

TITLE 16: BOARD OF BEHAVIORAL SCIENCES

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
May 1, 2012
10:00am – 11:00 am

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 30, 2012 or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, and 4990.20 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Sections 729 of said Code, Section 290 of the Penal Code, Section 11415.60 of the Government Code, and Section 44010 of the Education Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 4990.16 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses and registrations to eligible applicants; investigating complaints against the Board's statutes and regulations, and monitoring registrants and licensees whose licenses have been placed on probation. In order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate, the Board is proposing the following changes:

Amend Section 1803 - Delegation of Certain Functions

Existing law authorizes the Board to hire an Executive Officer. Existing regulations delegate certain functions to its Executive Officer relative to actions taken in connection with the Administrative Procedure Act.

This regulatory proposal would delegate to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Policy Statement Overview: Adoption of this proposed amendment is expected to shorten the timeframe for the settlement of these types of cases, protecting public health and safety and also allowing quicker resolution of these cases for licensees.

Adopt Section 1823; Amend Sections 1845, 1858, and 1881 - Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a registrant or licensee or to deny an application for a license or registration for unprofessional conduct. Existing regulations do not define unprofessional conduct to prohibit a registrant or licensee of the Board from the following activities:

- (1) Including or permitting to be included in a civil settlement agreement provisions that prevent a person from contacting, cooperating with, or filing a complaint with the Board, or requiring that a person attempt to withdraw a complaint already filed with the Board;
- (2) Failing to provide the Board lawfully requested documents within a specified timeframe;
- (3) Failing to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's or consumer's constitutional or statutory rights or privilege;
- (4) Failing to notify the Board within a specified timeframe of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation; and
- (5) Failing to comply with a court order, issued in the enforcement of a subpoena, to release records.

This regulatory proposal would define unprofessional conduct in such a manner.

Policy Statement Overview: Adoption of these proposed amendments regarding unprofessional conduct is expected to enhance public protection.

Specifically, this regulatory change will protect the public by enabling the Board to take action against licensees who refuse to cooperate in Board investigations or licensees who actively subvert Board investigations.

Adopt Section 1888.1 - Required Actions against Registered Sex Offenders

Existing law prohibits the Board from issuing a license or 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.

This regulatory proposal would require the Board to revoke a license or registration upon finding that an applicant or licensee was convicted of a sex offense. It would also require the Board to deny a petition for reinstatement or reissuance if the applicant or licensee was convicted of a sex offense.

Policy Statement Overview: Adoption of this proposed amendment is expected to increase public protection.

Specifically, this regulatory change will protect the public by ensuring that current licensees who are in direct contact with vulnerable populations are ineligible for licensure or renewal of licensure if the Board finds that they have been convicted of a sex offense. This is the same requirement that is currently placed on applicants for licensure.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

This regulatory proposal is consistent and compatible with existing state regulations. Existing regulations currently outline some functions that are delegated to the Executive Officer, outline several unprofessional conduct provisions, and set forth disciplinary guidelines. The proposed regulations expand upon these existing provisions and do not contradict or obstruct them in any way.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following relevant data was relied upon when making the above determination:

- The proposed regulatory changes would only affect those licensees or applicants who are the subject of Board disciplinary action, if they commit certain specific violations.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The proposed regulatory action affects licensees or registrants of the Board, or applicants for licensure or registration, who are the subject of Board disciplinary action.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees, if the individual is represented by

legal counsel. The disciplinary order impact varies and could include loss of the licensee or registrant's employment income, if the license or registration is revoked, surrendered, or suspended.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulations do not impose any new requirements on a licensee, registrant, or applicant who is not subject to disciplinary action. The regulation only affects licensees, registrants, or applicants who are already subject to disciplinary action by the Board.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The Board had determined that states with comparable populations place similar requirements on their mental health licensees. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects only licensees and registrants of the Board and applicants for licensure or registration, who are disciplined by the Board. This is a limited population and will only impact approximately 10 percent or less of the Board's licensees.

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

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by improving the efficiency of the enforcement process, and by making clarifications and additions to enforcement provisions to address current weaknesses in the regulations relating to licensees who are in the enforcement process. The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that the impact of this proposed regulation will be limited to those licensees who are the subject of disciplinary action taken by the Board. This is a low percentage of the Board's licensees overall (less than 10 percent), and therefore has little to no impact on occupations or businesses.

Reporting Requirements: None

Comparable Federal Regulations: None

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

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

The public will benefit from the increased efficiencies and clarifications in the enforcement process that these regulatory amendments provide.

CONSIDERATION OF ALTERNATIVES The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board’s website, www.bbs.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rosanne Helms
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7897
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E-Mail Address: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Marc Mason
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
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Website Access: Materials regarding this proposal can be found at www.bbs.ca.gov.