

**TITLE 16: DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED REGULATION CHANGES**

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
December 29, 2014
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 December 29, 2014, 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 (BPC), and to implement, interpret or make specific Sections 101.6, 163.5, 4980.03, 4980.30, 4980.35, 4980.397, 4980.399, 4980.40, 4980.44, 4980.50, 4980.54, 4980.72, 4984.01, 4984.7, 4984.8, 4984.72, 4989.20, 4989.22, 4989.44, 4989.68, 4992, 4992.05, 4992.07, 4992.09, 4992.1, 4996.1, 4996.2, 4996.3, 4996.4, 4996.6, 4996.17, 4996.18, 4996.28, 4997, 4999.42, 4999.45, 4999.46, 4999.50, 4999.52, 4999.53, 4999.54, 4999.55, 4999.60, 4999.61, 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

Introduction

The Board of Behavioral Sciences is the regulatory entity tasked with regulating the practice of licensed marriage and family therapists (LMFTs), licensed educational psychologists (LEPs), licensed clinical social workers (LCSWs) and licensed professional clinical counselors (LPCCs) in the State of California. The Board's highest priority is public protection when exercising its licensing, regulatory, and disciplinary functions.

Business and Professions Code (BPC) Sections 4980.60 and 4990.20 authorize the Board to adopt rules and regulations that are necessary to carry out its mandates.

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. BPC Sections

4980.50, 4992.1, and 4999.52 require the Board to examine candidates for licensure to assess the candidate's knowledge, professional skills and judgment.

SB 704 (Chapter 387, Statutes of 2011) and SB 821 (Chapter 473, Statutes of 2013), effective January 1, 2016, restructure the examination process for applicants seeking licensure as one of the following:

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

The legislation requires applicants for LMFT, LPCC, and LCSW licensure to pass two exams: a California law and ethics examination and a clinical examination. 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.

The legislation requires the Board to change the exams required for licensure effective January 1, 2016, as follows:

- A California "law and ethics" exam will replace the "standard written" exam.
- A "clinical" exam will replace the "clinical vignette" exam for LCSW and LMFT (LPCC statute has always used the title "clinical" exam).

Previously, the standard written exam could only be taken once an applicant had completed all other requirements for licensure, and the clinical vignette exam could only be taken once the standard written exam has been passed.

Under the exam restructure, all registered interns and associates, who by definition are gaining the hours of experience required toward licensure, must take the California law and ethics exam during each yearly renewal registration period until passed. If a registrant takes and fails the exam, he or she may renew the registration, but must provide proof of taking a 12-hour California law and ethics course before he or she will be eligible to retake the exam¹.

If a registrant does not take the exam during a renewal period, he or she will not be allowed to renew the registration until it has been taken². If the registrant does not pass the law and ethics exam while gaining hours of experience, he or she must take the exam upon application for licensure.

Once a registrant passes the law and ethics exam, he or she may continue earning the required hours of supervised experience for licensure. Upon completion of those hours, the registrant may submit an application for licensure and would be eligible to take the clinical exam if approved.

SB 704 also laid the groundwork for the Board to use a national clinical exam for its LCSW and LMFT programs by removing specific references to the "Board-developed clinical vignette" exam. The Board has always had the authority to use a national exam for the LPCC program.

¹ BPC Sections 4980.399, 4992.09, and 4999.55

² BPC Sections 4984.01, 4996.28, and 4999.100

SB 1466 (Chapter 316, Statutes of 2014) provides for transitional grace periods for registrants who apply for renewal during the first six months of the exam restructure. These individuals will be permitted to renew their registration without first participating in the law and ethics exam.

In response to these legislative changes, the Board is proposing regulatory amendments that would align the regulations with the statute; interpret, clarify and implement the examination restructure framework set forth in statute; and increase license portability across states.

Specific Changes

1. Amend Section 1805; Adopt Section 1805.05 - Re-Examination

Currently, section 1805 requires a 180-day waiting period between all exam retakes, and also permits the Executive Officer to allow for a lesser waiting period. The 180-day waiting period was designed for the Board-developed Standard Written and Clinical Vignette exams, because just two different versions of each exam were available per year. However, with the new Law and Ethics exam, four different versions of the exam will be possible, requiring only a 90-day waiting period between retakes.

The Board has been considering using a national clinical exam for those seeking LCSW or LMFT licensure, and currently uses a national clinical exam for the LPCC program. The waiting period for a national examination is determined by the national testing entity, so this is addressed in the proposal. Language pertaining to the 180-day waiting period has been retained, as the Board's LCSW and LMFT programs still have the option to use California-developed clinical exams.

Policy Statement Overview: 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. Adopt Section 1805.01 - Definitions

Once an applicant has completed all educational and experience requirements, he or she may submit an application for licensure. Approval of this application qualifies the individual to take the licensing exams. However, the Board's statutes use two different names to refer to the same application:

- *Application for Licensure and*
- *Application for Examination Eligibility*

In practice, the Board uses the form title *Application for Examination Eligibility*, as this best reflects the application's purpose and helps distinguish it from the *Application for Initial License Issuance* (which is submitted after the applicant has passed both licensing exams).

The use of two different names in statute to refer to the same application already creates some confusion, but the confusion would worsen upon implementation of the exam restructure as described below:

1. The exam restructure process will involve the applicant submitting a request to take the Law and Ethics exam. This request form could be easily confused with the *Application for Examination Eligibility*.
2. The form name becomes an important distinction when considering the proposed amendments to Section 1806 pertaining to abandonment. Currently, an *Application for Examination Eligibility* is considered abandoned when there has been no activity associated with that application for one year. However, a request to take the Law and Ethics exam submitted by a registered intern or associate will not be subject to abandonment.

To avoid potential confusion between application types, a regulatory definition of “application for licensure” is provided.

Additionally, the requirements under exam restructure are different for a registrant vs. an applicant who is not a registrant. Providing a regulatory definition of “application for licensure” and “registrant” will provide clarity for applicants when determining which set of requirements apply to them.

Policy Statement Overview: Adoption of these proposed definitions will benefit applicants, as it will provide clarity about application types, application requirements and exam requirements.

3. Amend Section 1806 – Abandonment of Application

Section 1806 currently defines certain applications as “abandoned” by the applicant when there has been no activity associated with that application for at least one year. For example, an applicant has been found to meet all requirements to take the licensing exams, but does not sit for the exam within one year of approval, would be considered abandoned. In this situation, the applicant would be required to reapply and meet all current requirements in place at the time the new application is received.

The purpose of having an abandonment process is twofold:

- (1) It permits the Board to archive files that have been inactive for at least one year
- (2) It permits the Board to re-evaluate an application to determine whether an individual continues to meet licensing qualifications. For example, the required supervised hours of experience do not qualify if they are more than 6 years old. Should an application for licensure be abandoned, the experience hours would need to be re-evaluated upon reapplication based on the new application date.

The “standard written” and “clinical vignette” exams are currently referenced by name in Section 1806. This proposal replaces the titles of the exams that will be obsolete with references to the new “law and ethics exam” and “clinical exam.”

The exam restructure statutes change the timing of when examinations are required to be taken. It requires the law and ethics exam to be taken as a registrant, rather than at the end of the licensure process. If the registrant does not pass the law and ethics exam while gaining hours of experience, he or she may take the exam upon approval of the application for licensure.

Applicants for the law and ethics exam who also hold an intern or associate registration and have NOT yet applied for licensure are NOT subject to abandonment provisions. This is because there are no time-sensitive qualifications that would need to be re-reviewed.

Applicants for Examination Eligibility (aka applicants for licensure), even if they also hold a valid intern or associate registration, will continue to be subject to abandonment provisions. This is because the hours of experience required for licensure can be no more than 6 years old, and therefore would need to be re-evaluated should the individual reapply after abandonment.

The proposal would also delete language pertaining to the jurisprudence and ethics exam required by BPC sections 4999.52 and 4999.54, required as part of the LPCC grandparenting process, which has ended.

The board's Licensed Educational Psychologist (LEP) exam program is not part of the exam restructure. However, criteria for abandonment of an LEP exam application is currently covered by subdivision (c), which is proposed to be deleted. Therefore, the LEP exam is proposed to be referenced specifically under paragraph (c)(5).

Policy Statement Overview: Adoption of these proposed amendments will benefit applicants by providing clarity about application types subject to abandonment and by removing outdated language.

4. Amend Sections 1816.2, 1816.3, 1829, and 1877 – Delete and Replace Descriptions of and References to Obsolete Examinations

The “standard written” and “clinical vignette” examinations are currently referenced by name in several sections. These specific examinations will no longer be offered as of January 1, 2016. Therefore, this proposal simply replaces the titles of the exams that will be obsolete with references to the new “law and ethics exam” and “clinical exam” (the fees for the new exams will be the same as the fees for the old exams).

Subdivision (h) of Section 1816.2 sets the fee for the LPCC “written exam” and is proposed to be deleted. The Board uses a national LPCC exam, and the fee is set by the national entity and applicants pay the fee directly to that entity.

Section 1816.3, which permits the Board to rescore an examination for a \$20.00 fee, is proposed to be amended to reflect that the Board may only hand score a board administered exam. Since the Board administers the LPCC law and ethics exam, LPCCs are proposed to be added to this section.

Policy Statement Overview: Adoption of this proposed amendment 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

The exam restructure legislation 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. The statute now simply requires applicants to pass a “clinical” exam.

This regulatory proposal would explicitly allow the Board to use either a national clinical exam, or a board-administered clinical exam for LMFT and LCSW applicants. The Board already has this authority for the LPCC program. The Board recently voted to work toward implementation of the Association of Social Work Boards (ASWB) national clinical exam for those seeking LCSW licensure, and is working with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) to determine if its exam for LMFT licensure may be viable for future use in California.

This proposal also provides a general definition of the content that the exams must cover. 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 supports this statute by stating that the new examinations shall test for minimum competency to practice safely, and includes content that will help make that determination.

Policy Statement Overview: 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. Adopt Sections 1822.51, 1829.2 and 1877.2 – Eligibility to Take the Law & Ethics Exam

This proposal would clarify the process by which an applicant becomes eligible to take the California Law and Ethics examination, and how eligibility may be maintained in subsequent renewal periods if the exam is not passed. It would 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.

Policy Statement Overview: 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. Adopt Sections 1822.52, 1829.3 and 1877.3 – Time Frames - Law and Ethics Exam

The exam restructure 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.

SB 1466 (Chapter 316, Statutes of 2014) provides a transitional grace period for existing registrants who apply for renewal during the first six months of the exam restructure. These individuals will be permitted to renew without first participating in the law and ethics exam.

The exam restructure statutes also specify different time frame requirements for registrants vs. applicants for licensure, and describe the consequences for a registrant who either fails to take or pass the law and ethics exam during any one-year renewal period.

The proposed text in this section does not set forth any additional requirements. It simply places all exam restructure-related time frame requirements in one place, as the individual components may interact with each other. This will help applicants meet those time frames and thus avoid any negative consequences.

Policy Statement Overview: 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. Amend Sections 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 make the regulations to be consistent with current statutes. These amendments are 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.

Policy Statement Overview: Adoption of these proposed amendments will benefit applicants, licensees and consumers by ensuring that the Board’s statutes and regulations are consistent and clear.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulatory amendments, the Board of Behavioral Sciences conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

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 are primarily technical, clarifying and non-substantive and are intended to ensure that the regulations are consistent with the changes in statute as a result of the passage of SB 704 and SB 274.

With one exception, the proposed changes will not result in any new fiscal impacts. Should the Board decide to use a national clinical examination for LCSW and/or LMFT applicants as a result of this proposal, there would be a minor fiscal impact on the Board.

The Board currently develops the clinical vignette examinations for LMFT and LCSW licensure. Switching to a national exam would lead to some cost savings, because the Board would no longer develop or administer the clinical vignette exam, and would no longer incur clinical exam development or administration costs for that program.

Applicants who take a national exam must pay the national testing entity directly, instead of paying the exam fee to the Board as they do now. This would result in some lost revenue to the Board.

The potential cost savings work out to being close to the same as the potential lost revenue, as shown in the estimate in Attachment B of the STD. 399.

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 purpose of the proposed regulatory changes are to provide consistency with statutory changes that impact individuals only, which take full effect on January 1, 2016.
- Allowing the board the choice of whether to use a national clinical licensing examination does not impact 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.

Cost Impact on Representative Private Person or Business: There will be no costs to businesses. However, the Board has determined the cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action and that are known.

A cost impact to applicants would occur if the Board decided to use a national clinical examination, as the fee is set by the national testing organization. Currently, the Board charges a \$100 clinical vignette examination fee. Should the Board choose to use a national clinical exam, the current exam fees set by the national providers are currently as follows:

- Association of Social Work Boards (ASWB): \$260
- Association of Marital and Family Therapy Regulatory Boards (AMFTRB): \$295

However, some applicants could see reduced costs if the Board decided to use a national clinical exam. If an out-of-state applicant has already taken and passed the same national exam the Board has accepted, then he or she would not need to pay for and pass a Board-administered clinical vignette exam upon application to California. These potential cost impacts are estimated in Attachment A of the STD. 399.

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 business.

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 because this proposal does not affect businesses; rather, it affects applicants (individuals) who are seeking licensure from the Board of Behavioral Sciences.

Additionally, this proposal makes Board regulations consistent with current statute, and in accordance with SB 704 (Chapter 387, Statutes of 2011) and SB 821 (Chapter 473, Statutes of 2013), effective January 1, 2016.

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.

Occupations/Businesses Impacted: This proposed regulation will not impact businesses. However, it will impact the Board's individual licensees.

Reporting Requirements: None

Comparable Federal Regulations: None

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 statutes and regulations related to the licensing of mental health practitioners are clear and consistent, and by supporting an examination process that measures a practitioner's ability to provide competent services to the public. The proposal will have no effect on worker safety or the State's environment.

Other Benefits of Regulation: The benefits will be clarity and consistency in the Board's licensing statutes and regulations, and the possibility of increased license portability for some out-of-state applicants and licensees.

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:

Name: Christy Berger
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7817
Fax No.: (916) 574-8626
E-Mail Address: Christy.Berger@dca.ca.gov

The backup contact person is:

Name: Rosanne Helms
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7897
Fax No.: (916) 574-8626
E-Mail Address: Rosanne.Helms@dca.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.bbs.ca.gov/bd_activity/law_reg.shtml