



Board of Behavioral Sciences



1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830  
www.bbs.ca.gov

Gavin Newsom, Governor  
State of California

Business, Consumer Services and Housing Agency  
Department of Consumer Affairs

## **POLICY AND ADVOCACY COMMITTEE Meeting Notice and Agenda**

**October 11, 2019  
8:30 a.m.**

**Department of Consumer Affairs  
Lou Galiano Hearing Room  
1625 North Market Blvd., #S-102  
Sacramento, CA 95834**

*While the Board intends to webcast this meeting, it may not be possible to webcast the entire meeting due to technical difficulties or limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location.*

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- I. Call to Order, Establishment of Quorum, and Introductions\*
  - II. Approval of August 2, 2019 Committee Meeting Minutes
  - III. Discussion and Possible Recommendation Regarding Proposed Technical Amendments to Business and Professions Code Sections 4980.01, 4980.43.2, 4980.43.3, 4983, 4987.5, 4989.66, 4990.30, 4996.12, 4996.14, 4996.22, 4996.23.1, 4998, 4999.22, 4999.46.1, 4999.46.2, 4999.86, 4999.123
  - IV. Discussion and Possible Recommendation Regarding Proposed Legislative Amendments Needed Due to the Passage of AB 2138: Business and Professions Code Sections 4980.40, 4982, 4989.20, 4989.24, 4989.54, 4992.3, 4996.2, 4996.18, 4999.42, 4999.51, 4999.80, 4999.90
  - V. Discussion and Possible Recommendation Regarding Custody of Client Records Due to Licensee Death or Incapacitation
  - VI. Discussion and Possible Recommendation Regarding Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees: Title 16, California Code of Regulations: Amend Sections 1805.05, 1850.6, 1850.7 and 1854; Repeal Section 1832

- VII. Status of Board-Sponsored, Board Supported, and Board Monitored Legislation:
- a. Assembly Bill 630 (Low) Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Educational Psychologists: Professional Clinical Counselors: Required Notice
  - b. Senate Bill 679 (Bates) Healing Arts: Therapists and Counselors: Licensing
  - c. Senate Bill 786 (Committee on Business, Professions, and Economic Development) Healing Arts
  - d. Assembly Bill 8 (Chu) Public Health: Mental Health Professionals
  - e. Assembly Bill 544 (Brough) Professions and Vocations: Inactive License Fees and Accrued and Unpaid Renewal Fees
  - f. Assembly Bill 613 (Low) Professions and Vocations: Regulatory Fees
  - g. Assembly Bill 769 (Smith) Federally Qualified Health Centers and Rural Health Clinics: Licensed Professional Counselors
  - h. Assembly Bill 1145 (Garcia) Child Abuse: Reportable Conduct
  - i. Assembly Bill 1540 (Holden) Certification Board for Music Therapists
  - j. Assembly Bill 1651 (Medina) LEPs: Supervision of Associates and Trainees
  - k. Senate Bill 10 (Beall) Mental Health Services: Peer, Parent, Transition Age, and Family Support Specialist Certification
  - l. Senate Bill 163 (Portantino) Healthcare Coverage: Pervasive Developmental Disorder or Autism
  - m. Senate Bill 425 (Hill) Health Care Practitioners: Licensee's File
  - n. Senate Bill 601 (Morrell) State Agencies: Licenses: Fee Waiver
  - o. Senate Bill 660 (Pan) Postsecondary Education: Mental Health Counselors
- VIII. Update on Board Rulemaking Proposals
- IX. Public Comment for Items Not on the Agenda

*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Gov. Code §§ 11125, 1125.7(a)]*

- X. Suggestions for Future Agenda Items
  - XI. Adjournment
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*\*Introductions are voluntary for members of the public.*

*Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times and order of items are approximate and subject to change. Action may be taken on any item listed on the Agenda.*

*This agenda as well as Board meeting minutes can be found on the Board of Behavioral Sciences website at [www.bbs.ca.gov](http://www.bbs.ca.gov).*

*NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

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Board of Behavioral Sciences

# Memo

1625 North Market Blvd., Suite S-200  
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[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Policy & Advocacy Committee  
Members

**Date:** September 30,  
2019

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject: Proposed Legislation: Technical Changes for 2020**

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Upon review, staff recommends that several sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences be amended. The proposed amendments are as follows:

**1. Amend BPC Sections 4987.5, 4998, and 4999.123 – Professional Corporations**

Background: These three sections specify that licensed marriage and family therapist (LMFT), licensed clinical social worker (LCSW), and licensed professional clinical counselor (LPCC) corporations are authorized to render professional services as long as the corporation and its shareholders, officers, directors, and employees rendering professional services, who are certain specified license holders, are in compliance with the Moscone-Knox Professional Corporation act and other relevant statutes and regulations.

The sections go on to list which license types may be officers, directors, or employees rendering professional services. However, this list is already in Section 13401.5 of the Corporations Code. Occasionally, the legislature changes the list in the Corporations Code. For example, midwives and naturopathic doctors are more recent additions that are listed in the Corporations Code, but not in the BPC sections cited above.

Recommendation: Staff recommends striking the list of professions in sections 4987.5, 4998, and 4999.123 of the Business and Professions Code, as they are already listed in the Corporations Code. These sections already state that the shareholders, officers, directors, or professional employees must be in compliance with the Moscone-Knox Act, so re-stating the professions is duplicative.

## 2. Amend BPC Section 4980.43.3 - Renumbering

Background: BPC Section 4980.43.3 contains a numbering error in subdivision (c). The two criteria listed as (1) and (2) should instead be labeled as subdivisions (A) and (B).

Recommendation: Renumber the contents of subdivision (c) in order to correct the error.

## 3. Amend BPC Sections 4980.43.2, 4996.23.1, 4999.46.2 – Definition of “One Hour of Direct Supervisor Contact”

Background: These sections define “one hour of direct supervisor contact” as a specified amount of face-to-face contact between one supervisor and their supervisees.

The intent of the term “face-to-face” contact is to require that the supervisor and supervisee(s) meet in person for the supervision session. This is implied by reviewing subdivisions 4980.43.2(d), 4996.23.1(f), and 4999.46.2(d), which state that notwithstanding the definitions of “one hour of direct supervisor contact”, an associate working in an exempt setting may obtain their required weekly direct supervisor contact via videoconferencing. However, due to questions about the meeting of “face-to-face”, staff believes it would be helpful to clarify that “face-to-face” contact means that the contact must be in-person.

Recommendation: Amend the definition of “one hour of direct supervisor contact” in sections 4980.43.2, 4996.23.1, and 4999.46.2 to specify that it is required to be in-person face-to-face contact.

## 4. Amend BPC Sections 4980.01, 4996.14, 4999.22 – Notice to Clients About Filing a Complaint

Background: Last year via AB 630, the Board amended the law to require that unlicensed or unregistered therapists in exempt settings provide their clients with information about where to file a complaint about the therapist.

In its review of the bill, the Senate Committee on Business, Professions, and Economic Development made a suggestion that the following language also be included in that notice provided to clients of unlicensed or unregistered therapists:

[The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.](#)

Adding this language would provide a consumer who is unsure about their therapist's license status with an additional resource (the Board's contact number) so that they could check if their therapist is licensed or registered.

Recommendation: Amend the above statement into the notice required by sections 4980.01, 4996.14, and 4999.22.

## **5. Amend BPC Section 4990.30 - Petitions for Reinstatement or Modification of Penalty**

Background: The Board's legal counsel has recommended clarifying certain provisions regarding the procedure for petitioning to terminate probation early or modify a penalty, in order to clear up some ambiguities in BPC section 4990.30:

- Subdivision (b) currently specifies timeframes after which a petition can be filed with the Board. Until recently, the Board has operated under the assumption that time during which a probation is tolled also counts toward the specified timeframes. However, in a recent case, an administrative law judge challenged this assumption, stating it is incorrect. Staff wishes to clarify that the timeframes exclude any periods of probation tolling.
- Subdivision (c) states that that a petition may be heard either by the Board, or that the Board can assign the petition to an administrative law judge. However, subdivision (d) implies that the petitioner has some say in who hears the case, stating "The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets." While the intent of this is likely to provide that the petitioner may request their case to be heard, for example at a southern California board meeting if they live in southern California, it also possibly inadvertently implies that a petitioner can request the Board to hear a case, instead of an administrative law judge.

Recommendation: Amend subdivision (b) to exclude periods of probation tolling from the required timeframes before a petition can be filed. Amend subdivision (d) to clarify that a petitioner can only request a hearing location if the Board is hearing the case.

## **6. Amend BPC Section 4996.22 – Acceptable LCSW Continuing Education Providers**

Background: Currently, the law states that social workers can only obtain continuing education from an accredited school if the school is accredited by the Commission on Accreditation of the Council of Social Work Education. It does not permit social workers to gain continuing education from a school accredited by the US

Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

Staff believes this is unintentional and that social workers should be able to gain continuing education from a school accredited by USDE or approved by BPPE, just as LMFTs and LPCCs can.

Recommendation: Amend BPC Section 4996.22 to permit clinical social workers to obtain continuing education from a school accredited by the US Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

#### **7. Amend BPC Section 4999.46.1 – Delete Duplicative Definition of Supervision**

Background: Currently, two sections of LPCC statute define “supervision.” These sections are BPC §4999.12 and §4999.46.1. BPC §4999.12 defines terms used throughout the LPCC licensing statute, and therefore the definition is most appropriate there. It does not need to be duplicated in §4999.46.1.

Recommendation: Delete the duplicative definition of “supervision” in BPC §4999.46.1.

#### **8. Amend BPC Sections 4983, 4989.66, 4996.12, and 4999.86 – Fines for Licensing Act Violations**

Background: LMFT and LPCC law both have provisions establishing a misdemeanor charge and a fine of \$2,500 and/or six months in county jail for violating the respective licensing acts.

LCSW law has this clause as well, however the fine amount is less, at \$1,000. LEP law states a violation of its chapter is a misdemeanor but does not specify a punishment of jail time or a fine.

Staff believes the stated punishment for a violation of the Board’s licensing acts should be consistent but has been unable to determine the reason for the inconsistency. Both the LMFT section establishing the \$2,500 fine, and the LCSW section establishing the \$1,000 fine were established in the mid-1980’s and have not been amended since. Legislative history that might explain the reason for the differing fines is not available that far back. The LPCC licensing law was established in 2009 and was modeled after the LMFT licensing law, which explains why the LPCC and LMFT fines are consistent.

The Board of Psychology has a similar provision (BPC §2970) that establishes a fine of \$2,000. (It was also last amended in the mid-1980’s).



The fines referenced above are court fines. BPC §125.9 grants boards the authority to establish a system for issuance of citations and administrative fines via regulations. The Board has done this in regulation section 1886.40, which establishes fines of up to \$2,500 for citable offenses, or up to \$5,000 if the particular offense meets certain specified circumstances.

Recommendation: Amend LCSW and LEP law to specify the misdemeanor punishment for a licensing act violation is a \$2,500 fine and/or six months in jail. This is consistent with current LMFT and LPCC law. (Note: staff reached out to the Assembly Business and Professions Committee to see if this issue could be addressed as a clean-up amendment in the Board's upcoming sunset bill. They indicated a willingness to examine and possibly address the issue there as well.)

### **Recommendation**

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal.

### **Attachments**

**Attachment A:** Proposed Language

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**ATTACHMENT A  
TECHNICAL AMENDMENTS - 2020  
PROPOSED LANGUAGE**

**AMEND §4980.01. (Language From AB 630)**

(a) This chapter shall not be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Law.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of their pastoral or professional duties, or to any person who is admitted to practice law in the state, or a physician and surgeon who provides counseling services as part of their professional practice.

(c) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if both of the following apply:

(1) The work of the employee or volunteer is performed solely under the supervision of the entity.

(2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:

**NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

[The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.](#)

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care provider subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

### **AMEND §4980.43.2. DIRECT SUPERVISOR CONTACT**

(a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph (9) of subdivision (a) of Section 4980.43, direct supervisor contact shall occur as follows:

- (1) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.
- (2) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of direct clinical counseling performed each week in each setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.
- (3) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.
- (4) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.

(b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:

- (1) Individual supervision, which means one hour of [in-person](#) face-to-face contact between one supervisor and one supervisee.
- (2) Triadic supervision, which means one hour of [in-person](#) face-to-face contact between one supervisor and two supervisees.
- (3) Group supervision, which means two hours of [in-person](#) face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour. A supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.

- (c) Direct supervisor contact shall occur within the same week as the hours claimed.
- (d) Notwithstanding subdivision (b), an associate working in a governmental entity, school, college, university, or an institution that is nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.
- (e) Notwithstanding any other law, once the required number of experience hours are gained, associates and applicants for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as defined in paragraph (9) of subdivision (a) of Section 4980.43, shall be at the supervisor's discretion.

**AMEND §4980.43.3. SUPERVISED EXPERIENCE: ACCEPTABLE SETTINGS;  
ACCEPTABLE SUPERVISION PRACTICES**

- (a) A trainee, associate, or applicant for licensure shall only perform mental health and related services as an employee or volunteer, and not as an independent contractor. The requirements of this chapter regarding hours of experience and supervision shall apply equally to employees and volunteers. A trainee, associate, or applicant for licensure shall not perform any services or gain any experience within the scope of practice of the profession, as defined in Section 4980.02, as an independent contractor. While an associate may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.
  - (1) If employed, an associate shall provide the board, upon application for licensure, with copies of the W-2 tax forms for each year of experience claimed.
  - (2) If volunteering, an associate shall provide the board, upon application for licensure, with a letter from his or her employer verifying the associate's status as a volunteer during the dates the experience was gained.
- (b) (1) A trainee shall not perform services in a private practice. A trainee may be credited with supervised experience completed in a setting that meets all of the following:
  - (A) Is not a private practice.
  - (B) Lawfully and regularly provides mental health counseling or psychotherapy.

- (C) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.
- (2) Only experience gained in the position for which the trainee volunteers or is employed shall qualify as supervised experience.
- (c) (1) An associate may be credited with supervised experience completed in any setting that meets both of the following:
- ~~(1)~~(A) Lawfully and regularly provides mental health counseling or psychotherapy.
  - ~~(2)~~(B) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.
  - ~~(3)~~(2) Only experience gained in the position for which the associate volunteers or is employed shall qualify as supervised experience.
  - ~~(4)~~(3) An applicant for registration as an associate shall not be employed or volunteer in a private practice until he or she has been issued an associate registration by the board.
- (d) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.
- (e) A trainee, associate, or applicant for licensure shall not receive any remuneration from patients or clients and shall only be paid by his or her employer, if an employee.
- (f) A trainee, associate, or applicant for licensure shall have no proprietary interest in his or her employer's business and shall not lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.
- (g) A trainee, associate, or applicant for licensure who provides voluntary services in any lawful work setting other than a private practice and who only receives reimbursement for expenses actually incurred shall be considered an employee. The board may audit an applicant for licensure who receives reimbursement for

expenses and the applicant for licensure shall have the burden of demonstrating that the payment received was for reimbursement of expenses actually incurred.

- (h) A trainee, associate, or applicant for licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to improve recruitment and retention in underserved regions or settings shall be considered an employee. The board may audit an applicant who receives a stipend or educational loan repayment and the applicant shall have the burden of demonstrating that the payment received was for the specified purposes.
- (i) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.
- (j) Each educational institution preparing applicants pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her associates and trainees regarding the advisability of undertaking individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, educational institutions and supervisors are encouraged to assist the applicant to locate counseling or psychotherapy at a reasonable cost.

#### **§4983. VIOLATION; MISDEMEANOR; PUNISHMENT**

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

#### **AMEND §4987.5. DEFINITION**

A marriage and family therapy corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services ~~who are licensed marriage and family therapists, physicians and surgeons, psychologists, licensed professional clinical counselors, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists~~ are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a marriage and family therapy corporation, the governmental agency referred

to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

### **AMEND §4989.66. VIOLATION OF CHAPTER; MISDEMEANOR**

A person who violates any of the provisions of this chapter is guilty of a misdemeanor-  
punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

### **AMEND §4990.30. PETITION FOR REINSTATEMENT OR MODIFICATION OF PENALTY**

- (a) A licensed marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, associate professional clinical counselor, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.
- (b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, ~~each of which~~ Each timeframe excludes any periods during which the probation was tolled, and commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:
  - (1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.
  - (2) Two years for early termination of any probation period of three years or more.
  - (3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.



- (c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.
- (d) If the petition is to be heard by the board, the~~The~~ petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.
- (e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.
- (f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.
- (g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license or registration was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.
- (h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.
- (i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.
- (j) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before

the board, to determine the petitioner's fitness to practice as required by Section 822.

- (k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.
- (l) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.
- (m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

#### **AMEND §4996.12. VIOLATIONS; PENALTIES**

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding a period of six months, or by a fine not exceeding ~~one thousand dollars (\$1,000), or by both~~ two thousand five hundred dollars (\$2,500), or by both.

#### **AMEND 4996.14. (Language from AB 630)**

(a) This chapter shall not be construed to constrict, limit, or withdraw the Medical Practice Act, the Licensed Marriage and Family Therapist Act, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Law.

(b) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if both of the following apply:

- (1) The work of the employee or volunteer is performed solely under the supervision of the entity.
- (2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:

#### **NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered

counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

[The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.](#)

(c) This chapter shall not apply to a person using hypnotic techniques if their client was referred by a physician and surgeon, dentist, or psychologist.

(d) This chapter shall not apply to a person using hypnotic techniques that offer vocational self-improvement, and the person is not performing therapy for emotional or mental disorders.

### **AMEND §4996.22. CONTINUING EDUCATION**

- (a)(1) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that ~~he or she has~~ they have completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.
- (2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).
- (b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.
- (c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.
- (d) The continuing education shall be obtained from one of the following sources:
- (1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this

paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) A school, college or university accredited by a regional or national institutional accrediting agency that is recognized by the United States Department of Education, or a school, college or university that is approved by the Bureau for Private Postsecondary Education.

~~(2)~~(3) Other continuing education providers, as specified by the board by regulation.

- (e) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.
- (f) Training, education, and coursework by approved providers shall incorporate one or more of the following:
  - (1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.
  - (2) Aspects of the social work discipline in which significant recent developments have occurred.
  - (3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.
- (g) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.
- (h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.
- (i) The board may adopt regulations as necessary to implement this section.
- (j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

### **AMEND §4996.23.1 DIRECT SUPERVISOR CONTACT**

(a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph (3) of subdivision (d) of Section 4996.23, direct supervisor contact shall occur as follows:

- (1) Supervision shall include at least one hour of direct supervisor contact each week for which experience is credited in each work setting.

(2) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting.

(b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:

(1) Individual supervision, which means one hour of in-person face-to-face contact between one supervisor and one supervisee.

(2) Triadic supervision, which means one hour of in-person face-to-face contact between one supervisor and two supervisees.

(3) Group supervision, which means two hours of in-person face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour. A supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.

(c) Direct supervisor contact shall occur within the same week as the hours claimed.

(d) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.

(e) Of the 52 weeks of required individual or triadic supervision, no less than 13 weeks shall be supervised by a licensed clinical social worker.

(f) Notwithstanding subdivision (b), an associate clinical social worker working in a governmental entity, school, college, university, or an institution that is nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring compliance with state and federal laws relating to confidentiality of patient health information.

(g) Notwithstanding any other law, once the required number of experience hours are gained, an associate clinical social worker or applicant for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as described in paragraph (3) of subdivision (d) of Section 4996.23, shall be at the supervisor’s discretion.

#### **AMEND §4998. DEFINITION; RIGHT TO PRACTICE CLINICAL SOCIAL WORK; BOARD AS GOVERNMENTAL AGENCY**

A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services ~~who are licensed clinical social workers, physicians and surgeons, psychologists, licensed professional clinical counselors, licensed marriage and family~~

~~therapists, registered nurses, chiropractors, or acupuncturists~~ are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a licensed clinical social worker corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

## **AMEND §4999.22. CONSTRUCTION WITH OTHER LAWS; NONAPPLICATION TO CERTAIN PROFESSIONALS AND EMPLOYEES**

- (a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the public by any title or description of services incorporating the words “licensed professional clinical counselor” and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.
- (b) Nothing in this chapter shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Licensed Marriage and Family Therapist Act.
- (c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of their pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of their professional practice.
- (d) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity or a school, a college, a university, or an institution that is both nonprofit and charitable, if both of the following apply:
- (1) The work of the employee or volunteer is performed solely under the supervision of the entity.
  - (2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:

### **NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.

(e) All persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

### **AMEND §4999.46.1. RESPONSIBILITIES OF SUPERVISORS AND ASSOCIATES**

(a) An associate or applicant for licensure shall be under the supervision of a supervisor at all times.

~~(b) As used in this chapter, the term “supervision” means responsibility for, and control of, the quality of mental health and related services provided by the supervisee. Consultation or peer discussion shall not be considered supervision and shall not qualify as supervised experience. Supervision includes, but is not limited to, all of the following:~~

~~(1) Ensuring the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the supervisee.~~

~~(2) Monitoring and evaluating the supervisee’s assessment, diagnosis, and treatment decisions and providing regular feedback.~~

~~(3) Monitoring and evaluating the supervisee’s ability to provide services at the site or sites where he or she is practicing and to the particular clientele being served.~~

~~(4) Monitoring and addressing clinical dynamics, including, but not limited to, countertransference, intrapsychic, interpersonal, or trauma-related issues that may affect the supervisory or practitioner-patient relationship.~~

~~(5) Ensuring the supervisee’s compliance with laws and regulations governing the practice of licensed professional clinical counseling.~~

~~(6) Reviewing the supervisee’s progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor.~~

~~(7) With the client’s written consent, providing direct observation or review of audio or video recordings of the supervisee’s counseling or therapy, as deemed appropriate by the supervisor.~~

~~(e)~~(b) An associate shall do both of the following:

- (1) Inform each client, prior to performing any professional services, that he or she is unlicensed and under supervision.
  - (2) Renew the registration a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked.
- ~~(d)~~(c) When no further renewals are possible, an applicant may apply for and obtain a subsequent associate registration number if the applicant meets the educational requirements for a subsequent associate registration number and has passed the California law and ethics examination. An applicant issued a subsequent associate registration number shall not be employed or volunteer in a private practice.

#### **AMEND §4999.46.2. DIRECT SUPERVISOR CONTACT**

- (a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph (5) of subdivision (c) of Section 4999.46, direct supervisor contact shall occur as follows:
  - (1) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.
  - (2) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of direct clinical counseling performed each week in each setting. For experience gained after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.
  - (3) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting. For experience gained after January 1, 2009, no more than six hours of supervision, whether individual supervision, triadic supervision, or group supervision, shall be credited during any single week.
  - (4) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.
- (b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:



- (1) Individual supervision, which means one hour of in-person face-to-face contact between one supervisor and one supervisee.
  - (2) Triadic supervision, which means one hour of in-person face-to-face contact between one supervisor and two supervisees.
  - (3) Group supervision, which means two hours of in-person face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour. The supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.
- (c) Direct supervisor contact shall occur within the same week as the hours claimed.
- (d) Notwithstanding subdivision (b), an associate working in a governmental entity, school, college, university, or institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.
- (e) Notwithstanding any other law, once the required number of experience hours are gained, associates and applicants for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as defined in paragraph (5) of subdivision (c) of Section 4999.46, shall be at the supervisor's discretion.

#### **§4999.86. VIOLATIONS OF CHAPTER PROVISIONS; MISDEMEANOR**

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

#### **AMEND §4999.123. DEFINITIONS**

A professional clinical counselor corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees who are rendering professional services ~~and who are licensed professional clinical counselors, licensed marriage and family therapists, physicians and surgeons, psychologists, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists,~~ are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this

article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a professional clinical counselor corporation, the term “governmental agency” in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) shall be construed to mean the Board of Behavioral Sciences.

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**To:** Policy & Advocacy Committee Members      **Date:** September 30, 2019

**From:** Rosanne Helms, Legislative Analyst      **Telephone:** (916) 574-7897

**Subject:** **Proposed Legislation: Amendments Needed Due to the Passage of AB 2138 (2018) and AB 2396 (2014)**

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AB 2138 (Chu and Low, Chapter 995, Statutes of 2018) was signed into law last year and becomes effective on July 1, 2020. This bill makes amendments to DCA boards' enforcement processes, including placing new limits on when a board can deny a license based on a conviction or prior formal disciplinary action. (See **Attachment B** for the text of AB 2138.)

AB 2396 (Bonta, Chapter 737, Statutes of 2014) prohibited boards under DCA from denying a license solely based on the applicant having certain types of convictions that have been expunged. (See **Attachment C** for the text of AB 2396.)

The passage of both bills require clean-up amendments in the Board's four practice acts so that related language is consistent throughout the statutes (See **Attachment A**). These amendments fall into four categories, as described below:

**1. Amend BPC Sections 4980.40, 4989.20, 4996.2, 4999.42, and 4999.51 – Qualifications for Licensure or Registration.**

Background: These sections list criteria needed to qualify for a license or registration. One of these criteria is that the person must not have committed any acts or crimes constituting grounds for denial of licensure under BPC Section 480. (BPC Section 480 outlines the reasons a board may deny a license, and it was significantly changed by AB 2138.)

BPC Section 480 used to allow denial of licensure based on convictions or certain acts involving fraud, dishonesty, or deceit. However, that language has been changed, and now denial is permitted based on certain types of convictions or based on formal discipline due to professional misconduct that occurred within a specific time frame and that is substantially related to the profession.

Recommendation: Given the recent changes to BPC Section 480, staff recommends striking the old language that the applicant must not have committed acts or crimes constituting grounds for denial under Section 480. Instead, staff recommends an amendment that simply states that the person must not be subject to denial of licensure pursuant to section 480.

**2. Amend BPC Sections 4980.40, 4989.24, 4996.2, 4999.42, and 4999.51 – Reference to Penal Code Section 290**

Background: Penal Code (PC) §290 specifies various types of crimes for which registration as a sex offender is required.

PC §290 is being reorganized effective January 1, 2021. Under the new version of that law, the types of sex offenses have been organized into three tiers, depending on the severity of the crime. The higher the tier, the longer the required registration as a sex offender.

**Attachment D** shows the current and upcoming versions of PC §290.

AB 2138 amended BPC §480 to specify that only the two higher tier sex offenses in the new PC §290 are subject to license denial regardless of the seven-year age limitation. However, there are several sections in the Board's practice acts that specify denial for any required registration under PC 290. However, these are now overridden by the changes made in AB 2138.

Recommendation: Amend the above listed sections of the Business and Professions Code to specify that any denials due to PC §290 registration must also be in accordance with the conditions for denial specified in section 480.

**3. Amend BPC Sections 4982, 4989.54, 4992.3, and 4999.90– Unprofessional Conduct Provisions.**

Background: These sections contain a definition of a conviction. However, AB 2138 amended the definition of a conviction in BPC §7.5 for the purposes of denying a license pursuant to section 480. Therefore, staff recommends referencing that definition here.

These sections also contain language permitting suspension, revocation, or denial of a license regardless of whether a conviction has been dismissed pursuant to Penal Code Section 1203.4. However, due to amendments made in AB 2396 and AB 2138, denial of licensure is not permitted on the basis of this type of dismissed conviction. Therefore, instead of including this specific language, staff recommends an amendment stating actions to suspend, revoke, or deny a license must be in compliance with Division 1.5 of the Business and Professions Code (this Division contains section 480 and contains the statutes governing denial, suspension, and revocation of licenses.)

Recommendation: Amend these unprofessional conduct sections to reference the definition of a conviction referenced in BPC §7.5. Also amend the sections to state that suspensions, revocations, or denials of a license or registration must be in accordance with Division 1.5 of the Business and Professions Code.

**4. Amend BPC Section 4999.80 – References to Statutes Governing License Denials, Suspensions, or Revocations.**

Background: This section references laws governing license denials, suspensions, or revocations. BPC section 490 governs license suspensions and revocations and is not included in the list of referenced sections. Staff believes it should be.

Recommendation: Amend BPC §4999.80 to include BPC §490 in the list of referenced sections that pertain to license denials, suspensions, or revocations.

**Recommendation**

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal.

**Attachments**

**Attachment A:** Proposed Language

**Attachment B:** AB 2138 Text

**Attachment C:** AB 2396 Text

**Attachment D:** Penal Code Section 290 – Version expiring January 1, 2021 and new version becoming effective January 1, 2021.

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**ATTACHMENT A  
AB 2138 AMENDMENTS  
PROPOSED LANGUAGE**

**AMEND §4980.40. QUALIFICATIONS**

An applicant for licensure shall satisfy all of the following qualifications:

- (a) Meet the educational requirements of Section 4980.36 or both Sections 4980.37 and 4980.41, as applicable.
- (b) Be at least 18 years of age.
- (c) Have at least two years of supervised experience as specified in this chapter and its corresponding regulations.
- (d) Successfully pass a California law and ethics examination and a clinical examination. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.
- (e) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory, in accordance with Section 480.

**§4982. UNPROFESSIONAL CONDUCT**

The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning~~

~~of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.~~

- (b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.
- (c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.
- (d) Gross negligence or incompetence in the performance of marriage and family therapy.
- (e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.
- (f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.
- (g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.
- (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.
- (i) Intentionally or recklessly causing physical or emotional harm to any client.



- (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.
- (k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.
- (l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, registered associate, or applicant for licensure under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.
- (m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.
- (n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.
- (o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).
- (p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.
- (q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.
- (r) Any conduct in the supervision of any registered associate, trainee, or applicant for licensure by any licensee that violates this chapter or any rules or regulations adopted by the board.
- (s) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

- (t) Permitting a trainee, registered associate, or applicant for licensure under one's supervision or control to perform, or permitting the trainee, registered associate, or applicant for licensure to hold himself or herself out as competent to perform, mental health services beyond the trainee's, registered associate's, or applicant for licensure's level of education, training, or experience.
- (u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.
- (v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.
- (w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.
- (x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.
- (y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.
- (z) Failure to comply with Section 2290.5.
- (aa) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.
- (2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.
- (ab) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

**§4989.20. LICENSURE REQUIREMENTS**

- (a) The board may issue a license as an educational psychologist if the applicant satisfies, with proof satisfactory to the board, the following requirements:
  - (1) Possession of, at minimum, a master's degree in psychology, educational psychology, school psychology, counseling and guidance, or a degree deemed equivalent by the board. This degree shall be obtained from an educational

institution approved by the board according to the regulations adopted under this chapter.

- (2) Attainment of 18 years of age.
- (3) ~~No commission of an act or crime constituting grounds for denial of licensure under Section 480. Is not subject to denial of licensure pursuant to Section 480.~~
- (4) Successful completion of 60 semester hours of postgraduate work in pupil personnel services.
- (5) Two years of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools. The applicant shall not be credited with experience obtained more than six years prior to filing the application for licensure.
- (6) One of the following:
  - (A) One year of supervised professional experience in an accredited school psychology program.
  - (B) In addition to the requirements of paragraph (5), one year of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools obtained under the direction of a licensed educational psychologist or a licensed psychologist.
- (7) Passage of an examination specified by the board.

#### **§4989.24. CONVICTION INVOLVING SEXUAL ABUSE OF CHILDREN**

The board shall not issue a license to a person who has been convicted of a crime in this or any other state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. A denial issued pursuant to this section shall comply with the conditions for denial specified in section 480.

#### **§4989.54. UNPROFESSIONAL CONDUCT**

The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- (a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.
- (1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
  - (2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.
  - (3) ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~
  - (4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.
- (b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.
- (c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing educational psychology.
- (d) Failure to comply with the consent provisions in Section 2290.5.
- (e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

- (f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.
- (g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.
- (h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.
- (i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as an educational psychologist, a clinical social worker, professional clinical counselor, or marriage and family therapist.
- (j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.
- (k) Gross negligence or incompetence in the practice of educational psychology.
- (l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.
- (m) Intentionally or recklessly causing physical or emotional harm to any client.
- (n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.
- (o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.
- (p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.
- (q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

- (r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.
- (s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.
- (t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.
- (u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.
- (v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.
- (w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.
- (x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.
- (y) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.
- (2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

- (z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.
- (aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use his or her license.
- (ab) Permitting a person under his or her supervision or control to perform, or permitting that person to hold himself or herself out as competent to perform, professional services beyond the level of education, training, or experience of that person.

### **§4992.3. UNPROFESSIONAL CONDUCT; EFFECT ON LICENSEE OR REGISTRANT**

The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~

The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for

or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Incompetence in the performance of clinical social work.

(e) An act or omission that falls sufficiently below the standard of conduct of the profession as to constitute an act of gross negligence.

(f) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(g) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(h) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(i) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(j) Intentionally or recklessly causing physical or emotional harm to any client.

(k) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(l) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(m) Performing, or holding oneself out as being able to perform, or offering to perform or permitting, any registered associate, trainee, or applicant for licensure under supervision to perform any professional services beyond the scope of the license authorized by this chapter.



(n) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (o).

(q) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(r) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device. A licensee shall limit access to that test or device to persons with professional interest who are expected to safeguard its use.

(s) Any conduct in the supervision of any registered associate, trainee, or applicant for licensure by any licensee that violates this chapter or any rules or regulations adopted by the board.

(t) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(u) Permitting an applicant for licensure, trainee, or registrant under one's supervision or control to perform, or permitting the supervisee to hold himself or herself out as competent to perform, mental health services beyond the supervisee's level of education, training, or experience.

(v) The violation of any law governing the gaining or supervision of experience required by this chapter.

(w) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(x) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(y) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(z) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(aa) Failure to comply with Section 2290.5.

(ab) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(ac) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

## **§4996.2. QUALIFICATIONS OF LICENSEES**

Each applicant for a license shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.23.

(d) ~~Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.  
The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory, in accordance with section 480.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

- (f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.
- (g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.
- (h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

## **§4996.18. ASSOCIATE CLINICAL SOCIAL WORKER; REGISTRATION; SUPERVISION**

(a) All applicants, except as provided in subdivision (b) of Section 4996.23, shall have an active registration with the board as an associate clinical social worker in order to gain hours of supervised experience.

(b) An applicant for registration shall satisfy the following requirements:

(1) Possess a master's degree from an accredited school or department of social work.

(2) ~~Have committed no crimes or acts constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.

(3) Have completed training or coursework, which may be embedded within more than one course, in California law and professional ethics for clinical social workers, including instruction in all of the following areas of study:

(A) Contemporary professional ethics and statutes, regulations, and court decisions that delineate the scope of practice of clinical social work.

(B) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of clinical social work, including, but not limited to, family law.

(C) The current legal patterns and trends in the mental health professions.

(D) The psychotherapist-patient privilege, confidentiality, dangerous patients, and the treatment of minors with and without parental consent.

(E) A recognition and exploration of the relationship between a practitioner's sense of self and human values, and his or her professional behavior and ethics.

(F) Differences in legal and ethical standards for different types of work settings.

(G) Licensing law and process.

(c) An applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, except as provided in subdivision (b) of Section 4996.23, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant ~~has not committed any crimes or acts that constitute grounds for~~ is not subject to denial of licensure ~~under~~ pursuant to Section 480. That applicant shall not, however, be eligible to take the clinical examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(d) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained

during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(e) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of evaluation or accreditation.

(f) All applicants for licensure and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws governing the practice of clinical social work.

(g) All applicants and registrants shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

#### **§4999.42. ASSOCIATE REGISTRATION; QUALIFICATION**

(a) An applicant shall meet all of the following qualifications to qualify for registration as an associate:

(1) Earned a master's or doctoral degree as specified in Section 4999.32 or 4999.33, as applicable. An applicant whose education qualifies him or her under Section 4999.32 shall also have completed the coursework or training specified in subdivision (e) of Section 4999.32.

(2) Be at least 18 years of age.

(3) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.

(b) The board shall not issue a registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual

abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. [A denial issued pursuant to this subdivision shall comply with the conditions for denial specified in section 480.](#)

#### **§4999.51. CRIMINAL OFFENDER RECORD INFORMATION; REQUIREMENTS FOR LICENSURE AND REGISTRATION**

An applicant for licensure as a professional clinical counselor or registration as an associate shall satisfy the following qualifications:

- (a) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ [Not be subject to denial of licensure pursuant to Section 480.](#)
- (b) Not have been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. [A denial issued pursuant to this subdivision shall comply with the conditions for denial specified in section 480.](#)
- (c) Have successfully passed a state and federal level criminal offender record information search conducted through the Department of Justice by submitting fingerprint images and other information to the Department of Justice for the purpose of obtaining records of state and federal convictions and arrests. The board shall request the subsequent arrest notification service on all applicants, pursuant to Section 11105.2 of the Penal Code.

#### **§4999.80. ENFORCEMENT OF LAWS; BOARD DUTIES**

In order to carry out the provisions of this chapter, the board shall do all of the following:

- (a) Enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.
- (b) Investigate complaints concerning the conduct of any licensed professional clinical counselor.
- (c) Revoke, suspend, or fail to renew a license that it has authority to issue for just cause, as enumerated in rules and regulations of the board. The board may deny, suspend, or revoke any license granted under this chapter pursuant to Section 480, 481, 484, [490](#), 496, 498, or 499.

## §4999.90. UNPROFESSIONAL CONDUCT

The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any associate or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct.

Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~ The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.~~

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

- (f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.
- (g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.
- (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.
- (i) Intentionally or recklessly causing physical or emotional harm to any client.
- (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.
- (k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.
- (l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, applicant, or registrant under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.
- (m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.
- (n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.
- (o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).
- (p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.
- (q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which



depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of a registered associate, trainee, or applicant by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee, associate, or applicant under one's supervision or control to perform, or permitting the trainee, associate, or applicant to hold himself or herself out as competent to perform, mental health services beyond the trainee's, associate's, or applicant's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a professional clinical counselor, clinical social worker, educational psychologist, or marriage and family therapist.

(ac) Failing to comply with the procedures set forth in Section 2290.5 when delivering health care via telehealth.

(ad) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

## Assembly Bill No. 2138

### CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with  
Secretary of State September 30, 2018.]

#### Legislative Counsel's Digest

AB 2138, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (A) The State Athletic Commission.
- (B) The Bureau for Private Postsecondary Education.
- (C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.



(h) “Conviction” as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

- (1) The nature and gravity of the offense.
- (2) The number of years elapsed since the date of the offense.
- (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
  - (2) The Bureau for Private Postsecondary Education.
  - (3) The California Horse Racing Board.
- (f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480;  
or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(b) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

- (B) The number of years elapsed since the date of the offense.
- (C) The nature and duties of the profession.
- (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
- (c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”
- (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
  - (1) The State Athletic Commission.
  - (2) The Bureau for Private Postsecondary Education.
  - (3) The California Horse Racing Board.
- (e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

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## Assembly Bill No. 2396

### CHAPTER 737

An act to amend Section 480 of the Business and Professions Code, relating to expungement.

[Approved by Governor September 28, 2014. Filed with  
Secretary of State September 28, 2014.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2396, Bonta. Convictions: expungement: licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law prohibits a board from denying a license on the ground that the applicant has committed a crime if the applicant shows that he or she obtained a certificate of rehabilitation in the case of a felony, or that he or she has met all applicable requirements of the criteria of rehabilitation developed by the board, as specified, in the case of a misdemeanor.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board within the Department of Consumer Affairs from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions. The bill would require an applicant who has a conviction that has been dismissed pursuant to the above provisions to provide proof of the dismissal.

*The people of the State of California do enact as follows:*

SECTION 1. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

O

# ATTACHMENT D

## PENAL CODE SECTION 290

### PENAL CODE - PEN

#### PART 1. OF CRIMES AND PUNISHMENTS [25 - 680] ( Part 1 enacted 1872. )

#### TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS [261 - 368.5] ( Heading of Title 9 amended by Stats. 1982, Ch. 1111, Sec. 2. )

#### CHAPTER 5.5. Sex Offenders [290 - 294] ( Chapter 5.5 heading added by Stats. 2006, Ch. 337, Sec. 10. )

**290.** (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

**(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.**

*(Amended (as amended by Stats. 2017, Ch. 541, Sec. 1.5) by Stats. 2018, Ch. 423, Sec. 51. (SB 1494) Effective January 1, 2019. Repealed as of January 1, 2021, by its own provisions. See later operative version amended by Sec. 52 of Stats. 2018, Ch. 290. Note: This section was amended on November 6, 2012, by initiative Prop. 35.)*

**290.** (a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

**(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10**

years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 287 or former Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 287, 288, or 289 or former Section 288a.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 287 or former Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

- (L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.
- (M) The person was convicted of violating Section 264.1.
- (N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.
- (O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.
- (P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 287 or former Section 288a.
- (Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.
- (R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.
- (4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).
- (B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:
- (i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.
- (ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
- (iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
- (5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.
- (B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.
- (e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.
- (f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

**(g) This section shall become operative on January 1, 2021.**

*(Amended (as added by Stats. 2017, Ch. 541, Sec. 2.5) by Stats. 2018, Ch. 423, Sec. 52. (SB 1494) Effective January 1, 2019. Section operative January 1, 2021, by its own provisions. Note: This section was amended on November 6, 2012, by initiative Prop. 35.)*

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**To:** Policy & Advocacy Committee Members      **Date:** September 30, 2019

**From:** Rosanne Helms  
Legislative Analyst      **Telephone:** (916) 574-7897

**Subject:** Custody of Client Records Due to Licensee Death or Incapacitation

From time to time, the Board receives inquiries about what should happen to client records if the therapist dies or becomes incapacitated.

Currently, the Board's statutes and regulations do not address this. Some professional associations address this in their codes of ethics. For example, American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (2017) states the following:

- APA Ethics Code Section 6.02(c): *Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice.*
- APA Ethics Code Section 3.12: *Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations.*

See **Attachment E** for guidance from the APA on handling records of a deceased psychologist.

The American Counseling Association's 2014 ACA Code of Ethics addresses the issue as follows:

- ACA Code of Ethics Section B.6.i.: Reasonable Precautions: *Counselors take reasonable precautions to protect client confidentiality in the event of the counselor's termination of practice, incapacity, or death and appoint a records custodian when identified as appropriate.*

## Other States

Some other states have taken steps to require that their licensed mental health professionals take certain actions to ensure safekeeping of client records. For example:

- **Texas:** The Texas Administrative Code requires that its licensed professional counselors notify their patients of the following as part of their informed consent before providing services:  
  
“the established plan for the custody and control of the client’s mental health records in the event of the licensee’s death or incapacity, or the termination of the licensee’s counseling practice.” (Texas Administrative Code Title 22, Chapter 681, §681.41(e)(8)) (Shown in **Attachment A.**)
- **Florida:** Florida has a regulation for its licensed mental health professionals that requires that if client termination was due to the licensee’s death, records must be maintained for at least two years. After that, the executor, administrator, or survivor must publish a notice once a week for 4 consecutive weeks in the highest circulated newspaper in each county of practice. The notice must state that the records will be disposed of or destroyed 4 weeks or later from the notice publication. (Florida Administrative Code §64B4-9.001(4)) (Shown in **Attachment B.**)
- **Oregon:** The Oregon Board of Licensed Professional Counselors and Therapists requires its licensed marriage and family therapists and professional counselors to arrange for the maintenance of and access to records in the event of the death or incapacity of the licensee. Oregon licensees must file the name of a custodian of record with the board, along with that person’s (or organization’s) contact information. The custodian of record must be an Oregon-licensed mental health professional, a licensed medical professional, a health care or mental health organization, and attorney, a school, or a medical records company. (Oregon Administrative Rules Chapter 833, §833-075-0080) (Shown in **Attachment C.**)
- **Washington:** The state of Washington requires its licensed mental health counselor’s, marriage and family therapists, and social workers to make provisions for retaining or transferring records in the event of going out of business, death, or incapacitation. The provisions may be made in the practitioner’s will, an office policy, or by ensuring another licensed counselor is available to review records with a client, or other appropriate means. (Washington Administrative Code §246-809-035(5)) (Shown in **Attachment D.**)

## HIPAA and Client Records

One logical question to ask is how establishing a plan to transfer client records to another practitioner upon a therapist’s death interacts with the federal Health Insurance Portability and Accountability Act (HIPAA).



The U.S. Department of Health and Human Services (HHS) has an FAQ about HIPAA for professionals on its web site. It states that health care providers are allowed to use health information for treatment purposes without the patient's authorization, including to consult with other providers or to refer the patient. **Attachment F** shows HHS's response to the FAQ question, as well as the federal regulation code section cited in its response.

### **Recommendation**

Conduct an open discussion about whether the Board should consider pursuing legislation or regulations to address safekeeping of client records in the event that a licensee dies or becomes incapacitated.

### **Attachments**

**Attachment A:** State of Texas Regulation: Texas Administrative Code Title 22, Chapter 681, §681.41(e)(8)

**Attachment B:** State of Florida Regulation: Florida Administrative Code §64B4-9.001(4)

**Attachment C:** State of Oregon Regulation: Oregon Administrative Rules Chapter 833, §833-075-0080

**Attachment D:** State of Washington Regulation: Washington Administrative Code §246-809-035(5)

**Attachment E:** American Psychological Association "Ask our Attorney: Handling Records of a Deceased Psychologist" January 17, 2013.

**Attachment F:** U.S. Department of Health and Human Services FAQ about HIPAA and Information Sharing, and Federal Code of Regulations Title 45, §164.506

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# ATTACHMENT A

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## Texas Administrative Code

<a href="#">TITLE 22</a>	EXAMINING BOARDS
<a href="#">PART 30</a>	TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS
<a href="#">CHAPTER 681</a>	PROFESSIONAL COUNSELORS
<a href="#">SUBCHAPTER C</a>	CODE OF ETHICS
RULE §681.41	General Ethical Requirements

(a) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or
- (3) the practice or field of counseling.

(b) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.

(d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:

- (1) fees and arrangements for payment;
- (2) counseling purposes, goals, and techniques;
- (3) any restrictions placed on the license by the board;
- (4) the limits on confidentiality;
- (5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and
- (6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
- (7) the name, address and telephone number of the board for the purpose of reporting violations of the Act or this chapter; and
- (8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) A licensee must inform the client in writing of any changes to the items in subsection (e) of this section prior to initiating the change.

(g) Technological means of communication may be used to facilitate the therapeutic counseling process.

(h) In accordance with §503.401(a)(4) of the Act, a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.

(i) A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the

requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, will not be considered as a violation of state law relating to illegal remuneration.

(j) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.

(k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.

(l) A licensee must set and maintain professional boundaries.

(m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(5) The licensee must not provide counseling services to previous or current:

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(6) The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.

(7) The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(n) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(o) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client.

(p) The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

(1) within a group; or

(2) individual counseling.

(q) For each client, a licensee must keep accurate records of:

(1) signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order

(2) intake assessment;

(3) dates of counseling treatment intervention;

(4) principal treatment methods;

(5) progress notes;

(6) treatment plan; and

(7) billing information.

(r) Records held by a licensee must be kept for a minimum of six (6) years from the date of the last contact with the client.

(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.

(t) Billing Requirements.

(1) A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.

(3) Pursuant to Texas Health and Safety Code Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) A licensee may not knowingly overcharge a client.

(5) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.

(u) A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.

(v) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

(w) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.

(x) Upon termination of a relationship, if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.

(z) A licensee must not knowingly overtreat a client.

(aa) A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

(bb) A licensee must report to the board knowledge of any unlicensed practice of counseling.

(cc) A licensee or an applicant must not participate in the falsification of any materials submitted to the board.

(dd) A licensee must not provide services while impaired.

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**Source Note:** The provisions of this §681.41 adopted to be effective September 1, 2003, 28 TexReg 4134; amended to be effective November 21, 2004, 29 TexReg 10512; amended to be effective September 1, 2005, 30 TexReg 4978; amended to be effective April 27, 2008, 33 TexReg 3268; amended to be effective September 1, 2010, 35 TexReg 7801; amended to be effective May 20, 2012, 37 TexReg 3591; amended to be effective December 12, 2013, 38 TexReg 8889; amended to be effective January 12, 2015, 40 TexReg 233; amended to be effective July 14, 2016, 41 TexReg 5057; amended to be effective July 16, 2017, 42 TexReg 3487; amended to be effective February 28, 2019, 44 TexReg 844

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**ATTACHMENT B  
STATE OF FLORIDA**

**CHAPTER 64B4-9  
CLIENT RECORDS**

- 64B4-9.001 Requirements for Client Records
- 64B4-9.002 Definitions

**64B4-9.001 Requirements for Client Records.**

(1) A licensed clinical social worker, marriage and family therapist, or mental health counselor, including any registered intern or provisional licensee, shall maintain responsibility for all records relating to his clients as provided in section 456.057, F.S. All such records shall remain confidential except as provided by law or as allowed pursuant to a written and signed authorization by the client specifically requesting or authorizing release or disclosure of records in his office or possession.

(2) A full record of services shall be maintained for 7 years after the date of the last contact with the client or user.

(3) When a clinical social worker, marriage and family therapist, or mental health counselor terminates practice or relocates and is no longer available to clients or users, the clients or users shall be notified of such termination or relocation and unavailability by the licensee's causing to be published in the newspaper of greatest general circulation in the county in which the licensee practices or practiced, a notice which shall contain the date of termination or relocation and an address at which the licensee's client or user records are available to the client, user, or to a licensed mental health professional designated by the client or user. The notice shall appear at least once a week for 4 consecutive weeks. The records shall be retained for 2 years after the termination or relocation of the practice.

(4) If the termination was due to the death of a licensee, records shall be maintained at least two years after the licensee's death. At the conclusion of a 22 month period from the date of the licensee's death, the executor, administrator, personal representative, or survivor shall cause to be published once during each week for 4 consecutive weeks, in the newspaper of greatest general circulation in each county in which the licensee practiced, a notice indicating to the clients or users of the deceased licensee that the licensee's records will be disposed of or destroyed 4 weeks or later from the last day of the final week of publication of the notice.

*Rulemaking Authority 456.058, 491.004(5), 491.0148 FS. Law Implemented 456.058, 491.0148 FS. History—New 5-8-90, Formerly 21CC-9.001, 61F4-9.001, 59P-9.001, Amended 2-11-98, 6-13-07.*

**64B4-9.002 Definitions.**

Psychotherapy records are chronicles of a dynamic psychotherapeutic relationship and are to be accorded the dignity and respect due such a relationship. Psychotherapy is for the client and all records constructed shall respect the integrity and privacy of that relationship.

(1) A psychotherapy report is a summary of information derived from the psychotherapy records which addresses a specific request as authorized by the client.

(2) A psychotherapy record shall contain basic information about the client including name, address and telephone number, dates of therapy sessions, treatment plan and results achieved, diagnosis if applicable, and financial transactions between therapist and client including fees assessed and collected. A record shall also include notes or documentation of the client's consent to all aspects of treatment, copies of all client authorizations for release of information, any legal forms pertaining to the client, and documentation of any contact the therapist has with other professionals regarding the client.

(3) Regardless of who pays for the services of the psychotherapist, a client is that individual who, by virtue of private consultation with the psychotherapist, has reason to expect that the individual's communication with the psychotherapist during that private consultation will remain confidential.

*Rulemaking Authority 491.004(5), 491.0148 FS. Law Implemented 491.0148 FS. History—New 12-11-91, Formerly 21CC-9.002, 61F4-9.002, 59P-9.002, Amended 2-11-98.*

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**ATTACHMENT C**  
**OREGON ADMINISTRATIVE RULES CHAPTER 833**

**833-075-0080 Custodian of Record**

- (1) A licensee or registered intern must:
  - (a) Arrange for the maintenance of and access to client records that ensure the client's right to confidentiality and access to records in the event of the death or incapacity of the licensee;
  - (b) Register with the Board the name and contact information of a custodian of record that will have case files and can make necessary referrals if licensee becomes incapacitated or dies; and
  - (c) Notify the Board of changes of the custodian of record.
- (2) If the licensee or registered intern is an employee of an organization, the organization may be named as the custodian of record.
- (3) The Board will not release the name of the custodian of record except in the following cases:
  - (a) The death or incapacity of the licensee; or
  - (b) When a client is unable to locate the licensee.
- (4) A custodian of record under this rule must be a licensed mental health professional licensed under Oregon law, a licensed medical professional, a health care or mental health organization, an attorney, a school, or a medical records company.

**Source: Oregon Board of Licensed Professional Counselors and Therapists *Oregon Revised Statutes Chapter 675 (2017) & Oregon Administrative Rules Chapter 833 (Revised 08/18)***

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**ATTACHMENT D**  
**WASHINGTON ADMINISTRATIVE CODE**

**WAC 246-809-035**

**Recordkeeping and retention.**

(1) The licensed counselor or associate providing professional services to a client or providing services billed to a third-party payor, must document services, except as provided in subsection (2) of this section. The documentation includes:

(a) The following business information:

(i) Client name;

(ii) The fee arrangement and record of payments;

(iii) Dates counseling was received;

(iv) Disclosure statement, signed and dated by licensed counselor and client or associate and client on or before the initial session.

(b) The following treatment information:

(i) The presenting problem(s), purpose or diagnosis;

(ii) Notation and results of formal consults, including information obtained from other persons or agencies through a release of information;

(iii) Progress notes sufficient to support responsible clinical practice for the type of theoretical orientation/therapy the licensed counselor or associate uses; and

(iv) The associate must also provide all relevant information about their clinical work to the approved supervisor. This includes session notes, case discussions/analysis, or reports from collaborating professionals. The approved supervisor must have a thorough understanding of the clinical work that the associate is doing.

(2) If a client being treated by the licensed counselor requests in writing that no treatment records be kept, and the licensed counselor agrees to the request, then the licensed counselor must retain only the following documentation:

(a) The following business information:

(i) Client name;

(ii) The fee arrangement and record of payments;

(iii) Dates counseling was received; and

(iv) Disclosure statement, signed and dated by licensed counselor or associate and client.

(b) The client's written request that no treatment records be kept.

(3) The licensed counselor shall not agree to the request if maintaining client records is required by other state or federal law.

(4) The licensed counselor or associate or the associate's supervisor must keep all client records for a period of five years following the last visit. Within this five-year period, all records must be maintained safely, with properly limited access.

(5) The licensed counselor or associate or the associate's supervisor shall make provisions for retaining or transferring records in the event of going out of business, death or incapacitation. These provisions may be made in the practitioner's will, an office policy, or by ensuring another licensed counselor is available to review records with a client and recommend a course of action; or other appropriate means as determined by the licensed counselor or associate.

[Statutory Authority: RCW **18.225.040**. WSR 17-13-082, § 246-809-035, filed 6/16/17, effective 7/17/17.

Statutory Authority: Chapter **18.225** RCW. WSR 09-15-039, § 246-809-035, filed 7/8/09, effective 7/8/09.

Statutory Authority: RCW **18.225.040**, **18.130.050**. WSR 06-09-032, § 246-809-035, filed 4/12/06, effective 5/13/06.]

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## ATTACHMENT E



AMERICAN PSYCHOLOGICAL ASSOCIATION  
Services, Inc.

**PracticeUpdate** (</practice/update/index>) | **January 17, 2013** (</practice/update/2013/01-17/index>)

# Ask our attorney: Handling records of a deceased psychologist

Guidance on disposition of patient records in the absence of a professional will

**By Legal & Regulatory Affairs and APA Ethics Office staff**

**Jan. 17, 2013**—APA Practice’s Office of Legal and Regulatory Affairs often receives calls from family members, executors, colleagues or office staff of deceased psychologists, asking what to do about that psychologist’s patient records. This issue can be complicated, particularly if the practitioner had not planned for disposition of the records through a professional will (</practice/good-practice/prepared.pdf>) (PDF, 657KB).

One source of difficulty is the fact that many laws and practices regarding record keeping and patient access to records were developed with the assumption that the psychologist would always be around to retain the records and to determine when it is appropriate for a patient to have access to his or her record.

Most of the tough issues discussed below are avoided when a practitioner has planned ahead for the disposition of records through a professional will. A professional will makes virtually every aspect of the transition process more efficient and helpful to those responsible for determining what to do with the psychologist’s records, and also to those who may be responsible for continued clinical care.

APA Record Keeping Guidelines (</practice/ce/guidelines/record-keeping>) and the Ethics Code (<http://www.apa.org/ethics/code/index.aspx>) offer relevant guidance. Section 6.02 of the Ethics Code provides: “Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists’ withdrawal from positions or practice.” (See also Standard 3.12, Interruption of Psychological Services.) Similarly, Guideline 13 of the APA Recordkeeping Guidelines recommends that psychologists plan for the transfer of records to ensure continuity of treatment and appropriate access to care when the psychologist is no longer in direct control.

The remainder of this article provides answers to questions frequently asked by callers when a deceased psychologist has not left a professional will.

## To whom should records be transferred?

The matter is clear cut if the psychologist has a professional will that specifies arrangements for another mental health professional to take over the records. Absent a professional will, the individual handling this issue (for example, the executor of the deceased psychologist’s estate or a family member) must figure out what to do with records. State law may directly address who has control over

the records — for example, the executor of the estate.

The person handling the issue can determine if the psychologist had a colleague who covered for the psychologist while on vacation, or who took referrals. If so, that psychologist might be asked to take over care of the records. One benefit of this approach is that another mental health professional should know the law, procedures and issues related to giving patients access to their records and retaining records. Another professional should already have a place and system for storing records, and may have staff familiar with responding to record requests.

This solution is particularly appropriate if any of the former patients are transitioning to this other psychologist.

As to patients for whom the other psychologist is *not* assuming care, it is important to note that this arrangement imposes some burdens on the other psychologist. First, there are potential HIPAA or other liability concerns for failure to secure records of another psychologist's patients. And the arrangement entails additional expense and burden for the other psychologist, which is particularly problematic if they do not have spare storage space. These burdens may be balanced, however, by the possibility that patients will want to receive treatment from the psychologist who has assumed custody of their records.

## What issues arise if records are retained by family members or the executor of the psychologist's estate?

Family members and executors usually understand the importance of protecting patient confidentiality and access to records. If they wind up with the records, however, some states' record keeping laws will not apply to them because they are not mental health professionals. Even in those states, the family or executor should be aware of potential liability to the estate if the psychologist's records are not properly maintained.

## What if the family/estate cannot transfer records to another psychologist and has issues with retaining the records? Should records be transferred to the patients?

Sometimes a family or estate of the deceased psychologist cannot identify an appropriate psychologist to assume control of the records, and does not have the resources or capability to store the records for the retention period and assure their security. Particularly after the estate is closed, there may be no legal or liability reasons for retaining the records and the family may consider destroying the records.

In this situation, giving patients the opportunity to take their records before they are destroyed is preferable (see last question regarding notice to former patients). Yet it is difficult to predict how a patient will react to seeing his or her record. For this reason, directly providing records to a former patient should be done with caution. If records are being provided directly to former patients, it may be helpful to provide a cover letter stating that the patient should speak with a mental health professional if there is anything in the record he or she finds distressing.

If records are destroyed, it should be done in a manner that will protect the records' privacy, such as by

shredding. Guideline 13 in the APA Record Keeping Guidelines discusses safe disposal and the particular concerns associated with electronic records.

## How long should records be retained?

How long records must be kept is governed by state record keeping law. In those few states that do not specify how long to keep psychology records, the suggested retention period in APA Record Keeping Guidelines (</practice/ce/guidelines/record-keeping>) should be considered. Guideline 7 of the record keeping guidelines recommends “retaining full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is later.” (These Guidelines are also an excellent source of guidance on many record keeping issues beyond how long to retain records.)

If the person keeping the deceased psychologist’s records wishes to keep records for a longer period of time, he or she should weigh the benefits of longer retention against the risks associated with privacy loss or security breaches, and with obsolete or outdated information.

## How should patients be alerted about accessing their records?

Some psychology patients have not told their spouses or family members that they are seeking care, which complicates the process of notifying former patients. Some psychologists have a file, or a place in their files, indicating how patients want to be contacted. If the psychologist had an administrative assistant or secretary, he or she may know how patients prefer to be contacted. Some alternatives for notifying patients without alerting their family members include posting a notice at the office of the deceased psychologist, on the office’s voicemail, on the practice’s website or in the local newspaper. The office-based solutions are particularly applicable if the psychologist had been practicing at or shortly before the time of his/her death.

Some state psychology boards, like the Florida Board of Psychology, keep track of who has records after a psychologist retires or dies. In such cases, the relevant psychology board should be given notice of who is assuming custody of the records.

## Conclusion

The thorny issues discussed above are a good reminder that practitioners can spare their family members, executors, colleagues and/or office staff much heartache if they plan ahead and execute a professional will (</practice/good-practice/prepared.pdf>) (PDF, 657KB).

**Legal issues are complex and highly fact specific and require legal expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article does not constitute legal advice and should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions regarding individual circumstances.**

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### **ⓘ DATED CONTENT**

*APA maintains an archive of our published material throughout our websites. From time to*

*time, you may come across a page that includes outdated science or missing details that could be improved. If you believe that this is one of those pages, please let us know.*

The content I just read:

 **IS RELEVANT**

 **MAY NEED AN UPDATE**

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**Find this article at:**

<https://www.apaservices.org/practice/update/2013/01-17/deceased-psychologist>



## ATTACHMENT F

[hhs.gov](https://www.hhs.gov)

### **481-Does HIPAA permit health care providers to share information for treatment purposes without authorization**

1 minute

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#### **Answer:**

Yes. The Privacy Rule allows those doctors, nurses, hospitals, laboratory technicians, and other health care providers that are covered entities to use or disclose protected health information, such as X-rays, laboratory and pathology reports, diagnoses, and other medical information for treatment purposes without the patient's authorization. This includes sharing the information to consult with other providers, including providers who are not covered entities, to treat a different patient, or to refer the patient. See [45 CFR 164.506](#).

Date Created: 11/03/2003

Content created by Office for Civil Rights (OCR)

Content last reviewed on July 26, 2013

## Code of Federal Regulations

Title 45 - Public Welfare Volume: 1 Date: 2003-10-01 Original Date: 2003-10-01 Title:  
Section 164.506 - Uses and disclosures to carry out treatment, payment, or health care  
operations. Context:

Title 45 - Public Welfare. SUBTITLE A - DEPARTMENT OF HEALTH AND HUMAN  
SERVICES. SUBCHAPTER C - ADMINISTRATIVE DATA STANDARDS AND  
RELATED REQUIREMENTS. PART 164 - SECURITY AND PRIVACY. Subpart E -  
Privacy of Individually Identifiable Health Information.

### § 164.506

Uses and disclosures to carry out treatment, payment, or health care operations.

(a) Standard: Permitted uses and disclosures. Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) Standard: Consent for uses and disclosures permitted. (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of protected health information when an authorization, under § 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.

(c) Implementation specifications: Treatment, payment, or health care operations.

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

(3) A covered entity may disclose protected health information to another covered entity or a health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

[67 FR 53268, Aug. 14, 2002]

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**To:** Policy and Advocacy Committee Members   **Date:** October 1, 2019  
**From:** Christy Berger, Regulatory Analyst   **Telephone:** (916) 574-7817  
**Subject:** **Discussion and Possible Recommendation on Proposed Regulatory Changes to Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees**

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The purpose of this agenda item is to consider regulation changes pertaining to examination waiting periods, professional corporations and educational institutions. This proposal would do all of the following:

**Examination Waiting Periods (Section 1805.05)**

- Specify a 180-day waiting period for a retake of the licensed educational psychologist (LEP) written examination. The waiting period for this exam is currently unspecified, but this time period proposed is consistent with current practice.
- Reduce the waiting period for a board-developed clinical examination to 120 days for consistency with current practice.
- Specify that the examination waiting periods are a minimum. This would allow for flexibility in case an event outside of the Board's control impacted the ability to administer examinations.

**Professional Corporations (Sections 1850.6 and 1850.7)**

- Add licensed professional clinical counselors (LPCC) to the sections pertaining to ownership and transfer of shares, as well as the section on naming a professional corporation, for consistency with the licensed marriage and family therapist (LMFT) and licensed clinical social worker (LCSW) professions.

**Accrediting Agencies and Equivalent Degrees (Sections 1832 and 1854)**

- Delete the section pertaining to equivalent accrediting agencies for MFT applicants. This section is no longer necessary as it is covered in statute (Business and Professions Code sections 4980.36, 4980.37, 4980.78 and 4980.79).

- Specify the accrediting agencies that are acceptable for licensed educational psychologist applicant degree programs for consistency with the LMFT, LCSW and LPCC professions, and update the name of the foreign credentials' evaluation service.

**Recommendation**

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes, and any non-substantive changes, and recommend to the full Board as regulatory proposal.

**Attachment**

Proposed Regulatory Language

## ATTACHMENT

### PROPOSED REGULATORY LANGUAGE

#### California Code of Regulations

#### Title 16. Professional and Vocational Regulations

#### Division 18. Board of Behavioral Sciences

##### § 1805.05. REEXAMINATION.

(a) A minimum 90-day waiting period is required between attempts for applicants retaking a California law and ethics examination.

(b) A minimum ~~480~~120-day waiting period is required between attempts for applicants retaking a clinical examination, except as indicated in subdivision ~~(c)~~(d).

(c) A minimum 180-day waiting period is required between attempts for applicants retaking the licensed educational psychologist examination.

~~(c)~~(d) Waiting periods for national examinations that are accepted by the board shall be determined by that national testing entity.

~~(d)~~(e) The Board's Executive Officer may allow for a lesser waiting period, as long as the integrity of the examination or examination security is not compromised.

*Note: Authority cited: Sections 4980.60 and 4990.20(a), Business and Professions Code. Reference: Sections 4980.50, 4984.72, 4989.22, 4992.1, 4996.4, 4999.52, 4999.54 and 4999.64, Business and Professions Code.*

##### § 1850.6. NAME OF CORPORATION.

The wording or abbreviation denoting corporate existence shall be limited to one of the following: "Professional Corporation," "Prof. Corp.," "Corporation," "Corp.," "Incorporated," or "Inc."

*Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections ~~4987.7 and 4998.2~~, 4987.7, 4998.2 and 4999.125, Business and Professions Code.*

##### § 1850.7. SHARES: OWNERSHIP AND TRANSFER.

(a) The shares of a marriage and family ~~therapist~~ therapist, licensed clinical social worker, or licensed professional clinical counselor corporation may be issued or transferred only to the issuing corporation or to an appropriately licensed person in accordance with Section 13401.5 of the Corporations Code.

~~(b) The shares of a licensed clinical social worker corporation may be issued or transferred only to the issuing corporation or to an appropriately licensed person in accordance with Section 13401.5 of the Corporations Code.~~

~~(e)(b)~~ Where there are two or more shareholders in a corporation and one of its shareholders dies, or becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, for a period exceeding ninety (90) days, ~~his or her~~ the person's shares shall be sold and transferred to a licensed person or to the issuing corporation, on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date the shareholder became a disqualified person.

~~(d)(c)~~ A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when ~~he or she~~ the person again ceases to become a disqualified person.

~~(e)(d)~~ The restrictions of ~~subdivisions~~ subdivision (a) ~~or (b)~~ where appropriate and, if appropriate, subdivision ~~(e)(b)~~ of this section shall be set forth in the corporation's by-laws or articles of incorporation.

~~(f)(e)~~ The income of the corporation attributable to professional, licensed services rendered while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or ~~his or her~~ the person's shares.

~~(g)(f)~~ The share certificates of the corporation shall contain either:

(1) An appropriate legend setting forth the restriction of subdivision (a) ~~or (b)~~ where appropriate-, and where applicable, the restriction of subdivision ~~(e)(b)~~, or

(2) An appropriate legend stating that ownership and transfer of the shares are restricted and specifically referring to an identified section of the by-laws or articles of incorporation of the corporation wherein the restrictions are set forth.

*Note: Authority cited: Sections 4980.60, 4988.2 and 4990.20, Business and Professions Code. Reference: Sections 4987.8, 4988, 4998.4 and 4998.3, 4998.4, 4998.5, 4999.126 and 4999.127, Business and Professions Code; and Sections 13401, 13401.5, 13403 and 13407, Corporations Code.*

### **~~§ 1832. EQUIVALENT ACCREDITING AGENCIES.~~**

~~The following accrediting agencies are essentially equivalent to Western College Association, which has been renamed the Western Association of Schools and Colleges, and Northwest Association of Secondary and Higher Schools:~~

~~(a) Middle States Association of Colleges and Secondary Schools.~~

~~(b) New England Association of Schools and Colleges.~~

~~(c) North Central Association of Colleges and Secondary Schools.~~

~~(d) Southern Association of Colleges and Schools.~~

~~(e) The Credentials Evaluation Service of the International Education Research Foundation, Inc. when it evaluates the foreign degree as being equivalent to the required degrees, and those foreign degree programs meet the educational requirements for equivalent degrees and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41 of the Code.~~



~~(f) State of California, Department of Education, Bureau of School Approvals with respect to its functions under Education Code section 29023(a)(2), when applied to master's degree and/or doctoral programs which meet the requirements for an equivalent degree pursuant to section 1830 of these regulations, and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41, of the Code.~~

~~Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4980.41 and 4999.12, Business and Professions Code.~~

#### **§ 1854. EQUIVALENT DEGREES APPROVED EDUCATIONAL INSTITUTIONS.**

Educational institutions approved by the board are defined as a college or university accredited by a regional or national institutional accrediting agency recognized by the United States Department of Education. The board may accept a degree deemed equivalent to that required by section 4989.20 of the Code by a foreign educational credentials evaluation service that is a member of the National Association of Credential Evaluation Services. ~~one of the following agencies:~~

- ~~(a) Western Association of Schools and Colleges.~~
- ~~(b) Northwest Commission on Colleges and Universities.~~
- ~~(c) Middle States Association of Colleges and Secondary Schools.~~
- ~~(d) New England Association of Schools and Colleges.~~
- ~~(e) North Central Association of Colleges and Secondary Schools.~~
- ~~(f) Southern Association of Colleges and Schools.~~
- ~~(g) The Credentials Evaluation Service of the International Education Research Foundation, Inc., where it evaluates the foreign degree as being equivalent to the required degree.~~

~~Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Section 4989.20(a)(1), Business and Professions Code.~~

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**To:** Policy & Advocacy Committee Members   **Date:** September 30, 2019  
**From:** Rosanne Helms, Legislative Analyst   **Telephone:** (916) 574-7897  
**Subject:** **Legislative Update**

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**BOARD-SPONSORED LEGISLATION**

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The Board is sponsoring the following legislative proposals:

1. **SB 679 (Bates) Healing Arts: Therapists and Counselors: Licensing**

This bill proposal represents the work of the Board's License Portability Committee and seeks to remove some of the barriers to inter-state licensure. It proposes a pathway for LMFTs, LCSWs, and LPCCs who are actively licensed in another state and have been so for at least two years, to become licensed in California if they complete continuing education coursework specific to the psychotherapy environment in this state, and if they pass a California law and ethics exam.

*Status: This was signed by the Governor. (Chapter \_\_\_\_, Statutes of 2019)*

2. **AB 630 (Arambula and Low) Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Educational Psychologists: Professional Clinical Counselors: Required Notice**

This bill proposes requiring all settings where psychotherapy is performed to provide clients, prior to initiating services, with a printed notice disclosing where to file a complaint about the therapist.

*Status: This bill was signed by the Governor. (Chapter 229, Statutes of 2019)*

3. **SB 786 (Senate Business, Professions, and Economic Development Committee): Healing Arts (Omnibus Bill)** This bill proposal, approved by the Board at its November 30, 2018 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

The Board requested eight items be included in the bill. One item was rejected for inclusion due to being too substantive. All other requested items were included.

*Status: This bill is on the Governor's desk awaiting a decision.*

## BOARD-SUPPORTED LEGISLATION

### 1. **AB 8 (Chu) Pupil Health: Mental Health Professionals**

At the time the Board considered this bill, it proposed requiring schools to employ at least one mental health professional for every 400 pupils.

At its May 10, 2019 meeting, the Board took a "support" position on this bill.

Since the May Board meeting, the bill was amended to require schools to employ at least one mental health professional for every 600 pupils. Additionally, by 2029, all mental health professionals providing services would need to hold a services credential with a specialization in pupil personnel services.

*Status: This is a two-year bill.*

### 2. **AB 613 (Low): Professions and Vocations: Regulatory Fees**

This bill would allow the Board to increase any of its authorized fees once every four years by an amount up to the Consumer Price Index (CPI) for the preceding four years.

At its May 10, 2019 meeting, the Board took a "support" position on this bill.

*Status: This is a two-year bill.*

### 3. **AB 769 (Smith): Federally Qualified Health Centers and Rural Health Clinics: Licensed Professional Clinical Counselor**

This bill would allow Medi-Cal reimbursement for covered mental health services provided by a licensed professional clinical counselor employed by a federally qualified health center or a rural health clinic.

At its May 10, 2019 meeting, the Board took a "support" position on this bill.

*Status: This is a two-year bill.*

### 4. **AB 1145 (Garcia): Child Abuse: Reportable Conduct**

This bill would specify that voluntary acts of sodomy, oral copulation, and sexual penetration are not considered acts of sexual assault that must be reported by a mandated reporter as child abuse if there are no indicators of abuse, unless it is between a person age 21 or older and a minor under age 16.

At its May 10, 2019 meeting, the Board took a “support” position on this bill.

*Status: This is a two-year bill.*

**5. AB 1651 (Medina): Licensed Educational Psychologists: Supervision of Associates and Trainees**

This bill would allow applicants for licensure as a marriage and family therapist, professional clinical counselor, or clinical social worker to gain some supervised experience hours under a licensed educational psychologist (LEP).

At its May 10, 2019 meeting, the Board took a “support if amended” position on the bill and asked that the hours an LEP is permitted to supervised be narrowed to “educationally related mental health services” only.

After the meeting, the bill was amended to accommodate the Board’s request. Therefore, the Board now has a “support” position.

*Status: This bill was signed by the Governor. (Chapter 321, Statutes of 2019)*

**6. SB 163 (Portantino) Health Care Coverage: Pervasive Developmental Disorder or Autism**

This bill seeks to close some of the loopholes that insurance companies use to deny treatment for behavioral health treatment for pervasive developmental disorder or autism. It also revises the definitions of a “qualified autism service professional” and a “qualified autism service paraprofessional.”

At its May 10, 2019 meeting, the Board took a “support” position on the bill.

Since the Board considered the bill, it has undergone a number of amendments that are substantive in nature.

*Status: This bill is on the Governor’s desk awaiting a decision.*

**7. SB 601 (Morrell): State Agencies: Licenses: Fee Waiver**

At the time the Board considered this bill, it proposed allowing a board to reduce or waive fees for a license or registration, renewal, or replacement of a physical display license if the licensee or registrant could demonstrate being affected or displaced by a state or federal emergency.

At its May 10, 2019 meeting, the Board took a “support” position on the bill.

Since the Board meeting, the bill has been significantly amended. It now allows a state agency that issues any business license to establish a process following specified criteria for a person or business that has been displaced or is experiencing economic hardship as a result of an emergency to submit an application for reduction or waiver of fees for licensure, renewal, or replacement of a physical display license.

*Status: This bill is on the Governor's desk awaiting a decision.*

**8. SB 660 (Pan): Postsecondary Education: Mental Health Counselors**

At the time the Board considered this bill, it proposed requiring California community colleges and schools in the California State University system to hire one full-time equivalent mental health counselor per 1,500 students enrolled at each of their campuses.

At its May 10, 2019 meeting, the Board took a "support" position on the bill.

Since the Board meeting, the bill was amended. Instead of requiring the specified ratio of one mental health counselors per 1,500 students, the specified colleges are required to establish a goal of having one full-time equivalent mental health counselor per 1,500 students.

*Status: This is a two-year bill.*

<b>BOARD-MONITORED LEGISLATION</b>
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**1. AB 544 (Brough) Professions and Vocations: Inactive License Fees and Accrued and Unpaid Renewal Fees**

This bill proposed prohibiting boards under the Department of Consumer Affairs from requiring payment of accrued and unpaid renewal fees as a condition of reinstating an expired license or registration. It also proposed limiting the maximum renewal fee for an inactive license to no more than 50 percent of the renewal fee for an active license.

At its May 10, 2019 meeting, the Board opted not to take a position on this bill.

*Status: This is a two-year bill.*

## **2. AB 1540 (Holden) Music Therapy**

This bill seeks to define music therapy in statute and to provide guidance to consumers and agencies regarding the education and training requirements of a qualified music therapist.

At its May 10, 2019 meeting, the Board opted not to take a position on this bill.

*Status: This bill was signed by the Governor. (Chapter 167, Statutes of 2019)*

## **3. SB 10 (Beall) Mental Health Services: Peer, Parent, Transition-Age, and Family Support Specialist Certification**

At the time the Board considered this bill, it proposed requiring the state Department of Health Care Services (DHCS) to establish a certification body for adult, parent, transition-age youth, and family peer support specialists. It also proposed requiring DHCS to amend the state's Medicaid plan to include these providers as a provider type within the Medi-Cal program.

At its May 10, 2019 meeting, the Board took a "support if amended" position on this bill, asking for two amendments

- Specification of allowable supervisors, including (but not limited to) the Board's marriage and family therapist, educational psychologist, clinical social worker, and professional clinical counselor licensees.
- Inclusion of specific language intended to protect the practice acts of licensed clinical mental health professionals.

Since the Board considered the bill, it has been amended fairly significantly. The establishment of peer, parent, transition-age, and family peer support specialists has been consolidated into just one category: peer support specialists. An amendment to require DHCS to specify supervision standards was added to the bill. However, the Board's second requested amendment was not added.

*Status: This bill on the Governor's desk awaiting a decision.*

## **4. SB 425 (Hill) Health Care Practitioners: Licensee's File: Probationary Physician's and Surgeon's Certificate: Unprofessional Conduct**

At the time the Board considered this bill, it proposed requiring health facilities, clinics, or other entities that make arrangements for a healing arts licensee to practice or provide care for patients to report allegations of sexual abuse or sexual misconduct by a licensee to the applicable state licensing board within 15 days. The reporting requirements would also extend to employees of such entities.

At its May 10, 2019 meeting, the Board discussed the bill and opted not to take a position on it. It asked staff to relay some concerns, including the lack of a specific definition of sexual abuse or misconduct, as well as a concern that the Board's Enforcement Unit would not be able to move forward with a complaint without substantiation of the incident.

This bill has been amended since the Board last considered it. The term "sexual misconduct" is now defined. Additionally, amendments were made to require allegations of sexual abuse or sexual misconduct be reported to the licensing board if the patient or the patient's representative makes the allegation in writing. The provision extending the reporting requirement to employees has been deleted.

*Status: This bill is on the Governor's desk awaiting a decision.*

*Updated: September 30, 2019*



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**To:** Policy and Advocacy Committee Members   **Date:** October 1, 2019  
**From:** Christy Berger, Regulatory Analyst   **Telephone:** (916) 574-7817  
**Subject:** **Status of Board Rulemaking Proposals**

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### **Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)**

**Status:** Noticed to Public/Hearing Scheduled

This proposal would result in changes necessary in order to meet the requirements of Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018). This proposal includes modifying the Board's substantial relationship criteria, which helps to evaluate whether a crime or act was substantially related to the profession, as well as criteria to evaluate the rehabilitation of an individual when considering denying, suspending or revoking a license. The proposal was approved by the Board at its meeting in February 2019 and was submitted to the Department of Consumer Affairs (DCA) to begin the initial review process on April 18, 2019, and was approved in July 2019 for filing with the Office of Administrative Law (OAL). The regulations were noticed to the public on August 8, 2019 and the hearing took place on September 30, 2019. Comments were received from a stakeholder that will be brought to the November 2019 Board meeting for consideration.

### **Enforcement Process**

**Status:** On Hold

This proposal would result in updates to the Board's disciplinary process. It would also make updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015)," which are incorporated by reference into the Board's regulations. The proposed changes fall into three general categories:

1. Amendments seeking to strengthen certain penalties that are available to the Board;
2. Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the Business and Professions Code; and
3. Amendments to clarify language that has been identified as unclear or needing further detail.

The proposal was approved by the Board at its meeting in February 2017 and was submitted to DCA to begin the initial review process in July 2017. This regulation

package was placed on hold due to the passage of AB 2138 and remains on hold pending passage of the AB 2138 regulations.

### **Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee**

Status: Submitted to OAL for Final Approval

This proposal would amend the Board's examination rescoring provisions to clarify that rescoring pertains only to exams taken via paper and pencil, since all other taken electronically are automatically rescored. This proposal would also make clarifying, non-substantive changes to the Board's application abandonment criteria, and clarify the fee required for subsequent Associate Professional Clinical Counselor registrations. The proposal was approved by the Board at its meeting in November 2017, was submitted to DCA to begin the initial review process in April 2018, and was approved in January 2019 for filing with OAL. The public comment period ended on April 8, 2019, and the package was submitted to DCA to initiate the final review process on April 30, 2019, and was submitted to OAL for final approval on July 22, 2019. The submission was subsequently withdrawn after language changes were identified that need to be brought to the Board for consideration at its November 2019 meeting.

### **Supervision**

Status: DCA Initial Review

This proposal would:

- Revise the qualifications to become supervisor;
- Require supervisors to perform a self-assessment of qualifications and submit the self-assessment to the Board;
- Set forth requirements for substitute supervisors;
- Update and strengthen supervisor training requirements;
- Strengthen supervisor responsibilities, including provisions pertaining to monitoring and evaluating supervisees;
- Strengthen requirements pertaining to documentation of supervision;
- Make supervision requirements consistent across the three licensed professions;
- Address supervision gained outside of California; and
- Address documentation when a supervisor is incapacitated or deceased.
- Set forth terms relating to registrant placement by temporary staffing agencies.

The proposal was approved by the Board at its meeting in November 2016 and was held aside while awaiting passage of AB 93 (Chapter 743, Statutes of 2018), the Board's supervision legislation. This proposal was submitted to DCA to begin the initial review process on April 18, 2019, and is currently awaiting approval by the State and Consumer Services Agency.

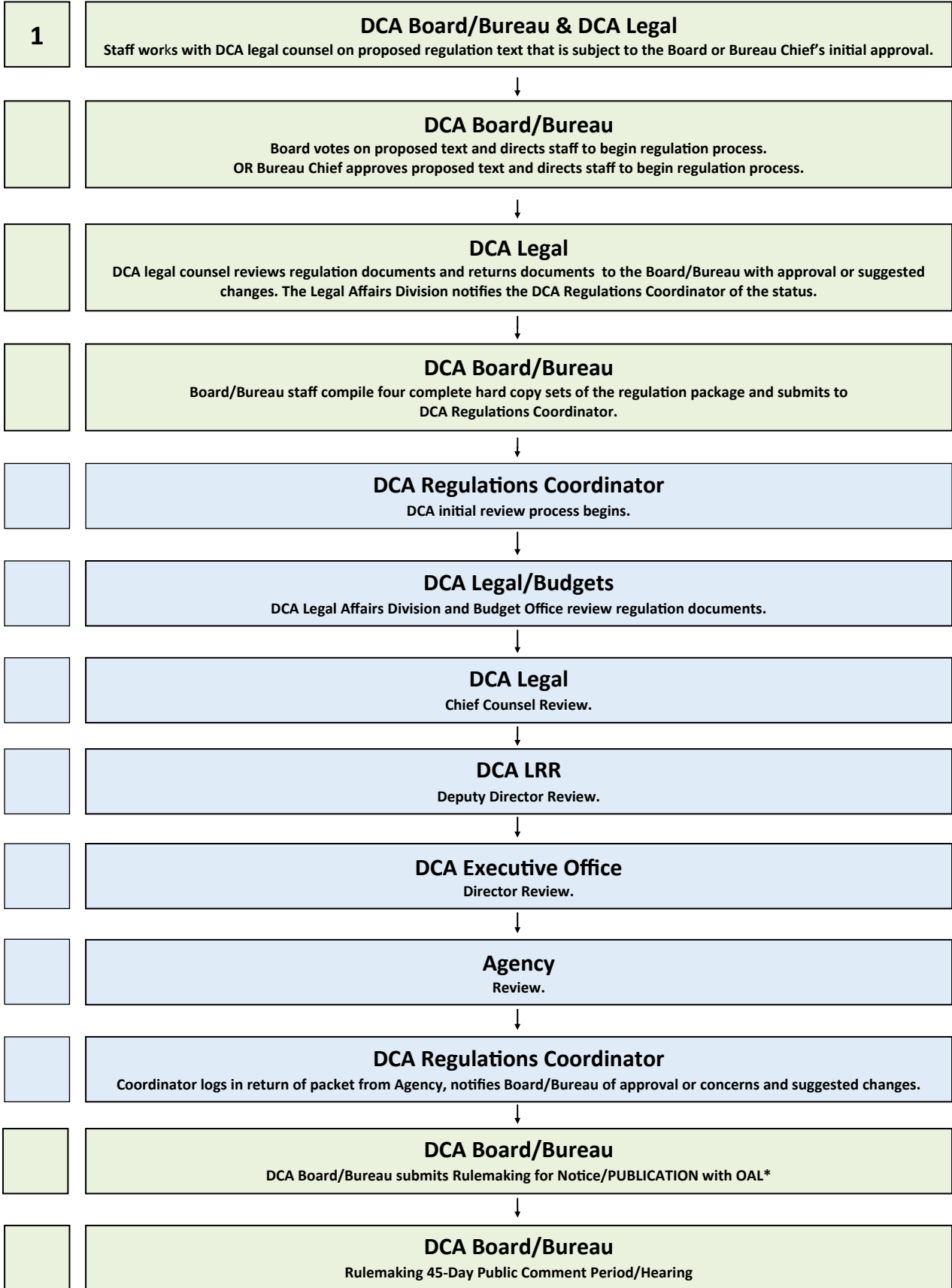
**Attachments**

**Attachment A:** DCA Regulation Process

**Attachment B:** BBS Regulation Timeline

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**INITIAL PHASE**

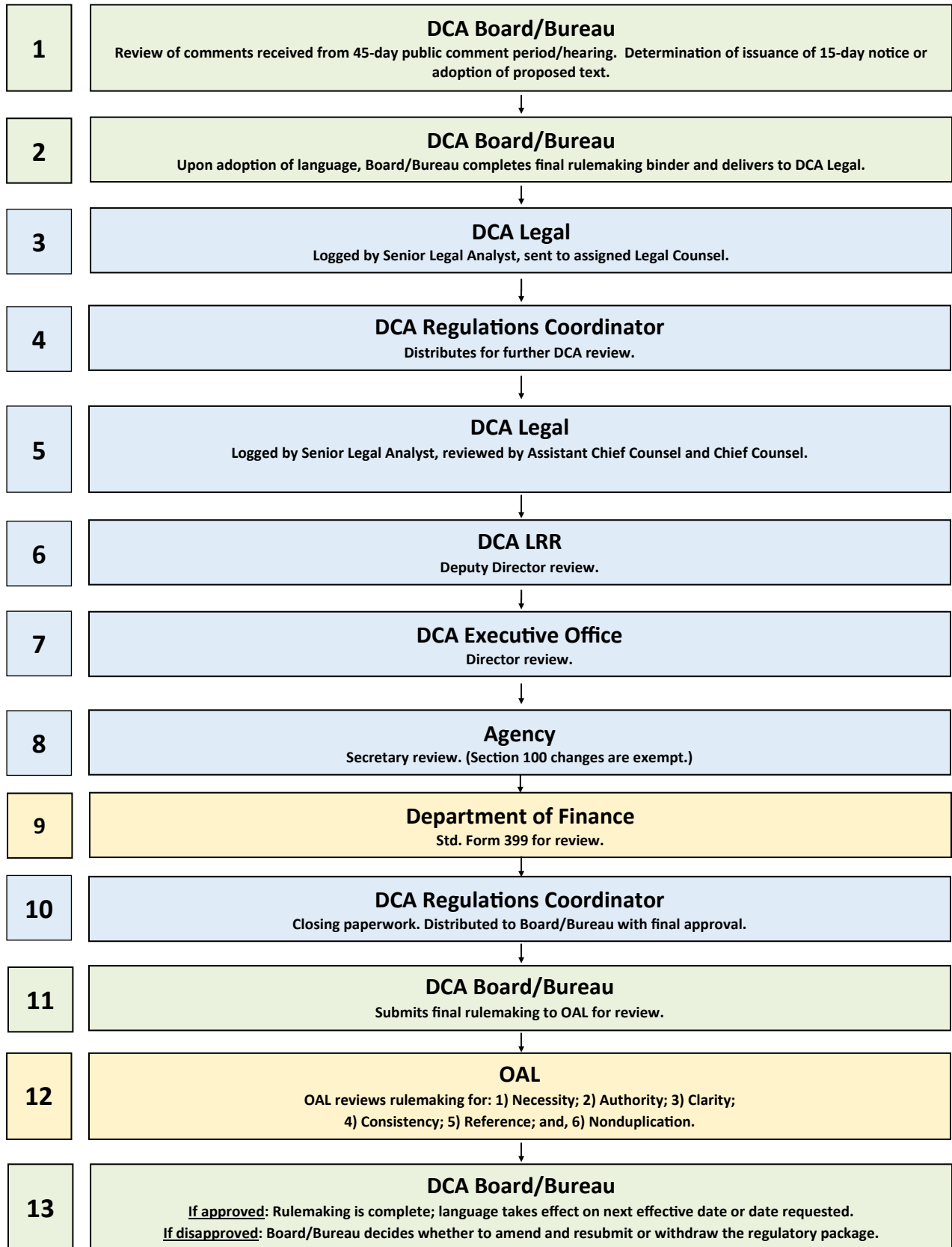


**Legend**  
 DCA – Department of Consumer Affairs  
 LRR – Division of Legislative Regulatory Review  
 OAL – Office of Administrative Law

\* If any changes to language last approved by the Board are needed, a vote by the Board may be necessary.

# REGULAR RULEMAKING PROCESS—DCA BOARDS/BUREAUS

## FINAL PHASE



### Legend

DCA – Department of Consumer Affairs  
LRR – Division of Legislative Regulatory Review  
OAL – Office of Administrative Law

DOF – Department of Finance  
Std. Form 399 – Economic and Fiscal Impact Statement  
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**ATTACHMENT B**

**BBS REGULATION TIMELINE**

**OCTOBER 1, 2019**

<b>Regulation Package Name</b>	<b>Board Approval</b>	<b>Submitted to DCA: Initial Review</b>	<b>Submitted to Agency: Initial Review</b>	<b>Noticed</b>	<b>Public Hearing</b>	<b>Submitted to DCA: Final Review</b>	<b>Approved by Agency: Final Review</b>	<b>Submitted to DOF for Approval</b>	<b>Date Submitted to OAL/ Date OAL Approved</b>
<b>Substantial Relationship &amp; Rehabilitation Criteria (AB 2138 Regs)</b>	03/01/19	4/18/19	6/25/19	8/8/19	9/30/19				
<b>Enforcement Update to Disciplinary Guidelines</b>	3/3/17	7/11/17	9/13/18*						
<b>Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee</b>	11/2/17	4/6/18	9/12/18	2/22/19	4/8/19	4/30/19	6/10/19	6/13/19	Submitted 07/22/19 & Withdrawn (to be resubmitted)
<b>Supervision</b>	11/4/16**	4/18/19	8/8/19						

\*This package was held due to the passage of AB 2138 and continues to be on hold pending approval of AB 2138 regulations.

\*\*This package was held pending passage of AB 93.

DCA and Agency Initial Review Process: Following review by the Board's attorney and required document preparation (Notice, Initial Statement of Reasons, Fiscal Impact), the package is submitted to the Department of Consumer Affairs' (DCA) Legislative and Policy Review Division, who routes it for approvals from the budget and legal offices, the DCA Executive Office and the State Business, Consumer Services and Housing Agency (Agency). Once approved by Agency, the Board can submit the package to the Office of Administrative Law (OAL) to publicly notice the proposed regulation change.

Notice and Public Hearing: The public notice initiates the 45-day public comment period and a public hearing. The Board must consider all comments submitted. If any substantive changes to the text of the proposal, the Board must approve the language again, and provide a 15-day public comment period. If no changes are made to the proposal, the package goes to DCA for final review.

DCA and Agency Final Review: The initial review process is repeated.

Submission to DOF and OAL for Final Approval: Both the Department of Finance (DOF) and OAL must approve the regulation package. The review may occur at the same time. However, OAL is the final approval. Once OAL approves the regulation package, the proposal is adopted, and it is assigned an effective date.