

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
October 22, 2013
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 October 21, 2013 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 4980.60 and 4990.20 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Sections 4980.54, 4989.34, 4996.22, and 4999.76 of the B&P 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

Current regulations outline a process by which the Board of Behavioral Sciences (Board) approves providers of continuing education (CE) for its licensees. Approved providers must ensure that course content is relevant to the practice of the licensees, is related to direct or indirect patient care, and must ensure instructors have specified qualifications.

Over the past several years, an increasing number of concerns have been raised regarding the Board's CE approval process. Therefore, the Board voted at its November 2011 meeting to form a two-member committee to review and discuss the Board's current CE provider requirements and compare them to other models of continuing education. During 2012, the Continuing Education Provider Review Committee met several times and ultimately proposed solutions to the following areas of concern:

1. Board Approval Method for Continuing Education

Currently, the Board has no authority to *approve* individual CE courses. Instead, it may only approve CE providers. This created concern, as once a provider was approved by the Board, the provider could change its coursework.

Many Boards within DCA accept courses provided through “sponsors” approved by specified accrediting entities. These accrediting entities establish stringent requirements for CE provider applicants, including administrative and financial accountability, program development and implementation criteria, and established performance measures for determining program effectiveness. Many of these accrediting entities also perform periodic reviews of approved “sponsors.”

By accepting CE from “sponsors” approved by an accrediting entity, boards are not involved in the approval or maintenance of the CE “sponsors.” Rather, the board relies on the accrediting entity’s standards to ensure the quality of CE provided to licensees.

The proposed amended language would remove the Board’s authority to directly approve CE providers. This language establishes the Board’s authority to accept CE credits from providers who have been approved or registered by a Board recognized “approval agency” or by an organization, institution, association or entity that has been recognized by the Board as a continuing education provider. Essentially, this change in the regulation will entrust the review and approval of CE providers, coursework and instructors to professional associations and other entities recognized by the Board.

2. Review of Coursework/Content

Courses and content offered by a CE Provider are not currently Board approved; a provider is approved based on the content of courses and qualification of instructors presented in the initial application package. Providers are not required to inform the Board of any changes in courses offered or any new courses added. Providers are also not required to inform the Board of any new instructors.

Under the newly proposed language, Board will not be directly approving CE providers. However, the suggested language will give the Board authority to audit coursework and providers. The approving agency and the provider must be able to deliver the specific coursework and provider material when requested by the Board. This language will also give the Board authority to revoke the approving agencies’ Board recognition if they fail to ensure that the providers that they approve meet the requirements of the Board.

3. Self-Study Versus Online Learning

In 2003, the Board amended the definition of CE courses found in 16 CCR Section 1887 to include courses offered through online education, which was previously included in the definition of a “self-study course.” This change allowed licensees to effectively gain all CE hours through online means, while self-study courses are limited to 18 hours. There has been much confusion for staff and licensees taking online courses (unlimited amount of hours credited) and how they differ from self-study courses (18-hour limit).

The committee conducted extensive discussions regarding the definition and applicability of self-study versus online learning. It was decided that self-study limitations should be removed. The amended language would now allow a licensee to gain their required CE credits through any course format.

4. CE Credit for Examination Development

Examination development is an integral part of the Board's licensure program and it is imperative that the Board continues to have a competent and committed pool of subject matter experts (SMEs). In fiscal year 2011-12 the Board facilitated approximately fifty-seven examination development workshops. While the Board does not currently give CE credit for SME participation in examination development, both the Dental Board and Psychology Board give CE credit for participation in examination development.

Under the proposed language, licensee will be able to obtain up to six hours of CE credits every renewal period for participating in a Board examination development workshop, attending board enforcement case review training, acting as a subject matter expert for board enforcement case reviews, or participating in a professional association's ethics review committee process. This CE credit may only be applied to the law and ethics portion of the CE requirement.

Amend Sections 1887, 1887.2, 1887.3, 1887.4, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.13, 1887.14, and 1887.15 – Phase out the Board's Current Continuing Education Provider Approval Program

These sections comprise the Board's current continuing education provider approval program. Transition language has been amended in to these sections in order to allow the Board to transition to the new continuing education program currently proposed. The effective date of the new CE program is six months after the effective date of these regulations, once the Office of Administrative Law (OAL) approves them and sets the effective date. In addition, providers with an active Board issued CE provider number may continue to provide CE until their provider number expires.

Policy Statement Overview: Adoption of this proposed amendment will benefit licensees seeking continuing education courses, and it will also benefit CE providers, as both parties will have a six month transition period before the new CE requirements become effective. It will allow providers currently licensed by the Board time to register and gain approval for CE programs through a Board accepted approval agency, if needed. In the meantime, providers with an active Board issued CE provider number may continue to provide CE until their provider number expires. These provisions will allow licensees time to locate acceptable CE providers and obtain the necessary coursework, and will ensure an adequate number of providers during the transition process.

Add Section 1887 – Definitions for Board's New Continuing Education Program

This section replaces the previous section 1887, which defined terms under the previous continuing education provider approval program. It defines a continuing education "provider"

and a continuing education “approval agency”, which are two new terms signifying to licensees that courses from these entities are acceptable toward the Board’s continuing education requirements for licensure. This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will benefit licensees and continuing education providers and approval entities, by making it clear which entities may approve Board-required continuing education coursework.

Amend Sections 1887.1 and 1887.2 – Removal of Obsolete Language

Effective January 1, 2012, the Board’s License Educational Psychologist (LEP) licensees were required to complete continuing education to maintain licensure. This was not previously required. Therefore, the Board implemented a transition program, so that LEP licensees renewing right after the continuing education requirement took effect would not be unduly burdened by having to suddenly complete 36 hours of continuing education with very little notice.

This transition period is over, and therefore the transition language included in these sections is now obsolete.

Policy Statement Overview: Adoption of this proposed amendment will benefit LEP licensees, by removing obsolete language that could potentially be confusing because it no longer applies.

Add Sections 1887.2 and 1887.3 – Removal of Self-Study Limitations on Continuing Education Coursework

These sections replace the previous sections 1887.2 and 1887.3, which limited CE earned through self-study courses to no more than nine hours prior to the first license renewal, and eighteen hours thereafter.

During the CE committee process, the Committee had extensive discussions about the suitability of self-study versus online coursework for continuing education. Online coursework currently has no hour limitation. The Committee decided that there is no reason to limit self-study coursework.

The new sections would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will benefit licensees, especially those in rural areas with little access to courses or conferences, by removing the limitation on self-directed study for continuing education.

Add Section 1887.3 – Removal of Obsolete Language and Addition of New Methods of

Obtaining Continuing Education

This section replaces the previous section 1887.3, which discussed continuing education course requirements and included an allowance for a licensee teaching a CE course to receive a specified amount of CE course credit.

This new section preserves the credit for teaching a CE course, and also adds additional methods by which a licensee can obtain some CE course credits. It allows a licensee to obtain specified amounts of CE credit for attending the Board's enforcement case review training, acting as a Board subject matter expert for an enforcement case review, participating in a Board examination development workshop, or participating in a professional organization's law and ethics review committee.

This section also removes obsolete language describing the LEP CE transition program that was discussed above.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will benefit licensees by allowing them an interactive, hands-on approach to stay current on law and ethics and enforcement issues. It will benefit the Board and professional associations by providing an incentive for licensees to participate in their examination development and discipline programs. It will also benefit the public by allowing licensees to obtain real-life training in law and ethics matters. Finally, it will benefit LEP licensees by removing obsolete language that is no longer effective and therefore is potentially confusing.

Add Section 1887.4 – Continuing Education Course Content

This section replaces the previous section 1887.4, which required Board licensed CE providers to ensure the content of their courses were related to the practice of the profession of their target audience, and be related to direct or indirect patient care. Concerns were raised that this regulation overly broad, and opened the door to courses covering subjects which contained content which were of questionable relevance, or unethical practices, but allowed the Board no authority to reject such practices as long as they fell under the broad guidelines of direct or indirect patient care.

During the CE committee process, the Committee worked extensively to outline new course criteria that would eliminate the danger of irrelevant or unethical courses being offered. Some of the new, more specific, key course requirements are as follows:

- The course must be based on methodological, theoretical, research or practice knowledge base;
- Has been supported using established research procedures; and
- Is related to ethical/legal policies, guidelines, and standards that impact each related practice.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above. The old version of Section 1887.4 has been amended to apply only to those with a Board-issued CE provider number. This allows it to remain in effect while the Board issued CE provider numbers are being phased out.

Policy Statement Overview: Adoption of this proposed amendment will benefit consumers, because it ensures that Board licensees will not be studying unsupported or unethical practices as part of their Board required continuing education. It will also benefit licensees, as they will not unknowingly be taking CE courses that advocate unethical practice or practice methods that are not backed up by research.

Add Section 1887.41 – Board Recognized Approval Agencies

This new section adds language and criteria for an entity to be a Board-recognized approval agency. It lists several entities that are recognized by the Board to approve CE providers. It also establishes strict criteria that must be met to become a Board-recognized approval agency. This criteria is designed to ensure public protection from practices being taught that are unproven or unethical. Some of this criteria is as follows:

- The entity is an organization that represents a licensed health care profession;
- The entity has a documented code of ethics; and
- The entity has the capacity to evaluate the courses of its providers.

This new section also adds language giving the Board the authority to revoke its approval of the entity as a CE provider, if the entity is not complying with the Board's requirements.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will benefit consumers by ensuring that entities that will be approving CE courses have strict guidelines and criteria in place, and that the Board has authority to take action if the criteria are not being met. This will help eliminate the possibility that CE courses will contain unproven or unethical content.

Add Section 1887.42 – Responsibilities of Board Recognized Approval Agencies

This new section adds language outlining the responsibilities of a Board-recognized approval agency. These responsibilities include evaluating each CE provider, responding to complaints from the Board, and conducting periodic reviews of courses. The responsibilities were designed to ensure public protection from unethical or ineffective practices.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will protect consumers by ensuring that entities that will be approving CE courses have clear responsibilities, and authority

to review providers' courses and take action if providers are not in compliance with course content requirements. This will help eliminate the possibility that CE courses will contain unproven or unethical content.

Add Section 1887.43 – Responsibilities of Continuing Education Providers

This new section adds language describing persons or entities that may provide continuing education coursework. It specifies several organizations, which represent Board licensees, that are directly recognized by the Board as being able to provide CE courses without being approved by an approval agency.

This section also outlines the responsibilities of an entity providing CE coursework, including ensuring the courses meet certain criteria, ensuring courses do not discriminate against any group, ensuring courses are consistent with ethical standards of the approval agency or organization, and ensuring courses do not promote any discriminatory modes of treatment. In addition, this section gives an approval agency and the Board the right to audit course material.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above.

Policy Statement Overview: Adoption of this proposed amendment will protect consumers by ensuring that entities providing CE courses meet certain criteria, and will not be advocating harmful or discriminatory methods of treatment. It also gives the Board the authority to review providers' courses and take action if providers are not in compliance with requirements. This will help eliminate the possibility that CE courses will contain unproven or unethical content.

Add Section 1887.11 – Records of Course Completion

This section replaces the previous section 1887.11, which requires the CE provider to issue a licensee, upon completing of a CE course, a record of course completion containing certain information.

This new section preserves all provisions of the previous section 1887.11, but adds a new requirement that the record of course completion must contain the approval agency provider information, or name of the Board recognized provider offering the course.

This new section would become effective six months after the OAL determined effective date of this regulatory proposal, which is consistent with the phase-in discussed above. Language has been added to apply the old Section 1887.11 to only those providers with a Board-issued CE provider number, ensuring it remains effective for those providers during the transition period.

Policy Statement Overview: Adoption of this proposed amendment will benefit licensees, by making it clear what information is required to be on a record of course completion, and ensuring that the required items listed in regulations are consistent and current with the new CE regulation program.

Add Section 1887.15 – Transition Period for Continuing Education Program

This section adds language specifying certain details of the CE program transition period, including the date on which the Board will no longer accept Board approved CE provider applications, when the Board will cease CE provider renewals, and the time period during which Board licensees may submit CE credits from discontinued providers.

Policy Statement Overview: Adoption of this proposed amendment will benefit CE providers, because it will give them time to gain approval from a Board recognized approval agency, rather than requiring they cease practice before they can even attempt to gain that approval. It will benefit licensees by ensuring that an adequate supply of CE providers remains available while the CE provider requirements are in transition, which allows them to continue to obtain the CE courses required of them.

Forms Incorporated by Reference

This proposed rulemaking makes changes to one form that is incorporated by reference that is currently used by the Board:

- Section 1887.7: Continuing Education Provider Application, Form 1800 37A-633 (Rev. 03/10). The new revision date is 1/11. No material changes were made to this form, however, the formatting of the instructions was changed slightly, and the instructions had been placed on Board letterhead.

Policy Statement Overview: The changes to this form are not material, and are for clarity and consistency purposes only.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has determined that these are the only regulations that deal with the subject area of the Board's continuing education program. Therefore, the Board finds that these proposed regulations are consistent and compatible with existing state regulations.

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 currently charges three fees related to continuing education providers:

- An application fee for Board approval as a CE provider: \$200
- A biennial renewal fee for a CE provider: \$200; and
- A delinquency fee (if renewal is late): \$100

The Board currently has approximately 2,604 approved CE providers. Under this proposed program, these providers will need to seek approval from other entities, as the Board will no longer be approving CE providers. Therefore, the Board will no longer be able to collect the fees listed above.

Attachment B of the STD 399 outlines the revenue loss from no longer being able to collect these fees. To determine an estimated revenue loss, the Board averaged revenue received for each fee over the past three fiscal years. The estimated revenue loss to the Board per fiscal year is \$277,133.

The Board has a staff person dedicated to the CE program, including approving and renewing CE providers, and conducting licensee audits. Due to very limited staff resources and a large workload, this person currently spends much of her time approving and renewing CE providers, and is unable to dedicate as much time as the Board would like to conduct CE audits.

Upon implementation of the new CE regulations, the duties of the CE Analyst (SSA position) will shift. This person will no longer be processing CE provider applications (PCE applications). Therefore, more time will be spent on CE audits of licensees, increasing public protection by ensuring that Board licensees are keeping current with developments in his or her field of practice.

Currently, the CE analyst position is only able to perform about 480 audits per year. This is less than 1% of renewing licensees (approximately 55,000 licensees are up for renewal each year).

Under the new CE program established by these regulations, the CE analyst will be able to audit an estimated 750 licensees per year. This is a 57% increase from the number of audits currently being done, and brings the audit total to about 1.4% of renewing licensees per year. This increased focus on audits is essential to consumer protection, as recent audits have revealed that about 16% of licensees are not compliant with CE requirements.

Attachment C of the STD 300 shows the estimated shift in task hours for the CE Analyst position, before and after the proposed regulations go into effect.

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 may impact some of the Board's 2,604 currently approved continuing education providers, if they are not able to meet any of the new Board designated CE approval agencies' requirements. The number of current providers that will no longer qualify to offer CE courses is unknown, however a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, is not expected.

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

- Examination of qualifications required by Board designated CE approval agencies.
- Examination of current requirements to become a Board approved CE provider.
- Number of current Board approved CE providers (2,604 providers)

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal may eliminate certain continuing education providers, and jobs contained by those providers, if those providers are unable to gain approval by one of the Board's designated CE approval agencies.

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 are as follows:

- Currently, the Board charges a \$200 application fee for new CE providers, and a biennial renewal fee of \$200 to renew a CE provider number.
- Since the Board will no longer be approving providers, CE providers will not need to pay these charges, but will need to go elsewhere for approval.
- Examples of other entities' charges include the Association of Social Work Boards (ASWB), one of the Board's designated approval agencies, charges an initial application fee of \$450, and requires a renewal fee of \$900 every three years. The National Board for Certified Counselors (NBCC), another Board designated approval agency, charges an initial application fee of \$300, and an annual renewal fee of \$100-\$200, depending on the program type.

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 following facts:

- **Analysis of creation/elimination of jobs:** There are currently 2,604 Board approved CE providers. The Board has determined that this regulatory proposal may eliminate certain continuing education providers, and jobs contained by those providers, if those providers are unable to gain approval by one of the Board's designated CE approval agencies. However, the majority of these providers are expected to be able to obtain approval from a Board recognized approval agency.
- **Analysis of creation/elimination of businesses.** This proposal is not expected to lead to the creation of any new businesses. This proposal may lead to the elimination of an unknown number of some existing businesses within the state, if they are not able to gain approval by one of the Board's designated CE approval agencies. However, the majority of these businesses are expected to be able to obtain approval from a Board recognized approval agency.
- **Analysis of expansion of business:** This proposal is not expected to lead to the expansion of new businesses within California. This regulation requires businesses wishing to provide continuing education for Board licensees to go to a Board-recognized approval agency for approval, instead of going to the Board for approval as they have

been required to do in the past. The change in method of approval is not expected to cause business expansion.

- **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 by ensuring that the psychotherapists who are treating the public will not be studying unsupported, discriminatory, or unethical practices as part of their Board required continuing education. The proposal will have no effect on worker safety or the State's environment.

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 while it may eliminate some CE providers who cannot obtain approval from a Board recognized approval agency, it will not eliminate a significant number of jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: Many of the Board's CE providers may be considered small businesses. It is expected that many of them will be able to obtain approval to offer CE courses from a Board recognized approval agency. However, if some of these businesses are not able to obtain approval, they will no longer be able to offer CE courses. However, nothing precludes them to continue to offer courses; licensees will just not be able to count those courses toward their CE requirement. Therefore, it is expected that this proposed action may affect an undetermined amount of small businesses, however the majority of these businesses should be able to obtain approval to offer CE courses from a Board recognized approval agency.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal may eliminate certain continuing education providers, and jobs contained by those providers, if those providers are unable to gain approval by one of the Board's designated CE approval agencies. However, 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.

Occupations/Businesses Impacted: This proposed regulation will impact psychotherapists who are licensed by the Board. It will ensure that they will not unknowingly be taking CE courses that advocate unethical practice or practice methods that are not backed up by research.

Reporting Requirements: Reporting requirements may vary depending on which approval agency a CE provider seeks approval from, as different approval agencies may have different reporting requirements. This proposal does contain a provision that requires approval agencies to do the following:

- Maintain a list of the names and addresses of persons responsible for each provider's CE program;

- Provide the Board with names, addresses, and responsible party of each provider upon request;
- Respond to complaints from the Board, providers, or licensees concerning the activities of its approved course providers; and
- Conduct periodic reviews of its provider's courses to determine compliance with the Board's requirements, and report the findings to the Board if requested to do so.

In addition, the proposal contains a provision that requires providers of CE coursework to do the following:

- Furnish each licensee a record of course completion containing specified information;
- Maintain records of completion for their CE courses four years; and
- Submit required materials to their approval agency or to the Board if requested for a course audit.

Comparable Federal Regulations: None

Benefits: The benefits will be increased public protection by ensuring that the psychotherapists who are treating the public will not be studying unsupported, discriminatory, or unethical practices as part of their Board required continuing education.

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
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The backup contact person is:

Name: Marc Mason
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Website Access: Materials regarding this proposal can be found at www.bbs.ca.gov.