

**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

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. 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 no later than 5:00 p.m. on February 16, 2009 or must be received by the Board of Behavioral Sciences at the hearing.

The Board will hold a public hearing starting at 9:00am on February 18, 2009, at the Spyglass Inn located at 2705 Spyglass Drive, Pismo Beach, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Information Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal 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 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4982, 4989.54, and 4992.3 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board proposes to amend Section 1888 of Title 16 of the CCR. This section pertains to the Board's disciplinary guidelines for disciplinary action against a licensee under the Administrative Procedures Act (APA) which are incorporated by reference in this Section.

Specifically, the regulation would incorporate amendments to the Guidelines, as revised November 2008, which are as follows:

Penalty Guidelines

- Replace errant references to BPC sections 4986.10, 4986.20, 4986.50, 4986.70, 4986.71 and 4986.75. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections to BPC Sections 4989.14, 4989.20, 4989.26, 4989.54, 4989.56, and 4989.58. The purpose of this proposed change is to make the Guidelines, which are incorporated at 16 CCR Section 1888, consistent with these current statutes.
- Add a reference to BPC section 4992.3(r) in addition to 4989.54(f) to include the violation of unprofessional conduct statutes by a registrant related to the acquisition of experience hours. The purpose of the proposed change is to make the Guidelines consistent with the newly re-numbered Licensed Educational Psychologist and current Licensed Clinical Social Worker unprofessional conduct statutes.

- Delete references to subsections (a)-(e), (g)-(k) and (n) of Section 1858 of Title 16, CCR. An approved regulatory change operative December 30, 2007, repealed these subsections in accordance with changes implemented by SB 1475, Chapter 659, Statutes of 2006. The purpose of this proposed change is to delete these obsolete references and update the Guidelines.
- Add reference to 16 CCR section 1845((b) related to unprofessional conduct. This reference was inadvertently omitted in the current version of the Guidelines. The purpose of this change is to add clarity and consistency by referencing all relevant code sections related to the violation.
- Add reference to BPC sections 4982(aa)(1), 4992.3(x)(1) and 4989.54(y)(1) that were created by SB 797, Chapter 33, Statutes of 2008. The purpose of this change is to make Section 1888 consistent with current statute. These code sections now specify that it is unprofessional conduct for a licensee or registrant to do any of the following:
 - engaging in an act with a minor punishable as a sexually related crime regardless of whether the act occurred prior to or after registration or licensure; and,
 - engaging in an act described in section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in sections 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time registration or license was issued by the board.
- Add references to BPC sections 4982(y), 4992.3(v) and 4989.54(x). SB 1048, Chapter 588, Statutes of 2007 added willful violation of Chapter 1 of part 1 of division 106 of the Health and Safety Code to the unprofessional conduct statutes of Board licensing law. The purpose of this change is to make the Guidelines consistent with current statute.
- Add reference to BPC sections 4982(z) and 4992.3(w). SB 1048, Chapter 588, Statutes of 2007 added failure to comply with telemedicine law (BPC section 2290.5) to the unprofessional conduct statutes for board licensees. The purpose of this change is to make the Guidelines consistent with current statute.
- Makes a conforming change to provide consistency for penalties within the same violation category on page 9 of the guidelines related to fiscal and property crimes.
- Make several non-substantive changes to provide clarity and order to page five of the Guidelines.

Optional Terms and Conditions of Probation

- *(Psychotherapy Terms)* Allow a respondent, with the permission of the Board, to secure mandated personal psychotherapy services via videoconferencing. Currently this section is silent on the method by which services may be received. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult, this regulatory change will allow compliance with a personal psychotherapy order in those rural areas where the respondent may be the only licensed mental health professional.

- *(Psychotherapy Terms)* Allow a respondent, with permission of the Board, to receive mandated supervised practice via videoconferencing or with a supervisor not in the respondent's field of practice. Currently a supervisor providing services pursuant to this section of the Guidelines must be licensed in the same field of practice as the respondent. This section does not currently allow supervision via video conferencing. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult or impossible, this regulatory change will allow a respondent alternatives to meeting the conditions of the order, if approved by the board. This change is necessary to increase compliance in areas where a qualified mental health professional may not be available.
- *(Psychotherapy Terms)* Clarify that supervision obtained from a probation supervisor may not be used as experience gained toward licensure. The purpose of this change is to clarify that supervision gained as a condition of probation may only count towards one supervision requirement, meeting the conditions of the disciplinary order, and may not be counted towards the licensure requirements.
- *(Law and Ethics/Education Terms)* Allow a respondent to take mandated educational courses from an approved educational institution, in addition to accredited institutions or through a course approved by the Board. This is consistent with required coursework for licensure eligibility which allows that education to be gained at a Bureau for Private and Postsecondary Vocational *Education* approved institution that offer qualifying degrees for Board licensees (BPC 4980.40(a)).
- *(Law and Ethics/Education Terms)* Delete the prohibition against attending workshops to meet educational requirements and allow a respondent to receive mandated educational courses through a workshop. The purpose of this change is to allow greater flexibility for respondents that may have difficulty finding access to these types of courses.
- *(Law and Ethics/Education Terms)* Require that mandated coursework must be completed one year from the effective date of the decision. Currently the guidelines allow a date to be determined by the entity making the order. The purpose of this change is to establish a standard timeframe that will enable the Board to more easily enforce the order and thereby ensure better compliance from respondents.
- *(Reimbursement of Probation Program Terms)* Clarify the reimbursement costs to be paid by respondents by adding a reference line to allow the amount to be paid per month to be entered in the order. The purpose of this change is to add clarity for the respondent about the timeframes for compliance with the order and determination by the Board of the reimbursement costs due.

Standard Terms and Conditions of Probation

- Delete obsolete references to BPC 4986.10 and 4986.70 and replace with correct references to 4989.14, 4989.54(h) and 4989.54(i). SB 1475, Chapter 659, Statutes of 2006 repealed and recast the law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections. The purpose of this change is to make this section of the Guidelines consistent with those current statutes.
- *(Cost Recovery Terms)* Specify that a respondent must complete cost recovery payments six month prior to the termination of probation. The purpose of the change is to increase enforceability of cost recovery. Currently the respondent could be released

from probation before the Board becomes aware that the financial requirements of the disciplinary order have not been met. This proposed change is necessary to allow the Board to enforce this provision of a disciplinary order and grant flexibility when necessary to enable the respondent to meet the mandated requirements.

Board Policies and Guidelines

- *(Language for License Surrenders)* The addition of this proposed language would permit the Board to directly discuss a pending stipulation with the staff or advisors to the Board to determine whether to adopt a stipulation proffered by the respondent and the Board's Executive Officer. This language is necessary for the Board to effectively consider a proposed settlement, to permit communications between Board staff and the Board regarding the pending stipulation, and to comply with the requirements of the Administrative Procedure Act governing settlements and permissible communications with the Board (Government Code sections 11415.60 and 11430.30(b)).
- Allow a respondent to reapply to the Board for licensure three years from the date of surrender. Currently the disciplinary guidelines do not specify a waiting period for reapplication, allowing a respondent to reapply immediately. However, current law (BPC 4990.30) specifies that a petition for reinstatement of a license or registration that has been revoked for unprofessional conduct may be filed only after three years. Both revocation and license surrender occur as a result of unprofessional conduct and therefore should have consistent timeframes for subsequent licensure. The purpose of this change is to create a standardized timeframe for reapplication of a surrendered license consistent with reinstatement of a revoked license.
- Add recommended language for registration applicants and registrants that describes the conditions of revocation of registration and subsequent registrations with the Board. This language is necessary to standardize the orders for registrants as no language currently exists in the disciplinary guidelines, without this standardized language, the Board will continue to observe inconsistencies in the form of the orders given to registrants related to revocation and probation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires 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 businesses, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice.

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

CONTACT PERSON

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

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AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

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 upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

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

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact 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 Web site listed below).

WEBSITE ACCESS

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