

Board of Behavioral Sciences
FINAL STATEMENT OF REASONS

Hearing Date: March 23, 2020

Subject Matter of Proposed Regulations: Supervision-Related Requirements

Section(s) Affected: All regulation sections added, deleted, or amended, herein, are located in the California Code of Regulations (CCR), title 16, division 18: Add sections 1815.8, 1820.3, 1821.1, 1821.2, 1821.3, 1833.05, 1833.1.5, 1834, 1869, 1869.3, 1870.3, 1870.5, and 1871; Amend Sections 1820, 1820.5, 1821, 1833, 1833.1, 1833.2, and 1870; Repeal sections 1822 and 1870.1.

The Initial Statement of Reasons (ISOR) is included in the file. An addendum to the ISOR is also included in the file, which includes additional necessity statements. The information contained therein is incorporated herein by reference.

Updated Information

1. On March 23, 2020, the Board held a public hearing at the Department of Consumer Affairs Headquarters, located at 1625 North Market Boulevard, second floor, in Sacramento, California. The comments received and the Board's responses are detailed under "Objections or Recommendations/Responses to Comments." The Board approved the responses to comments at its meeting on June 5, 2020.
2. The Underlying Data in the ISOR listed a "Supervision Survey Memo April 2015." The date is incorrect and should have been March 2015.
3. The following amendments were made to the proposed regulation text after the 45-day public comment period. The Board approved changes at a meeting on March 5, 2021, and a subsequent 15-day public comment period was held. The Board approved additional changes at a meeting on July 7, 2021, and another public comment period was held. Board meeting minutes have been added to the file. The additional Board-approved text changes are as follows:
 - a. Minor grammatical and technical changes throughout the text.
 - b. Section 1815.8: Change "organization" to "supervisee's employer" for clarity and for consistency with Business and Professions Code (BPC) sections 4980.43.4(d), 4996.23.3(d), and 4999.46.4(d). Add relevant code sections to references, and strike one unnecessary reference.

c. Section 1820:

- i. Subsection (a): Text now refers back to the statute which specifies when a written oversight agreement is necessary, rather than duplicating statute, and simply specifies that the written oversight agreement shall be completed as described in following subsections.
- ii. Subsections (a)(1) and (a)(4): Move text in (a)(1) regarding submission of the written oversight agreement to new subsection (a)(4). Modify text to specify when the supervisor shall provide the signed agreement to the supervisee for clarity. Providing the signed agreement upon completion or termination of supervision is appropriate because the supervisor will need to be in possession of the signed agreement during the supervisory relationship.
- iii. Subsection (b): Strike the effective date for submission of the supervisor self-assessment report. The effective date is specified and further explained in section 1821(d), and is unnecessary here. Add a reference to BPC section 4999.12, which specifies supervisor qualifications, for clarity.
- iv. Subsection (c)(1): Add text that references subsection (c)(2), which provides for an exception to this subsection, for clarity. Specify that the supervision agreement means the agreement listed in subsection (c)(3) for clarity.
- v. Subsection (c)(2): Specify the effective date of January 1, 2022 rather than have OAL insert the effective date of regulation, as the effective date can now be better anticipated.
- vi. Subsection (c)(3): Add a reference to BPC section 4999.4 for clarity, as this code section specifies requirements regarding registration of the supervisee.
- vii. Subsection (d)(2): Clarify what is meant by “experience gained per category” by referencing BPC sections 4999.46(c)(3), 4999.46(c)(5), and 4999.46.2(b), which list the experience categories.

d. Section 1820.3:

- i. Subsection (c)(2): Correct an incorrect section number. Add text regarding the status of the supervisor that mirrors BPC section 4999.46.4(d)(1) for clarity.
- ii. Subsection (d): Recast the W-2/volunteer letter requirement by referencing BPC section 4999.46.5(a), as the Board does not have regulatory authority over employers of supervisees. Clarify that this statutory requirement applies regardless of who employs the supervisee.

- e. Section 1821:
 - i. Subsection (d): Strike the effective date for submission of the supervisor self-assessment report, as it is now specified and further described in subsection(d)(2).
 - ii. Subsection(d)(1): State that a supervisor’s telephone number and email address shall be considered confidential and not subject to public disclosure in order to protect the supervisor’s personal information. Clarify that the supervisor shall submit an email address if they have one, to allow for the possibility of supervisors who may not have one.
 - iii. Subsection (d)(2): Add this subsection to clarify when supervisors must submit a supervisor self-assessment report. Modify required submission dates for licensees who are supervising as of January 1, 2022 in order to provide a full one year for compliance. Clarify that licensees not supervising an associate as of January 1, 2022 shall submit a self-assessment report within 60 days of commencing supervision.
 - iv. Subsection (e): Move text to subsection (d)(2)(B) and modify text as described above.
- f. Section 1821.1(b): Add text specifying that the substitute supervisor and supervisee’s employer shall sign a written oversight agreement if required by section 1820. This provides the substitute supervisor and supervisee with the same protections as those who are (or have) a regular supervisor.
- g. Section 1821.3: Modify text to use the terms “coursework or training” throughout for consistency to match the introductory text of this section.
 - i. Subsection(a): Change the effective date to the now anticipated effective date of the regulation. Clarify that there is an exception provided for in subsection (d).
 - ii. Subsection (a)(3): Provide reference to BPC section 4999.12 for clarity regarding the definition of accredited or approved postsecondary institution.
 - iii. Subsections (b) and (c): Reference the exception provided for in subsection (d) for clarity.
 - iv. Subsection (c)(3): Strike text that states “deemed equivalent by the board” as this text lacks clarity and cannot be adequately defined.
 - v. Subsection (c)(4): Specify that collaboration with another licensee through mentoring or consultation shall be documented via a log signed by both parties. This will provide supervisors with clarity on what would be required during an audit as specified in BPC

4999.46.5.

- vi. Subsection (c)(5): Specify that attendance at supervisor peer discussion groups shall be documented via letter or certificate from the group leader or facilitator. This will provide supervisors with clarity on what would be required during an audit as specified in BPC 4999.46.5.
- vii. Subsection (d)(2): Strike all text in this subsection. This text contained an exception to supervisor requirements specified in BPC section 4999.12(h), which is not permissible because statute supercedes regulations.
- viii. Subsection (d)(3): Clarify the entities that are being referred to by adding a reference to subsection (d)(1).
- ix. Add BPC section 4999.48 to the reference section, which pertains to the board's adoption of regulations.

h. Section 1833:

- i. Subsection (a): Text now refers back to the statute which specifies when a written oversight agreement is necessary, rather than duplicating statute, and simply specifies that the written oversight agreement shall be completed as described in following subsections.
- ii. Subsections (a)(1) and (a)(4): Move text in (a)(1) regarding submission of the written oversight agreement to new subsection (a)(4). Modify text to specify when the supervisor shall provide the signed agreement to the supervisee for clarity. Providing the signed agreement upon completion or termination of supervision is appropriate because the supervisor will need to be in possession of the signed agreement during the supervisory relationship.
- iii. Subsection (b): Strike the effective date for submission of the supervisor self-assessment report. The effective date is specified and further explained in section 1833.1(d), and is unnecessary here.
- iv. Subsection (c)(1): Add text that references subsection (c)(2), which provides for an exception to this subsection, for clarity. Specify that the supervision agreement means the agreement listed in subsection (c)(3) for clarity.
- v. Subsection (c)(2): Specify the effective date of January 1, 2022 rather than have OAL insert the effective date of regulation, as the effective date can now be better anticipated.
- vi. Subsection (c)(3): Add a reference to BPC section 4980.43 for clarity, as this code section specifies requirements regarding

registration of the supervisee.

- vii. Subsection (d)(2): Clarify what is meant by “experience gained per category” by referencing BPC sections 4980.43(c)(8), 4980.43(c)(10), and 4980.43.2(b), which list the experience categories.
- i. Section 1833.05:
 - i. Subsection (c)(2): Add text regarding the status of the supervisor that mirrors BPC section 4980.36.4(d)(1) for clarity.
 - ii. Subsection (d): Recast the W-2/volunteer letter requirement by referencing BPC section 4980.43.3(a), as the Board does not have regulatory authority over employers of supervisees. Clarify that this statutory requirement applies regardless of who employs the supervisee.
- j. Section 1833.1:
 - i. Subsection (d): Strike the effective date for submission of the supervisor self-assessment report, as it is now specified and further described in subsection(d)(2).
 - ii. Subsection(d)(1): State that a supervisor’s telephone number and email address shall be considered confidential and not subject to public disclosure in order to protect the supervisor’s personal information. Clarify that the supervisor shall submit an email address if they have one, to allow for the possibility of supervisors who may not have one.
 - iii. Subsection (d)(2): Add this subsection to clarify when supervisors must submit a supervisor self-assessment report. Modify required submission dates for licensees who are supervising as of January 1, 2022 in order to provide a full one year for compliance. Clarify that licensees not supervising an associate as of January 1, 2022 shall submit a self-assessment report within 60 days of commencing supervision.
 - iv. Subsection (e): Move text to subsection (d)(2)(B) and modify text as described above.
- k. Section 1833.1.5: Add text specifying that the substitute supervisor and supervisee’s employer shall sign a written oversight agreement if required by section 1833. This provides the substitute supervisor and supervisee with the same protections as those who are (or have) a regular supervisor.
- l. Section 1834: Modify text to use the terms “coursework or training” throughout for consistency to match the introductory text of this section.

- i. Subsection(a): Change the effective date to the now anticipated effective date of the regulation. Clarify that there is an exception provided for in subsection (d).
- ii. Subsection (a)(3): Provide reference to BPC section 4980.03 for clarity regarding the definition of accredited or approved postsecondary institution.
- iii. Subsections (b) and (c): Reference the exception provided for in subsection (d) for clarity.
- iv. Subsection (c)(3): Strike text that states “deemed equivalent by the board” as this text lacks clarity and cannot be adequately defined.
- v. Subsection (c)(4): Specify that collaboration with another licensee through mentoring or consultation shall be documented via a log signed by both parties. This will provide supervisors with clarity on what would be required during an audit as specified in BPC 4980.43.5.
- vi. Subsection (c)(5): Specify that attendance at supervisor peer discussion groups shall be documented via letter or certificate from the group leader or facilitator. This will provide supervisors with clarity on what would be required during an audit as specified in BPC 4980.43.5.
- vii. Subsection (d)(2): Strike all text in this subsection. This text contained an exception to supervisor requirements specified in BPC section 4980.03(g), which is not permissible because statute supercedes regulations.
- viii. Subsection (d)(3): Clarify the entities that are being referred to by adding a reference to subsection (d)(1).

m. Section 1869:

- i. Subsection (a): Text now refers back to the statute which specifies when a written oversight agreement is necessary (rather than duplicating statute), and simply specifies that that the written oversight agreement shall be completed as described in following subsections.
- ii. Subsections (a)(1) and (a)(4): Move text in (a)(1) regarding submission of the written oversight agreement to new subsection (a)(4). Modify text to specify when the supervisor shall provide the signed agreement to the supervisee for clarity. Providing the signed agreement upon completion or termination of supervision is appropriate because the supervisor will need to be in possession of the signed agreement during the supervisory relationship.
- iii. Subsection (b): Strike the effective date for submission of the

supervisor self-assessment report. The effective date is specified and further explained in section 1870(d), and is unnecessary here. Add a reference to BPC section 4996.20, which specifies supervisor qualifications, for clarity.

- iv. Subsection (c)(1): Add text that references subsection (c)(2), which provides for an exception to this subsection, for clarity. Specify that the supervision agreement means the agreement listed in subsection (c)(3) for clarity.
- v. Subsection (c)(2): Specify the effective date of January 1, 2022 rather than have OAL insert the effective date of regulation, as the effective date can now be better anticipated.
- vi. Subsection (c)(3): Add a reference to BPC section 4996.23 for clarity, as this code section specifies requirements regarding registration of the supervisee.
- vii. Subsection (d)(2): Clarify what is meant by “experience gained per category” by referencing BPC sections 4996.23(d)(2), 4996.23(d)(3), and 4996.23.1(b), which list the experience categories.

n. Section 1869.3:

- i. Subsection (c)(2): Add text regarding the status of the supervisor that mirrors BPC section 4996.23.3(d)(1) for clarity.
- ii. Subsection (d): Recast the W-2/volunteer letter requirement by referencing BPC section 4996.46.3(a), as the Board does not have regulatory authority over employers of supervisees. Clarify that this statutory requirement applies regardless of who employs the supervisee.

o. Section 1870:

- i. Subsection (d): Strike the effective date for submission of the supervisor self-assessment report, as it is now specified and further described in subsection(d)(2).
- ii. Subsection(d)(1): State that a supervisor’s telephone number and email address shall be considered confidential and not subject to public disclosure in order to protect the supervisor’s personal information. Clarify that the supervisor shall submit an email address if they have one, to allow for the possibility of supervisors who may not have one.
- iii. Subsection (d)(2): Add this subsection to clarify when supervisors must submit a supervisor self-assessment report. Modify required submission dates for licensees who are supervising as of January

1, 2022 in order to provide a full one year for compliance. Clarify that licensees not supervising an associate as of January 1, 2022 shall submit a self-assessment report within 60 days of commencing supervision.

- iv. Subsection (e): Move text to subsection (d)(2)(B) and modify text as described above.
- p. Section 1870.3(b): Add text specifying that the substitute supervisor and supervisee's employer shall sign a written oversight agreement if required by section 1869. This provides the substitute supervisor and supervisee with the same protections as those who are (or have) a regular supervisor.
- q. Section 1871: Modify text to use the terms "coursework or training" throughout for consistency to match the introductory text of this section.
 - i. Subsection(a): Change the effective date to the now anticipated effective date of the regulation. Clarify that there is an exception provided for in subsection (d).
 - ii. Subsection (a)(3): Provide reference to BPC section 4996.18(b)(3) for clarity regarding the definition of accredited or approved postsecondary institution.
 - iii. Subsections (b) and (c): Reference the exception provided for in subsection (d) for clarity.
 - iv. Subsection (c)(3): Strike text that states "deemed equivalent by the board" as this text lacks clarity and cannot be adequately defined.
 - v. Subsection (c)(4): Specify that collaboration with another licensee through mentoring or consultation shall be documented via a log signed by both parties. This will provide supervisors with clarity on what would be required during an audit as specified in BPC 4996.21.
 - vi. Subsection (c)(5): Specify that attendance at supervisor peer discussion groups shall be documented via letter or certificate from the group leader or facilitator. This will provide supervisors with clarity on what would be required during an audit as specified in BPC 4996.21.
 - vii. Subsection (d)(2): Strike all text in this subsection. This text contained an exception to supervisor requirements specified in BPC section 4996.20(a), which is not permissible because statute supercedes regulations.
 - viii. Subsection (d)(3): Clarify the entities that are being referred to by adding a reference to subsection (d)(1).

Nonsubstantive Changes to the Regulation Text During OAL Review

Nonsubstantive changes were made to correct punctuation, grammar, cross-references and authority and reference citations.

Additional changes were made as follows:

- Sections 1820(b), 1833(b) and 1869(b): Removed cross-references to a “Code” section. These subdivisions addresses self-assessment reports, and the cross-referenced sections of the Code does not.
- Sections 1820(e)(1), 1833(e)(1) and 1869(e)(1): Removed duplicative wording (“the supervisor’s”) for brevity.
- Sections 1820.3(c)(2), 1833.05(c)(2) and 1869.3(c)(2): Removed “Notwithstanding” (regulation section) and added “as required by” (pertinent regulation section) to clarify the cross-reference.
- Sections 1821(d)(1)(E), 1833.1(d)(1)(E) and 1870(d)(1)(E): Added “or coursework” after “training” to make the text internally consistent with related regulation sections.
- Sections 1821(d)(1)(F)(3), 1833.1(d)(1)(F)(3) and 1870(d)(1)(F)(3) : Changed “registrants” to “supervisees” to make the text internally consistent with statutory language.
- Sections 1821.1(c)(2), 1833.1.5(c)(2) and 1870.3(c)(2): Changed wording in regard to the 30-day period for brevity in the regulation text.
- Sections 1821.3(a), 1834(a) and 1871(a) : Removed “beginning January 1, 2022” as it is unnecessary. The regulation is expected to become effective on that date.

These changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of the proposed text.

Form Revisions:

Note: A number of forms incorporated by reference were repealed during this regulatory revision, and are contained in the regulatory package. These forms were not replaced nor revised by the Board.

Change of Venue for Public Hearing

The venue for the public hearing on March 23, 2020 had to be changed due to the Governor’s stay at home order (Executive Order N-33-20) issued on March 19, 2020,

which resulted in the meeting location being closed to the public. The Board was able to arrange for the hearing to be held online instead. The Board sent out an email notification and placed an alert on our website.

Objections or Recommendations/Responses to Comments Received during 45-Day Public Comment Period:

1. Comment from Sheila Addison, Naila Qureshi, Stacey Thacker and Amanda Michelle Jones at March 23, 2020 Hearing

Summary of comments: The above individuals provided substantially similar comments. Each would like the regulations to be amended to allow for supervision via videoconferencing in a private practice setting. The following reasons were cited:

- It can be a hardship for disabled supervisors and disabled supervisees to provide supervision in person. This is an access issue which leads to inequality for already marginalized supervisors and supervisees.
- Due to the COVID-19 pandemic it is risky to provide in-person supervision, especially for high-risk individuals.
- The restriction may lead to client abandonment, which is a legal and ethical problem. If the supervisor is ill or out of town, or restricted as in this pandemic, and the supervisor directs a private practice supervisee to not work because in-person supervision can't be provided, this can result in client abandonment. Interim supervision can be difficult and expensive and is sometimes not possible in specialty practices. Clients and supervisees are typically more comfortable with therapy and supervision staying with the same person.

Response: The Board appreciates these comments but has determined that no changes to the text are necessary in response. Per statute (BPC subdivisions 4980.43.2(d), 4996.23.1(f) and 4999.46.2(d)), supervision via videoconferencing is only allowed in a governmental entity, school, college, university, or an institution that is nonprofit and charitable. Therefore, any change to this provision would need to be pursued via legislation.

2. Comment from May-Ci Xiong at Hearing

Summary of comment: May-Ci Xiong commented that they would like to see telephone conferencing allowed for group and individual supervision, in order to account for a potential lack of access to telehealth equipment.

Response: The Board appreciates this comment but has determined that no

changes to the text are necessary in response. Supervision is required by statute (BPC subdivisions 4980.43.2(b), 4996.23.1(b) and 4999.46.2(b)) to be provided face-to-face. Therefore, any change to this provision would need to be pursued via legislation.

3. Comment #1 from Curt Widhalm, LMFT at Hearing

Summary of comment: Mr. Widhalm commented on the section regarding deceased or incapacitated supervisors. He would like to see directives included for the handling of supervisory documentation in a professional will in the event of a supervisor's death or incapacitation.

Response: The Board appreciates this comment but has determined that no changes to the text are necessary in response. This concern would be better addressed in a larger discussion about professional wills for all licensees (not just supervisors), and whether it is appropriate to require them by law.

4. Comment #2 from Curt Widhalm, LMFT via Email (Attachment C)

Summary of comment: Mr. Widhalm's email requests that subsections (c)(4) & (5), of 16 CCR sections 1821.3, 1834 and 1871, be stricken from the proposal. These provisions would allow supervisors to count supervision-related mentorship or consultation, and attendance at supervisor peer discussion groups toward professional development hours. He cited the following reasons:

- The threshold for content and accountability of peer-led groups and consultations may not meet the rigors comparable to continuing education (CE) course content.
- Peer groups without CE may be helpful and provide insight, but can spin into unstructured discussions and "complaint sessions" about supervisees rather than being educative in nature.
- Without the rigors of education, these options are "counter to the Board's removal of participating in psychotherapy as an option for accruing hours for MFT prelicensees."

Response: The Board appreciates this comment but has determined that no changes to the text are necessary in response. Issues concerning the newly proposed continuing professional development (CPD) activities were discussed, at length, in the Board's public Supervision Committee meetings and had broad support from stakeholders. Currently, only CE is permitted to meet the requirement, and CE may not meet a supervisor's specific development needs. Quality may vary in any of the proposed CPD activities, including CE. If quality is a problem, the professional can find a new group, mentor, course, etc. In addition, all new supervisors would still

need a one-time 15-hour CE course for supervisors, with 6 hours of CPD activities required every two years thereafter. In addition, every licensee must complete 36 hours of CE every two years, so it is likely that many supervisors will continue to meet the CPD requirement by completing CE since it counts toward the 36 hours.

5. Comment #1 from Jerald Shapiro, Director and Professor, School of Social Work at San Francisco State University (SFSU) via Email (Attachment D)

Summary of comment: Add the term “employer” to 16 CCR subsection 1820(a)(2) to state: “The agreement shall contain a statement from the supervisor and employer agreeing to ensure that the extent, kind, and quality of counseling performed by the supervisee is consistent with the supervisee’s training, education, and experience, and is appropriate in extent, kind, and quality.”

Response: The Board appreciates this comment but has determined that no changes to the text are necessary in response. While employers have a role to play here, it is the supervisor who has the direct knowledge of the specifics of the client-therapist relationship, and the therapeutic model and techniques being used by the supervisee. The primary purpose of the written oversight agreement, as specified in 16 CCR subsection 1820(a)(3), is to ensure that the employer acts in a manner that ensures the supervisor is able to fulfill the responsibilities mandated in section 1821.

6. Comment #2 from Jerald Shapiro, Director and Professor, School of Social Work at SFSU via Email (Attachment D)

Summary of comment: Either delete 16 CCR subsection 1820(a)(3), entirely, as it is repetitive of subsection 1820(a)(2), or change the language of subsections 1820(a)(3)(A), (B) and (C), so that the language from subsection (a)(2), stating “the extent, kind, and quality of counseling...”, is made consistent in all subsections of 1820(a)(3). The letter states, “Added consistency detail provides opportunity for tailoring supervisory process to wider range of settings. Additionally, avoids possible HIPAA complications.”

Response: The Board appreciates this comment but has determined that no changes to the text are necessary in response. 16 CCR subsection 1820(a)(2) does not appear to contain language that is repetitive of subsection 1820(a)(3). Subsection 1820(a)(2) pertains to a supervisor’s responsibilities, and subsection 1820(a)(3) pertains to an employer’s responsibilities and provides important protections for supervisors, supervisees and clients that are not contained elsewhere.

The alternative option, suggested by Mr. Shapiro, is to make the language from subsection 1820(a)(2) pertaining to “the extent, kind, and quality of counseling” consistent in subsections 1820(a)(3)(A), (B) and (C). However, while employers have

a role to play here, it is the supervisor who has the direct knowledge of the specifics of the client-therapist relationship, and the therapeutic model and techniques being used by the supervisee, and not always the employer, unless they are also the supervisor.

7. Comment from Melanee Cottrill of the California Association of School Psychologists (CASP) via Email (Attachment E)

Summary of comment: The email states that Licensed Educational Psychologists (LEPs) are missing from the “overview” of the regulation, and asked whether the proposed regulations are intended to or will apply to LEPs .

Response: The Board accepts this comment. While LEPs are included throughout the regulation sections addressed in the Initial Statement of Reasons (ISOR) and the Notice, their mention was erroneously omitted from the first paragraph under “Background and Identification of the Problem” in the ISOR, and in the first paragraph under “Informative Digest/Policy Statement Overview” in the Notice. LEPs who act as supervisors will be affected by the proposed changes, as will all license types who supervise. Upon receiving this comment, staff immediately responded to Ms. Cottrill’s email and updated its website text, in the “Pending Regulations” section, to list all of the affected supervisor license types, which include LEPs. The Board has determined that no changes to the regulatory text are necessary in response, as LEPs were already addressed within the regulation sections listed in the text.

Comments Received During the First 15-Day Modified Text Public Comment Period (April 16, 2021 to May 2, 2021)

1. Comment from Kathleen Hawk

Summary: The commenter asked why LMFTs were not included in section 1820.5(c)(2) pertaining to individuals who are supervising the treatment of couples and families by individuals pursuing LPCC licensure. She wondered if LMFTs should be listed due to their specialization in working with these client groups, or instead it is a given that they meet the education and experience requirement and therefore do not need to be listed.

Response: Board staff have reviewed this comment and do not recommend any changes to the text based thereon. Board staff notes that this comment is outside of the scope of this comment period. LMFTs are not listed in section 1820.5(c)(2) because they do not need to be. This is because LMFTs, by definition of their scope of practice, are specifically trained to treat couples and families (i.e. they specifically have this in their education/experience required for licensure.) However, LCSWs, licensed psychologists, and licensed physicians, while likely to have this training, are not necessarily required to have it. Therefore,

the regulations state that if these license types are treating couples and families, they need to have the education/experience to competently practice it and supervise its provision.

2. Comments #1 and #2 from Teresa Pardini dated 04/19/2021 and 4/20/2021

The commenter submitted two comments. Comment #1 (dated 4/19/2021) was fully incorporated into the text of Comment #2 (dated 4/20/2021), so both are being responded to herein.

Summary: The commenter expressed concern that the “additional requirements for supervisors and their employers” place an undue burden on supervisors and will discourage supervisors from taking on supervisees. The commenter believes that in a field where there is already supervisor shortage, this will create a bottleneck in the training facilities and private practice availability for new Trainees and Associates, and the requirements will reduce production of new generations of therapists at a time when COVID has increased the great need for therapy.

Response: Board staff have reviewed this comment and do not recommend any changes to the text based thereon. Sections 1821(d)(3), 1833.1(d)(3) and 1870(d)(3) would implement an additional requirement for supervisors to notify the board within 60 days of the supervisor no longer being qualified to supervise. This requirement would not pose a significant burden to supervisors as it would be a simple communication sent to the Board through the Board’s website or via mail.

Additionally, this language, which had originally been proposed for the purpose of maintaining a current list of supervisors, is proposed to be stricken from the text for other reasons (See today’s agenda item V. The list was planned for internal use only. Staff realized that the list would need to maintain anyone who has supervised in the past for purposes of checking qualifications of supervisors when evaluating hours of experience submitted by applicants, which can be up to six years old (or more in the case of MFT practicum hours). In addition, the list would need to be used by staff when performing audits of supervisor records, and for use as past workforce data.).

Accordingly, there are no additional requirements for supervisors or their employers in the modified text. Perhaps the commenter was referring to originally proposed text which did contain new requirements. That text was already subject to an extensive public development process and a 45-day public comment period. The Board carefully weighed those changes with the public protection needs for greater accountability and transparency regarding the supervision process, and determined that the duties of supervisors and employers are not anticipated to create a significant burden on either.

Summary: The commenter expressed concern that the “additional requirements for agency investigation and certification of the validity of paperwork, in addition to the legal responsibility” will overload hiring agencies. The commenter states that in the Board’s assessment of costs, the Board makes no mention of the extra work this would require. The commenter believes that the Board would be shifting the bulk of the Board’s job and the legal responsibility of determining licensure qualifications of Associates to the individual agencies, and that this would be costly and legally worrisome.

The commenter also asks how the Board proposes that the agencies investigate and monitor the supervisor statements since “the Board has access to all of the licensure information for supervisors, and individual agencies do not.” The commenter states that agencies would have to use the Board’s information to check qualifications, for which the agencies “would be legally responsible.” The commenter states that these agencies are usually understaffed and overworked nonprofit agencies who provide services to racially under-served and low-socioeconomic populations, and many are surviving on a minimal budget with volunteers due to the pandemic.

Response: Board staff have reviewed this comment and do not recommend any changes to the text based thereon. Board staff notes that this comment is outside of the scope of this comment period. The proposed text the commenter is referencing went through an extensive development process that included a great deal of public participation, including the 45-day public comment period.

While the Board understands the challenges currently facing agencies, the proposed regulations would not add to their burden. Current statute (Business and Professions Code section 4980.43.4(d), 4996.23.3(d), and 4999.46.4(d) already requires employers that are not a private practice to sign a written oversight agreement with the supervisor in certain situations. Those situations are further specified in regulations (sections 1820(a), 1833(a) and 1869(a)), where some modifications are being proposed.

As to the commenter’s concerns about investigation and certification validity of paperwork, current and proposed regulations do not require such. However, agencies and other employers do check the licenses of those that they hire or who will volunteer with their agency, though this is not a requirement enforced by the Board.

In terms of forms to be completed by supervisors, the supervisor responsibility statements are a current regulatory requirement. The proposed regulations modify them, but not in a way that would significantly increase a supervisor or agency’s

workload. The new supervisor self-assessment is designed to make it clearer for supervisors to understand their roles and responsibilities so that they are informed and don't inadvertently violate the law, and is not expected to create a significant burden. The Board carefully weighed these changes with the public protection needs for greater accountability and transparency regarding the supervision process and the duties of supervisors.

Comments Received During the Second 15-Day Modified Text Public Comment Period (July 14, 2021 to August 14, 2021)

No comments were received.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact/Finding of Necessity

The Board of Behavioral Sciences (Board) has determined that the proposed regulations do not have a significant adverse economic impact on small businesses.

The Board hereby finds that it is necessary for the public health, safety, and welfare of the people of California that this regulation apply to businesses. This regulatory proposal will help protect consumers who are receiving mental health treatment from an individual who is not yet licensed by strengthening standards that lead to proper and effective supervision of the unlicensed individual.

Nonduplication Statement - 1 CCR 12

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as "authority" and "reference" for the proposed regulations and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code subsection 11349.1(a)(3).

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be 1) more effective in carrying out the purpose for which the action is proposed; 2) would be as effective and less burdensome to affected private persons than the proposed regulation; or 3) would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected for the following reasons:
 - The law would remain inconsistent between substantially equivalent license types, resulting in continuing confusion for supervisors attempting to apply the law to all supervisees.
 - The law would continue to be unclear regarding the documentation necessary when a supervisor is deceased or incapacitated and unable to verify experience.
 - The law would continue to be unclear about who must supervise the required experience for the LPCC “couples and families” specialty designation.
 - Consumer protection for individuals receiving services from unlicensed individuals would not be strengthened.
 - Protections for supervisees would not be strengthened.
 - The law would continue to remain inconsistent and unclear for applicants who have been placed in an agency by a temporary staffing agency.
 - The Board would remain unable to directly communicate with licensees who are currently supervising individuals pursuing licensure.
 - The law would continue to lack clarity for applicants who are completing experience outside of California.
 - The Board’s laws would remain duplicative and outdated.

2. Adopt the regulations. The Board determined that this alternative is the most feasible because it would provide clarity in the Board’s laws and supervision-related requirements, promote consistency in the laws between three substantially equivalent professions, facilitate communications with supervisors, protect consumers receiving mental health treatment from an individual who is not yet licensed, help to ensure competent and effective supervision, provide protections for supervisees, address supervisor shortages, potentially expand job prospects for out-of-state licensees upon licensure in California, and align the Board’s regulations with statutory changes imposed by AB 93 (Medina, Chapter 743, Statutes of 2018).