

**TITLE 16: BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES**

**Subject Matter of Proposed Regulations:
Application Processing and Registrant Advertising**

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
August 22, 2017
10:00 a.m.

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 August 21, 2017, 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 137, 650.4, 4980.34, 4980.60, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 137, 650.4, 651, 4980.03, 4980.09, 4980.40, 4980.44, 4982, 4989.20, 4989.49, 4989.54, 4992.2, 4992.3, 4996.2, 4996.18, 4999.12, 4999.12.5, 4999.42, 4999.46 and 4999.90 of the BPC, 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

Amend Section 1805.1 – Permit (Application) Processing Times

This regulation currently sets forth the Board's maximum application processing time frames, the "actual" processing times based on the prior two years, and the maximum time after receipt of a complete application to issue or deny a license in accordance with the "Permit Reform Act of 1981" (PRA, Government Code sections 15374-15378).

The PRA was repealed by Assembly Bill 1757 (Chapter 229, Statutes of 2003). The proposed rulemaking will amend regulations initially adopted in conformance with the PRA in a manner designed to increase this section's helpfulness to applicants.

The proposed amendments would update the license types and application types listed, and update the maximum processing times to reflect current processing times. It would also delete the column titled, "Maximum time after receipt of a complete application to issue or deny license or registration." This information will continue to be collected and reported to the Board. The column titled, "Actual processing times based on prior two years" is also proposed to be deleted, as this information is inaccurate and unnecessary.

The objective of this proposal is to provide applicants with a realistic expectation of how long it will take the Board to process their application. The Board established the amendments to the maximum processing times (30 or 60 business days, depending on application type) based on application volumes, staffing levels and actual processing times over the past 18 months.

Policy Statement Overview: The amendments would result in an up to date and accurate chart that is consistent with current processing times for all application types, thereby making the regulation more relevant and helpful for applicants. By establishing up to date processing times to which the Board can be held accountable, this proposal helps to ensure consumers will have a consistent supply of licensed mental health professionals, and that applicants will have reasonable waiting periods to enter their professional occupation.

Amend Section 1811 – Advertising

Business and Professions Code (BPC) section 651 states that it is unlawful for any healing arts licensee to disseminate any public communication containing a false, fraudulent, misleading or deceptive statement for the purpose of inducing the rendering of services in connection with the licensee's practice.

The Board's statutes define "advertising" as any public communication, including printed matter or business solicitations communicated by radio or television broadcasting (BPC sections 4980.03(e), 4989.49, 4992.2 and 4999.12(j)). Section 1811 specifies the minimum information which must be included in advertisements, and mandates the specific titles that a licensee or registrant must use in advertisements.

Effective January 1, 2018, a statutory change revises the existing registration titles, "Marriage and Family Therapist Intern" and "Professional Clinical Counselor Intern". These titles will be replaced by "Associate Marriage and Family Therapist" and "Associate Professional Clinical Counselor" (Senate Bill 1478, Chapter 489, Statutes of 2016).

This regulatory proposal would implement the new statute by adding the use of "Registered Associate Marriage and Family Therapist" or "Registered Associate Professional Clinical Counselor" to the list of acceptable titles when advertising, and implements a sunset date of December 31, 2018 for the continued use of the old titles.

Existing law specifies another registrant title of "Associate Clinical Social Worker" (ASW), and this title is not changing. However, this proposal would make the advertising regulations pertaining to ASWs consistent with requirements for other registrant types. The amendment would prohibit the abbreviation "ASW" from being used in an advertisement unless the title "Registered Associate Clinical Social Worker" appears in the advertisement.

Policy Statement Overview: This proposal would update the regulations for consistency with statute, provide consistency between regulatory provisions for different registration types, and provide clarity in how the new registration titles can be used in advertisements. It also allows registrants enough time (one year) to use up existing stocks of printed advertising material, thereby providing the opportunity to avoid costs for compliance. It also would benefit consumers by ensuring that clear and accurate titles are used in advertising.

ANTICIPATED BENEFITS OF PROPOSAL

The application processing times regulation amendments (section 1805.1) would make the regulations more relevant and helpful to applicants; would help to ensure consumers will have a consistent supply of licensed mental health professionals; and ensure that applicants will have reasonable waiting periods to enter their professional occupation. The advertising regulation change (section 1811) would provide consistency and clarity for registrants, and would benefit consumers by ensuring that clear and accurate titles are used in advertising.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent or incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

No forms have been incorporated by reference.

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 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 proposed amendments to section 1805.1 pertaining to application processing times do not impose any new requirements on a licensee, registrant, or applicant.
- The proposed amendments to section 1811 pertaining to advertising specify a one-year phase-in to help avoid costs to individuals or businesses.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action are minor, and would result from printing costs for a new stock of business cards, or from changing the employee's title on the business' website. A one-year phase-in for the advertising regulation has been built in to help avoid such costs.

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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations do affect small businesses. Any business that employs Board registrants are required to comply with the advertising portion of the proposed regulation. If the small business provides business cards for its registrants, it will need to order new ones after the title phase-in period. A small business that does not maintain its own website may also incur minimal costs for changing the employee's title on the business' website.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would not have a 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 following facts:

- **Analysis of creation/elimination of jobs:** This proposal will not create or eliminate any jobs within California. Amendments to section 1805.1 do not impose any new requirements on a licensee, registrant, or applicant. The amendment to section 1811(a)(2)(E) imposes a very minor new requirement for ASWs if the individual uses the acronym "ASW" in advertising. Other amendments to section 1811 merely clarify implementation of new statutory requirements, and create consistency between the statutes and regulations.
- **Analysis of creation/elimination of businesses.** This proposal will not create or eliminate any businesses in California for the reasons described above.
- **Analysis of expansion of business:** This proposal will not expand any businesses in California for the reasons described above.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** This regulatory proposal will benefit the health and welfare of California residents who seek services by ensuring that clear and accurate titles are used in registrant

advertising. This proposal will also benefit the Board's applicants by providing accurate and clear information about application processing times. By establishing up to date processing times, to which the Board can be held accountable, this proposal helps to ensure consumers will have a consistent supply of licensed mental health professionals, and that applicants will have reasonable waiting periods to enter their professional occupation. The proposal will have no effect on worker safety or the State's environment.

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 will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

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 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. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected for the following reasons:
 - Not changing section 1805.1 would leave inaccurate and misleading time frames listed in regulation, and would also leave an outdated list of application types in place, which would be confusing and unhelpful to applicants wanting an estimate of how long it might take for the Board to process their application.
 - Not changing section 1811 would leave some inconsistencies between the Board's statutes and regulations. It would be confusing to applicants, registrants and consumers to leave the inconsistencies in place.
2. Adopt the regulations. The Board determined that this alternative is the most feasible because it provides consistency between the statutes and regulations, provides clarity in the titles that can be used in advertising, and provides more useful processing time information to applicants.

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 at 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 on the Board's website at http://www.bbs.ca.gov/bd_activity/reg_pending.shtml. *NOTE: The Board is in the process of updating its website. Should the above link no longer work, please see <http://www.bbs.ca.gov> and navigate to "Board Activity," then "Law Changes".*