

TITLE 16: BOARD OF BEHAVIORAL SCIENCES

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

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
April 30, 2013
10:00am – 11:00 am

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 29, 2013 or must be received by the Board at the hearing.

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

Authority and Reference: Pursuant to the authority vested by Sections 4980.60 and 4990.20 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Sections 163.5, 4980.30, 4980.40, 4980.397, 4980.399, 4980.54, 4980.72, 4984.01, 4984.7, 4984.72, 4989.20, 4989.22, 4989.68, 4992, 4992.05, 4992.09, 4996.1, 4996.2, 4996.3, 4996.4, 4996.6, 4996.17, 4996.28, 4997, 4999.50, 4999.53, 4999.54, 4999.55, 4999.60, 4999.64, 4999.100, 4999.104, 4999.112, and 4999.120 of the B&P Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Passage of this legislation means that 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 alter the timing of the examination process for all three license types.

In addition to this change, the passage of SB 274 (Wyland, 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.

In response to these legislative changes, the Board is proposing several regulatory amendments in order to make its regulations consistent with its licensing laws:

Amend Section 1805; Adopt Section 1805.01 – Reexamination

Currently, the regulations state that a 180-day waiting period is required between examinations for any applicant re-taking an examination. Now that the Board will be accepting certain national examinations, it is possible that those national examination entities may have different wait times between exams. Therefore, language is proposed to simply state that an applicant shall not take a version of any board-administered exam that is different from the one the applicant most recently took. This accomplishes the same purpose of the 180 day wait period. The language would also state that wait periods for accepted national exams shall be determined by the national testing entity.

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

Amend Sections 1806, 1816.2, 1816.3, 1816.4, 1829, and 1877; Adopt Section 1825, 1826, 1830, and 1878 – Replace References to Obsolete Examinations and Reference Correct Examination Processes

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.

This regulatory 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.

Policy Statement Overview: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board’s laws and regulations are consistent.

Amend Section 1806 – Abandonment of Application

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, 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.

Policy Statement Overview: 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.

Amend Section 1816 – Removal of Social Worker Extension Fee

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

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

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

SB 274 (Chapter 148, Statutes of 2011), deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process.

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

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

Adopt Sections 1825 and 1826 – Designate LPCC Examinations and Processes

The law allows the Board to accept either a Board-administered examination, or the NCMHCE examination (if determined acceptable by the Board) as the clinical exam. Therefore, language is being proposed in regulation to state 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 LPCC applicants.

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.

Policy Statement Overview: 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 exam meets California standards. If the national exam is 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.

Amend Sections 1829 and 1877, Adopt Sections 1830 and 1878 – Board Consideration of National Exams for LMFT and LCSW Applicants

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 license 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.

This regulation package proposes adding language to regulations which will 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.

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.

Policy Statement Overview: 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.

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

This proposal makes several non-substantive and technical amendments which are needed in order to update the regulations to be consistent with current statutes. These 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.

Policy Statement Overview: Adoption of this proposed amendment will benefit applicants, licensees, and consumers by ensuring that the Board’s laws and regulations are consistent.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

This regulatory proposal is consistent and compatible with existing state regulations. This proposal is making amendments to ensure that the Board’s regulations are consistent with its licensing laws.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The changes proposed by this regulation package make technical and non-substantive changes and make the regulations consistent with the changes in statute as a result of the passage of SB 704 and SB 274. The technical and non-substantive changes will not result in any new fiscal impacts, as they are simply making regulations consistent with changes that have already been made statutorily.

This regulatory proposal does make one amendment that will have a fiscal impact. Currently, the Board will administer its own clinical examinations for LMFT and LCSW licensure. This package is proposing the addition of language stating that the Board may consider using a national examination as the clinical exam for LMFT and LCSW licensure, if the Board determines these examinations are acceptable.

The Board is planning on using the ASWB Clinical Level Examination for those seeking LCSW licensure as the clinical exam beginning in January 2014. This will lead to some cost savings, because the Board will no longer offer a clinical exam for LCSW applicants. Therefore, the Board will no longer incur development costs for this exam, or exam administration costs for the exam. However, there will be some lost revenue to the Board, as applicants for this exam will pay the national testing entity directly when they take the exam, instead of paying the exam fee

to the Board as they have previously. These potential cost savings and lost revenues are estimated in Attachment A of the STD. 399.

The Board does not plan to use the national exam for LMFT licensure at this time, as it does not meet California standards. Therefore, these costs savings and lost revenues do not apply to this exam. The Board will continue to work with the national LMFT exam testing entity in the future to see if the exam is viable for use in California.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

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

- The changes proposed by these regulations are being made so the Board's regulations are consistent with recent statutory changes that become effective January 1, 2014.
- Allowing the board to consider using national licensing examinations does not have an impact on businesses within California.

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 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.

Cost Impact on Representative Private Person or Business: The Board has determined that a representative private person or business in reasonable compliance with the proposed action would not incur any cost impacts, for the following reasons:

- The changes proposed by these regulations are being made so the Board's regulations are current with recent statutory changes that are already in place.
- Allowing the Board to use a national licensing examination instead of a Board-administered examination does not cause a cost impact on an individual or business.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

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

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

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

CONTACT PERSON

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

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The backup contact person is:

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