

BOARD OF BEHAVIORAL SCIENCES
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 18

NOTICE OF PROPOSED REGULATORY ACTION

**Subject Matter of Proposed Regulations: Examination Waiting Periods;
Corporations; Accreditation**

Sections Affected: Amend sections 1805.05, 1850.6, 1850.7 and 1854, and repeal section 1832, of Division 18 of Title 16 of the California Code of Regulations.

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (board) is proposing to take the action described in the Informative Digest/Policy Statement Overview, after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing

The board has not scheduled a public hearing on this proposed action. However, the board will hold a hearing if it receives a written request for a public hearing from any interested person, or the person's authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Persons in this notice.

Written Comment Period

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Persons" in this Notice, must be **received by the Board at its office no later than Tuesday, November 1, 2022, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled. The Board will only consider comments received by the deadline.

Authority and Reference

Pursuant to the authority vested by sections 4980.60, 4988.2 and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 4980.50, 4984.72, 4987.7, 4987.8, 4988, 4989.20, 4989.22, 4992.1, 4996.4, 4998.2, 4988.3, 4988.4, 4999.52, 4999.64, 4999.125, 4999.126 and 4999.127 of the BPC, and sections 13401, 13401.5, 13403 and 13407 of the Corporations Code, the board is considering amending sections 1805.05, 1850.6, 1850.7 and 1854, and repealing section 1832, of Division 18 of Title 16 of the California Code of Regulations (CCR) as described in this Notice.

Informative Digest / Policy Statement Overview

The 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) pursuant to BPC sections 4990.12 and 4990.20.

The board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure pursuant to BPC sections 4990.12 and 4990.20. This includes registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs), Associate Clinical Social Workers (ASWs), and applicants pending registration.

- Existing law:
 - Permits applicants who fail a clinical examination or the LEP written examination to retake the examination within one year from the notification date of the failure (BPC sections 4984.72, 4989.22, 4996.4 and 4999.64).
 - Specifies the waiting period required between examination retakes (16 CCR section 1805.05).
 - Specifies the wording permitted to be used when naming a professional corporation (BPC sections 4987.7, 4998.2 and 4999.125 and 16 CCR section 1850.6).
 - Specifies how shares of a professional corporation may be sold, issued or transferred (16 CCR section 1850.7).
 - Requires a degree that qualifies for LMFT licensure to be obtained from a college or university accredited by a regional or national institutional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary Education (BPC sections 4980.36 and 4980.37).
 - Specifies the accrediting agencies that are equivalent to a regional accrediting agency for a degree that qualifies for LMFT licensure (16 CCR section 1832).
 - Specifies the educational institutions approved by the board for a degree that qualifies for LEP licensure (BPC section 4989.20 and 16 CCR section 1854).

This proposal will:

- Reduce the waiting period to retake a board-developed clinical examination from 180 days to 120 days (16 CCR section 1805.05(b)).
- Clarify that a 180-day waiting period is required to retake the LEP written examination (16 CCR section 1805.05(c)).
- Add LPCCs to the section on naming a professional corporation, as well as sections pertaining to ownership and transfer of shares (16 CCR sections 1850.6 and 1850.7).

- Repeal the section pertaining to equivalent accrediting agencies for degrees that qualify for LMFT licensure (16 CCR section 1832).
- Update the accrediting agencies that are deemed acceptable for degrees that qualify for LEP licensure, and update the name of the foreign credentials evaluation service (16 CCR section 1854).
- Update references throughout the above-named sections.
- Make grammatical and other nonsubstantive changes throughout.

Anticipated Benefits of Proposal

This proposal is expected to result in the following benefits:

- Update, clarify, and provide consistency in the board's regulations.
- Reduce barriers to licensure by reducing waiting times, expanding foreign credential evaluation service options for LEP applicants, and allowing applicants with an out-of-state degree earned from an institution that holds a national accreditation to qualify for LEP licensure.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the board conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Fiscal Impact Estimates

The board will be required to ensure compliance with the proposed regulations. Any increased workload and costs are anticipated to be minor and absorbable within existing resources.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The board estimates it will receive 10 additional applications for LEP licensure in the first year, and two additional applications per year ongoing. The board anticipates a higher number of applications in the first year of implementation because some individuals previously denied may reapply because their degree would now qualify.

The board estimates workload costs (per application) of approximately \$253 to complete the application process, \$204 to complete and issue an initial license, and \$205 for each (biennial) license renewal. Total workload costs are estimated to range from approximately \$941 to \$5,313 per year and up to \$31,711 over a ten-year period.

Note: 3 percent workload cost growth factor included

The board estimates revenues ranging from approximately \$900 to \$4,100 per year and up to \$27,000 over a ten-year period.

The proposed regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None

Results of Economic Impact Assessment/Analysis: Business Impact Estimates

The board has made the 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:

Impact on Jobs / Businesses

The board has determined that this regulatory proposal will not eliminate any jobs or businesses in California because it does not directly affect those hiring the Board's licensees. It may expand or create some businesses that provide educational psychology services due to an increased pool of LEP applicants as a result of the changes to section 1854, and it may create jobs, as businesses may choose to hire more LEPs.

Some of the individuals who newly qualify for LEP licensure may open a private practice. The board receives an average of 133 applications for LEP licensure per year (as averaged for 2019, 2020 and 2021). An average of 18 of those applicants possess an out-of-state degree. The board estimates that ten additional applicants the first year, and two additional applicants per year ongoing will qualify for LEP licensure as a result of the proposed change.

This regulatory proposal does not affect the health and welfare of California residents, worker safety, or the state's environment.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the board.

Effect on Small Business

Some of the individuals who newly qualify for LEP licensure, may open a private practice, which is considered a small business. There are no other impacts anticipated on small business.

Cost Impact on Representative Private Person or Business

The board receives approximately 133 applications for LEP licensure per year with 18 of those applicants possessing an out-of-state degree. The board estimates it will receive 10 additional applications for LEP licensure in the first year, and two applications per year ongoing as a result of the proposed regulations.

Applicants will be required to pay a \$250 application fee plus a \$200 initial license fee to become licensed. These individuals will also be required to pay biennial renewal fees of \$200 and continuing education fees of approximately \$360 each renewal cycle.

Total costs are estimated to range from \$900 to \$9,860 per year and up to \$52,920 over a ten-year period

Significant Effect on Housing Costs: None

Consideration of Alternatives

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 be more effective in carrying out the purpose for which the action is proposed; as effective and less burdensome to affected private persons than the proposal described in this Notice; 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 submit comments to the board in writing relevant to the above determinations to the address provided under "Contact Persons."

Availability of Initial Statement of Reasons and Rulemaking File

The board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection on the board's website or upon request from the Contact Persons named in this notice.

Text of Proposal

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information upon which the proposal is based, may be obtained from the board's website or upon request from the Contact Persons named in this notice.

Availability of Changed or Modified Text

After considering all timely and relevant comments, the board, upon its own motion or at the request 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, grammatical or other nonsubstantive changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the "Contact Persons" 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.

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 persons 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 Persons named below or by accessing the website listed below.

Contact Persons

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christy Berger
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7995
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E-Mail Address: BBS.Rulemaking@dca.ca.gov

The backup contact person is:

Name: Rosanne Helms
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
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E-Mail Address: Rosanne.Helms@dca.ca.gov

Availability of Documents on the Internet

Materials regarding this proposal can be accessed on the board's website at https://www.bbs.ca.gov/about/law_req.html.