

BOARD OF BEHAVIORAL SCIENCES FINAL STATEMENT OF REASONS

Hearing Date: October 22, 2013

Subject Matter of Proposed Regulations: Continuing Education

Section(s) Affected: Amend Sections 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, and 1887.14 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1887, 1887.2, 1887.3, 1887.4.0, 1887.4.1, 1887.4.2, 1887.4.3, 1887.11.0, and 1887.15 to Division 18 of Title 16 of the California Code of Regulations.

Updated Information

Changes have been made as follows:

1. On the Notice of Proposed Regulations, page 5, under the section “Add Section 1887.4 – Continuing Education Course Content,” paragraph 1, the second sentence should contain the word “is”, to read as follows: “Concerns were raised that this regulation is overly broad...”
2. A nonsubstantive, technical, amendment was made to the first sentence of Section 1887.42(a)(2) of the text. This change is reflected in the Order of Adoption:

“Maintain a list of the names and addresses of persons responsible for the provider’s continuing education program. The approval agency shall require that any change in the responsible person’s ~~identity~~ shall be reported to the approval agency within 15 days of the effective date of the change.”

The following changes were made after the 45 day public comment period. The Board approved these changes at a meeting on June 26, 2014, and a subsequent 15-day public comment period was then held:

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

OAL also recommended that subsection 1887.4.0(d) be deleted. This subsection had stated that “courses shall not predominately reflect the commercial views of the provider or any other person giving financial assistance to the provider.” OAL had concerns that it was difficult to quantify whether a course predominately reflected “commercial views” of the provider.

The Board reconsidered this language at a meeting on June 26, 2014, as well as possible alternative language that could be used in its place. The Board decided to remove both subsections (1887.4.0(b)(2) and (d)). The Board believes that 1887.4.0.(b)(1), which requires CE coursework to be based on methodological, theoretical, research or practice knowledge base that has demonstrated credibility in the mental health field, provides sufficient protection to ensure course quality, and therefore the two deleted subsections are not necessary.

4. **Records of Course Completion.** Section 1887.11.0 discusses the types of information a CE provider must include on a record of course completion. OAL requested that subsection (d) be amended, because of concerns that the use of the term “provider identification” was unclear, and because it believed requiring the name of a board-recognized provider was redundant with subsection (c).

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

5. **Adjustment of Phase-Out Period and Implementation Dates.** A phase out period is needed for the Board’s existing continuing education approval system.

The Board had originally proposed a six month delayed implementation of the new regulations. Under this delayed implementation, the new CE approval system would go into effect six months from the OAL-designated effective date of the new regulations. The Board would cease CE provider renewals on January 1, 2015.

Due to the delay of the regulation package to make the changes requested by OAL, the Board decided to change the implementation dates to allow more time to do outreach, and to allow providers more time to seek approval from recognized approval entities. The new timelines are as follows:

- **January 1, 2015** – The Board begins accepting documentation from entities wishing to become a Board-recognized approval agency. At this time, the Board also ceases accepting applications for new Board-approved CE provider numbers.
- **July 1, 2015** – Language implementing the Board’s existing CE approval program sunsets. Board approved CE providers will no longer be renewed. Language has also been added to ensure that those CE providers expiring after July 1, 2015 cannot be renewed early to avoid this deadline. All Board-approved CE providers with a number that expires after July 1, 2015 may continue providing CE coursework until the provider number expires.

6. Miscellaneous Technical Changes. OAL requested a number of minor, technical, or nonsubstantive changes to the language in the regulatory proposal. These changes were as follows:

- Minor technical, nonsubstantive changes to titles, text, and authority and reference footnotes.
- Re-numbering of certain sections to either ensure numbering is correct for continuity, or to ensure that a section remains distinct when a new section is phasing in. References to added sections 16 CCR 1887.4, 1887.41, 1887.42, 1887.43, and 1887.11 have been changed to sections 1887.4.0, 1887.4.1, 1887.4.2, 1887.4.3, 1887.11.0, respectively, for these reasons. This affects the text, as well as references to these sections in the Notice and the Initial Statement of Reasons.
- Insertion of a proper citation for the Americans with Disabilities Act.
- Elimination of Section 1887.5 from the regulation proposal. The regulation package makes no changes to this section, and therefore it does not need to be included. This section will remain a part of the Board's regulations.

7. Additional Technical Changes. Upon further consideration, the Board found it necessary to make two additional technical changes:

- Section 1887.8(b), last paragraph: The first sentence of the last paragraph of this subsection references that the Board has a total of three license types. In January 2011, the Board received statutory authority to begin licensing professional clinical counselors. Therefore, the Board now has four license types instead of three. A change has been made here to reflect this.
- Section 1887.15(d): This subsection has been added to further clarify who may renew a provider number prior to July 1, 2015. Section 1887.15(c) states that the Board will no longer conduct renewals as of July 1, 2015. However, there was a concern that this did not clarify whether or not someone who expired after July 1, 2015 would be permitted to renew early to avoid the cutoff date. Therefore, this subsection was added to clarify that is not allowed.

Objections or Recommendations/Responses to Comments:

The Board of Behavioral Sciences (Board) received a written letter jointly signed by Cathy Atkins, Deputy Chief Executive Officer, and Sara Kashing, Staff Attorney, of the California Association of Marriage and Family Therapists (CAMFT). The comments in the letter, and the Board's responses, are as follows:

1. **COMMENT NO. 1: 16 CCR Section 1887.41(b)(3)(B)**: This subsection states that a Board-recognized Continuing Education (CE) approval agency must have documented procedures for monitoring and approving CE providers and courses.

CAMFT states that it does not believe approval agencies should need to approve each and every offered CE course, but instead should monitor courses and CE providers for quality. It proposes that 16 CCR Section 1887.41(b)(3)(B) be amended to state that a CE approval agency have documented procedures for "Monitoring and approving continuing education providers and *monitoring* courses."

RESPONSE: The Board rejects this comment. The Board conducted extensive research into each of the five accepted approval agencies listed in this section. All of them either approve individual courses or conduct audits or reviews of courses. The Board believes this is an important requirement for any other approval agency seeking Board recognition in the future. Therefore, even if the entity is not approving every course (there is no requirement of this in these proposed regulations), it is very important that the approval agency have documented procedures for determining if courses meet their approval criteria.

2. **COMMENT NO. 2: 16 CCR Section 1887.41(c)**: This subsection allows the Board to revoke an approval agency's Board recognition if it does not comply with the approval agency's responsibilities specified in Business and Professions Code section 1887.42.

CAMFT requests additional language stating that the Board can only revoke recognition by a formal Board action, following a notice and hearing, and must show good cause for the revocation.

RESPONSE: The Board rejects this comment. The statute that authorizes the Board to approve providers of CE courses allows for approval, not licensure of these entities, and does not call for a hearing. Those entities are independent businesses and the revocation or denial of approval as CE providers by the Board does not deprive them of the right to continue doing business. Therefore, a constitutional right to a hearing in the case of a Board revocation or denial of approval would not be implicated and a formal Administrative Procedure Act style hearing is not warranted.

3. **COMMENT NO. 3: 16 CCR Section 1887.42(a)(2)**: This subsection requires that an approval agency must maintain a list of names and addresses of persons responsible for a provider's CE program. Any change in the responsible person's identity must be reported to the approval agency within 15 days of the effective date of the change.

CAMFT agrees with the concept of this subsection, but believes that the use of the term "responsible person's identity" is imprecise, as a particular person responsible for a program may change, but a specific person's identity does not change.

CAMFT proposes the following amendment instead:

"Maintain a list of the names and addresses of persons responsible for the provider's

continuing education program. Should there be a change in who is responsible for the provider's continuing education program, that change ~~The approval agency shall require that any change in the responsible person's identity shall be reported to the approval agency within 15 days of the effective date of the change.~~

RESPONSE: The Board accepts that the use of the term “responsible person’s identity” is imprecise, and has made the following non-substantive change to 16 CCR Section 1887.42(a)(2):

“Maintain a list of the names and addresses of persons responsible for the provider’s continuing education program. The approval agency shall require that any change in the responsible person’s ~~identity~~ shall be reported to the approval agency within 15 days of the effective date of the change.”

4. **COMMENT NO. 4: 16 CCR Section 1887.42(a)(5):** This subsection requires all Board recognized approval agencies to conduct periodic reviews of courses offered by its providers to determine compliance. If the Board requests it, the approval agency must share these reviews with the Board.

CAMFT has two objections to this subsection:

- a) CAMFT states that the subsection implies that approval agencies are responsible for approving CE provider’s courses. They argue that approval agencies are defined in 16 CCR Section 1887(e) as an entity that approves providers and monitors courses. 16 CCR Section 1887(e) does not say a provider approves CE provider courses.
- b) CAMFT states this subsection is unclear because it requires approval agencies to conduct “periodic” reviews of courses. CAMFT requests that the Board specify how often approval agencies must conduct course reviews.

RESPONSE: The Board rejects this comment. With regard to the first objection, this subsection does not state that approval agencies are responsible for approving CE provider’s courses. It is consistent with the definition of approval agency set forth in 16 CCR Section 1887(e), because it provides a method by which the approval agency must ensure courses offered by its providers meet the CE requirements of the Board (by conducting the periodic reviews).

In response to the second objection, the Board believes the use of the term “periodic reviews of courses” is sufficient. When choosing the five recognized approval agencies listed in 16 CCR Section 1887.41, the Board conducted extensive research into their CE approval programs. All of them have extensive expertise in administering CE approval programs, and each of them has a specific process defined for conducting reviews. The Board has chosen each entity due to its high standards for CE, and believes it is appropriate to defer to its expertise when determining how often reviews are needed, as long as reviews are being conducted. Use of the word periodic does not make the regulation unclear, but allows the approval agencies flexibility to conduct the reviews on the timeline they have determined meets their high standards.

5. **COMMENT NO. 5: 16 CCR Section 1887.42(a)(6):** This subsection requires Board-recognized approval agencies to take action as is necessary to assure the CE coursework offered by a provider meets the Board's requirements.

CAMFT believes this subsection is unclear because it does not specify what action an approval agency would be required to take. CAMFT requests removal of this subsection.

RESPONSE: The Board rejects this comment. As discussed above, the Board-recognized approval agencies have been vetted by the Board to ensure they meet high standards. They are tasked with ensuring compliance with the Board's requirements, per 16 CCR Section 1887(e). However, the Board did make a nonsubstantive change to this text, removing the phrase "take action as is necessary to assure" and replaced it with the term "Ensure...", as the Board believed this terminology was more concise. However, this subsection still requires the approval agencies to take action to ensure that their providers are in compliance; the action needed to ensure this compliance is at the discretion of the approval agency, and may vary depending on the discrepancy noted.

In addition to the CAMFT letter, the Board received several letters from CE providers who have a Board-issued provider number. They are as follows:

1. **Karen L. Erlichman, MSS, LCSW:** Ms. Erlichman notes that she has been an independent CE provider for many years. She states that changing from the Board approving CE providers to approval agencies approving CE providers will make it financially difficult for individual providers. She believes the new process will favor large educational institutions and CE corporations because they will be able to absorb the increased costs. She notes that small providers offer courses more attuned to regional/specialized issues, and suggests that perhaps there can be two options to gain approved CE provider status; one for individuals and one for institutions.

RESPONSE: The Board rejects this comment. The Board is proposing utilization of Board-recognized approval agencies because it has been determined, after extensive research of each agency, that they have stringent requirements to ensure the quality of the CE providers they approve. In recent years, the Board has received complaints about some Board-approved CE providers offering unethical or unproven content in their CE courses. These Board recognized approval agencies have the expertise that the Board simply does not have to ensure that providers do not offer unethical or unproven courses.

Small providers have the option, if they choose, to apply to one of the five Board recognized approval agencies to be a CE provider. The approval agency will then determine if the applicant meets their specified standards.

Fees vary by approval agency, and the Board does not control the fees they set. Currently, the Board charges a \$200 application fee for a new CE provider, then a renewal fee of \$200 every-other year. Examples of fees for proposed Board-recognized

approval agencies are as follows:

- Association of Social Work Boards (ASWB): \$450 initial application fee, and a \$900 renewal fee every three years.
- National Board for Certified Counselors (NBCC): \$300 initial application fee and a \$200 annual renewal fee.
- National Association of School Psychologists (NASP) \$400 initial application fee and a \$100 renewal fee every two years.

2. **Ricki Boden, LCSW, MFT:** Ms. Boden states that the financial impact of the proposed change, from Board approval to approval agency approval will make it difficult fiscally for individual providers. She notes that small providers offer courses attuned to regional and specialized issues. She asks if there is any way that the concept of different fiscal arrangements for individual small providers can be addressed as part of the requirements to become/remain an approval agency.

RESPONSE: The Board rejects this comment. Much of the response above to Ms. Erlichman's comments applies here as well. The Board has designated five different approval entities. Each has a different fee structure and approval process, but all meet the Board's standards for providing a review process that will ensure high-quality CE providers. The fee structure for each varies – some are substantially more than the Board's current fees, but some are approximately on par with the Board's current fees. Individuals may choose to seek approval from one Board recognized entity versus another based on their preference for that entity's fees and approval process requirements.

3. **Jeanne Courtney, MFT:** Ms. Courtney is currently a small CE provider and is concerned that if the proposed changes are implemented, she will not have the capital or volume of business to keep offering trainings. She believes only corporate entities will be able to afford to be CE providers, which will lead to a generic/diluted quality in CE coursework for LMFTs or LCSWs. She suggests offering a streamlined/simplified process for CE providers who are sole proprietors or have a small number of courses/participants.

RESPONSE: The Board rejects this comment. Much of the responses above to Ms. Erlichman's and Ms. Boden's comments apply here as well. Small CE providers may choose to apply to one of the Board recognized approval agencies to be a CE provider if they meet the approval agency's criteria to be an approved provider.

4. **Julie Stowasser, MFT:** Ms. Stowasser is concerned by the amounts of the fee increases (the fees that the Board recognized approval agencies are charging).

She asked for the names of the Board recognized approval agencies, and wanted to know if the California Association of Marriage and Family Therapists (CAMFT) is a recognized approval agency.

RESPONSE: Board staff responded to Ms. Stowasser, referring her to the section of the proposed regulation that lists the Board recognized approval agencies. Staff noted

that CAMFT is not currently on the list, but may choose to request Board recognition in the future, as is any other entity, if they can demonstrate to the Board's satisfaction compliance with the requirement listed in 16 CCR Section 1887.41.

The Board's response to Ms. Stowasser's comment about the fee increases is outlined in the responses to Ms. Erlichman's and Ms. Boden's comments above.

5. **Stacey Peyer, LCSW:** Ms. Peyer asked how the proposed changes would impact automatic providers such as universities.

RESPONSE: 16 CCR Section 1887.43 of the proposed regulations designates the persons or entities that may provide CE. Accredited or approved postsecondary institutions that meet certain requirements specified in law are included in this list. They would not need to seek approval from a Board-recognized approval agency in order to provide CE courses.

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

The Board held one 15-day public comment period. One comment was received during this period:

Jo Linder-Crow, PhD, Chief Executive Officer of the California Psychological Association: Objections or Recommendations/Responses to Comments: Ms. Linder-Crow submitted a letter request that the California Psychological Association (CPA) be recognized as a board-recognized approval agency in Section 1887.4.1. With her letter, she provided materials to demonstrate that CPA meets the criteria to be a Board-recognized approval agency.

RESPONSE: The Board rejects this comment, as it is not related to the proposed modifications of the 15-day notice. However, the Board will consider CPA's request to become a Board-recognized approval agency at a future board meeting. If it is determined that CPA meets the requirements, the Board will run a new regulatory proposal to add them to the list.

Small Business Impact:

Many of the Board's CE providers may be considered small businesses. The Board expects many of them will be able to obtain approval to offer CE courses from a Board recognized approval agency. However, if some current CE providers are unable to obtain approval, they will no longer be able to offer CE courses. Therefore, it is expected that this proposed action may affect an undetermined amount of small businesses.

In addition, several current CE providers had commented (see above) that the fees to gain approval through a Board recognized approval agency are greater.

The Board has designated five acceptable Board recognized approval agencies through which a prospective CE provider may seek approval. These approval agencies were chosen after the Board conducted extensive research to ensure each of these approval agencies' review

process will ensure high-quality CE providers. The fee structure for each approval agency varies – some are substantially more than the Board’s current fees, but some are approximately on par with the Board’s current fees. Individuals may choose to seek approval from one Board recognized entity versus another based on their preference for that entity’s fees and approval process requirements.

Over the past several years, the Board has received complaints about some Board-approved CE providers offering unethical or unproven content in their CE courses. These Board-recognized approval agencies have the expertise that the Board simply does not have to ensure that providers do not offer unethical or unproven courses. The Board believes protecting the public from unethical or unproven courses will far outweigh the impact of any fee increases or inability of certain select current CE providers to obtain approval from one of the approval agencies.

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 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 regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 concern related to its current CE program. Through an extensive committee process in which stakeholders had significant input, the solutions presented in this proposal were formulated, and have been determined to be the best method of providing consumer protection.

2. Consider allowing a system that allows different fee amounts for small CE providers. This alternative was rejected because the Board believes it is in the best interests of consumer protection to delegate the responsibility for approving CE providers to the five Board recognized approval agencies recognized in the proposed regulations.

Each of the five Board recognized approval entities has a different fee structure and approval process, but all meet the Board’s standards for providing a review process that will ensure high-quality CE providers. The fee structure for each varies – some are substantially more than the Board’s current fees, but some are approximately on par with the Board’s current fees. Individuals may choose to seek approval from one Board recognized entity versus another based on their preference for that entity’s fees and approval process requirements.

3. Adopt the regulations. The Board determined that this alternative is the most feasible because it corrects several issues that have been raised with the Board’s current CE, and puts in place a system where course providers are held to a high standard to ensure their course content is not unproven or discriminatory.

Documents Incorporated by Reference

The following form has been incorporated by reference:

- Continuing Education Provider Application (Form no. 1800 37A-633, Rev.1/11)

This form has been incorporated by reference 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. Prior versions of this document have also been incorporated by reference into the regulations. This form was made available to the public for review and comment in the same manner and at the same time that the proposed text of this regulation was.

Local Mandate

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