

FINAL STATEMENT OF REASONS

Effective Date

The Board of Behavioral Sciences (Board) requests an effective date of July 1, 2020, to coincide with the implementation date in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). If the regulation is approved after July 1, 2020, the Board requests that the regulation become effective upon filing to align as closely as possible with the statutory implementation date.

Hearing Date: September 30, 2019

Subject Matter of Proposed Regulations: Substantial Relationship and Rehabilitation Criteria

Section(s) Affected: Amend Division 18 of Title 16 of the California Code of Regulations sections 1812, 1813, 1814, 1888, and 1888.1, and the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015)," which are incorporated into the regulations by reference via section 1888.

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein, which is incorporated herein by reference, is updated as follows:

On September 30, 2019, the Board held a public hearing at the Department of Consumer Affairs Headquarters, located at 1625 North Market Boulevard, second floor, in Sacramento, California. No oral testimony was presented and only one (1) written comment was provided to the Board. That comment and the Board's responses are detailed, below, under "Objections or Recommendations/Responses."

Amendments Made For The 15 Day Comment Period:

The Initial Statement of Reasons is included in the rulemaking file. The following changes were made to the proposed regulation text after the 45-day public comment period. The Board approved the change at a meeting on May 6, 2020, and a subsequent 15-day public comment period was then held:

1. Section 1812(a):

- i. **Proposed Change/Purpose:** References to Sections 4982, 4989.54, 4990.31, 4992.3, and 4999.90 of the BPC were added. These sections authorize the Board to deny, suspend, or revoke a license or registration for acts that the Board's licensing law considers unprofessional conduct.

Factual Basis/Rationale: All acts, including acts which constitute unprofessional conduct, must be substantially related to the practice of the

profession for which the practitioner is licensed in order for denial, suspension, or revocation to take place. This amendment clarifies this.

Anticipated Benefits: By reiterating that all acts of unprofessional conduct must be substantially related to the profession, this amendment provides increased clarity in the law.

- ii. Proposed Change/Purpose: A definition of “license” has been added to clarify that “license” means a license or registration.

Factual Basis/Rationale: This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration.

Anticipated Benefits: The amendment provides the reader clarity about what “license” means.

2. Section 1812(b):

- i. Proposed Change/Purpose: Insert “all of” before “the following criteria” to reflect the statutory requirement in BPC §481(b) for consistency.

Factual Basis/Rationale: The reference to the criteria in this subsection should be consistent with the language used in BPC §481(b).

Anticipated Benefit: This change will ensure consistency and clarity between the statute and its corresponding regulation.

- ii. Proposed Change/Purpose: Make a technical revision to use the appropriate term “subsection” instead of “subdivision”.

Factual Basis/Rationale: This will ensure consistency of the use of the term throughout the regulations and is being revised since this is a regulation and not a statute where “divisions” and “subdivisions” are used.

Anticipated Benefit: Using a consistent term will ensure greater clarity to the reader of the regulations.

- iii. Proposed Change/Purpose: Make a technical correction to replace the semicolon at the end of (b)(1) and (2) with a period. (This is a non-substantive change.)

Factual Basis/Rationale: This is a grammatical correction made for consistency throughout the regulations.

Anticipated Benefit: Using a consistent term will ensure greater clarity to the reader of the regulations.

3. Section 1812(c):

- i. Make a technical revision to use the appropriate term “subsection” instead of “subdivision”. (See explanation 2(ii) for §1812(b), above.)
- ii. Proposed Change/Purpose: Make technical revisions to use singular nouns throughout the subsection for clarity and consistency.

Factual Basis/Rationale: This is a grammatical correction made for consistency throughout the regulations.

Anticipated Benefit: Using consistent grammar will ensure greater clarity to the reader of the regulations.

4. Section 1812 Authority and Reference:

- i. Proposed Change/Purpose: Make minor revision to delete inapplicable authority sections and add to the reference section statutes that relate to the substantial relationship criteria.

Factual Basis/Rationale: These changes are needed to ensure appropriate sections are referenced.

Anticipated Benefit: Having appropriate sections referenced provides clarity, because the correct references can then easily be found.

5. Section 1813(a):

- i. A definition of “license” has been added as its own subsection to clarify that “license” means a license or registration. This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration. (See explanation 1(ii) for §1812(a) above.)

6. Section 1813(b):

- i. Proposed Change/Purpose: Renumber to conform to the addition of subsection (a).

Factual Basis/Rationale: This change is needed so that numbering within this section remains chronological and correct.

Anticipated Benefit: Ensuring accurate numbering promotes clarity for the readers of this section.

- ii. Proposed Change/Purpose: Make a grammatical correction: change “was” to “has been” for consistency.

Factual Basis/Rationale: This makes the language in this subsection consistent with the grammar used for the corresponding language in BPC §480(a).

Anticipated Benefit: Using consistent grammar and language between the statute and its corresponding regulation will enhance clarity for the reader.

- iii. Proposed Change/Purpose: Strike “and is presently eligible for a license,” to resolve OAL’s concern that this phrase could be misinterpreted.

Factual Basis/Rationale: Whether or not someone is presently eligible for a license is a separate issue than what is being addressed in this section, which is whether a showing of rehabilitation has been made. It is not necessary to state “and is presently eligible for a license” because if they are not, they will not move forward toward licensure regardless of whether or not it is stated here because other sections of the law have already established criteria for this.

Anticipated Benefit: Removing unnecessary language promotes clarity for the reader.

7. Section 1813(c):

- i. Renumber to conform to the addition of subsection (a). (See explanation 6(i) for §1813(b), above.)
- ii. Proposed Change/Purpose: Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to applicants who have not completed a criminal sentence without a violation, the applicant with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (b), the denial is based on professional misconduct (as that term is used under the new BPC §480), or the denial is based on one or more of the grounds specified in the Board’s practice acts applicable to denials, suspensions, or revocations of a license issued by the Board.

Factual Basis/Rationale: This clarifying amendment is necessary to inform

the public, applicants, and Board staff that rehabilitation criteria will be considered for all application denials, regardless of whether the grounds for denial stem from BPC §480.

Anticipated Benefit: The clarifications promote equity and fairness to all applicants in keeping with the legislative intent of AB 2138.

- iii. Proposed Change/Purpose: Subparagraph (1): Replace the term “severity” with the term “gravity” to better align with the language used in the new version of BPC §481(b)(1).

Factual Basis/Rationale: This makes the language in this subparagraph consistent the corresponding language in BPC §481(b)(1).

Anticipated Benefit: Using consistent language between the statute and its corresponding regulation will enhance clarity for the reader.

- iv. Proposed Change/Purpose: Subparagraphs (1), (2), and (3): Add “professional misconduct” to include the conduct described under the new BPC §480 as grounds for denial.

Factual Basis/Rationale: BPC §480(a)(2) discusses professional misconduct as grounds for denying a license and, therefore, professional misconduct should be considered in evaluating rehabilitation, just as acts and crimes that are previously mentioned.

Anticipated Benefit: Including professional misconduct here clarifies that it can be a reason to evaluate rehabilitation, just as act and crimes are.

- v. Proposed Change/Purpose: Subparagraph (2): Delete “under Section 480 of the Business and Professions Code.”

Factual Basis/Rationale: There are grounds for denial other than those stated in BPC §480, so the statement is being deleted since it is too limiting.

Anticipated Benefit: Deleting an inaccurate statement provides clarity to the reader.

- vi. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead. (See explanation 2(ii) for §1812(b), above.)
- vii. Subparagraph (5): Delete incorrect reference to “subdivision” (b) (1) through (5) and make the correct reference to “subsection” instead. (See

explanation 2(ii) for §1812(b), above.)

8. Section 1813 Authority and Reference:

- i. Make minor revision to delete one inapplicable Authority section and add additional citations to the Reference section statutes that relate to rehabilitation criteria. (See explanation 4(i) for §1812 Authority and Reference, above.)

9. Section 1814(a):

- i. A definition of “license” has been added to clarify that “license” means a licensee or registrant. This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration. (See explanation 1(ii) for §1812(a) above.)
- ii. Proposed Change/Purpose: A definition of “licensee” has been added to clarify that “licensee” means a licensee or registrant.

Factual Basis/Rationale: This provision conforms to BPC §23.8, which defines “licensee” to mean “any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a licensee or an associate registrant.

Anticipated Benefits: The amendment provides the reader clarity about what “licensee” means.

10. Section 1814(b)

- i. Renumber to conform to the addition of subsection (a). (See explanation 6(i) for §1813(b), above.)
- ii. Proposed Change/Purpose: Clarify that the conditions for applying rehabilitation criteria for suspension or revocation of a license for criminal convictions are pursuant to BPC §490.

Factual Basis/Rationale: It is appropriate to reference BPC §490 here, because it is the section in statute that discusses suspension or revocations of licenses for criminal convictions.

Anticipated Benefits: The proposed amendment makes the regulations clearer for the reader, because it cites the relevant statute that the reader can refer to for more information.

11. Section 1814(c)

- i. Renumber to conform to the addition of subsection (a). (See explanation 6(i) for §1813(b), above.)
- ii. Proposed Change/Purpose: Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to licensees who have not completed a criminal sentence without a violation, the licensee with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (b), the suspension or revocation is based on a disciplinary action defined in BPC section 141, or the suspension or revocation is based on one or more of the grounds specified in the Board’s practice acts applicable to denials, suspensions, or revocations of a license issued by the Board.

Factual Basis/Rationale: This clarifying amendment is necessary to inform the public, licensees, and Board staff that rehabilitation criteria shall be considered for all license suspensions and revocations, regardless of whether the grounds for discipline stem from BPC §490.

Anticipated Benefit: These clarifications promote equity and fairness to all licensees in keeping with the legislative intent of AB 2138.

- iii. Subparagraph (1): Replace the term “severity” with the term “gravity” to better align with the language used in the new version of BPC §481(b)(1), as amended in AB 2138. (See explanation 7(iii) for §1813(c), above.)
- iv. Proposed Change/Purpose: Subparagraph (2): Delete “under Section 490 of the Code”, as this subparagraph is applicable to all statutory grounds for suspension and revocation, as specified, not just grounds under BPC §490.

Factual Basis/Rationale: There are grounds for suspension or revocation other than those stated in BPC §490, so the statement being deleted is imprecise and too limiting.

Anticipated Benefit: Deleting an inaccurate statement provides clarity to the reader.

- v. Proposed Change/Purpose: Subparagraphs (1), (2), and (3): Add “disciplinary action(s)” to include the conduct described under BPC §141 as grounds for suspension or revocation.

Factual Basis/Rationale: BPC §141 discusses that disciplinary action taken by another licensing board or government entity may be grounds for

disciplinary action by the respective state licensing board. Therefore, it should be included to evaluate rehabilitation, just as acts and crimes are.

Anticipated Benefit: Including disciplinary action, here, clarifies that it can be a reason to evaluate rehabilitation, just as acts and crimes are.

- vi. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead. (See explanation 2(ii) for §1812(b), above.)
- vii. Proposed Change/Purpose: Subparagraph (4): Replace the term “such person” with the term “the licensee” for clarity.

Factual Basis/Rationale: The term “such person” might leave some ambiguity about who the law is referring to. Replacing it with the term “the licensee” provides direct clarity about who is being referred to.

Anticipated Benefit: This amendment clarifies the sentence for the reader so that there is less room for misinterpretation.

- viii. Proposed Change/Purpose: Subparagraph (5): Delete incorrect reference and numbering for “subdivision (a) (1) through (5)” and instead make the correct reference to “subsection (b) (1) through (5)”.

Factual Basis/Rationale: This amendment ensures references are correct and that the term “subsection” is consistently used throughout the regulations.

Anticipated Benefit: Using correct references and consistent terminology throughout the regulations helps to ensure clarity for the reader.

12. Section 1814(d)

- i. Renumber to conform to the addition of subsection (a). (See explanation 6(i) for §1813(b) above.)
- ii. Proposed Change/Purpose: Correct the reference to reinstatement petition evaluations. Currently, Section 11522 of the Government Code (GC) is cited. The last sentence of GC 11522 states that it does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement/reduction of penalty. For the Board’s practice acts, BPC §4990.30 states different provisions, and therefore would override.

Factual Basis/Rationale: BPC §4990.30 is the correct reference to use, and therefore it should be the reference cited.

Anticipated Benefit: Citing the correct code section promotes clarity and avoids readers referring to an incorrect code section.

13. Section 1814 Authority and Reference:

- i. Make minor revision to delete one inapplicable authority section and add to the reference section statutes that relate to rehabilitation criteria. (See explanation 4(i) for §1812 Authority and Reference above.)

Additional Non-Substantive Amendments Made After the 15-Day Comment Period

Several non-substantive, technical amendments were made to the text after the 15-day comment period based on discussions between the Department of Consumer Affairs (DCA) Legal Division and the Office of Administrative Law (OAL). These changes are as follows and are reflected in the Order of Adoption:

1. **Section 1812(a), first line – delete the words “or registration”.** This is being done for clarity purposes. The last sentence of the subsection now defines references to “license” as meaning license or registration, so the reference is now unnecessary.
2. **Section 1812(a), second line – delete the words “of the Code”.** This is being done for clarity purposes. References to the “Code” are already included after the reference to Business and Professions Code (BPC) Section 4999.90 in the same sentence. Therefore, the reference being deleted is duplicative and not necessary.
3. **Section 1812(a), third line – delete “Section 4990.31,”.** In the 15-day notice, references to Sections 4982, 4989.54, 4990.31, 4992.3, and 4999.90 of the BPC were added. These sections authorize, for each of the Board’s four practice acts, the Board to deny, suspend, or revoke a license or registration for acts that the Board’s licensing law considers unprofessional conduct. Inclusion of these sections was meant to clarify that all acts, including acts which constitute unprofessional conduct, must be substantially related to the practice of the profession for which the practitioner is licensed in order for denial, suspension, or revocation to take place. Conversely, inclusion of section 4990.31 was made in error. This section pertains to the Board denying a request to petition for probation or modification of penalty, not unprofessional conduct. It is not relevant here, its errant inclusion is confusing, and, therefore, is being deleted for clarity.
4. **Section 1812(b), numbering (1) – (3), and 1812(c), numbering (1) - (2) –** Change numbering format from 1., 2., etc., to using parentheses around the numbers instead. This is being done for consistency with the numbering format used elsewhere in the regulations and is technical in nature.
5. **Section 1812(b)(3) – Delete “How the offense relates to”.** This extra wording is not needed to relay the meaning of the sentence. Striking it makes the sentence

consistent with its related statute, BPC Section 481(b)(3) and is non-substantive.

6. **Section 1812(c)(1) and (2)** – For each reference to an Article or a Chapter of the BPC, add in parentheses the code section that the Article or Chapter commences with. This is being done to make it clearer to the reader, who may not be familiar with the format of the law, to specifically point the reader to where, in the BPC, the beginning of the Article or Chapter can be found. This is non-substantive, as it adds only a specific reference to locations that are already referenced in the text.
7. **Section 1812 changes to Authority and Reference** – BPC Sections 4982.25, 4990.38, 4992.36, and 4999.91 have been deleted from the “Reference” citation. It was determined that citing these sections is not necessary, as citing the Board’s unprofessional conduct provisions sufficiently cover these violations and those are already cited in subsection (a) (BPC sections 4982, 4989.54, 4992.3, and 4999.90).
8. **Section 1813(b), first line – delete the words “or registration”**. This is being done for clarity purposes. Subsection (a) now defines references to “license” as meaning license or registration, so the reference is now duplicative and unnecessary.
9. **Section 1813(b), second line – replace “Business and Professions Code” with “Code”**. This is being done for consistency with other regulations. It is already established in the Board’s regulations that references the term “Code” references the Business and Professions Code, and therefore referring to the full name of the code each time it is mentioned is not necessary.
10. **Section 1813(c)** - For each reference to an Article of the BPC, add in parentheses the code section that the Article commences with. This is being done to make it clearer to the reader, who may not be familiar with the format of the law, where the beginning of the Article can be found, as discussed above in Section 1812(c)(1) and (2).
11. **Section 1813(c)(5)** – replace reference to subsection (b)(1)-(5) to instead reference subsection (b)(1) through (5). Replacing the “-” with the word “through” is intended to add clarity for the reader.
12. **Section 1813 changes to Authority and Reference** – BPC sections 4982-4982.3, 4989.54-4989.66, 4990.28-4990.42, 4992.3-4992.4, and 4999.80-4999.91, have been deleted from the “Reference” citations. OAL advised against citing groupings of code sections without listing all of them. The groupings being removed were originally meant to refer to the articles of law pertaining to enforcement. It was determined that citing these entire articles is not necessary, as citing the Board’s unprofessional conduct provisions cover these violations.(BPC sections 4982, 4989.54, 4992.3, and 4999.90 each have a

provision stating that violating any provisions of the practice act or its regulations is unprofessional conduct and may be used to deny, suspend or revoke a license or registration.) Therefore, these four unprofessional conduct sections (one for each of the Board’s practice acts) have been added to the “Reference” section instead for clarity.

13. Section 1814(c) - For each reference to an Article of the BPC, add the code section that the Article commences with in parentheses. This is being done to make it clearer to the reader, who may not be familiar with the format of the law, where the beginning of the Article can be found, as discussed above in Section 1812(c)(1) and (2).

14. Section 1814(c)(5) – replace reference to subsection “(b)(1)-(5)” to instead reference subsection “(b)(1) through (5)”. Replacing the “-“ with the word “through” is intended to add clarity for the reader.

15. Section 1814 changes to Authority and Reference – BPC sections 480 and 4982-4982.3, 4989.54-4989.66, 4990.28-4990.42, 4992.3-4992.4, and 4999.80-4999.91, have been deleted from the “Reference” citation. Section 480 was deleted because it pertains to denial of a license, however, this section of the regulations is only concerned with suspensions or revocations of a license. Therefore, Section 480 is not relevant here. For the other sections being deleted, OAL advised against citing groupings of code sections without listing all of them. The groupings being removed were originally meant to refer to the articles of law pertaining to enforcement. It was determined that citing these entire articles is not necessary, as citing the Board’s unprofessional conduct provisions cover these violations.(BPC sections 4982, 4989.54, 4992.3, and 4999.90 each have a provision stating that violating any provisions of the practice act or its regulations is unprofessional conduct and may be used to deny, suspend or revoke a license or registration.) Therefore, these four unprofessional conduct sections (one for each of the Board’s practice acts) have been added to the “Reference” section instead.

16. Section 1888(a) – Per OAL’s request, “(OAL TO INSERT EFFECTIVE DATE)” has been underlined. This is a change and should be underlined because the correct new effective date will be inserted by OAL when the regulations are approved and obtain an effective date. (Until the regulations are actually approved, an exact effective date cannot be determined.)

17. Section 1888(a), numbering (1) – (3), and 1888(b), numbering (1) - (3) – Change numbering format from 1), 2), etc., to using dual parentheses around the numbers instead ((1), (2), etc.). This is being done for consistency with the numbering format used elsewhere in the regulations.

Additional Explanation: Specific Purpose, Rationale, and Anticipated Benefits of

each Adoption, Amendment or Repeal:

The Board offers additional explanation for the following items:

- 1. Section 1812(c)(1)** – This subparagraph states that a violation of BPC Division 2, Chapter 1, Article 6 can be considered substantially related to the professions which the Board licenses for purposes of denying or disciplining a license. This is a general BPC article that applies to Board licensees, and they have the potential to violate it if they are advertising, or offering rebates, refunds or discounts. The Board chose to list the entire article because although there are some sections in the article that would not apply to Board licensees, a large number of them potentially could. For example, sections BPC 650, 650.01, 650.02, 651, 652, 652.5, 653, 654.2, 654.3, 656, and 657 all appear to be potential violations. Listing the entire article avoids the possibility of missing a potential violation and then realizing it later when enforcement action is needed. It also is clearer and more concise, directing the reader to review the entire Article about unearned rebates, refunds, and discounts related to advertising, and to ensure they follow any portion of the law there that relates to what they are doing in their practice.
- 2. Sections 1813(c) and 1814(c)** – These subsections both clarify the circumstances under which the Board will apply rehabilitation criteria if rehabilitation has not been found under subsection (b). One of the circumstances is if the denial, suspension, or revocation is based on one or more of the grounds specified in the Board’s practice acts applicable to denials, suspensions, or revocations of a license issued by the Board.

Here, the Board chose to list the entire relevant article that is related to enforcement, from each of its four (4) practice acts, rather than specify a large list of code sections that contain possible violations of law. The Board believes this is more concise than listing a large paragraph of specific code sections with potential violations because it instead directs the reader to a specific area of the law where the respective violations, per each of the Board’s four (4) practice acts, can be found.

This methodology also follows the Board’s continued pattern over the past ten years of locating these type of regulations in this manner, so that a member of the public, practitioner, Respondent to a Board disciplinary action, Respondent’s legal counsel, an Administrative Law Judge (ALJ), and Board staff can more easily locate and use the relevant regulations in performing their respective roles. This also provides each of the forgoing classes of people less likelihood to miss locating the regulations related to their respective practice act, since the Board regulates four (4) practice areas and needs to ensure that those whom it regulates, and the public, are able to fully educate themselves on what is in the regulations and where those regulations are located.

Nonduplication Statement - 1 CCR 12

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” and “reference” for the proposed regulations and the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).

The Board also has the following updates to the Economic and Fiscal Impacts:

Economic Impact:

The Board of Behavioral Sciences (BBS) receives approximately 5,650 initial license applications (3,000 Associate Marriage and Family Therapists (AMFT), 2,400 Licensed Clinical Social Workers (LCSW), and 250 Licensed Professional Clinical Counselor (LPCC)) per year and denies approximately 62 annually.

The Board estimates 20 applicants per year (10 AMFT, 8 LCSW, and 2 LPCC) would be granted licensure as a result of the proposed regulations and be required to pay initial license and examination fees as follows:

Registration and License Type	Applicants Per Year	Initial Fee Costs	Total Initial Costs
Associate Marriage and Family Therapist (AMFT)			
Initial Renewal Registration, Application, and Exam	10	\$375	\$3,750
Initial License (Year Three Costs)*	10	\$130	\$1,300
Total AMFT Costs:			\$5,050
Associate Clinical Social Worker (ACSW)			
Initial Renewal Registration, Application, and Exam	8	\$535	\$4,280
Initial License (Year Three Costs)*	8	\$100	\$800
Total ACSW Costs:			\$5,080
Associate Professional Clinical Counselor (APCC)			
Initial Renewal Registration, Application, and Exam	2	\$655	\$1,310
Initial License (Year Three Costs)*	2	\$200	\$400
Total APCC Costs:			\$1,710
Total Initial License Costs:			\$11,840

*Initial License approve upon completion of experience requirements

Licensees will also be required to pay ongoing biennial renewal fees as follows:

Registration and License Type	Applicants Per Year	Biennial Fee Costs	Total Costs Per Year
Associate Marriage and Family Therapist (AMFT)			
Biennial License Renewal	10	\$130	\$1,300
Total AMFT Costs:			\$1,300
Associate Clinical Social Worker (ACSW)			
Biennial License Renewal	8	\$100	\$800
Total ACSW Costs:			\$800
Associate Professional Clinical Counselor (APCC)			
Biennial License Renewal	2	\$175	\$350
Total APCC Costs:			\$350
Total Biennial License Renewal Costs:			\$2,450

The total economic impact is estimated to range from \$9,340 to \$21,640 per year and \$143,260 over a ten-year period as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year													
Registration and License Type	Applicants Per Year	Fee Costs Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Associate Marriage and Family Therapist (AMFT)													
Initial Renewal Registration and Exam	10	\$375	\$ -	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$33,750
Initial License (Year Three Costs)*	10	\$130	\$ -	\$ -	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$10,400
Biennial License Renewal	Various	\$130	\$ -	\$ -	\$ -	\$1,300	\$1,300	\$2,600	\$2,600	\$3,900	\$3,900	\$5,200	\$20,800
Total AMFT Costs:			\$ -	\$3,750	\$5,050	\$6,350	\$6,350	\$7,650	\$7,650	\$8,950	\$8,950	\$10,250	\$64,950
Associate Clinical Social Worker (ACSW)													
Initial Renewal Registration and Exam	8	\$535	\$ -	\$4,280	\$4,280	\$4,280	\$4,280	\$4,280	\$4,280	\$4,280	\$4,280	\$4,280	\$38,520
Initial License (Year Three Costs)*	8	\$100	\$ -	\$ -	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$6,400
Biennial License Renewal	Various	\$100	\$ -	\$ -	\$ -	\$800	\$800	\$1,600	\$1,600	\$2,400	\$2,400	\$3,200	\$12,800
Total ACSW Costs:			\$ -	\$4,280	\$5,080	\$5,880	\$5,880	\$6,680	\$6,680	\$7,480	\$7,480	\$8,280	\$57,720
Associate Professional Clinical Counselor (APCC)													
Initial Renewal Registration and Exam	2	\$655	\$ -	\$1,310	\$1,310	\$1,310	\$1,310	\$1,310	\$1,310	\$1,310	\$1,310	\$1,310	\$11,790
Initial License (Year Three Costs)	2	\$200	\$ -	\$ -	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$3,200
Biennial License Renewal	Various	\$175	\$ -	\$ -	\$ -	\$350	\$350	\$700	\$700	\$1,050	\$1,050	\$1,400	\$5,600
Total APCC Costs:			\$ -	\$1,310	\$1,710	\$2,060	\$2,060	\$2,410	\$2,410	\$2,760	\$2,760	\$3,110	\$20,590
Total Registrant and License Costs:			\$ -	\$9,340	\$11,840	\$14,290	\$14,290	\$16,740	\$16,740	\$19,190	\$19,190	\$21,640	\$143,260

*Initial License approve upon completion of experience requirements

BBS notes applicants (denied and approved) are required to submit an initial registration form and pay a non-refundable registration fee in year one of implementation. As a result, any economic impact to licensees resulting from the proposed regulations does not occur until year two of implementation.

Fiscal Impact:

BBS anticipates approximately 20 additional applicants will be provided licensure per year as a result of the proposed regulations.

Any workload and costs to process the initial and renewal applications is estimated as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year											
Registration and License Type	Years Ongoing										
	1	2	3	4	5	6	7	8	9	10	Total
Initial License and Applications Submitted Per Year	-	20	20	20	20	20	20	20	20	20	180
*Management Services Technician (30 minutes - License)	-	\$840	\$840	\$840	\$840	\$840	\$840	\$840	\$840	\$840	\$7,560
**Staff Services Analyst (60 minutes - Application)	-	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$16,920
Postage and materials (\$15 per)	-	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$2,700
Total Initial Costs:	-	\$3,020	\$3,020	\$3,020	\$3,020	\$3,020	\$3,020	\$3,020	\$3,020	\$3,020	\$27,180
Biennial License Renewal	-	-	-	20	20	40	40	60	60	80	320
***Office Technician (30 minutes - License)	-	-	-	\$820	\$820	\$1,640	\$1,640	\$2,460	\$2,460	\$3,280	\$13,120
****Enforcement-related costs per licensee	-	-	-	\$960	\$960	\$1,920	\$1,920	\$2,880	\$2,880	\$3,840	\$15,360
Postage and materials (\$15 per)	-	-	-	\$300	\$300	\$600	\$600	\$900	\$900	\$1,200	\$4,800
Total Renewal Costs:	-	-	-	\$1,780	\$1,780	\$3,560	\$3,560	\$5,340	\$5,340	\$7,120	\$28,480
Total Initial and Renewal Costs:	-	\$3,020	\$3,020	\$4,800	\$4,800	\$6,580	\$6,580	\$8,360	\$8,360	\$10,140	\$55,660

*Management Services Technician (approximately \$84 per hour - includes DCA distributed costs)

**Staff Services Analyst (approximately \$94 per hour - includes DCA distributed costs)

***Office Technician (approximately \$82 per hour - includes DCA distributed costs)

****Enforcement Costs (\$5,618,000)/Licensee Population (117,000) = \$48 per licensee

Any additional workload and costs will likely be absorbed within existing resources.

The Board estimates annually initial and renewal license fee revenues ranging from approximately \$9,340 to \$21,640 per year and \$143,260 over a ten-year period.

Objections or Recommendations/Responses to Comments:

As discussed above, the Board held a public hearing on September 30, 2019. No member of the public appeared or provided comments. The Board received one letter during the 45-day public comment period regarding the proposed action. The letter was from Katherine Katcher, Executive Director of Root & Rebound Reentry Advocates. The comments in the letter, and the Board's responses, are as follows:

1. Comment #1: General Statement/ Purpose of the Letter

Summary: The letter states that they believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system that leads many of them to give up. They believe the proposed regulations leave gaps and fail to implement Business and Professions Code (BPC) section 480 and fall short of the intent of the bill to combat discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

Response: The Board rejects this comment. The proposed regulations clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138. Clarifying how to determine whether a crime is substantially related and the factors that will be considered when evaluating rehabilitation should assist applicants and licensees when planning how they are going to demonstrate their rehabilitation. In conjunction with the effective date of AB 2138 and these regulations, the Board also plans to engage in outreach to answer some of the more commonly asked questions about seeking licensure after being impacted by the criminal justice system.

2. Comment #2

Summary: The letter asks that the full extent of AB 2138 be incorporated into the regulations by including the seven-year washout period for consideration of convictions or discipline which are not statutorily considered serious felonies under the Penal Code. (See BPC §480(a)(1))

Response: The Board rejects this comment. The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC §480(a)(1). As this is already included in statute, it is not necessary to repeat it in the regulations.

3. Comment #3

Summary: The letter asks that the full extent of AB 2138 be incorporated into the regulations by including a provision that a denial cannot occur if it was based on an expunged conviction, if the person has provided evidence of rehabilitation, or was granted clemency or pardon for an arrest that led to a disposition other than a conviction. (See BPC §480(c))

Response: The Board rejects this comment. BPC §480(c) already clearly states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code §§ 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC §480(b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC §482. BPC §480(d) prohibits license denial based on an arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. Since these provisions are already specifically covered in statute, it is not necessary to repeat them in regulations.

4. Comment #4

Summary: The letter requests that the term “substantially related” to the qualifications, functions, or duties of the business or profession be clarified beyond already existing considerations.

Response: The Board rejects this comment. Existing language in section 1812 of the regulations simply states that a crime or act is substantially related if “to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare.”

The amendments being proposed to §1812 expand upon this by listing criteria that the Board must consider to determine if there is a substantial relationship. These include the nature and gravity of the offense, the number of years elapsed since the offense, and how the offense relates to the nature and duties of the profession. These criteria serve to clarify what the Board must consider in determining a substantial relationship and fulfill the requirements of BPC §481(a) and (b).

5. Comment #5

Summary: The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. They state that rehabilitation can and does take many forms that extend beyond law enforcement supervision, and this will not adequately show how an applicant would do on the job. They recommend that the Board consider reviewing things such as volunteer service, successful employment in a related field, unpaid community work, and further education.

Response: The Board rejects this comment. BPC §482 requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated.

Therefore, sections 1813 and 1814 of the regulation proposal are being amended so that there is two-step guidance for the Board in complying with this law:

- First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Specific criteria are being amended in to sections 1813 and 1814 to help the Board determine whether sentence completion demonstrates this. Criteria the Board proposes including are the length of the parole/probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole/probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Board does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered.
- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Board must consider certain other criteria to evaluate rehabilitation. This includes the time elapsed since the crime, evidence of any subsequent crimes, compliance with probation/parole, and evidence of rehabilitation submitted by the applicant or licensee. This provides them with an opportunity to demonstrate volunteer or charity work, furthered education, successful employment, or other activities that they choose to submit to the Board for review. The Board can and already does give serious consideration to these factors when considering whether or not an applicant or licensee is rehabilitated.

6. Comment #6

Summary: The letter states that the regulations do not mention that obtaining a certificate of rehabilitation, dismissal, or arrest that led to an infraction, citation, or juvenile adjudication means that a person shall not be denied a license, and requests that this be clarified.

Response: The Board rejects this comment. As noted in the response to Comment #3, above, BPC §480(b), (c), and (d) explicitly prohibit denial of a license in these circumstances. It is not necessary to repeat this in the regulations.

7. Comment #7

Summary: The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record

who apply and receive notice of denial/disqualification of licensure, provided evidence of mitigation/rehabilitation, and the final disposition of demographic information. (See BPC §480(g)(1),(2))

Response: The Board rejects this comment. These requirements are already stated in statute (BPC §480(g)(1) and (2)). It is not necessary to repeat them in regulations.

8. Comment #8

Summary: The letter states that the regulations fail to include that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (See BPC §480(f)(2))

Response: The Board rejects this comment. BPC §480(f)(2) already covers this in detail. Since this information is already in the relevant statute, it is not necessary to repeat it in these regulations.

9. Comment #9

Summary: The letter states that the regulations fail to include that the Board must notify the applicant in writing for denial and disqualifications and have procedures in place for the applicant to challenge a decision or request consideration, and that the applicant has a right to appeal the Board's decision and the process of requesting a complete conviction history. (See BPC §480(f)(3))

Response: The Board rejects this comment. BPC §480(f)(3) already contains these requirements. It is not necessary to repeat them in regulations.

10. Comment #10

Summary: The letter recommends that to better define rehabilitation, the Board should provide examples of evidence of mitigating circumstances and rehabilitation efforts to assist both the Board and licensing applicants.

Response: The Board rejects this comment. Currently, the Board's regulations allow the applicant or licensee to submit evidence of rehabilitation, and the Board is required to consider it.

There are many possible ways of showing rehabilitation, and many unique

scenarios of mitigating circumstances. Attempting to specifically list some, but not others, may be limiting or misleading. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes; i.e., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes, but is not a good example of rehabilitation for a crime where alcohol was not involved. The Board believes that this concern will be better addressed by engaging in outreach to answer some of the more commonly asked questions about demonstrating rehabilitation.

Comments Received During the 15-Day Period the Modified Text was Available to the Public

The Board received one comment in response to its 15-Day public comment period, which ran from March 13, 2020 through March 30, 2020. However, the comment was received via email on March 31, 2020, which was outside of the public comment period. Therefore, the Board is not required to respond to this comment.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact/Finding of Necessity:

The Board has determined that the proposed regulations do not have a significant adverse economic impact on small businesses.

The Board hereby finds that it is necessary for the public health, safety, and welfare of the people of California that this regulation apply to businesses. The regulations may increase the ability of some individuals with past convictions or disciplinary action to obtain a Board license where they previously could not. Having more licensees increases the pool of hireable candidates for small business looking to hire licensed mental health professionals. This will increase the supply of available licensed mental health professionals, allowing greater access for those who seek mental health services.

Consideration of Alternatives

The Board has determined 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The following options were considered by the Board and rejected:

1. Option 1: Pursue a regulatory change that requires the Board to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts historically rejected the view that compliant individuals are rehabilitated. “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal App.3d 461, 473.) Therefore, this alternative was rejected, because the Board determined that reviewing each individual on the basis of multiple criteria better indicates rehabilitation and better ensures the public’s health, safety, and welfare.
2. Option 2: Not adopt the regulations. This alternative was rejected because AB 2138 requires the Board to run regulations for its implementation. It specifically requires changes to the Board’s regulation sections governing substantial relationship criteria and criteria for rehabilitation in order to be compliant with the provisions of the bill.
3. Option 3: The Board considered drafting a single regulation for each of the Board’s four (4) practice acts, for each of the proposed regulatory code sections, herein, so that each practice act would have separate regulations governing what is currently addressed in 16 CCR 1812, 1813, and 1814. Were this methodology to have been undertaken, it would have been extremely duplicative and unclear to both the public and licensees regulated by the Board, as it would have added twelve (12) new regulations (and possibly up to fifteen (15) to the California Code of Regulations, where the current regulatory proposal only amends existing sections. This is because there would have been three (3) new sections generated, per practice act, plus a potential three (3) more sections relating to the Board generally. Conversely, by providing the information in the manner presented, herein, the Board has limited the new regulations to only amending the abovementioned existing three (3) sections, which are in a manner that is consistent with the format that the Board has used for the past ten years in its regulations. For this reason, this alternative was rejected by the Board.