on this bill.

Status: This bill is currently in the Senate Appropriations Committee Suspense File.

SB 570 (DeSaulnier): Advanced Alcohol and Drug Licensing Act

This bill establishes the Advanced Alcohol and Drug Counselor Licensing Board within DCA for the purposes of licensing and regulating Advanced Alcohol and Drug Counselor Interns and Licensed Advanced Alcohol and Drug Counselors.

The Board held a meeting on July 11, 2014, where the Board adopted a “support if amended” position on this bill. The Board identified several concerns which it requested the author’s office consider in order to ensure public protection:

- Require a master’s degree for a license, even in the grandparenting period.
- Establish a secondary licensing designation, possibly requiring supervision, for an individual who does not possess a master’s degree; and
- Clarify that the license types established in the bill are subject to SB 1441 (Ridley-Thomas, Statutes of 2008), which establishes uniform standards for substance abusing licensees that all healing arts boards under DCA must abide by.

At the July 11, 2014 meeting, the Board also voted to take an “oppose” position on this bill if it were amended to place this licensing program under the Board of Behavioral Sciences.

Status: This bill is currently in the Assembly Appropriations Committee Suspense File.

Updated: August 11, 2014

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To: Board Members

Date: August 6, 2014

From: Christy Berger
Regulatory Analyst

Telephone: (916) 574-7817

Subject: Rulemaking Update

CURRENT REGULATORY PROPOSALS

Continuing Education: Amend Title 16, California Code of Regulations (CCR) Sections 1887, 1887.1, 1887.3, 1887.4, 1887.11; Add Sections 1887.41, 1887.42, 1887.43; Delete Sections 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.13, 1887.14

This proposal would make a number of changes to the Board's continuing education program. These proposed changes are based on the recommendations of the Board's Continuing Education Committee, which was formed in 2011 in response to a number of concerns raised about continuing education.

This proposal was approved by the Board at its meeting on February 28, 2013. The Notice was filed with the Office of Administrative Law (OAL) for publication, and the 45-day public comment period ended on October 22, 2013. The proposal was sent through the typical regulatory review process, which includes the Department of Consumer Affairs (DCA), the Business, Consumer Services and Housing Agency, and the Department of Finance.

After approval by those entities, the final proposal was submitted to OAL, who required several changes to the proposed text. The 15-day public comment period for these changes ended on July 18, 2014. The revised proposal is now awaiting the signature of the DCA director, then will go to OAL for final consideration.

Disciplinary Guidelines and SB 1441: Uniform Standards for Substance Abuse: Amend Title 16, CCR Section 1888

This is a regulatory proposal that the DCA and the Legislature have asked all healing arts licensing boards to pursue. It creates uniform standards for discipline that the boards must follow in cases of licensee or registrant substance abuse. This proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for handling cases that involve licensees or registrants who abuse drugs or alcohol.

This proposal was initially approved by the Board at its meeting in November 2012. A revised proposal was approved by the Board at its meeting in March 2014.

The Notice was filed with OAL for publication, and the 45-day public comment period ended on July 8, 2014. After the close of the public comment period, the proposal was submitted to DCA for review. DCA requested some changes to the proposal, which will be considered by the Board at its August 2014 meeting. A 15-day public comment period will need to be provided after that time, and the regulation review process will continue.

Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families: Amend Title 16, CCR Sections 1820.5 and 1822; Add Sections 1820.6 and 1820.7

This proposal clarifies requirements for LPCCs to treat couples and families, and outlines a process by which LPCCs and PCC Interns would receive Board confirmation that they have met the requirements to treat couples and families.

The final proposal was approved by the Board at its meeting in May 2014. Staff is developing materials that are required for submission of the proposal to OAL for publication, which will begin the 45-day public comment period.

Implementation of SB 704 (Examination Restructure): Amend Title 16, CCR Sections 1805, 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Sections 1805.01, 1822.5, 1822.6, 1830, 1878

This proposal would revise Board regulations for consistency with statutory changes made by SB 704¹, which restructures the examination process for LMFT, LCSW, and LPCC applicants effective January 1, 2016.

This proposal was originally approved by the Board at its meeting in February 2013, and published in its California Regulatory Notice Register on March 15, 2013. However, the proposal was withdrawn in May 2013, as staff learned of implementation conflicts with the new BreEZe database system. For this reason, the effective date of the restructure was delayed until 2016².

The Policy and Advocacy Committee considered the revised proposal at its meeting in August 2014, and recommended it to the Board for consideration.

¹ Chapter 387, Statutes of 2011

² SB 821 (Chapter 473, Statutes of 2013)

2015 BOARD MEETING DATES

February 25-26, 2015 Sacramento, CA

April 23, 2015 Disciplinary Hearings* Sacramento, CA

May 20-21, 2015 Southern California

August 26-27, 2015 Sacramento, CA

October 22, 2015 Disciplinary Hearings* Southern California

November 18-19, 2015 Southern California

**Disciplinary hearings dates may be canceled if the Board does not receive any petition requests.*