



Board of Behavioral Sciences

# Memo

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**To:** Interested Parties **Date:** November 9, 2018

**From:** Board of Behavioral Sciences **Telephone:** (916) 574-7830

**Subject:** Law Changes for 2019

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There are many law changes that you need to be aware of as a Board licensee, registrant, or applicant. While this document highlights some of the bigger changes, the Board highly recommends reading the bills referenced for greater clarity. The discussed changes become effective on January 1, 2019, unless otherwise noted.

### **Supervisor Qualifications and Responsibilities**

There are several law changes that apply to existing supervisors and individuals who wish to supervise those pursuing licensure as a marriage and family therapist (LMFT), professional clinical counselor (LPCC), or clinical social worker (LCSW). Highlights are below. For complete information, please see [AB 93](#).

- The Board now has the authority to audit supervisors to ensure they meet the qualifications to supervise. All supervisors must keep records of his or her qualifications for 7 years from the termination of supervision to prove they meet the qualifications in case of an audit. If you are a supervisor, please ensure that you meet the requirements to supervise and that you save your materials to document compliance. Additional information about the audits will be available in the Board's upcoming newsletter, to be released in January.
- A supervisor must meet all the following requirements; some of which have been changed by AB 93:
  - Held an active license for at least 2 years of the 5-year period immediately preceding any supervision as an LPCC, LMFT, licensed psychologist, LCSW, a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology, or an equivalent out-of-state license;
  - For at least 2 of the past 5 years immediately preceding supervision, the supervisor has practiced psychotherapy or provided direct clinical supervision of psychotherapy performed by marriage and family therapist trainees, associate marriage and family therapists (AMFTs), associate professional clinical counselors (APCCs), or associate

clinical social workers (ASWs). Supervision of psychotherapy performed by social work interns (students) or professional clinical counselor trainees is also acceptable if the supervision is substantially equivalent to the supervision required for board registrants;

- Has and maintains a current, active California license that is not under suspension or probation, as an LMFT, LPCC, LCSW, a licensed psychologist, or a physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology;
  - Has received supervision training as required by the board;
  - If the supervisor is an LPCC who is supervising an AMFT, MFT trainee, or LPCC licensee or registrant seeking experience to treat couples and families, he or she must meet the requirements to treat couples and families specified in BPC §4999.20;
  - Has not provided therapeutic services to the supervisee;
  - Is not a spouse, domestic partner, or relative of the supervisee; and
  - Does not have or has not had a personal, professional, or business relationship with the supervisee that undermines the authority or effectiveness of the supervision.
- Specifies certain actions that are a supervisor's responsibility (this is not an all-inclusive list):
    - Ensuring the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the supervisee.
    - Monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions and providing regular feedback.
    - 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.
    - 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.
    - Ensuring the supervisee's compliance with laws and regulations governing the practice of marriage and family therapy, clinical social work, or professional clinical counseling.
    - Reviewing the supervisee's progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor.
    - 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.
  - Group supervisors are required to ensure that the amount and degree of supervision is appropriate for each supervisee.

- Permits a supervisor of individuals pursuing LCSW or LPCC licensure to arrange for alternative supervision during his or her vacation or sick leave if in compliance with the law's supervision requirements. (This provision was already specified in the law for supervisors of those pursuing LMFT licensure.)
- If a setting is not a private practice, and if the supervisor is not employed by the supervisee's employer or is a volunteer, the supervisee's employer and supervisor must sign a written oversight agreement as specified in regulation.

### **Changes to Required Supervised Experience**

Below are some highlights of changes to supervised experience requirements for those pursuing licensure as an LMFT, LCSW, or LPCC. For complete information, please see [AB 93](#).

- Removes the limit of 15 supervisees in a corporation. Supervisors at private practices or corporations can continue to supervise up to 3 supervisees each.
- The law now allows triadic supervision in addition to individual supervision and group supervision. Triadic supervision is defined as face-to-face supervision between one supervisor and two supervisees. Allows the 52 weeks of required individual supervision to now be either individual, triadic, or a combination of both. On or after January 1, 2019, please download a new "Weekly Summary of Experience Hours" and "Experience Verification" form in order to track and count triadic supervision.
- Clarifies that consultation or peer discussion does not qualify as supervised experience.
- Once all experience hours are gained, a pre-licensure must have at least one hour of direct supervisor contact per week for each setting in which direct clinical counseling is performed. Further supervision for non-clinical practice once all hours are gained is at the supervisor's discretion.
- Trainees must receive an average of at least one hour of direct supervisor contact for every 5 hours of direct clinical counseling performed each week in each setting (previously, it was tied to the amount of client contact.).
- For associates, ties additional supervision needed in a week to the amount of direct clinical counseling performed that week (previously, it was tied to the amount of client contact or face-to-face psychotherapy performed in a week).
- Adds additional language to LPCC law, consistent with LMFT and LCSW law, prohibiting PCC trainees, associates or applicants from leasing or renting space or paying for furnishings, equipment, supplies or other expenses that are the obligation of their employers.

## **The 90-Day Rule**

The 90-day rule is a clause in the law that allows applicants (previously only marriage and family therapy or professional clinical counselor applicants) to count supervised experience hours gained in between the time of their degree award date, and the date the Board issues their associate registration number, if the applicant applies for the registration within 90 days of the date that their degree was granted. The following is an overview of changes that apply to the 90-day rule. For complete information about the law changes, see [AB 93](#) (for AMFT and APCC applicants) and [AB 456](#) (for ASW applicants).

- Beginning January 1, 2019, associate clinical social worker (ASW) applicants can begin utilizing the 90-day rule. (Previously, the 90-day rule did not apply to ASW applicants.)
- To utilize the 90-day rule, an applicant must apply for registration and the Board must receive the application within 90 days of the qualifying degree being granted. The applicant is not allowed to work or volunteer in a private practice until the actual registration is issued.
- For all (ASW, AMFT, and APCC) applicants who complete graduate study on or after January 1, 2020, there is a change to the 90-day rule. For these applicants, hours may only be counted under the 90-day rule if the applicant can prove that prior to gaining those hours, the workplace required completed Live Scan fingerprinting. To prove this, the applicant must obtain a copy of his or her completed “State of California Request for Live Scan Service” form and provide it to the Board when applying for licensure.

## **Other Supervised Experience Requirements Specific to LCSWs and LCSW Applicants**

Aside from adding the 90-day rule for ASW applicants, AB 93 made the following changes specific to LCSWs and LCSW applicants. (See [AB 93](#) for complete details):

- On and after January 1, 2019, disallows ASWs from being supervised in a private practice by a person not employed by the private practice. (Business and Professions Code §4996.23.3(b)) Specifies that an ASW may only perform services where his or her employer regularly conducts business and services. In a private practice, the ASW’s supervisor must be employed by the same employer and must practice at the same site or must be an owner of the private practice. If the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services there. (These provisions were already in LMFT and LPCC law.)
- Reduces total required supervised experience hours from 3,200 to 3,000. Reduces the maximum allowed non-clinical hours from 1,200 to 1,000.
- The 13 weeks of required supervision by an LCSW may now be either individual or triadic supervision.

- Adds a provision already in LMFT and LPCC law, that educational institutions and supervisors should encourage their students/supervisees to undergo counseling or psychotherapy and are encouraged to assist them in finding it at a reasonable cost.
- Requires supervisors of those pursuing LCSW licensure to evaluate the site where their supervisee will be gaining experience to determine they are in compliance with the law for acceptable supervision sites. (This was already in LMFT and LPCC law.)
- Specifies that supervisors of those pursuing LCSW licensure must not have provided therapeutic services to their supervisee. Also clarifies in law that ASW supervisors must maintain a current and active license in good standing. (Language is being made consistent with LMFT and LPCC statute.)
- Adds three new unprofessional conduct provisions (4992.3(t), (u), and (v)). These provisions are already in LMFT and LPCC law and were added to LCSW law for consistency. They are as follows:
  - *(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.*

### **Reimbursements and Stipends**

Experience hours are only allowed to be gained as an employee (where the employer issues a W-2 tax form) or as a volunteer. Working as an independent contractor (where a 1099 tax form is issued) is prohibited. However, there are some limited circumstances where the Board may accept hours even if the employer issues a 1099. This applies to reimbursement of expenses, and certain stipend and loan repayment programs. The following are highlights of changes regarding registrant stipends, loan repayment programs, or reimbursement for expenses where the employer issues a 1099 for those payments. For complete information, please see [AB 93](#):

- Modifies the restriction on pre-licensee's reimbursement for expenses. An applicant providing voluntary services in a setting that is not a private practice, and who only receives reimbursement for expenses actually incurred, is considered an employee and not an independent contractor. The dollar limit on reimbursements, previously \$500, was removed.

It is the applicant's responsibility to demonstrate the reimbursement was for expenses if the Board audits them. (Note: for LCSW applicants, this is an entirely new provision.)

- Adds a provision allowing a pre-licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to encourage employment in underserved areas, to be considered an employee and not an independent contractor. It is the applicant's responsibility to demonstrate this if the Board audits them.

### **Suicide Risk Assessment and Intervention Coursework**

Effective January 1, 2021, applicants for licensure for each of the Board's four license types (LMFT, LEP, LCSW, and LPCC), as well as all Board licensees (upon renewal), must have completed at least 6 hours of coursework or supervised experience in suicide risk assessment and intervention, as follows (This is a one-time requirement; see [AB 1436](#) for further information):

#### **Applications for Licensure Received on or after 1/1/2021:**

The requirement must be met using one of the following methods:

- It can be obtained as part of the degree program. The applicant needs to provide the Board with a written certification from the registrar or training director of the school or degree program from which he/she graduated stating the required coursework was either required by the degree program or was part of the coursework completed by the applicant.
- It can be obtained as part of the applicant's supervised experience. The applicant needs to provide the Board with a written certification from the director of training for the program, or from his or her primary supervisor, stating that the training was included in the applicant's supervised experience.
- It can be obtained by taking a continuing education course from a provider that meets the Board's continuing education provider requirements. The applicant needs to provide the Board with the course's certificate of completion.

#### **For All Existing Licensees (Effective First Renewal Period, Reactivation, or Reinstatement on or After 1/1/2021):**

Upon the first renewal period occurring on or after 1/1/2021 (or upon reactivation or reinstatement on or after this date) an existing licensee must sign under penalty of perjury that he or she is in compliance with this coursework requirement via one of the three methods described above. The licensee does not need to submit proof (other than certifying under penalty of perjury) but does need to retain proof of the coursework or experience in case of a Board audit.

- In the coming months, the Board will be contacting in-state school programs to let them know that the new 6-hour requirement is coming. It will also be asking them, if already in their curriculum, to identify the course(s) it is located in.

### **Child Custody Evaluators**

Permits LPCCs to serve as child custody evaluators. See [AB 2296](#) for further information.

### **Changes to LPCC Education Requirements**

There are two significant changes to LPCC educational requirements, which in select cases may allow certain individuals who were previously ineligible for an LPCC license or registration to become eligible. A summary of the changed requirements is below. For complete information, see [AB 2296](#):

- **For applicants with either in-state or out-of-state degrees**, the half-quarter unit requirement for core content areas has been removed. Previously, core content areas were required to be 3 semester units or 4.5 quarter units. On and after January 1, 2019, applicants must have 3 semester units or **4 quarter units** in each content area.
- **For applicants with in-state degrees only**, certain individuals will be able to remediate the “assessment” and “diagnosis” core content areas for a limited period of time. The following applicants may remediate a deficiency in the “assessment” and/or “diagnosis” core content areas:
  - An applicant with an in-state degree whose application for licensure is received by the Board on or before August 31, 2020;
  - An applicant with an in-state degree whose application for registration is received by the Board on or before August 31, 2020, and the Board subsequently issued the registration.

No other applicants are permitted to remediate the “assessment” or “diagnosis” core content areas. Therefore, any in-state applicant whose degree is deficient these core content areas needs to make sure their application is submitted and received by **August 31, 2020**.

- Former applicants who believe they may now be eligible for registration or licensure due to these changes will be required to submit a new application (along with a new application fee) and may need to submit fingerprints to the Board again. Applicants who had previously applied before 2016 will also need to re-submit their transcripts.
- The Board will be conducting outreach via its website, newsletter, and social media to get the word out to previous applicants who may now be eligible. It will also reach out to in-state schools so that they may contact any former students who may now qualify for licensure due to these changes.

## **“Professional Therapy Never Includes Sex” Brochure**

For LEPs: LEPs are now included in the list of professionals who must provide the “Professional Therapy Never Includes Sex” brochure to clients who have indicated sexual behavior or sexual contact with a previous therapist. Previously, LEPs were the only Board licensees that did not have this requirement.

The brochure can be found at this link: <http://www.dca.ca.gov/publications/proftherapy.pdf>

For all license types: The brochure is in the process of being updated due to changes in AB 2968 that require its content to be modernized. The updated version is expected to be added to the Board’s website within the next year. The changes required under AB 2968 can be found in full [here](#).

## **Addenda to Patient Records**

The law now allows any patient who inspects his or patient records the right to provide the health care provider with a written addendum of up to 250 words, to any item or statement in the records that the patient believes is incomplete or incorrect. Previously, only adult patients (not minors) were permitted to do this. Please see [AB 2088](#) for the full text of the law.

## **Criminal Convictions**

Effective July 1, 2020, the Board may only deny a license on grounds that an applicant has been convicted of a crime or subject to formal discipline if one of the following conditions are met:

1. The applicant has been convicted of a crime within 7 years of the date of their application that is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code §1192.7), or for those who must register as a sex offender as described in Penal Code §290(d)(2) or (3).
2. The applicant has been subject to formal discipline by a licensing board within the past 7 years if it was for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession. (The prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction.)

For a full description of the changes related to licensing and convictions, see [AB 2138](#). The Board is in the process of developing regulations to comply with the provisions of this bill. Information about the new process, as well as instructions for applicants with convictions who are applying during the transition period (the period just before July 1, 2020), will be available before the effective date.