

# BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

**Hearing Date: December 29, 2014**

## **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, 1805.05, 1822.50, 1822.51, 1822.52, 1829.1, 1829.2, 1829.3, 1877.1, 1877.2 and 1877.3 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), SB 821 (Chapter 473, Statutes of 2013), and SB 1466 (Chapter 316, Statutes of 2014), effective January 1, 2016, restructure the examination (exam) process for applicants seeking licensure as one of the following:

- Licensed Clinical Social Worker (LCSW)
- Licensed Marriage and Family Therapist (LMFT)
- Licensed Professional Clinical Counselor (LPCC)

The legislation requires applicants for licensure to pass two exams: a California law and ethics exam and a 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 exam process for all three license types.

The new exam process will require registered interns and associates to take the exam while a registrant, rather than upon application for licensure. Additionally, SB 704 laid the groundwork for the Board to use a national clinical exam for its LCSW and LMFT programs by deleting specific references to the Board-developed “clinical vignette” exam.

In response to these legislative changes, the Board is proposing regulatory amendments that would provide consistency with the licensing statutes and to provide clarity in the requirements. Additionally, this proposal would make several technical changes and delete obsolete provisions, and would explicitly allow the Board the option of using a national clinical exam.

### ***Other Statutory Changes***

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. This proposal would remove the annual renewal fee.

SB 1048 (Chapter 588, Statutes of 2008), removed the Board's authority to issue associate clinical social worker registration extensions. This proposal would remove the extension fee.

### **Identification of the Problem**

Due to the above statutory changes, as well as recent regulatory changes that modified the Board's continuing education program, the Board's regulations are no longer consistent with statutes. Additionally, the exam restructure statutes would be difficult to implement without regulations to clarify procedures and processes. The purpose of this proposal is to clarify the new exam processes delineated in statute and to make the regulations consistent with statutory changes.

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

The changes proposed by this regulatory package fall into the following categories:

#### ***1. Reexamination - Amend Section 1805; Adopt Section 1805.05***

Proposed Changes: The proposed amendments would define the waiting periods between examination re-takes, including setting a 90-day waiting period for the new law and ethics exams. The language also proposes that wait periods for accepted national exams shall be determined by the national testing entity.

Rationale: Since another section of this proposal could result in the Board accepting certain national examinations, it is possible that those national entities will require different wait times between exam attempts. A 90-day waiting period for retaking the California law and ethics exam is necessary in order for the Board to implement a new version of the exam so that the applicant does not take the same exam twice.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants, as it will eliminate any conflict and confusion between the 180-day waiting period to re-take an exam, and differing policies of national testing entities. It will allow a shorter waiting period to re-take the Law and Ethics exam, which benefits applicants in the licensing process. Specifying the required waiting periods between retakes would also ensure that candidates do not have the advantage of taking the same version of an exam twice, thereby supporting consumer protection.

#### ***2. Definitions - Adopt Section 1805.01***

Proposed Changes: The proposed amendments would provide regulatory definitions of "application for licensure" and "registrant."

Rationale: The statutory requirements of the exam restructure are different for a registrant, vs. an applicant for licensure who is not a registrant. Providing a regulatory definition of "registrant" will provide clarity for those seeking a license when determining which set of requirements apply to them.

Additionally, the Board's statutes use two different names to refer to an application for licensure. The examination restructure could increase confusion among applicants about which specific type of application should be submitted to the Board. To avoid potential confusion, a regulatory definition of "application for licensure" is provided.

Anticipated Benefit: Adoption of these proposed definitions will benefit applicants, as it will

provide clarity about application types, application requirements and exam requirements.

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

Proposed Changes: The proposed amendments would:

- Remove references to the old “standard written” and “clinical vignette” examinations.
- Add references to the new “California law and ethics” and “clinical” examinations and the “licensed educational psychologist written” examination.
- Specify application abandonment criteria for individuals who become eligible to take the law and ethics exam after approval of an application for licensure.
- Revise application abandonment criteria to incorporate the new examination processes and time frames.
- Delete outdated application and exam types and associated abandonment criteria.

Rationale: The standard written and clinical vignette examinations will no longer be offered as of January 1, 2016, so the abandonment regulations need to reflect the new exam names and incorporate the new exam processes and timing.

The abandonment criteria for applicants for examination eligibility (aka applicants for licensure) has been specified because the hours of experience required for licensure can be no more than 6 years old at the time of application.

The board’s Licensed Educational Psychologist (LEP) exam program is not part of the exam restructure, and so its exam and related processes are not changing. However, criteria for abandonment of an LEP exam application is currently covered under subdivision (c), which is proposed to be deleted. Therefore, to keep the LEP application criteria for abandonment the same, it is proposed to now be referenced specifically under paragraph (c)(5).

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants by providing clarity about application types subject to abandonment. It would also create consistency between the statutes and regulations by removing outdated language.

### **4. Delete and Replace References to Obsolete Examinations - Amend Sections 1816.2, 1816.3, 1829, and 1877**

Proposed Changes: The proposed amendments would:

- Replace references to the old “standard written” and “clinical vignette” examinations with references to the new “California law and ethics” and “clinical” examinations.
- Replace references to prior procedures and timeframes for taking examinations with the new procedures and timeframes prescribed by law
- Remove the fee for the LPCC written exam.
- Clarify that the Board may only rescore an examination that is Board administered.

Rationale: The standard written and clinical vignette examinations will be replaced with new exam types as of January 1, 2016. The regulations need to be updated to reflect the correct examination names, procedures and timing. The Board does not charge a fee for the LPCC written exam as it is administered by a national entity, so it is proposed to be removed. The

Board is not permitted to rescore an exam it did not develop. It would be done by the entity that develops and administers the exam.

Anticipated Benefit: Adoption of these proposed amendments will benefit applicants, licensees, and consumers by ensuring that the Board's statutes and regulations are consistent and clear.

***5. Permit use of a National Clinical Examination and Update Exam Descriptions - Amend Sections 1829, and 1877; Adopt Sections 1822.50, 1829.1 and 1877.1***

Proposed Changes: The proposed amendments would:

- Provide a general description of what the new examinations are designed to assess.
- Permit the Board to use either a national clinical exam, or a board-administered clinical exam for LMFT and LCSW applicants if the Board found that the exam meets California's needs (the Board already has this authority for LPCC applicants).

Rationale:

BPC section 101.6 permits the Board to determine whether applicants possess the skills and qualifications necessary to provide safe and effective services to the public. The proposed language is in alignment with this statute by requiring that the new examinations test applicants for minimum competency to practice without causing harm to the public health, safety or welfare. The proposed language also describes what the exams shall assess in order to determine a candidate's competency.

The Board currently uses a national clinical exam for the LPCC program, and has been considering national clinical exams for LMFT and LCSW applicants. 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.

Anticipated Benefit: Adoption of the proposed amendment to allow use of a national exam could benefit applicants and licensees by providing increased portability of licensure across states, and by providing cost savings for out-of-state applicants. The proposed exam descriptions would benefit consumers by helping to ensure that examinations provide public protection by testing for minimum competency to practice safely.

***6. Eligibility to Take the Law & Ethics Exam - Adopt Sections 1822.51, 1829.2 and 1877.2***

Proposed Changes: This proposal would clarify the process by which an applicant becomes eligible to take the California law and ethics examination, and, for registrants, describes how eligibility may be maintained in subsequent registration renewal periods if the exam is not passed. It would also require the applicant to hold (or to have held) a registration and submit a request and fee to take the exam, OR have an approved application for licensure in order to be eligible.

Rationale: The exam restructure statutes set forth different requirements for (1) applicants for licensure and (2) registrants who are not yet applicants for licensure. The proposed changes are intended to clearly delineate the time frames during which each type of applicant must take the California law and ethics exam, and the consequences of not taking the exam. The proposed language also clarifies who may sign up to take the California law and ethics exam to ensure that the test-taker is a Board applicant or registrant.

Anticipated Benefit: Adoption of this proposed amendment will benefit applicants by ensuring that there is a clear process by which an applicant can gain and maintain eligibility to take the law and ethics examination, and creates consistency between the Board's statutes and regulations. This proposal supports exam security by assuring that non-BBS-applicants do not have access to the California law and ethics exam, thereby enhancing consumer protection.

### **7. Time Frames - Law and Ethics Exam - Adopt Sections 1822.52, 1829.3 and 1877.3**

Proposed Changes: This proposal would:

- Clarify the time frames during which a candidate must take the law and ethics exam, based on whether the candidate is an applicant for licensure or a registrant.
- Clarify the time frames during which a new registrant (issued on or after January 1, 2016) vs. an existing registrant (issued prior to January 1, 2016 or prior) must take the law and ethics exam.
- Clarify consequences of a registrant failing to take the law and ethics exam during a renewal period.
- Clarify procedures for re-taking the law and ethics exam.
- Create consistency with the proposed revisions to Title 16, CCR section 1806.

Rationale: The exam restructure statutes set forth different requirements for registrants vs. applicants for licensure. The statutes require new registrants to take the law and ethics exam within the first year of registration as an intern or associate, and at least once per renewal cycle until passed. Existing registrants (issued December 31, 2015 or prior) are required to take the law and ethics exam once per renewal cycle until passed. This is a change from prior practice that did not allow taking any exams until all other licensure requirements have been met.

Individuals who are not registrants (i.e., have submitted an application for licensure) will be required to meet all education and experience requirements before being permitted to take the law and ethics exam (or the clinical exam).

Anticipated Benefit: Adoption of these proposed amendments will provide consistency between the Board's statutes and regulations and provide clarity to applicants pertaining to time frames, which will help individuals avoid the consequences of not meeting those time frames.

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

Proposed Changes: This proposal makes a number of non-substantive and technical amendments as follows:

- Updates authority and reference citations to reflect statutory changes.
- Deletes obsolete code section references.
- Incorporates the term "Licensed" to the title "Marriage and Family Therapist" to match the title given in statute.
- Deletes an obsolete annual renewal fee for LPCCs who obtained a license through the grandparenting process. The renewal process is now a two-year cycle,

consistent with LPCCs who did not apply through grandparenting. The annual renewal fee was removed by SB 274 (Chapter 148, Statutes of 2011).

- Deletes an obsolete fee for associate clinical social worker registration extensions, the authority for which was removed by SB 1048, Chapter 588, Statutes of 2008.
- Deletes biennial renewal fees that have a built-in expiration date of 2002.
- Deletes board-approved continuing education provider renewal and delinquency fees. Effective July 1, 2015, the Board will no longer be renewing individual providers as a result of recently approved Continuing Education regulations.

Rationale: These amendments are needed in order to ensure the regulations are consistent with current statutes and are up to date. Additionally, SB 274 (Chapter 148, Statutes of 2011), deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Their renewal process is now a two-year cycle, consistent with LPCCs who did not apply through grandparenting.

The Board's authority to issue associate clinical social worker registration extensions was removed from law as of 2008 (SB 1048, Chapter 588, Statutes of 2007) and therefore the provision is now obsolete.

As a result of recent changes to its continuing education regulations, the Board will no longer be approving continuing education providers effective January 1, 2015. Therefore, the biennial renewal fee for CE providers will very soon be obsolete.

Anticipated Benefit: Adoption of these proposed amendments will benefit applicants, licensees and consumers by ensuring that the Board's statutes and regulations are consistent and clear.

## **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 clarify existing statutes, and will make 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 clarifies statutory changes and will make 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. However, this proposal may increase portability of licensure for certain LMFT or LCSW out-of-state applicants seeking licensure in California if the Board decided to accept a national clinical exam. Under this scenario, if an out-of-state applicant has already taken and passed the

particular national exam the Board has accepted, 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 by supporting examination security and specifying examination content designed to test for minimum competency to practice safely. It will also indirectly benefit consumers 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:

- Not adopt the regulations. This alternative was rejected because the Board has identified areas of inconsistency between its statutes and regulations. It would be confusing to applicants, licensees, and consumers to leave the inconsistencies in place.