

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 18. BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: Section 1888 of Division 18 of Title 16 of the California Code of Regulations (16 CCR).

Updated Information:

The Initial Statement of Reasons (ISOR) is included in the file. The information contained therein is updated as follows:

The Board first approved the text of the proposal at its meeting on September 20, 2024. The regulations were noticed on January 10, 2025 with a public comment period ending on February 25, 2025.

The comments received during the 45-day public comment period and the Board's responses are detailed under "Objections or Recommendations/Responses to Comments." The Board approved the responses rejecting the comments at its meeting on May 9, 2025. The Board also voted to direct staff to take all steps necessary to complete the rulemaking process including the filing of the final rulemaking package with the Office of Administrative Law, authorize the Executive Officer to make any nonsubstantive changes to the proposed regulation and the rulemaking documents, and adopt the proposed regulations as noticed for 16 CCR section 1888.

After the May Board meeting, the following technical and nonsubstantive changes were made to the proposed regulatory language and incorporated forms under the Executive Officer's authority to make nonsubstantive revisions:

1. In subsection (a) of section 1888, "Rev." was changed to "Revised" for the revision date of the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" document incorporated by reference for consistency with the wording in subsection (d).
2. Corrections were made to the underlining within subsection (b) of section 1888 after "successfully" and "presumption" to ensure correct spacing.
3. Corrections were made to the underlining within the Authority cited section after "495," and in the reference section after "865.2," to ensure correct spacing.

4. Corrections were made to the page numbering within the document incorporated by reference titled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”. The page numbering erroneously restarts at “1” after the Table of Contents and should have continued on as page “4” and continued to page “5”, etc. throughout. The Board has corrected this error.
5. A change in font for the heading of the document incorporated by reference “Quarterly Report Form” was changed on each page of the document from Arial Rounded MT Bold to Arial Bold for consistency with the font on the remainder of the form.
6. A change was made to add “(OAL to insert page number)” on each page of the document incorporated by reference titled “Quarterly Report Form” to assist individuals completing the form to be assured that they have all necessary pages.

LOCAL MANDATE

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

SMALL BUSINESS IMPACT

The Board has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting small businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number of licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board’s jurisdiction.

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 laws and/or regulations within the Board’s jurisdiction. Any potential “adverse economic impact” may be avoided simply by complying with the existing laws and regulations governing practice in California.

ANTICIPATED BENEFITS

This regulatory proposal strengthens consumer protection and promotes fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable. This proposal and provides for clarity and consistency by making the Uniform Standards and Disciplinary Guidelines consistent with current law and the current probationary environment, and by providing model disciplinary orders. The Board anticipates that the updated Disciplinary Guidelines will be a more useful educational and guidance tool for the Board, applicants and licensees, Deputy Attorneys General (DAGs), legal counsel, Administrative Law (ALJs) and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions and making improvements for readability and inclusivity.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board's meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. All recommendations provided during this rulemaking were considered by the Board and rejected as discussed below.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES

Summary and Response to Comments Received During 45- Day Public Comment Period

A. Summary of Comments from Shanti Ezrine, MPA, State Government Affairs Associate and Cathy Atkins, JD, Deputy Executive Director on behalf of the California Association of Marriage and Family Therapists (CAMFT)

Comment: In an email to the Board dated February 10, 2025 titled "Disciplinary Guidelines - Proposed Text Question", the commenter stated that they were reviewing the proposed changes to section 1888 and asked for clarification of the rationale for the amendment that says a violation is "presumed to be" a substance abuse violation; and if the licensee does not "successfully" rebut "the presumption" that the violation is a substance abuse violation, then the Uniform Standards apply. The question is whether this proposed amendment is just codifying current practice, or does it change how a determination of a substance abuse violation is made and when the Uniform Standards apply?

Board Response: The Board rejected the comment and declined to make any changes due to this comment. The proposal merely clarifies current implementation policy of the Board as set forth in the Initial Statement of Reasons. Existing regulation at Section 1888, subsection (b), in pertinent part, states:

"...if the conduct found to be a violation involves drugs and/or alcohol, the violation is a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not rebut that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply without deviation."

Historically, the Board has interpreted the second sentence to mean that the licensee or registrant must rebut the Board's "presumption" that the violation is a substance abuse violation if it involves drugs and/or alcohol, and that a licensee must rebut that presumption "successfully", otherwise the Uniform Standards will apply in their case. However, the above text does not precisely convey this interpretation, so the Board has proposed to further refine the text to avoid confusion, as follows:

Notwithstanding subsection (a), if the conduct found to be a violation involves drugs and/or alcohol, the violation is presumed to be a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not successfully rebut the presumption that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply without deviation.

B. Summary of Comments from Shanti Ezrine, MPA, State Government Affairs Associate and Cathy Atkins, JD, Deputy Executive Director on behalf of the California Association of Marriage and Family Therapists (CAMFT)

In a letter to the Board dated and received on February 24, 2025 via email, titled “Proposed changes to Uniform Standards Related to Substance Abuse and Disciplinary Guidelines & Division 18 of Title 16, California Code of Regulations (CCR) Section 1888”, CAMFT provides two comments in regard to the proposed regulatory action, each of which serve as a separate comment. They are as follows:

Comment 1: “**Modified text to “presume” violations involving abuse of drugs and/or alcohol.** The proposed language in 16 CCR Section 1888 modifies the text to say that a violation involving drugs and/or alcohol is “presumed to be” a substance abuse violation and if the licensee does not “successfully” rebut the “presumption” that the violation is a substance abuse violation, then the Uniform Standards shall apply. It is our understanding that this proposed language codifies current probationary practice and clarifies that a determination of a violation involving the abuse of drugs and/or alcohol is based on whether a licensee is found to be a “substance abusing licensee.” We request that the BBS confirm our understanding to ensure that the proposed language does not change how these determinations are made and when the Uniform Standards apply.”

Board Response: The Board rejected the comment and declined to make any changes due to this comment. This change was merely to clarify some ambiguities in the language as noted above and does not substantively change the Board’s approach to deciding these types of cases. The changes clarify that the Uniform Standards Related to Substance Abuse apply unless the licensee “successfully” rebuts the legal “presumption” that there is a substance abuse violation if the conduct involves drugs or alcohol. If the licensee does not “successfully” rebut the presumption that it is a substance abuse violation, then the Uniform Standards do apply since the Board has evidence in the case that they are a substance-abusing licensee per Business and Professions Code (BPC) section 315.

Comment 2: “**Financial implications of extending probationary periods for certain violations.** Several proposed changes to the minimum penalty column for certain violations extend the probationary period from one year to three-five years. We understand the rationale for the change is because the current length of the probationary period is insufficient to ensure adequate rehabilitation. While we don’t oppose the proposed change, it was as recent as September 2024 when BBS Board members held a discussion around the increased number of probationers having a difficult time complying with their probationary terms due to financial

strains.” The commenter then provided a web link to the Board’s meeting materials from its September 2024 meeting regarding Agenda Item 24 “Probation Program Statistics.” (Attached to this comment for ease of reference.) The commenter then added that “Increasing the length of the probationary period increases financial strains on the probationer (\$1,200 per additional year of probation). As the Board continues their monitoring of reasons that a probationer may surrender their license, we highlight this for your attention as it appears that financial strain during probation has become an increasing factor for license/registration surrender.”

Board Response: The Board rejected the comment and declined to make any changes due to this comment. While this commenter did not specify which probationary periods that they specifically had concerns about, the Board believes the commenter is referencing the following proposed amendments, which are excerpted from the Guidelines document:

<u>Statutes and Regulations</u>	<u>Violation Category</u>	<u>Minimum Penalty</u>	<u>Maximum Penalty</u>
LMFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(f), 4992.3(s) LEP: B&P § 4989.54(f) LPCC: B&P § 4999.90(e) 4999.90(u) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board	• Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • <u>3-5 years probation; sStandard</u> terms and conditions • Education <u>pertaining to the violation</u> • <u>Law and ethics course</u> • Cost recovery • Reimbursement of probation program costs.	• Revocation / Denial of license or registration • Cost recovery
<u>LMFT: B&P § 4982(u)</u> <u>LCSW: B&P § 4992.3(s)</u> <u>LEP: B&P § 4989.54(ac)</u> <u>LPCC: B&P § 4999.90(u)</u> <u>GP: B&P § 480</u>	<u>Violations Involving Gaining Required Hours of Experience or Supervision of Required Hours of Experience</u>	• <u>Revocation stayed</u> • <u>3-5 years probation; standard</u> terms and conditions • <u>Rejection of all illegally acquired hours</u> • <u>Supervised practice</u> • <u>Education pertaining to the violation</u> • <u>Law and ethics course</u> • <u>Cost recovery</u> • <u>Reimbursement of probation program costs</u>	• <u>Revocation / Denial of license</u> • <u>Cost recovery</u>

The above amendments split one category into two, as they are separate types of violations and therefore, due to differences in subject matter and differing impacts on public safety, the penalties should differ.

For the newly split out category “Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board” (currently titled “Violations of the Chapter or Regulations by licensees or registrants”):

The currently listed terms regarding probation length “Registration on probation until exams passed and license issued” and “License issued on probation for one year” are not directly applicable to this category as it could be violated by someone who is already licensed. Therefore, a standard probation length needs to be set. 3-5 years’ probation for this category is likely sufficient to ensure adequate rehabilitation in the Board’s experience. This provision is most commonly used when a licensee conspires to violate the Board’s laws regarding unlicensed activity, which presents significant risk of harm to the consumer. This penalty is appropriate considering the high risk of harm to a consumer receiving services from an unlicensed individual who has not met the standards for professional licensure.

For the other newly split out category “Violations Involving Gaining Required Hours of Experience or Supervision of Required Hours of Experience”:

Striking “Registration on probation until exams are passed and license issued” and “License issued on probation for one year” and replacing it with “3-5 years probation” will decrease the length of probation for many individuals but will increase the length for others depending on how close the individual is to becoming licensed. This change will provide a consistent length of probation, and in the Board’s experience, 3-5 years is typically sufficient to monitor probationers for this type of violation. This penalty is appropriate, as the Board considers violations based upon gaining required hours of experience or supervision of such required hours serious, as these violations directly relate to competency of the supervisee and their ability to practice with safety to the public. While the Board is sympathetic to the financial strain of probation, the Board’s highest priority is public safety.

INCORPORATION BY REFERENCE

Current regulation incorporates by reference into 16 CCR Section 1888 the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”, last revised in December 2020. This proposal would update the revision date of this document (effective date to be inserted by the Office of Administrative Law (OAL)). Current regulation also incorporates by reference the “Quarterly Report Form”, last revised January 12, 2001, within the Disciplinary Guidelines document itself. This proposal would correct that error and instead move the incorporation of the form to a new location in 16 CCR 1888. This proposal incorporates the Quarterly Report Form by reference in 16 CCR Section 1888, assigns it Form Number DCA BBS 37M-443 and gives it a new revision date (effective date to be inserted by OAL). The Disciplinary Guidelines and Quarterly Report Form are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR. The Guidelines were made available to the public and were posted on the Board’s website.