

# BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

**Hearing Date: April 30, 2013**

**Subject Matter of Proposed Regulations: Examination Restructure**

**Section(s) Affected:** Amend Sections 1805, 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, and 1877 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1805.01, 1825, 1826, 1830 and 1878 to Division 18 of Title 16 of the California Code of Regulations.

## Introduction

### Statutory Changes Related to the Examination Restructure

SB 704 (Chapter 387, Statutes of 2011) sponsored by the Board of Behavioral Sciences (Board), restructures the examination process for applicants seeking Marriage and Family Therapist (LMFT), Clinical Social Worker (LCSW), and Professional Clinical Counselor (LPCC) licensure.

Effective January 1, 2014, applicants for LMFT, LPCC, and LCSW licensure shall pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams replace the standard written and the clinical vignette exams currently in place for LMFT and LCSW applicants, and alters the timing of the examination process for all three license types.

### Examination Restructure for LMFT and LCSW Applicants

Under the restructure, the exam process will be as follows for LMFT and LCSW applicants:

#### Law and Ethics Exam

- A new registrant with the Board would be required to take the law and ethics exam. This exam must be taken within the first year of registration with the Board.
- If the law and ethics exam is not passed within the first renewal period, the registrant must complete a 12 hour law and ethics course in order to be eligible to take the exam in the next renewal cycle. The exam must be re-taken in each renewal cycle until passed. In addition, in each year the exam is not passed, the 12 hour law and ethics course must be taken to establish examination eligibility.
- According to current law, a registration cannot be renewed after six years. If a registrant's registration expires, he or she must pass the law and ethics exam in order to obtain a subsequent registration number.

#### Clinical Exam

- Once a registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take the clinical exam. This exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the clinical exam.

## **Examination Restructure for LPCC Applicants**

Under the new law, LPCCs will follow the same examination process as LMFT and LCSW applicants. However, the LPCC license is new and the Board only began accepting applications for LPCC licensure in July 2011. Therefore, a California law and ethics exam and a clinical exam are already in place, and there is no need to replace any previous examinations.

LPCC licensing law gives the Board the option to accept a national examination as the clinical examination for LPCC applicants, in lieu of a Board-administered clinical examination. The Board may choose to accept a national examination if it finds that one of these examinations meet the prevailing standards for validation and use of the licensing and certification tests in California.

At its meeting on May 18, 2011, the Board accepted the National Clinical Mental Health Counselor Examination (NCMHCE) as meeting California testing standards. This exam is currently administered as the clinical examination, and this will continue under the exam restructure.

The NCMHCE exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the NCMHCE exam. This is consistent with the structure for LMFTs and LCSWs taking the Board-administered clinical exam.

Several regulatory amendments now need to be made in order to be consistent with the changes in SB 704.

## **Other Statutory Changes**

The passage of SB 274 (Chapter 148, Statutes of 2011), deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Grandparented LPCCs will now renew biennially, consistent with all other Board-issued licenses. The proposed regulations incorporate this change as well.

## **Identification of the Problem**

Due to recent statutory changes which changed the names and timing of Board examinations, and which eliminated the annual renewal requirement for grandparented LPCCs, the Board's regulations are no longer consistent with the law. The purpose of these regulations is to correct these inconsistencies, and add clarity to the new exam processes required by law.

## **Specific Changes and Factual Basis/Rationale:**

The changes proposed by this regulatory package fall into eight categories:

### **1. Reexamination - Amend Section 1805; Add Section 1805.01**

**Proposed Change:** This proposed amendment would remove the 180-day waiting period required for an applicant to re-take an examination. Instead, the regulations would state that an applicant shall take a version of the board-administered exam that is different from the version taken at their most recent prior exam. The language would also state that wait periods for accepted national exams shall be determined by the national testing entity.

Rationale: Now that the Board will be accepting certain national examinations, it is possible that those national examination entities may have different wait times, other than 180-days between exams. Stating that an applicant shall not take the same version as their most recent board administered exam accomplishes the purpose of the 180-day wait period, and national exam wait periods would be determined by the national exam administrator.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, as it will eliminate any conflict and subsequent confusion between the Board's current prescribed 180-day wait period to re-take an exam, and possible differing policies of national testing entities.

**2. Replace References to Obsolete Examinations and Reference Correct Examination Processes - Amend Sections 1806, 1816.2, 1816.3, 1816.4, 1829, and 1877; Add Sections 1825, 1826, 1830, and 1878**

Proposed Change: This proposal replaces references to the old standard written and clinical vignette examinations with references to the new clinical and California law and ethics examinations. It also replaces references to prior procedures and timeframes for taking examinations with the new procedures and timeframes prescribed by law.

Rationale: The standard written and clinical vignette examinations are referenced by name in several regulatory sections. These examinations will no longer be offered as of January 1, 2014. Therefore, these references need to be deleted and replaced with references to the new California law and ethics and clinical exams.

Additionally, the previous standard written and clinical vignette examinations were taken once education and experience had been gained, and the clinical vignette exam could not be taken until the standard written exam had been passed. When the exam restructure goes into effect on January 1, 2014, the timing of when examinations are taken will change. The regulations need to be updated to reflect the correct examination procedures.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board's required examinations are referenced consistently in both law and regulations, and that the regulations reflect the correct timing of when the exams should be taken as prescribed by law.

**3. Abandonment of Application - Amend Section 1806**

Proposed Change: This proposed amendment would specify that an application is considered abandoned if an applicant fails to take the California law and ethics or clinical exams within a specified timeframe.

Rationale: When an applicant becomes eligible to sit for an exam, if he or she fails to take the exam within a specified period of time, the application is abandoned. As a result of the change to the timing of when the examinations are taken, some of the criteria for abandonment of an application in Section 1806 are no longer correct. For example, if an applicant is now required to sit for the California law and ethics examination in the first year of registration. This was not previously the case. Therefore, the regulations need to specify that if this exam is not taken in the first year of registration, the application would be considered abandoned.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and

consumers by ensuring that the Board's laws and regulations are consistent and that all possible scenarios for failing to take an exam are covered.

**4. Removal of Social Worker Extension Fee - Amend Section 1816**

Proposed Change: This proposal would delete the social worker extension fee in Section 1816.

Rationale: The authority of the Board to issue extensions was removed from law as of 2008 (SB 1048, Chapter 588, Statutes of 2007) and therefore the provision is now obsolete.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board's laws and regulations are consistent.

**5. Changes Related to the Removal of Annual Renewal for Grandparented LPCCs - Amend Sections 1816, 1816.6, 1816.7**

Proposed Change: This proposal would delete obsolete provisions in regulation that set fees for an annually renewing grandparented LPCC license.

Rationale: SB 274 (Chapter 148, Statutes of 2011), deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Therefore, provisions in regulation that set fees related to the annually renewing grandparented LPCC license are obsolete and need to be deleted.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board's regulations do not reference provisions in law that the Board no longer has the authority to implement.

**6. Designate LPCC Examinations and Processes - Add Sections 1825 and 1826**

Proposed Change: This proposal would add language in regulation stating that the LPCC clinical exam may be either a board accepted national exam or a board-administered clinical exam, as determined by the Board. Language is also being proposed to clarify the process by which an applicant becomes eligible to take the California law and ethics examination, and how they must maintain this eligibility in subsequent renewal periods if the exam is not passed.

Rationale: Allowing the Board to either administer its own clinical exam, or accepting a national examination as the clinical exam, is consistent with the current licensing law. Adoption of this proposed amendment will make Board regulations consistent with current law regarding use of a Board-administered or a national exam.

Specifying the process by which an applicant becomes eligible to take the California law and ethics examination and maintains this eligibility provides clarity to a process which is not completely defined in law.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by making the Board's regulations consistent with licensing law. It will also ensure that there is a clear process by which an applicant can gain and maintain eligibility to take the California law and ethics examination.

**7. Board Consideration of National Exams for LMFT and LCSW Applicants - Amend Sections 1829 and 1877, Add Sections 1830 and 1878**

Proposed Change: This proposed amendment adds language to clarify that either a board accepted national exam or a board-administered clinical exam, as determined by the Board, and the California law and ethics examination, are the Board-designated exams required for LMFT and LCSW applicants.

The amendment also proposes language to clarify the process by which an applicant becomes eligible to take the California law and ethics examination, and how they must maintain this eligibility in subsequent renewal periods if the exam is not passed.

Rationale: The Board has been considering use of a national exam as its clinical exam for LMFT and LCSW applicants. Adoption of a national exam would increase portability of the licenses across states.

Currently, the Board has voted to accept the Association of Social Work Boards (ASWB) Clinical Level Examination for those seeking LCSW licensure with the Board, and is currently working on a contract with ASWB to offer that exam beginning in January 2014. In addition, the Board will continue working with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) to determine if its exam for LMFT licensure may be viable for use in California in the future.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board's laws and regulations are consistent.

In addition, adoption of this proposed amendment will benefit applicants and licensees by providing increased portability of licensure across states, should the Board determine that the national exams meet California standards. If the national exams are accepted, the amendment may increase the availability of mental health practitioners to the public, as increased portability of licensure may increase the number of practitioners seeking a license in California.

These amendments will also ensure that there is a clear process by which an applicant can gain and maintain eligibility to take the California law and ethics examination.

**8. Technical and Non-Substantive Changes - Amend Sections 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, and 1877**

Proposed Change: These proposed amendments make several non-substantive and technical amendments which are needed in order to update the regulations to be consistent with current statutes. The amendments are as follows:

- Update authority and reference citations to reflect statutory changes and additions;
- Deletion of obsolete code section references;
- Incorporation of the term "Licensed" to the title "Marriage and Family Therapist" to accurately reference the title given to these licensees; and
- Deletion of fees which expired in 2002.

Rationale: These are non-substantive amendments needed to keep the Board's regulations up-to-date with current law and practice.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by providing increased clarity and consistency between the Board's statutes and regulations.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulations do not impose any new requirements on a licensee, registrant, or applicant. The proposed changes are only making regulations consistent with changes that have already been made statutorily.

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

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal only makes Board regulations consistent with current law.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This proposal may increase portability of licensure for certain LMFT or LCSW out-of-state applicants seeking licensure in California, as follows:

- If the Board decides to accept a national exam for licensure as the clinical exam, and if an out-of-state applicant has already taken and passed the particular national exam the Board has accepted, then he or she may no longer need to take a Board-administered clinical exam, if certain requirements are met.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents indirectly by ensuring the laws and regulations related to the licensing of mental health practitioners are consistent. The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: This proposed regulation will impact applicants and licensees by ensuring the laws and regulations regarding their licensure are consistent.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: The benefits will be consistency of the Board's licensing laws and its regulations, and the possibility of future increased license portability for some out-of-state applicants.

**Underlying Data**

None

**Business Impact**

This proposal will not have adverse economic impact on businesses. This proposal would make Board regulations consistent with statutes that are already in place.

**Specific Technologies or Equipment**

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

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

**Consideration of Alternatives**

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

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

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of inconsistency between regulations and current law. It would be confusing to applicants, licensees, and consumers to leave the inconsistencies in place.
2. Adopt the regulations. The Board determined that this alternative is the most feasible because it provides consistency between the Board's statutes and regulations, allowing clarity for applicants, licensees, and consumers.

