

**TITLE 16 BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS**

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 the Handlery Hotel, 351 Geary Street, San Francisco, California, 94102, at 1:00 p.m. on Thursday, November 17, 2005.

Written comments must be received by the Board at its office including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this notice not later than 5:00 p.m. on November 14, 2005, 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 proposal 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 125.9, 148, 149, 4980.60, 4987 and 4990.14, Business and Professions Code, and to implement, interpret, or make specific Sections 125.9, 136, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, 4986.10, 4986.50, 4986.70, 4987.7, 4987.8, 4987.9, 4988, 4988.1, 4988.5, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.20, 4998.2, 4998.3 and 4998.4 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board proposes to adopt amendments to Section 1886.40 in Title 16 of the California Code of Regulations (CCR). This section pertains to the Board's citation and fine program for Marriage and Family Therapists (MFT), Licensed Clinical Social Workers (LCSW), and Licensed Educational Psychologists (LEP).

Section 1886.40 currently permits the issuance of a citation for a violation of the MFT, LCSW, or LEP practice acts as specified, and sets the range of fines from a minimum of \$100 to a maximum of \$2,500 per investigation. Citations are generally issued for violations of sufficient severity to warrant an enforcement action by the Board but which are not severe enough to warrant disciplinary action. Citations may also be issued for unlicensed practice in which case the Board (by definition) does not have the authority to pursue disciplinary action.

This citation program is based on Business and Professions Code Sections 125.9 and 148 that permit boards and bureaus in the Department of Consumer Affairs to implement such a program through regulations. Those statutes were originally created with a maximum fine of \$2,500 per investigation. However, that amount was recently increased to \$5,000 via Senate Bill 362 (Chapter 788, Statutes of 2003), in order to preserve the deterrent effect of the fine.

Consistent with that legislative change, the proposed regulation amending Section 1886.40, would allow fines of up to \$5,000 in the circumstances listed below:

1. The cited person has a history of two or more citations for similar violations.
2. The citation involves multiple violations that demonstrate willful disregard of the law.
3. The violation is perpetrated against a senior citizen, minor, or disabled person.
4. The violation involves unlicensed activity
5. The violation involved an impermissible breach of confidentiality.

The proposal also includes language consistent with Business and Professions Code Section 125.9(b)(3) that allows the Board to issue a fine not to exceed \$5,000 if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

The proposal also makes some minor additions including providing definitions for “citable offense,” “disabled person,” “senior citizen,” and eliminating the list of violations included in the current regulation to ensure clarity and consistent application of the regulation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Board of Behavioral Sciences will incur an unknown amount of minor costs for Attorney General and Office of Administrative Hearings expenses. The Board may also have an unknown amount of minor revenue increase based on the number of fines levied. There are no costs/savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires 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.

AND

The following studies/relevant data were relied upon in making the above determination: Draft board meeting minutes dated May 20, 2005, citation and fine program data from fiscal years 00/01 through 04/05, and citation appeal data.

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

Cost Impacts on Representative Private Persons or Businesses: The proposed regulations will not have an adverse economic impact on business. The proposed

regulations will affect individuals who are assessed a citation and fine due to a violation. The Board issued an average of 29 citations with fines per year from the 2000/2001 through 2004/2005 fiscal years. The average fine is \$918. However, it is impossible to predict the amount of increase due to the variability in number and type of citations with fines issued per year.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulatory action would not have any effect on small businesses because this proposal would only impact individuals who commit one of the specific violations addressed by this proposal and are issued a citation and fine by the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

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

CONTACT PERSON

General or substantive inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christy Berger
Address: 400 R Street, Suite 3150
Sacramento CA 95814
Telephone: 916-445-4933, extension 1142
Fax: 916-323-0707
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AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations, 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 Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

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 from the Contact Person listed above.

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 above or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.