



Board of Behavioral Sciences



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Gavin Newsom, Governor  
State of California

Business, Consumer Services and Housing Agency  
Department of Consumer Affairs

## POLICY AND ADVOCACY COMMITTEE MINUTES

A recorded webcast of this meeting is available at:  
<https://www.youtube.com/watch?v=3fCCO0uGUvw>

**DATE** January 13, 2023

**TIME** 1:00 p.m.

### ATTENDEES

**Members Present:** Max Disposti, Chair, Public Member  
Abigail Ortega, LCSW Member  
John Sovec, LMFT Member  
Wendy Strack, Public Member

**Members Absent:** John Sovec at 2:20 p.m.

**Staff Present:** Steve Sodergren, Executive Officer  
Marlon McManus, Assistant Executive Officer  
Rosanne Helms, Legislative Manager  
Christy Berger, Regulatory Analyst  
Gena Beaver, Enforcement Manager  
Christina Kitamura, Administrative Analyst  
Sabina Knight, Legal Counsel  
Kristy Schieldge, Legal Counsel

**Other Attendees:** Public participation via WebEx video conference/phone conference and in-person at Department of Consumer Affairs

## I. **Call to Order and Establishment of Quorum**

Max Disposti, Chair of the Policy and Advocacy Committee (Committee) called the meeting to order at 1:02 p.m. Roll was called, and a quorum was established.

## II. **Introductions**

Committee members, Board staff and some public attendees introduced themselves.

## III. **Consent Calendar: Discussion and Possible Approval of October 14, 2022 Committee Meeting Minutes**

This item was tabled.

## IV. **Discussion and Possible Recommendation Regarding Amendments to the Board's Temporary Practice Allowance Bill Proposal (Add Business and Professions Code (BPC) §§4980.011, 4996.16.1, 4999.23, Amend BPC §§4980, 4980.30, 4991.2, and add Article 1 Under Chapter 14)**

This bill was introduced as AB 232.

At its November 2022 meeting, the Board of Behavioral Sciences (Board) approved statutory language and directed staff to pursue legislation to allow a 30-day temporary practice allowance to qualifying therapists licensed in another state whose client is visiting California or is in the process of moving here.

### **Suggested Amendments from Legislative Counsel**

The Legislative Counsel recommended some additional changes to the proposed language. These changes are:

1. Technical Changes to the Board-Approved Language (Proposed BPC §§4980.11, 4996.16.1, 4999.23). This was presented as Attachment B in the meeting materials.
2. Additional Recommended Amendments to Related Code Sections (BPC §§4980, 4980.30, 4991.2, and add Article 1 Under Chapter 14). This was presented as Attachment C in the meeting materials.

Details of these amendments were presented.

Motion: Direct staff to make any discussed changes and any non-substantive changes to the language in Attachments B and C and recommend that the Board approve the language in Attachments B and C for use in the temporary

practice allowance legislative proposal that the Board is currently pursuing; and add Article I General Provisions at the beginning sections of BPC §4991.

Disposti moved; Strack seconded.

Public Comment

Cathy Atkins, California Association of Marriage and Family Therapists (CAMFT): Thanked the Committee for addressing this issue.

Roll call vote: Motion carried: yea - 4, nay - 0

Member	Vote
Max Disposti	Yes
Abigail Ortega	Yes
John Sovec	Yes
Wendy Strack	Yes

**V. Discussion and Possible Recommendation Regarding the Definition of a Supervisee BPC §§4980.43.2, 4980.43.4, 4996.23.1, 4996.23.3, 4999.46.2, 4999.46.4)**

The Board’s practice acts reference the term “supervisee” but do not define it. In the context in which it is used in the practice acts, the term is intended to mean an individual required by the Board to be under supervision.

There are two instances where the intended definition of “supervisee” may not apply, and the intended definition becomes unclear:

**1. Definition of Direct Supervisor Contact (BPC §§4980.43.2(b), 4996.23.1(b), 4999.46.2(b))**

These subsections define individual supervision, triadic supervision, and group supervision for purposes of “direct supervisor contact.” The definition for each includes one supervisor and a specified number of supervisees.

Group supervision is defined as consisting of one supervisor and no more than eight “supervisees”. However, the law does not address whether individuals receiving supervision, who are not required by the Board to be under supervision, count as members of the group toward the 8 “supervisee” limit.

Possible Solutions

- Suggestion #1: Add a paragraph to this subdivision of law that states “For purposes of this subdivision, “supervisee” refers to any participant

in supervision of clinical mental health services, as described in section 4980.43.1, with a supervisor.” OR

- Suggestion #2: Instead of defining individual, triadic, and group supervision as consisting of one supervisor and a specified number of supervisees, define them as one supervisor and a specified number of individuals or participants.

### Public Comment

Ben Caldwell: Suggested group supervision limited to no more than 8 participants but include a caveat that other licensed mental health professionals would not count against that number.

Atkins, CAMFT: Expressed concern regarding pre-licensees receiving quality supervision in a group that is made up of mostly folks not pursuing licensure.

### Discussion

Ortega: Wants to limit the size of the group; eight is still too many.

Disposti: The problem lies within how the numbers are composed. Prefers Option 2.

Sovec: Explained the difference between treatment team and supervision. If group discussions are focused on the “treatment team,” then the supervision experience is going to be watered down. Option 1 gets closer to the purpose of what supervision is for both trainees and associates. Option 2 leaves a lot of flexibility for the group to turn into a treatment team.

Disposti: Suggested taking this to the Board for further discussion.

After further discussion, staff was directed to reach out to stakeholders and associations for feedback and suggestions regarding the definition of direct supervision contact.

## **2. Limitation on Number of Supervisees per Supervisor (BPC §§4980.43.4(c), 4996.23.3(c), 4999.46(c))**

Staff was directed to reach out to stakeholders and associations for feedback and suggestions regarding limitation on the number of supervisees per supervisor.

## VI. Discussion and Possible Recommendation Regarding Legal Name Changes and Website Posting (BPC §27)

When a licensee changes their name, the previous name will appear on the BreEZe online license verification system (BreEZe). In instances where a licensee legally changes their name to conform to their gender identity, the licensee may prefer that their previous name, or “deadname”, not be listed publicly on BreEZe.

The law does not specifically require that a licensee’s previous name be disclosed publicly online; however, would be subjected to disclosure if requested due to the public nature of the information (i.e., subject to a Public Records Act request).

To avoid litigation on unintended consequences or discrimination claims, staff recommends that legislation be introduced to create uniformity and clarity across Department of Consumer Affairs’ (DCA) boards on how to address deadnames.

### Discussion

Disposti: Explained the difficulties in balancing consumer protection and the individual’s right to privacy and safety in regard to their gender identity. Suggested focusing on the license number as a means of identification instead of the name.

Strack: Asked if the solution would be to process complaints under the license number, not the individual’s name.

Sodergren: Responded that the issue would be the Public Records Act (PRA) request.

Further discussion ensued. Public comment was received from stakeholders thanking the Board for discussing this matter.

Kristy Schieldge: Stated that it would be very difficult to pass regulation dealing with this issue because: 1) BPC section 27, and 2) the state of California enacted the Sunshine Law, which states that it is a constitutional right for people of the state of California to have access to public records. Suggested focusing on a legislative proposal that balances the two policies of privacy and safety and the constitutional right of public access.

### Public Comment

Trisha Wallis: Explained how the practice of publicly listing deadnames is impacting the lives of her colleagues.

Rebecca Gonzales, National Association of Social Workers, California Chapter (NASW-CA): Feels this could be a public safety issue for certain domestic violence victims.

Discussion

Disposti: Wants to advocate to DCA to dig deeper into this.

Schildge: There are many things to consider, not just California's requirements for posting and providing information. 1) We are responding to BPC section 27 legal mandates which is viewed as an informal PRA request when a person performs a license search on the database and accesses that information, to make it readily accessible to the public under that section of the law. 2) We are required to report to the National Practitioner Database, which is federal law.

No action taken.

**VII. Discussion and Possible Recommendation Regarding Clarifications to Licensed Educational Psychologist Requirements: Experience Equivalent to Three (3) Years Full-Time Experience as Credentialed School Psychologist (Title 16, California Code of Regulations (CCR) Section 1856)**

The purpose of this item is to consider a regulatory proposal that would strengthen and clarify the experience requirements for Licensed Educational Psychologist (LEP) applicants.

Christy Berger presented the identified issues and proposed regulatory changes.

Discussion: Definition of Supervisor

Ortega: Likes the definition.

Public Comments: None

Schildge: Legal has not reviewed this yet, but legal may need to make changes to this before going to the full board.

Staff is awaiting feedback from the California Association of School Psychologists. Staff will continue to work on this and will bring it back to the Committee.

**VIII. Discussion and Possible Recommendation Regarding Changes to Enforcement Regulations: Unprofessional Conduct, Amount of Fines, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Title 16, CCR Sections 1823, 1845, 1858, 1881, 1886.40 and 1888 and Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Rev. December 2020))**

The proposed revisions to the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” was presented to the Committee in July 2022 and October 2022. The latest changes are still undergoing legal review.

**II. PENALTY GUIDELINES**

**Add to Penalty Guidelines: Engaging in Sexual Orientation Change Efforts with a Patient Under Age 18**

Previously, staff had included the same minimum and maximum penalties used for the unprofessional conduct violation of “*Intentionally / Recklessly Causing Physical or Emotional Harm to Client.*” However, at its October 2022 meeting, the Committee directed staff to change the penalties to instead require outright revocation or denial of license due to the severity of impacts that this violation has on these vulnerable clients.

**Penalty Guidelines: Improper Supervision**

At the July 2022 and October 2022 meetings, the Committee discussed the penalties for this section and determined that suspension of license and supervised practice should be moved to the maximum penalty column. When a licensee is on probation they are already not allowed to supervise, and in some cases the licensee may be a good clinician but not a good supervisor, and thus may be no risk to their own clients.

**III. MODEL DISCIPLINARY ORDERS**

**Clinical Diagnostic Evaluation**

The latest amendments would:

- Prohibit the evaluator from having a current or prior financial, personal, business, professional or therapeutic relationship with the Respondent.
- Specify that an extension for the Board’s receipt of the evaluation must be for good cause, as defined.

Discussion

Schildge: More work needs to be done on this, and staff will bring it back to the Committee for review.

## **Psychological/Psychiatric Evaluation**

The latest amendments would:

- Require the evaluator to simply have experience performing psychological or psychiatric evaluations, as opposed to knowledge, training and experience “in the area involved in the violation.”

## **Psychotherapy**

The latest amendments would:

- Allow a registrant to provide psychotherapy.
- Strike the requirement that the therapist has knowledge, training and experience “in the area involved in the violation.”
- Prohibit the therapist from having a current or prior financial, personal, business, professional or therapeutic relationship with the Respondent.
- Strike the requirement that the therapist not be the Respondent’s supervisor, as a professional relationship between the Respondent and therapist would be prohibited as provided in item #2 in the same section.
- Require the psychotherapy be provided on an individual rather than group basis.

## **Supervised Practice**

The latest amendments would:

- Strike the requirement that the supervisor have knowledge, training, and experience “in the area involved in the violation.”
- Prohibit the supervisor from having a current or prior financial, personal, business, professional or therapeutic relationship with the Respondent.
- Specify how Respondent must proceed should their supervisor no longer be available, including:
  - a. Require Respondent to submit for approval the name and qualifications of a new supervisor within 15 working days.
  - b. Clarify that if Respondent does not secure a new Board-approved supervisor within 30 days, Respondent shall not practice until a new supervisor is approved. This allows an abundant amount of time for the Board to vet and approve a new supervisor.

Public Comments: None



### **Take and Pass Licensure Examination(s)**

This penalty was originally proposed to be stricken. However, DCA Legal strongly recommended that it remain. Minor changes to the existing text are proposed for clarity.

### **New: Attend Recovery Support Program**

The latest amendments would:

- Specify that Respondent must begin attending meetings within 30 days of the effective date of the Decision.
- Clarify that it may be a recovery support program, or a facilitated group led by a mental health professional trained in alcohol and drug use treatment.
- Specify acceptable proof of attendance.
- Clarify that Respondent must continue attending the group for the duration of probation unless notified by the Board otherwise.

### **New: Relapse Prevention Plan**

Completion of a relapse prevention plan had originally been proposed as a new optional term of probation. However, it is now proposed to be stricken completely.

This term was originally proposed because sometimes the Respondent does not meet the criteria to enter a rehabilitation program, and this would be a potential alternative. After the October 2022 meeting, staff consulted with DCA Legal, and it was clarified that if a rehabilitation program is included as a penalty and the Respondent does not meet the criteria of the program, the Board can reduce the penalty.

Furthermore, when a Respondent petitions for reinstatement to a full and unrestricted license, per the Uniform Standards a licensee must demonstrate that they have a relapse prevention plan.

### **Standard Terms and Conditions of Probation**

#### **Failure to Practice/Tolling**

Defines “good cause” for failure to practice for two years (normally considered a violation of probation) as including, but not limited to, a personal or family illness or disability.

Schildge: Recommended deleting this proposal. Explained that the intent of tolling is to not have probationers continue to retain their license if they are not competent to practice. They are given 2 years to toll because the idea of probation is to allow people to demonstrate that they can still meet

minimum standards for competency. If there is a problem with illness or other issues affecting their ability to practice, then the question is, should they still be in practice, which should be determined by the board. The probationer would come before the Board in a petition to revoke probation or to modify their probation and demonstrate why they should keep their license. Tolling does not have any kind of good cause exception. Allowing this proposal will create a situation where people could be on probation for a long period of time, or they will run their probation out. Either one of those options are not good from the public protection perspective.

Ms. Schieldge recommended tabling this this specific item until staff and legal can further discuss it.

### **Reinstatement/Reduction of Penalty Hearings**

Add pertinent language from statute (BPC section 4990.30) as listed in items H and I and replace language about the petitioner’s “attitude” with language that instead pertains to the petitioner’s cooperation with the Board’s investigation, other law enforcement or regulatory agencies, and/or the injured parties.

### Public Comment

Caldwell: Expressed that the language regarding recovery support program seemed strange. From a perspective of evidence-based treatment, attending a recovery support program does not seem to be as effective as other forms of substance abuse treatment. Expressed that he would like the Board to take a holistic and data-driven look at the disciplinary process because “the majority of people who are put on probation” do not complete it.

Staff will continue to work on this. No action taken.

## **IX. Update on Board-Sponsored Legislation**

Temporary Practice Allowance Bill Proposal was introduced as AB 222.

Omnibus Bill Proposal (No Bill Number Assigned at This Time)

This proposal was submitted to the Senate Business, Professions and Economic Development Committee.

## **X. Update on Board Rulemaking Proposals**

Continuing Education and Additional Training Requirements

Status: Approved by the Office of Administrative Law (OAL) and takes effect July 1, 2023.

Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees

Status: Approved by the OAL and takes effect April 1, 2023.

**XI. Suggestions for Future Agenda Items**

None

**XII. Public Comment for Items not on the Agenda**

None

**XIII. Adjournment**

The Committee adjourned at 4:31 p.m.