

BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS

Hearing Date: April 8, 2019

Subject Matter of Proposed Regulations:
Examination Rescoring; Abandonment of Application;
Associate Professional Clinical Counselor (APCC) Application Fee

Section(s) Affected: Add section 1805.08, amend sections 1806 and 1816.1, and repeal section 1816.3 of Division 18 of Title 16 of the California Code of Regulations.

Background and Identification of the Problem:

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), Licensed Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCs), and registers individuals gaining the required supervised experience toward licensure (Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCC) and Associate Clinical Social Workers (ASWs)).

Examination Rescoring

Current statutes authorize the Board to charge candidates a \$20 fee to re-score an examination (*Business and Professions Code (BPC) §§4984.7(a)(5), 4989.68(a)(6), 4996.3(a)(5) and 4999.120(j)*). This fee is also listed in regulation (*Title 16, California Code of Regulations (16CCR) §1816.3*). However, neither the statutes nor the regulations set forth any criteria regarding “examination rescoring.”

Examination rescoring originated from a time when all examinations were administered manually by the Board, via paper and pencil. The purpose was to hand-check for errors in Scantron answer sheet processing. Now that the vast majority of the Board’s exams are administered electronically, every exam taken electronically is automatically double-checked, or rescored, by the Board’s testing vendor. The way the rule is written now causes confusion. Often candidates pay a \$20 fee for a rescoring, which provides no benefit to a candidate who took the exam electronically, and such fees are returned to the candidate. Candidates with a disability accommodation may take a Board exam via paper and pencil. In this case, the Board has identified that examination rescoring is an important option to continue to offer.

In addition, the Board now utilizes two national examinations, each of which has its own process for rescoring. The proposed language would clarify that examination rescoring may only be requested for Board-developed exams taken via paper and pencil. Lastly, the Board's regulations list a \$20 fee for rescoring, which is unnecessary as the fee is set in statute for each profession.

Abandonment of Application

Current regulations specify the circumstances under which an application for registration or licensure is considered "abandoned" by the applicant, and describes, in general, the repercussions of abandonment. The proposed changes would clarify and streamline this language. In addition, the Board restructured its examination program effective January 1, 2016. Though the abandonment regulations were updated at that time, some updates and fine tuning are necessary.

Professional Clinical Counselor Registration Application Fee

Note: The term "intern" and "associate" have the same meaning. SB 1478 (Chapter 489, Statutes of 2016) changed the title of professional clinical counselor registrations from "Professional Clinical Counselor Intern" to "Associate Professional Clinical Counselor" (APCC) effective January 1, 2018 (now at BPC §4999.12.5).

BPC §4999.120(b) sets the maximum fee required for "application for associate registration" at \$150. 16CCR §1816.1(e) specifies \$100 as the actual fee for the "initial application" for intern registration. 16CCR §1816(c) sets the fee for yearly renewal of a registration number. Per BPC §4999.45, a registration number can only be renewed five times, and if, after the fifth renewal, the individual still needs a registration, he or she can apply for a new registration number.

The proposed regulatory change would replace the term "intern" with "associate" per BPC §4999.12.5. It would also clarify that the \$100 fee pertains to any application for issuance of an APCC registration number, which would include the first and any subsequent (second, third etc.) registration numbers. (BPC §4999.45).

The term "initial" is intended to distinguish the application to be issued a registration number from an application for renewal of a registration. However, clarification is needed because the word "initial" could be interpreted as excluding applications for issuance of a "subsequent registration" (second, third, etc.) number.

Specific Changes: Purpose, Factual Basis/Rationale and Anticipated Benefits:

The changes proposed by this regulatory package are as follows:

A. ADOPT SECTION 1805.08 and REPEAL SECTION 1816.3 – EXAMINATION RESCORING

The proposed language would do all of the following:

- State that candidates who took a Board-developed exam administered via paper and pencil may request the examination to be rescored.
- Require candidates requesting a rescoring to submit a request stating the type of exam to be rescored and the date the exam was taken.
- Strike the rescoring fee in regulation.

Purpose/Rationale: The fee listed in regulation is unnecessary because it duplicates the fee set in statute. This regulation change would clarify that the fee provided for in statute is only applicable to those who took a Board-developed exam via paper and pencil. Other exam types cannot be “rescored” by the Board (national exams, which have their own rescoring processes, and Board-developed electronically administered exams, which are automatically rescored for every candidate). The Board does respond to exam complaints filed by candidates, and if concerns are expressed about scoring, it is investigated and addressed. No fee is required to file a complaint.

Anticipated Benefit: The proposed changes would update the Board’s regulations to match the current exam system, and would continue to provide an avenue for rescoring of any Board-developed exam taken via paper and pencil.

B. AMEND SECTION 1806 – ABANDONMENT OF APPLICATION

The proposed language would do all of the following:

- Move text that appears in the last line of the regulation section toward the top of the section.
- Delete subdivision (a), which is outdated and unnecessary.
- Collapse the paragraphs that refer to specific exams and required time frames for taking an exam into more general text that encompasses all of the circumstances.
- Remove reference to the “standard written” examination, which is no longer

offered.

- Clarify the time frame during which an applicant must take an exam in order to maintain an active licensure application by changing “one year” to “365 days”.
- Add a definition of “required examination.”

Purpose/Rationale: This regulatory change is necessary because the current language contains outdated provisions and is lacking in ease of readability. Striking subdivision (a) will help provide clarity, as paragraph (b) (re-numbered as (a)) fully addresses application completion problems, as missing or incomplete items are always addressed in a deficiency letter.

Collapsing the paragraphs that refer to specific exams as well as the required time frames for taking an exam into more general text that encompasses all of the circumstances streamlines this section, thereby helping to improve clarity and readability. Changing the time frame from “one year” to “365 days” improves clarity regarding required time frames for taking the exam, and adding a definition of “required examination” clarifies the types of exams that may be taken in order to maintain an active licensure application.

Anticipated Benefit: The proposed changes would improve readability and clarify this section, and result in an up-to-date regulation that matches current Board processes.

C. AMEND SECTION 1816.1 – INITIAL LICENSE AND REGISTRATION FEES

The proposed language would do all of the following

- Remove the term “initial” from subdivision (e), thereby clarifying that the fee applies to all applications for issuance of an associate registration number.
- Change the term “intern” to “associate” in subdivision (e) in accordance with SB 1478 (Chapter 489, Statutes of 2016).

Purpose/Rationale: This regulatory change is necessary because the wording of the current regulation could be interpreted as meaning that there is no fee for an application for issuance of a subsequent APCC registration number. It is also necessary to update the language with the new “associate” registration title used in the statute.

Anticipated Benefit: The proposed changes would provide clarity regarding the application fee and the registration title.

Underlying Data

None

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 business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

- The proposed addition of section 1805.08 simply updates and clarifies the exam rescoring process.
- The proposed amendments to section 1806 simply clarify the application abandonment criteria and process.
- The proposed amendments to section 1816.1 simply clarify that the application fee is required for any application for issuance of a professional clinical counselor registration number, whether it is for a first, second or third (etc.) number.
- Striking section 1816.3 simply deletes a section that duplicates statute.
- **Analysis of creation/elimination of jobs:** This proposal will not create or eliminate any jobs within California, nor impose any new requirements on businesses for the reasons described above.
- **Analysis of creation/elimination of businesses.** This proposal will not create or eliminate any businesses in California for the reasons described above.
- **Analysis of expansion of business:** This proposal will not expand any businesses in California for the reasons described above.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** This regulatory proposal will benefit applicants by updating, streamlining and clarifying the Board's regulations pertaining to applications and examinations, and by updating and providing clarity in the Board's application processes. 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 will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states for the reasons described in the prior section.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Consideration of Alternatives

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the 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. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected for the following reasons:
 - Not changing section 1805.08 would result in a continuing lack of formal criteria regarding examination rescoring.
 - Not changing section 1806 would result in continuing to have outdated text that lacks in ease of readability.
 - Not changing section 1816.1 would result in a continuing lack of clarity regarding the professional clinical counselor registration application fee.
 - Not striking section 1816.3 would leave in place a section that duplicates statute.
2. Adopt the regulations. The Board determined that this alternative is the most feasible because it would benefit applicants by updating, streamlining and clarifying the Board's regulations pertaining to applications and examinations, and by updating and providing clarity in the Board's application processes.