

## FINAL STATEMENT OF REASONS

**Hearing Date: October 16, 2012**

**Subject Matter of Proposed Regulations: Disciplinary Guidelines**

**Section(s) Affected:** Amend Sections 1888 of Division 18 of Title 16 of the California Code of Regulations, and the Board of Behavioral Sciences Disciplinary guidelines, Revised March 2010, which are incorporated by reference.

### **Updated Information**

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

1. Section 1888 has been amended. This section incorporates the “Board of Behavioral Sciences Disciplinary Guidelines [Rev. August 2012].” The revised date has been changed from August 2012 to December 2012, as this is now a more accurate estimate of when the proposed regulations will be submitted. The cover page of the Disciplinary Guidelines has also been amended to incorporate this date change.
2. An amendment was made to the Disciplinary Guidelines. Item #7 under the “Optional Terms and Conditions of Probation” on page 19, titled “Rehabilitation Program,” sets forth an optional term of probation where the probationer is required to complete treatment at a rehabilitation and monitoring program. The amendment addresses a concern by the California Association of Marriage and Family Therapists (CAMFT), about the following statement:

*“The respondent shall ensure that the Board receives quarterly written reports from the rehabilitation program addressing the respondent’s progress in the program”*

CAMFT was concerned that the use of the term “ensure” suggested that the respondent had control over the rehabilitation program, which they do not. However, it is ultimately the responsibility of the respondent to make sure that the rehabilitation program sends the report to the Board. In order to increase clarity, and to increase consistency with the language that is already in Item #3 under the “Optional Terms and Conditions of Probation”, the language was modified as follows:

*“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.”*

3. Grammatical Changes to the Initial Statement of Reasons were requested by DCA Legal and are noted as follows:
  - a. Page 2, 1<sup>st</sup> paragraph under item #3, 2<sup>nd</sup> sentence is modified as follows:

*“However, once a respondent is notified of an adopted decision, ~~they~~ he or she ~~have~~ has 30 days before the decision becomes effective.”*

- b. Page 2, 2<sup>nd</sup> paragraph under item #3, 2<sup>nd</sup> sentence is modified as follows:

*“If this change is implemented, a respondents would know 45 days in advance that they must choose a therapist and submit the pertinent information about their chosen therapist to the Board.”*

- c. Page 3, 2<sup>nd</sup> paragraph under item #7, 1<sup>st</sup> sentence is modified as follows:

*“Two of the current standard terms and conditions, “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” allows a registrants or licensees to “toll” their probation if they are not practicing.”*

- d. Page 4, 4th paragraph is modified as follows:

*“The Board is proposing amendments to combine the “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of ~~their~~ the holder’s in-state or out-of-state residency.”*

The Notice of Proposed Changes in the Regulations is included in the file (Tab I). The information contained therein is updated as follows:

1. Changes to the Notice of Proposed Changes were requested by DCA Legal and are noted as follows:

- a. Page 1, 2<sup>nd</sup> paragraph under “Informative Digest”, the following modification is made, as the originally modified document is the one that needs to be referenced:

*“The Board is proposing to amend the “Board of Behavioral Sciences Disciplinary Guidelines” (Rev. ~~August 2012~~ March 2010) incorporated by reference by this section.”*

- b. Page 2, 2<sup>nd</sup> paragraph under item #2, is modified as follows:

*“**Policy Statement Overview:** Adoption of these proposed amendments will increase openness and transparency in business and government by ensuring the Disciplinary Guidelines clearly ~~classify~~ denote reimbursement of a probation program as a standard term and condition of probation.”*

- c. Page 2, 2<sup>nd</sup> and 3rd paragraph under item #3, is modified as follows:

*“The Board is proposing an amendment to change the 60 day period to submit a therapist for approval to 15 days. If this change is implemented, a respondents would know 45 days in advance that they must choose a therapist and submit the pertinent information about their chosen therapist to the Board.*

***Policy Statement Overview:** Adoption of this proposed amendment will protect the*

public by ensuring that licensees and registrants whom the Board deems in need of psychotherapy as a condition to ~~remain practicing~~ safe practice receive that psychotherapy in a timely manner.”

- d. Page 3, 2nd paragraph under item #7, is modified as follows:

“Two of the current standard terms and conditions, “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” allow a registrants or licensees to “toll” their probation if they are not practicing. Tolling probation stops the clock on a practitioner’s probation term until ~~they~~ he or she resumes practice. The tolled period is then added to the end of the probation and extends the expiration date.”

- e. Page 4, 4th paragraph, is modified as follows:

“Although the current disciplinary guidelines specify that time spent outside the state in an intensive training program is not to be considered non-practice, staff has never encountered a probationer who was in an intensive training program outside California. The current guidelines also state a respondent’s license must not be cancelled if he or she is residing and practicing in another state and is on active probation with the licensing authority of that state. Staff has also never encountered a probationer who was practicing in another state and on active probation with the licensing authority in that state.”

- f. Page 4, 5th paragraph, is modified as follows:

“Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing, other than their notification to the Board. Therefore, the Board is proposing amendments to combine the “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of ~~their~~ the probationer’s in-state or out-of-state residency.”

### **Objections or Recommendations/Responses to Comments:**

The Board received a written letter jointly signed by Jill Epstein, Executive Director, and Sarah Kashing, Staff Attorney, of CAMFT. The request in the letter, and the Board’s response, is as follows:

1. **COMMENT NO. 1: Optional Condition #7: Rehabilitation Program:** CAMFT had a concern about one of the “Optional Terms and Conditions of Probation” in the Disciplinary Guidelines. Item #7 (page 19), titled “Rehabilitation Program,” sets forth an optional term of probation where the probationer is required to complete treatment at a rehabilitation and monitoring program. One of the requirements of this provision was proposed as follows:

“The respondent shall ensure that the Board receives quarterly written reports from the rehabilitation program addressing the respondent’s progress in the program”

CAMFT was concerned that the use of the term “ensure” suggested that the respondent

had control over the rehabilitation program, which they do not. They were concerned about the respondent being punished if the Board does not receive the quarterly reports, even though this is outside of the respondent's control. Therefore, they requested that the respondent instead should be required to make a written request that the rehabilitation program send quarterly reports to the Board of Behavioral Sciences.

RESPONSE: The Board made modifications to this sentence to increase clarity. The Board struck the above sentence and replaced it with the following sentence:

*"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."*

It is ultimately the responsibility of the respondent to make sure that the rehabilitation program sends the report to the Board. The Board currently requests this report and has not encountered a situation where the rehabilitation program refused to send reports, as long as they have the signed released form authorizing them to do so.

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

The modified text was made available to the public from December 5, 2012, through December 20, 2012. No comments were received during this time.

### **Small Business Impact:**

The Board has determined there will be no business impact for these proposed amendments. This is based on the fact that the amendments make technical or procedural changes to the disciplinary process which would not affect the operations of a business.

### **Consideration of Alternatives**

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

The BBS has determined that no alternative would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **Documents Incorporated by Reference**

The disciplinary guidelines entitled "Board of Behavioral Sciences Disciplinary Guidelines" [Rev. December 2012] have been incorporated by reference. This is because the BBS has determined that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations, due to the fact that the document is 29 pages. Prior versions of this document have also been incorporated by reference into the

regulations.

**Local Mandate**

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