

Proposed Language: Enforcement Regulations

§1803. DELEGATION OF CERTAIN FUNCTIONS

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, 4990.04 and 4990.12, Business and Professions Code; and Sections 11415.60 and 11500-11528, Government Code.

§1823. UNPROFESSIONAL CONDUCT

As used in Section 4999.90 of the code, unprofessional conduct includes, but is not limited to:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, of filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Sections 4990.20, 4999.48, Business and Professions Code. Reference: Sections 4990.20, 4999.48, and 4999.90, Business and Professions Code.

§1845. UNPROFESSIONAL CONDUCT

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

(a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

(c) Failing to comply with the child abuse reporting requirements of Penal Code Section 11166.

(d) Failing to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institutions Code Section 15630.

(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(j) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.

§1858. UNPROFESSIONAL CONDUCT

~~The Board may suspend or revoke the license of a licensee who:~~ As used in Section 4989.54 of the code, unprofessional conduct includes, but is not limited to:

(a) Impersonates a licensee or allows another person to use his or her license.

(b) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(c) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(d) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(e) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(f) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(g) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(h) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code.

§1881. UNPROFESSIONAL CONDUCT

~~The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:~~ As used in Section 4992.3 of the code, unprofessional conduct includes, but is not limited to:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the misrepresentation of his or her professional qualifications or affiliations.

(b) Impersonates a licensee or who allows another person to use his or her license.

(c) Aids or abets an unlicensed person to engage in conduct requiring a license.

(d) Intentionally or recklessly causes physical or emotional harm to a client.

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

(f) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of a Licensed Clinical Social Worker.

(g) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(h) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

(i) Fails to maintain the confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client during the course of treatment and all information about the client which is obtained from tests or other such means.

(j) Prior to the commencement of treatment, fails to disclose to the client, or prospective client, the fee to be charged for the professional services, or the basis upon which such fee will be computed.

(k) Advertises in a manner which is false or misleading.

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and dependent adult abuse reporting requirements of Welfare and Institution Code Section 15630.

(q) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(r) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(s) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other

constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(t) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(u) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(v) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Section 11166, Penal Code, and Section 15630, Welfare and Institution Code.

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.

3) Deny any petition to reinstate or reissue the individual's license or registration.

(b) This section shall not apply to any of the following:

1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has

otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

- 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
- 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.