

**BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: February 17, 2004

**SUBJECT MATTER OF PROPOSED REGULATIONS: REVISION OF DISCIPLINARY
GUIDELINES**

**SECTIONS AFFECTED: Section 1888 of Division 18 of Title 16 of the California
Code of Regulations**

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The proposed regulations provide needed changes to the Board's Disciplinary Guidelines document. The changes will create clarity, efficiency, consistency, and thoroughness in the guidelines. These enhancements will better protect the public by providing additional guidance for determining penalties, discipline, and probation conditions for Board licensees and registrants who have violated the law.

FACTUAL BASIS

The Board's mandate is to protect the health, safety and welfare of California consumers. The Board's highest priority is to protect consumers by employing its authority to investigate complaints and take disciplinary action against licensees, registrants and applicants for licensure who endanger the health, safety, or welfare of the consumer.

Business and Professions Code Sections 4982, 4986.70 and 4992.3 specify the grounds by which the Board may discipline a Marriage and Family Therapist, Licensed Clinical Social Worker, Licensed Educational Psychologist, Registered Marriage and Family Therapist Intern, or Associate Clinical Social Worker. Most violations involve unprofessional conduct, which includes, but is not limited to:

Gross Negligence - An extreme departure from the standard of care which has or could have resulted in harm to the consumer.

Sexual Misconduct - Any act of sexual abuse or sexual relations with a patient, or sexual misconduct substantially related to the qualifications, functions or duties of a licensee or registrant.

Conviction of a Crime - A crime substantially related to the qualifications, functions or duties of a licensee or registrant. Examples include convictions involving sexual misconduct, patient abuse, illegal possession or use of dangerous drugs, or driving under the influence of drugs or alcohol.

Not all violations are of such a nature or severity to warrant revocation of a license or registration. In some cases, a lesser penalty such as probation is sufficient to ensure consumer protection. The Disciplinary Guidelines document is used to assist the Deputy Attorneys General, Administrative Law Judges, defense attorneys, licensees, and Board Members when determining an appropriate penalty. The Disciplinary Guidelines also assist in determining appropriate terms and conditions for stipulated settlement agreements in contested cases.

The Board has determined there is a need to amend the Disciplinary Guidelines in order to create a more clear, comprehensive, user-friendly, and up to date document. The document has been amended as follows:

1. Revised Introduction
2. New Penalty Guidelines statement
 - (a) Explains document purpose and format
 - (b) Explains and provides direction regarding Optional Terms and Conditions of Probation
 - (c) Provides direction to Administrative Law Judge requesting explanation of deviations or omissions from guidelines
3. Penalty Guidelines
 - (a) Reformatted Penalty Guidelines in table format
 - (b) Edited various minimum and maximum penalties
 - (c) Violation categories re-titled to accurately reflect all violations
4. Added description of Model Disciplinary Orders
5. Renumbered Optional and Standard Terms and Conditions of Probation
6. Optional Conditions section now precedes Standard Conditions section
7. Optional Terms and Conditions of Probation
 - (a) Added request for Optional Conditions to be listed first in decisions
 - (b) Added "Psychiatric" to Psychological Evaluation
 - (c) "Psychotherapy" now precedes "Supervised Practice"
 - (d) Renamed "Supervision of Respondent's Practice" to "Supervised Practice"
 - (e) Moved Law and Ethics course from Standard to Optional Conditions and included a NOTE explaining when this term is appropriate
 - (f) Added NOTE regarding the appointment of evaluators for psychological or psychiatric evaluations
8. Standard Terms and Conditions of Probation
 - (a) Deleted Tolling of Probation
 - (b) Added Residing or Practicing Out-of-State Terms and Conditions
 - (c) Added Failure to Practice – California Resident Terms and conditions
 - (d) Added NOTE to Notification to Clients explaining when this term is appropriate
 - (e) Added supplementary direction to probationer regarding when notification

to client is needed and included NOTE providing direction to probationer regarding appropriate application of the condition

UNDERLYING DATA / MATERIALS RELIED UPON:

The revisions to the Disciplinary Guidelines document resulted from the recommendations of the Board's Ad Hoc Disciplinary Guidelines Committee, consisting of Board members, Board staff, and legal counsel. This committee met on February 20, 2003, April 24, 2003, August 21, 2003, January 7, 2004, February 19, 2004, and May 20, 2004. Revisions were also received from the Department of Consumer Affairs' Legal Office, and the Board's enforcement staff. Additionally, the draft Disciplinary Guidelines document was agendaized at the May 21, 2004, Board meeting and the Board received input from professional associations, licensees, registrants, and other interested parties.

BUSINESS IMPACT

The proposed regulations will not have a significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

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

CONSIDERATION OF ALTERNATIVES

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

Set forth below is the alternative considered and the reason it was rejected:

Alternative #1:

Not amend the Disciplinary Guidelines document and continue to work with a document that does not meet all of the needs of those involved in determining the most appropriate penalties or terms and conditions of probation in disciplinary actions. This alternative was rejected because if the Disciplinary Guidelines document were not amended, it would lead to difficulty in determining the most appropriate penalties and terms and conditions of probation, placing consumers at risk.