

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: October 16, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: This proposal makes technical and procedural changes to the Board of Behavioral Sciences' Disciplinary Guidelines.

SECTIONS AFFECTED: Section 1888 of Division 18 of Title 16 of the California Code of Regulations, and the Board of Behavioral Sciences Disciplinary Guidelines, Revised March 2010, which are incorporated by reference.

IDENTIFICATION OF THE PROBLEM

The Board has identified a number of technical clean-up changes needed in the Disciplinary Guidelines. In addition, the Board has identified several procedural changes to the Disciplinary Guidelines that would make the enforcement process clearer and more efficient.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

The Board is proposing several amendments to the Disciplinary Guidelines incorporated by reference in Section 1888 of Division 18 of Title 16 of the California Code of Regulations:

1. Update of Penalty Guideline References:

Proposed Change: The Disciplinary Guidelines contain penalty guidelines which have several references that are incorrect due to legislative changes. The Board is proposing amendments to correct these errant references.

Rationale: Adoption of these proposed amendments will ensure the Disciplinary Guidelines contain correct references to statute.

Anticipated Benefit: Referencing the correct statute will ensure that licensees and consumers have access to clear and consistent information regarding the Board's disciplinary procedures.

2. Reimbursement of Probation Program

Proposed Change: The Disciplinary Guidelines contain several optional terms and conditions of probation that may be appropriate in certain disciplinary cases. A respondent's reimbursement to the Board of his or her probation program costs is currently listed in the Disciplinary Guidelines as an optional term and condition of probation. However, it is standard that the Board require a probationer to reimburse the Board for probation costs. Therefore, the Board is proposing an amendment to move this condition to the list of standard terms and conditions of probation, which must appear in all disciplinary decisions.

Rationale: This proposed change makes it clear that it is standard for the Board to require a

probationer to reimburse the Board for the costs of his or her probation program. Probation monitoring costs are incurred by the Board for all probationers, and reimbursement is essential to Board operations.

Anticipated Benefit: This amendment will provide increased clarity to probationers as well as consumers of the standard practices of the Board.

3. Optional Term and Condition of Probation: Psychotherapy

Proposed Change: If a respondent is required to participate in psychotherapy as one of the optional terms and conditions of his or her probation, the disciplinary guidelines currently require that within 60 days of the effective date of the Board's decision, the respondent must submit to the Board the name and qualifications of the therapist he or she would like to choose. However, once a respondent is notified of an adopted decision, they have 30 days before the decision becomes effective. From this time, under current regulations, the respondent then has another 60 days to choose a therapist. As a result, respondents are not starting their required psychotherapy for approximately 3 to 4 months.

The Board is proposing an amendment to change the 60 day period to submit a therapist for approval to 15 days. If this change is implemented, a respondent would know 45 days in advance that they must choose a therapist and submit the pertinent information about their chosen therapist to the Board.

Rationale: The Board believes 45 days is sufficient notice for a probationer to find and obtain the services of a psychotherapist.

Anticipated Benefit: Adoption of this proposed amendment will protect the public by ensuring that licensees and registrants whom the Board deems in need of psychotherapy as a condition to remain practicing receive that psychotherapy in a timely manner.

4. Optional Term and Condition of Probation: Rehabilitation Program

Proposed Change: The Board may require a respondent to participate in a rehabilitation program as one of the optional terms and conditions of his or her probation. The Board is proposing an amendment requiring a respondent to ensure that the rehabilitation program submits to the Board quarterly written reports addressing the respondent's progress in the program.

Rationale: Although this requirement is currently written in the instructions and the approval letter of the rehabilitation program, the Board is requesting its addition to the Disciplinary Guidelines for further clarity. The Board wants to ensure the probationer is aware that it is his or her responsibility to ensure that the Board receives the quarterly written progress reports.

Anticipated Benefit: Adoption of these proposed amendments will increase clarity of the law by directly stating that a probationer who is required to enter a rehabilitation program must ensure that that program provides quarterly written progress reports to the Board.

5. Optional Term and Condition of Probation: Submit to Biological Fluid Testing and Samples

Proposed Change: The Board may require a respondent to abstain from use of alcohol and/or controlled substances and submit to biological fluid testing and samples as one of the optional terms and conditions of probation. The Disciplinary Guidelines currently state if such testing is ordered, it is the respondent's responsibility to ensure the testing agency submits the results to the Board.

Test results are now automatically submitted to the Board by the testing agency. Therefore, the Board is proposing an amendment to delete this requirement.

Rationale: This proposed amendment removes a requirement that is no longer necessary.

Anticipated Benefit: Adoption of these proposed amendments will increase clarity of the law by removing an obsolete requirement that is no longer needed.

6. Optional Term and Condition of Probation: Monitoring of Billing System

Proposed Change: Under current law, if a respondent is required to obtain a billing system monitor as an optional term and condition of probation, he or she is notified of the decision and has 30 days before it becomes effective. Once effective, he or she must obtain a billing system monitor within 30 days.

The Board is proposing an amendment that is more consistent with the Board's requirements for other terms and conditions of probation. A respondent would still be notified of the Board's decision and have 30 days before it becomes effective. Once effective, the respondent would need to submit the name of the billing monitor he or she would like to use for Board approval within 15 days. Once the Board approves a billing monitor, the respondent must obtain the services of the billing monitor within 15 days of the Board's approval.

Rationale: Adoption of these proposed amendments will make the procedural requirements for obtaining a billing monitor more consistent with the procedural requirements for other similar optional terms and conditions of probation.

Anticipated Benefit: This change will result in greater consistency, and therefore greater clarity, of the procedures for abiding by terms and conditions of probation.

7. Tolling of Probation

Proposed Change: The Disciplinary Guidelines contain specific language for standard terms and conditions of probation, which are included in all disciplinary decisions.

Two of the current standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident," allow a registrant or licensee to "toll" their

probation if they are not practicing. Tolling probation stops the clock on a practitioner's probation term until they resume practice. The tolled period is then added to the end of the probation and extends the expiration date.

The "Residing or Practicing Out of State" condition includes language which allows the Board to cancel a license or registration after two years if the respondent does not return to California and resume practice.

The "Failure to Practice – California Resident" condition does not delineate a time limit on non-practice, as long as the licensee or registrant is residing in California. Therefore, probationers can continue in their "toll" status indefinitely or until their registration or license expires by operation of law.

The Board is proposing amendments to combine the "Residing or Practicing Out of State" and "Failure to Practice – California Resident," standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of their in-state or out-of-state residency.

Rationale: Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing, other than their notification to the Board.

Anticipated Benefit: Adoption of this proposed amendment will increase public protection by cancelling a respondent's license if he or she does not practice for a total of two years, regardless of whether he or she is in-state or out of state. This will help the Board ensure that probationers who are tolling for a long period of time are not practicing without the Board's knowledge.

8. License Surrender

Proposed Change: The Board proposes an amendment to the license surrender language in the Disciplinary Guidelines. The language contains requirements a respondent must meet to reinstate a surrendered license, including meeting current educational requirements and passing required examinations.

The Board proposes an amendment that would add gaining experience to the list of requirements that an applicant would need to meet if he or she decided to re-apply for licensure in the future.

Rationale: Gaining experience hours is always required for licensure.

Anticipated Benefit: Adoption of this proposed amendment would enhance public protection by clarifying that applicants for re-licensure must meet all experience requirements that are in law at the time they apply for their new license.

9. Recommended Language for Disciplinary Orders

Proposed Change: The “Board Policies and Guidelines” section of the Disciplinary Guidelines contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders.

The Board is proposing amendments to the “Recommended Language for Registration Applicants” and “Recommended Language for Registrants” to address the granting of other registrations or licenses by the Board, and the applicability of the probation to those other registrations or licenses. The Board also proposes adding “Recommended Language for Licensees” which addresses this same issue.

Rationale: The Board offers several different license types. There is currently nothing in the Disciplinary Guidelines addressing discipline for a licensee on probation who receives another type of license from the Board.

Anticipated Benefit: Adoption of these proposed amendments will increase public protection by clarifying that if an applicant, registrant, or licensee is granted another license or registration by the Board during probation, the probation also applies to that license or registration.

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 following:

- The proposal only makes technical and procedural changes to the process used to handle disciplinary cases.

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 for the reasons specified above.

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

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 who seek the services of the Board’s licensees. Health and welfare is increased by clarifying the disciplinary process and increasing the efficiency of some disciplinary procedures.

The proposal will have no effect on worker safety or the State’s environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:

“Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

The public will benefit from the increased clarity and protections this proposal provides, as described above.

UNDERLYING DATA

None

BUSINESS IMPACT

The Board has determined there will be no business impact for these proposed amendments. This is based on the fact that the amendments make technical and procedural changes to the disciplinary process which would not affect the operations of a business.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation 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:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern that these regulations address.
2. Adopt the regulations. The Board has determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.