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To: Board Members Date: May 2, 2024

**From:** Christy Berger, Regulatory Manager

**Subject: Update on Board Rulemaking Proposals** 

Below is the status of Board-approved regulation proposals. See **Attachment** for information on the required steps of the regulatory process.

#### **Disciplinary Guidelines**

<u>Status: Submitted to DCA Office of Legal Affairs to Begin Initial Review Process</u> (<u>Production Phase</u>)

This proposal would result in updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, which are incorporated by reference into the Board's regulations. The proposed changes fall into three general categories:

- 1. Amendments seeking to amend 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 August 2023.

#### <u>Unprofessional Conduct</u>

Status: Public Comment Period Ended March 25, 2024; Comment Received; Modified <u>Text Proposed</u>

This proposal would result in updates to the Board's Unprofessional Conduct regulations. The proposed changes would result in striking regulations that duplicate statutory law, and would provide for transparency by adding requirements related to the Confidentiality in Medical Information Act.

The proposal was approved by the Board at its meeting in August 2023.

#### **Telehealth**

Status: Approved by the Board at its March 1, 2024 meeting

This proposal would require a license be "current and active" to engage in telehealth instead of "valid and current" to conform with the actual license status types in the Board's online licensing system; require licensees providing services via telehealth to ensure that the technology, method and equipment used to provide services complies with all applicable federal and state privacy, confidentiality and security laws; and, strike a provision that states that violation of this section is unprofessional conduct, as this authority is already provided for in statute.

#### **Attachment**

**Regulation Process** 

## Regulation Package Approval Process

### Concept Phase



# Production Phase



# Initial Filing Phase



# Final Filing Phase

- Kick-Off Meeting with relevant Board and DCA staff to discuss potential regulation.
- Board staff drafts proposed regulation.
- Regulations Counsel and Second Level Reviewer reviews and approves proposed regulation.
- Board meeting is held, proposed regulation text is presented for vote and approval.

**Phase Goal:** Proposed Regulation is drafted and approved by the Board to move forward.

- After the Board approves the proposed text, Board staff develop remaining documents in the initial regulatory package.
- Regulation package is prepared with assistance from DCA Budget Analyst and Board Regulations Counsel.
- Following review and approval of the regulatory package by the Budget Analyst and Regulations Counsel, the package is reviewed and approved by the DCA Director and Agency.

**Phase Goal:** Regulation Package is approved by Agency.

- Following Agency approval, the regulatory package is submitted to OAL for publication in the Notice Register for a 45-day comment period.
- If comments are received, Board Staff draft responses for review by the Regulations Counsel.
- Board meeting is held to approve the responses and modified text, if necessary.
- If substantial changes are made to the text, a 15-day comment period commences.

Phase Goal: Completion of the Public Comment Period with all comments appropriately addressed and any changes to the text approved by the Board.

- Board Staff develops and submits a final regulatory package to the Regulations Coordinator for review.
- If there is a fiscal impact to the regulations, the Budget Analyst submits the package to the Department of Finance (DOF) for review and approval, as necessary.
- The package is reviewed by Regulations Counsel, DCA Director, and Agency.
- Final package is submitted to OAL.
- OAL approves package, Board Staff updates the Board website with the new regulation, and contacts interested parties with notification of the effective date.

**Phase Goal:** OAL approves Final Regulatory Package.



#### Note:

All references to
timeframes
throughout the
Phases shall be
calendar days, unless
the Parties agree
otherwise during the
kick-off meeting or
subsequently to
alternative
timeframes.

# Light Blue: B/B Staff/Reg Counsel, Board Counsel, Second Level Reviewer, Budget Staff

Purple: Second Level Reviewer

Orange: B/B Staff Gray: Reg Counsel

### **Concept Phase**

Meet to discuss regulatory concept, confirm statutory authority, walk through six standards from OAL, and determine if there is fiscal/economic impact.

(B/B Staff, Reg Counsel, Board Counsel, Second Level Reviewer, Budget Staff)

Based upon discussion, draft text and incorporate reference documents for proposed regulation, if any, and provide draft text to Reg Counsel. (B/B staff)

#### Note:

30-day timeframe for reviewing of proposed regulations and legal research. Review proposed regulations, conduct necessary legal research, make necessary edits to language directly to the document, including any related documents, and pose any questions for consideration. (Reg Counsel)

Set meeting with B/B staff to present edits and discuss questions identified from review. (Reg Counsel)

After meeting, finalize regulation language with edits discussed, obtain approval from Executive Officer or Bureau Chief, and submit to Reg Counsel. (B/B staff)

May share proposed text with Board Counsel for review and edit document with any suggestions. (Reg Counsel)

Make any additional edits to the regulation language and submit to Second Level Reviewer. (Reg Counsel)

#### Note:

Regulation Counsel and Second Level Reviewer have a 30day timeframe for reviewing and finalizing regulation language. Review text for compliance with applicable laws and for relevant departmental uniformity and consistency. (Second Level Review)

Discuss regulation language edits with Reg Counsel. (Second Level Review)

Discuss edits with B/B [may need to meet if edits extensive]. (Reg Counsel)

Finalize regulations and submit to Reg Counsel for final review. (B/B staff)

Concur text is ready for B/B consideration. (Reg Counsel)

If necessary, prepare board meeting materials. (B/B staff)

Review agenda item and board memos or item summaries for B/B meeting at which proposed regulation text is presented. (Reg Counsel)

Attend B/B meeting at which proposed regulation text is presented to B/B for vote and approval, and answer questions or concerns. (Reg Counsel)

# End Point

Note:

If suggestions are substantial from the Board Counsel, the Regulations Counsel may need to confer with Staff and Executive Officer or Bureau Chief.

#### Note:

Additional revisions
to the text may raise
new legal issues not
previously identified,
which may also alter
the review
timeframe.



## **Production Phase** After Board/Bureau approves the regulatory text, begin preparing the regulation package for submission. (B/B Staff) Review and analyze text, ISOR, and documents incorporated by reference for fiscal and economic impacts and review Std. Form 399 draft. (Budget Analyst) Make necessary edits to the ISOR and Std. Form 399 and any other documents. (Budget Analyst) Review and make necessary edits directly to the Note: regulation package. (Reg Counsel) Regulations Counsel review will be completed within a 30-day Set meeting with Staff to present edits to documents and timeframe. discuss the questions identified from the review. (Reg Counsel) Finalize the regulation package with edits discussed, obtain approval from the Executive Officer or Bureau Chief, and submit to Regulations Counsel and Budget Analyst. (B/B Staff) Complete final review of the regulation package, working with Staff, until the package is complete. (Reg Counsel) Approve the package, initial the Std. Form 399, and forward the approved form to the Regulations Coordinator with a copy to Regulations Counsel. (Budget Analyst) Request Staff to submit final initial package to Regulations Coordinator. (Reg Counsel) Review regulation package for completeness and forward the package to the Director for review and approval. (Regulations Coordinator) Review and approve regulations package. (DCA Director) Upon Director approval, submit the regulation package to Agency. (Regulations Coordinator) Notify Regulations Coordinator of regulation package approval. (Agency) Notify B/B Staff of regulation package approval. (Regulations Coordinator)

DEPARTMENT OF CONSUMER AFFAIRS

Blue: Agency

Yellow: DCA Director Green: Regulations Coordinator

Red: Budget Analyst Orange: B/B Staff Gray: Reg Counsel

## **Initial Filing Phase**

Notify Staff of Agency approval and offer to electronically

Green: Regulations Coordinator Orange: B/B Staff

Pink: OAL

**Gray: Reg Counsel** 

submit package to OAL for publication. (Regulations Coordinator) Submit package to OAL and copy Staff and Staff submitting package to OAL? Regulations Counsel on submission. (Regulations Coordinator) Provide Form 400 and Agency's signed Std. Form 399 to Staff for submission. (Regulations Coordinator) Submit package to OAL and copy Regulations Coordinator on submission. (B/B Staff) Publish rulemaking in Notice Register for 45-day comment period. (OAL) Post the notice on B/B webpage on same day as publication. (B/B Staff) Send email and U.S. Mail notices to the mailing list by OAL publishing date. (B/B Staff) Adverse comments received? Proceed to Final Filing Phase Review comments, prepare recommended responses, and Note: proposed modification to text, and forward to Regulations A hearing, if timely requested, must be Counsel for review. (B/B Staff) scheduled (if a hearing is not already scheduled) and Staff shall arrange such hearing. Regulations Review proposed responses to comments and any proposed Counsel shall attend the modification to text, if any. Make necessary edits to hearing. documents and place questions regarding responses for B/B in comment fields. If necessary, seek Second Level Review of modified text. (Reg Counsel) Note: Comments review should take 15-30 days Provide approved responses and modified text, if necessary depending upon the to Staff. number and (Reg Counsel) complexity of the comments. Schedule B/B meeting to approve the responses and, as

Note:

Note:

Regulations

Counsel and the Second Level Reviewer are

copied as appropriate

throughout the process.

Board
commences any
15-day comment
period. Process
would repeat if
adverse
comments were
received, and
edits or
responses were
needed.

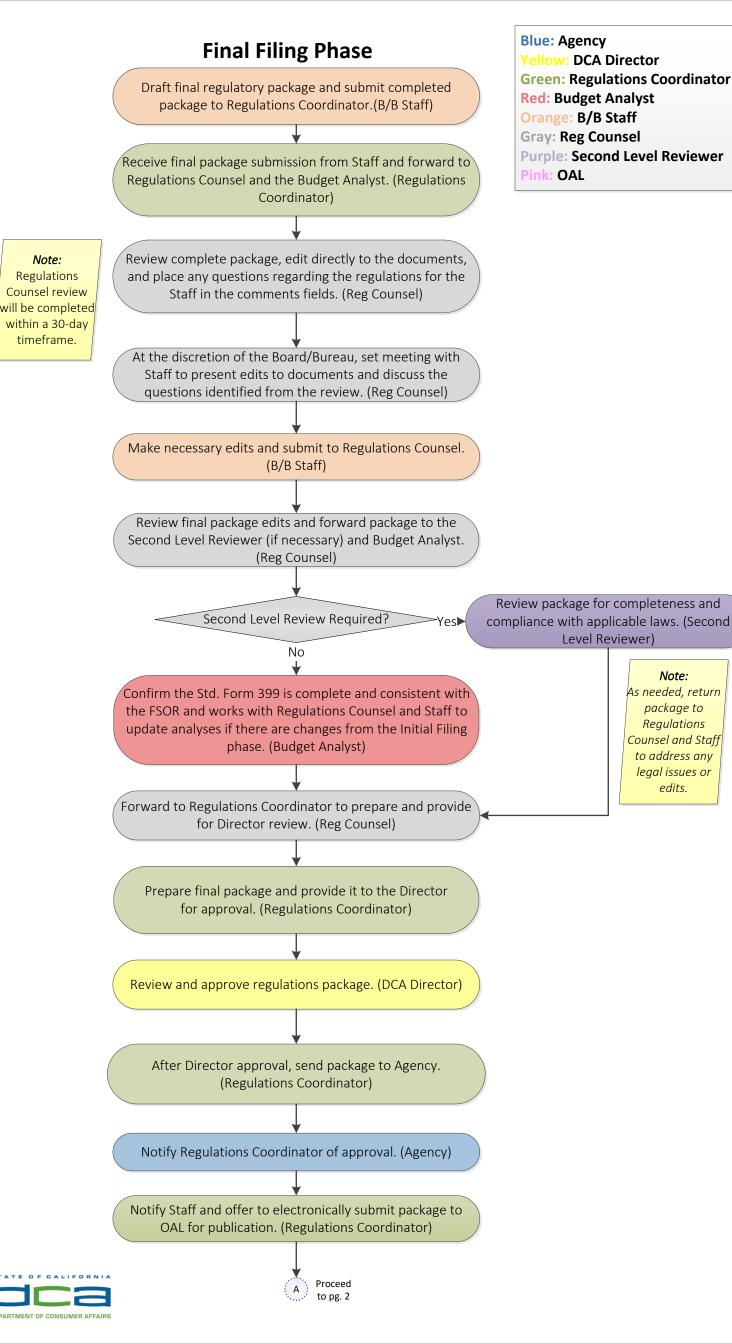
Attend any P/P meeting to address logal questions raised

needed, any modified text. (B/B Staff)

Attend any B/B meeting to address legal questions raised regarding comments or modified text, if any. (Reg Counsel)

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Note:

