

**BOARD OF BEHAVIORAL SCIENCES  
INITIAL STATEMENT OF REASONS**

**Hearing Date: March 23, 2020**

**Subject Matter of Proposed Regulations:  
*Supervision-Related Requirements***

**Section(s) Affected:** 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, 1870.1, and 1874 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 Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCs).

The Board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure. This includes Marriage and Family Therapist Trainees (MFT Trainees), as well as registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs) and Associate Clinical Social Workers (ASWs) and applicants pending registration. The Board also sets forth certain requirements for Professional Clinical Counselor Trainees.

Current law specifies the requirements pertaining to employment and supervision of individuals gaining hours of experience toward licensure, including supervisor qualifications and responsibilities. The Board's requirements relating to supervision have been subjected to minor amendments periodically over the years, but had not ever been subject to a holistic review.

In addition, the practice landscape has changed with the implementation of the Affordable Care Act. Far more consumers are now able to access mental health services, thus increasing the need for practitioners, especially in public mental health settings.

The Board's Supervision Committee undertook a holistic review of supervision requirements over a two-year period including public meetings during 2015 and 2016. The Committee's work resulted in a legislative proposal - Assembly Bill (AB) 93 (Chapter 743, Statutes of 2018) - as well as the regulations proposed herein.

The proposed regulations govern the supervision requirements for each of Board's different license and registrant types. Accordingly, this action spans multiple articles

within Division 18 of Title 16, which set out the regulations for the different license types, including Article 1, General Provisions (section 1815.8), Article 3, Licensed Professional Clinical Counselors (sections 1820, 1820.3, 1820.5, 1821, 1821.1, 1821.2, 1821.3, and 1822), Article 4, Licensed Marriage and Family Therapists (sections 1833, 1833.05, 1833.1, 1833.1.5, 1833.2, and 1834), and Article 6, Licensed Clinical Social Workers (sections 1869, 1869.3, 1870, 1870.3, 1870.1, 1870.5, 1871, and 1874).

As part of the Committee process, the following additional issues were identified:

- Supervisor requirements and responsibilities are inconsistent among the three substantially equivalent license types, resulting in some supervisors needing to comply with two or three different sets of licensing laws.
- There are no standards in law that address situations where a supervisor is deceased or becomes incapacitated prior to signing off on an applicant's supervised experience.
- A supervisor's qualifications are not reported to the Board until an applicant's supervised experience has been completed, which means that noncompliance is not discovered until the hours have already been earned, sometimes resulting in experience hours being denied. Applicants are often unaware of a supervisor's noncompliance or, if they are aware, are uncomfortable with confronting their supervisor due to the power imbalance inherent in such relationships.
- Current law specifies the number and types of supervised experience hours required for licensure and sets parameters regarding those hours. Applicants for licensure must demonstrate compliance with such requirements to the Board. However, this process is currently uncodified.
- Current law does not address a supervisor's responsibility to monitor for or address dynamics that could lead to ineffective supervision.
- Though it is very common for an applicant to temporarily need a substitute supervisor, current law does not address this situation, nor does it address the requirements pertaining to a temporary supervisor.
- Supervisor training requirements are inconsistent among license types and lack flexibility.
- Current law does not address situations where an individual gaining experience hours has been placed in a mental health agency by a temporary staffing agency, which is increasingly common in mental health professional shortage areas. Current law places responsibility for oversight of the supervisee and his or her clients with the employer and supervisor. The temporary agency is often the employer. However, the mental health agency is the entity responsible for clinical services and the supervisee's clients.

- Current law sets forth the requirements for an LPCC to be allowed to assess and treat couples or families. One of the requirements is 500 hours of supervised experience with couples, families or children. Current law implies, but does not clearly specify, who can supervise those hours.

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

The changes proposed by this regulatory package are as follows:

**A. ADD §1815.8 – DOCUMENTATION OF SUPERVISED EXPERIENCE: DECEASED OR INCAPACITATED SUPERVISOR**

Purpose of Proposed Changes: The proposed amendments would specify that the Board may accept supervised experience that has not been signed for by the supervisor due to death or incapacitation, if certain documentation is submitted to the Board. Because this section is within the general provisions, it would apply to applicants for LPCC, LMFT and LCSW licensure.

Factual Basis/Rationale: Occasionally, an applicant who is in the process of (or recently completed) gaining supervised experience hours and is preparing to apply for licensure learns that the supervisor is now deceased, or is incapacitated to the point that they cannot verify the applicant's experience. Current law does not specify acceptable methods of verifying supervised experience in lieu of a supervisor's signature in this situation, and staff must review documentation on a case-by-case basis in order to determine if it can accept unsigned-for experience hours. The proposed required documentation will assist the Board in determining the legitimacy of the applicant's request to count unsigned-for experience hours and will provide information necessary for the Board to make that determination. Such documents would provide information consistent with the normally required documentation specified under proposed sections 1820, 1833 and 1869.

Anticipated Benefit: This proposal would provide clarity for supervisees regarding the documentation necessary in this situation, and would provide the Board with a clear standard of application, thereby avoiding potential loss of supervised experience hours.

**B. AMEND §§1820 (LPCCs) AND 1833 (LMFTs) – SUPERVISED EXPERIENCE: REQUIRED DOCUMENTATION**

Purpose of Proposed Changes: The proposed amendments would:

1. Make technical and nonsubstantive changes to §§1820 and 1833. This includes striking §1833(a)(3) and 1833(c), as these provisions originally mirrored statutory requirements which were changed via Senate Bill (SB) 620 (Chapter 262, Statutes of 2015) and thus are no longer relevant.

2. Strike language that duplicates statute, as follows:
  - Delete §1820(a) as it is not necessary. Supervised experience requirements are covered in statute (Business and Professions Code (BPC) §§ 4999.46, 4999.46.2 and 4999.46.3).
  - Delete §1820(b) as “supervision” is fully defined in BPC §4999.12(m).
  - Delete §1820(c)&(d) as they duplicate BPC §4999.12(n)&(o).
  - Delete §1820(e)(1) and (2) as they duplicate BPC §4999.46.2(a).
  - Delete subsections (a) and (a)(1) of §1833 as they are not necessary. Supervised experience requirements are covered in statute (BPC §§ 4980.43, 4980.43.2 and 4980.43.3).
  - Delete §1833(a)(2) as it duplicates BPC §4980.43(c)(2).
  - Delete §1833(a)(4) as this requirement is specified for all applicants in BPC §4980.43(c)(8).
  - Delete §1833(b) as “supervision” is fully defined in BPC §4980.43.1(b).
  - Delete §1833(b)(1) and (2) as they duplicate BPC §4980.43.2(a).
  - Delete §1833(b)(3) as it duplicates BPC §4980.43.3(d).
  - Delete §1833(d)(1) and (2) as they duplicate BPC §4980.43.4(b) & (b)(1).
  - Delete §1833(d)(3) as it duplicates BPC §4980.43.3(a).
3. Amend §1820(e)(3) (*now §1820(a)*) and amend §1833(b)(4) (*now §1833(a)*) to revise the terms of the written agreement required between the supervisor and employer when the supervisor is a volunteer. The new terms require a written oversight agreement to be signed any time the supervisor is not employed by the supervisee’s employer, adds an agreement by the employer to not interfere with the supervisor’s clinical direction to the supervisee, and specifies when the agreement must be submitted to the Board.
4. Add subsection (b) to §§1820 and 1833, requiring supervisors to complete and submit a one-time self-assessment report of qualifications to the Board effective January 1, 2022. The terms of the self-assessment report are specified in proposed additions to §§1821(d) and 1833.1(d).
5. Add subsection (c) to §§1820 and 1833, requiring supervisors and supervisees to complete and sign a supervision agreement under penalty of perjury, to be submitted by the supervisee to the Board upon application for licensure. The agreement includes the supervisor’s qualifications, the supervisor affirming an understanding of legal requirements, and includes a collaboratively developed supervisory plan that describes goals and objectives.

6. Amend §§1820(e)(4) (*now (d)*) and 1833(e) (*now (d)*) to remove the “Weekly Summary of Experience Hours” form, currently incorporated by reference, recasting it as a weekly log that includes specified information, and clarifying that the supervisee must retain the signed logs.
7. Add subsection (e) to §§1820 and 1833, specifying that completed experience hours must be signed by the supervisor under penalty of perjury at the completion of supervision, and submitted by the supervisee to the Board upon application for licensure. The proposed amendment also specifies that the documentation must include the supervisor’s and employer’s information, the supervisee’s employment status, and a breakdown of the completed supervised experience.
8. Repeal subsection (f) of §1820 as requirements for private practice supervisors are specified in subdivision (b) of BPC §4999.46.4.

Factual Basis/Rationale:

1. The proposed technical and nonsubstantive changes are for the purpose of clarifying, updating, streamlining and providing consistency in the Board’s regulations.
2. Striking language duplicated in statute achieves the nonduplication standard of the Administrative Procedure Act (*Government Code section 11349(f); Title 1, California Code of Regulations, section 12*) and helps simplify the Board’s regulations.
3. Requiring a written oversight agreement any time the supervisor is not employed by the supervisee’s employer is necessary because the supervisor may not have access to clinical records of the supervisee’s clients, and the supervisor may not have explicit authority to direct the supervisee’s clinical work. Requiring the employer to agree not to interfere with the supervisor’s clinical guidance may help prevent employers from interfering with supervision or with a patient’s treatment, which would help protect the consumer from receiving treatment that does not meet the standards of practice for the profession. Requiring the supervisee to submit a copy of the agreement to the Board helps to ensure compliance. Greater compliance leads to greater numbers of consumers protected.
4. Requiring supervisors to complete and submit a self-assessment of qualifications will provide the Board with a record of all licensees who are supervising individuals gaining experience toward licensure, which currently does not exist. Such a record will allow the Board to target communications directly to supervisors. It will also help to confirm that the licensee meets all requirements to be a supervisor. Specifying an implementation date of January 1, 2022 is necessary for clarity in how to comply with the new law. This time frame would also allow supervisors adequate lead time for submission.

5. Requiring supervisors and supervisees to complete and sign a supervision agreement will help ensure that supervisors and supervisees understand their mandated responsibilities, as well as the requirements necessary for the hours to count toward licensure. All of the terms of the agreement memorialize supervision requirements that are already set out elsewhere in law. None of the itemized terms of the agreement set out a new or different supervision obligation from existing law, or from regulations proposed herein, with the factual basis/rationale is provided in another section. Requiring supervisors to sign that they “understand” the various requirements is intended to encourage supervisors to seek a true understanding of the legal requirements so that supervisees do not lose experience hours and consumers are protected.

Setting forth time frames for completion of the supervision agreement is necessary for clarity in how to comply with the new law. The 60-day time frame proposed will allow supervisors adequate lead time for completion of the agreement. Certification under penalty of perjury helps ensure that the agreement contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications]).

6. Removing the “Weekly Summary of Experience Hours” forms from being incorporated by reference will provide the Board and its applicants with the ability to change the categories tracked immediately when statutory experience requirements change. Currently when this happens, the form becomes outdated and unusable before a revised form can be incorporated by reference. The three categories of information specified in sections 1820(d)(1)-(3) and 1833(d)(1)-(3) are already required in the existing form and are not new requirements. The information that would be required by subsections (e)(3)-(7) would assist the Board in determining whether the experience hours were gained in a manner that qualifies for licensure.
7. Requiring applicants for licensure to submit documentation of completed experience that includes the supervisor’s and employer’s information allows the Board to contact supervisors and employers for possible follow-up questions or verification. Certification by the supervisor under penalty of perjury helps ensure that the documentation contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications].) Requiring the documentation to include information about the supervisee’s work setting, employment status, experience hours, the amount and type of supervision provided and the dates during which the experience was gained will ensure that only those applicants who meet the supervised experience requirements as demonstrated by their application materials will be eligible for licensure.

Anticipated Benefit: The amendments would help protect consumers receiving mental health treatment from an individual who is not yet licensed, would help to

ensure that supervisors meet all qualifications to supervise, and that only those applicants who have met all requirements qualify for licensure. The amendments would also help protect supervisees from losing experience hours.

### **C. §1869 (LCSWs) – SUPERVISED EXPERIENCE: REQUIRED DOCUMENTATION**

Purpose of Proposed Changes: The proposed amendments would:

1. Add §1869 for consistency with §§1820 and 1833. The language proposed in §1869 mirrors all of the changes that would result if the changes proposed herein for §§1820 and 1833 take effect.
2. Require a written oversight agreement to be signed between the supervisor and employer when the supervisor is not employed by the supervisee's employer or is a volunteer. This includes the supervisor agreeing to ensure appropriate oversight, and the employer acknowledging awareness of, and agreeing not to interfere with licensure requirements; agreeing to provide the supervisor with access to the supervisee's clients' records; and, agreeing to not interfere with the supervisor's clinical guidance to the supervisee. Specifies that the agreement must be executed prior to the commencement of supervision and requires submission to the Board upon application for licensure.
3. Require supervisors to complete and submit a one-time self-assessment report of qualifications to the Board effective January 1, 2022. The terms of the self-assessment report are specified in proposed subsection (a) of §1870.
4. Require supervisors and supervisees to complete and sign a supervision agreement under penalty of perjury, to be submitted by the supervisee to the Board upon application for licensure. The agreement includes the supervisor's qualifications, the supervisor affirming an understanding of legal requirements, and includes a collaboratively developed supervisory plan that describes goals and objectives.
5. Require supervisees to maintain a log of all experience hours gained toward licensure in each category, to be signed by the supervisor on a weekly basis. Requires the supervisee to retain the signed logs, and allows the Board to require the supervisee to submit the log if necessary for verification.
6. Specify that completed experience hours must be signed by the supervisor under penalty of perjury at the completion of supervision, and submitted by the supervisee to the Board upon application for licensure. Specifies that the documentation must include the supervisor's and employer's information, the supervisee's employment status, and a breakdown of the completed supervised experience.

### Factual Basis/Rationale:

1. Adding §1869 is necessary to bring the requirements for those pursuing LCSW licensure (and for licensees supervising such individuals), in line with the requirements for those pursuing LMFT and LPCC licensure. Qualified licensees may supervise individuals pursuing any of the three substantially equivalent professions, and currently must keep track of different requirements depending on the license type being pursued.
2. Requiring a written oversight agreement any time the supervisor is not employed by the supervisee's employer or is a volunteer is necessary because the supervisor may not have access to clinical records of the supervisee's clients, and the supervisor may not have explicit authority to direct the supervisee's clinical work. Requiring the employer to agree not to interfere with the supervisor's clinical guidance may help prevent employers from interfering with supervision or with a patient's treatment, which would help protect the consumer from receiving treatment that does not meet the standards of practice for the profession. Requiring the supervisee to submit a copy of the agreement to the Board helps to ensure compliance. Greater compliance leads to greater numbers of consumers protected.
3. Requiring supervisors to complete and submit a self-assessment of qualifications will provide the Board with a record of all licensees who are supervising individuals gaining experience toward licensure, which currently does not exist. Such a record is necessary to allow the Board to target communications directly to supervisors. It will also help to confirm that the licensee meets all requirements to be a supervisor. Specifying an implementation date of January 1, 2022 is necessary for clarity in how to comply with the new law. This time frame would also allow supervisors adequate lead time for submission.
4. Requiring supervisors and supervisees to complete and sign a supervision agreement will help ensure that supervisors and supervisees understand their mandated responsibilities, as well as the requirements necessary for the hours to count toward licensure. All of the terms of the agreement memorialize supervision requirements that are already set out elsewhere in law. None of the itemized terms of the agreement set out a new or different supervision obligation from existing law, or from regulations proposed herein where the factual basis/rationale is provided in another section. Requiring supervisors to sign that they "understand" the various requirements is intended to encourage supervisors to seek a true understanding of the legal requirements so that supervisees do not lose experience hours and consumers are protected.

Setting forth time frames for completion of the supervision agreement is necessary for clarity in how to comply with the new law. The 60-day time frame proposed will allow supervisors adequate lead time for completion of

the agreement. Certification under penalty of perjury helps ensure that the agreement contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications]).

5. Requiring applicants to document experience hours gained in each category, signed by the supervisor on a weekly basis will provide a record of hours earned that serves as a record that can be transferred to a summary of all experience gained. It will also serve as a backup in the event the supervisor dies or becomes incapacitated prior to signing off on the hours at the conclusion of supervision.
6. Requiring applicants for licensure to submit documentation of completed experience that includes the supervisor's and employer's information allows the Board to contact supervisors and employers for possible follow-up questions or verification. Requiring the information specified in subsections (e)(3)-(7) would assist the Board in determining whether an applicant's experience hours meet the requirements for licensure. Certification by the supervisor under penalty of perjury helps ensure that the documentation contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications].) This will ensure that only those applicants who meet the supervised experience requirements as demonstrated by their application materials, including certification under penalty of perjury, will be eligible for licensure.

Anticipated Benefit: The amendments would promote consistency in the laws between three substantially equivalent professions, which assists supervisors in applying the law correctly to all supervisees regardless of which license type the supervisee is pursuing. The amendments would also help protect consumers receiving mental health treatment from an individual who is not yet licensed, would help to ensure that supervisors meet all qualifications to supervise, and that only those applicants who have met all requirements qualify for licensure. The amendments would also help protect supervisees from losing experience hours.

#### **D. AMEND §1820.5 (LPCCs) – ASSESSMENT OR TREATMENT OF COUPLES AND FAMILIES: EXEMPTIONS AND SUPERVISED EXPERIENCE**

Purpose of Proposed Changes: The proposed amendments would:

1. Make technical and nonsubstantive changes including changing the section's title and deleting the word "approved" prior to "supervisor" for consistency with BPC §4999.12(h).
2. Prohibit Professional Clinical Counselor (PCC) Trainees from counting experience with children toward the requirements of BPC §4999.20(a)(3), in addition to the current prohibition on counting experience hours with couples or

families. This will correct an omission in the original regulation, and would provide consistency with the wording of the statute. PCC Trainees are students, are not permitted to gain experience hours toward licensure per BPC §4999.36(e), and rarely work with children due to their lack of experience.

3. Clarify that applicants for associate registration who meet the requirements of BPC §§ 4980.43(b)(1), 4996.23(b)(1) or 4999.46(b)(1) are also exempt from the scope of practice restrictions.
4. Clarify that individuals gaining experience toward meeting the requirements of §4999.20(a)(3) must be supervised by a licensee who meets the definition of “supervisor” as described in statute.

Factual Basis/Rationale:

1. The proposed technical and nonsubstantive changes are for the purpose of consistency, as well as clarifying, and updating the Board’s regulations.
2. Prohibiting PCC Trainees from counting supervised experience with children toward the requirements of BPC §4999.20(a)(3) will provide consistency with the wording of the statute and the original intent of the regulatory language. BPC §4999.20 sets forth assessment and treatment of couples and families as a specialty. While PCC Trainees may work with couples, families or children, the level at which they engage with the clients does not prepare them for the specialty in the same way the experience gained by a graduate or licensee would.
3. Clarifying that associate applicants are also exempt from the scope of practice restrictions will allow an applicant to count supervised experience hours with couples, families or children. Associate applicants have graduated from a qualifying degree program, may be working in a setting where they will be seeing these types of clients, and are already permitted to count similar experience toward licensure.
4. Explicitly requiring individuals gaining experience toward meeting the requirements of BPC §4999.20(a)(3) to be supervised by a “supervisor” as defined in statute will provide clarity, as the current regulation only implies who can supervise in subsection (c)(2). It will also help to ensure appropriate supervision.

Anticipated Benefit: This proposal would provide clarity and consistency in the Board’s regulations. It will enhance consumer protection by ensuring that individuals gaining experience toward meeting BPC §4999.20(a)(3) are supervised by a qualified licensee, and that the individual gains experience that leads to the ability to provide competent services under the specialty designation.

**E. ADD §§1820.3 (LPCCs), 1833.05 (LMFTs) and 1869.3 (LCSWs) – TEMPORARY STAFFING AGENCY EMPLOYERS**

Purpose of Proposed Changes: The proposed amendments would:

1. Define “temporary staffing agency” (temp agency) and “contracting agency.”
2. Specify that a supervisee who has been placed by a temp agency shall only perform services at the places allowed by the contracting agency. Current law specifies that supervisees may only perform services at places where the “employer” regularly conducts business. For purposes of these regulatory sections, the Board considers the contracting agency to be the “employer” because temp agencies do not have authority over locations where the clients, which are served by the contracting agency, are provided with services. The contracting agencies conduct business at the sites, not the temp agencies.
3. Specify that the written oversight agreement required by subsection (d)(1) of BPC §§4980.43.4, 4996.23.3 and 4999.46.4, and further specified in subsection (a) of §§1820, 1833 and proposed §1869, must be signed by the contracting agency and the supervisor. Current law requires the written agreement to be signed by the “employer” and “supervisor” when the supervisor is not employed by the supervisee’s employer (i.e., an “outside supervisor”). The purpose of the written agreement is to protect consumers by ensuring that outside supervisors are allowed to provide clinical direction to the supervisee and have access to client records. In the special context of a temp agency relationship, the contracting agency, not a temp agency, can direct where services are provided to clients, and allow the supervisor access to the records of the contracting agency’s clients. Accordingly, the contracting agency is considered to be the employer for these purposes.
4. Specify that when the supervisor is an employee of the contracting agency, no written agreement is required. When a supervisee works for a temp agency, and is placed at a contracting agency where the supervisor is already employed, a written agreement is not necessary because the supervisor already has access to client records and is already allowed to provide clinical direction to the supervisee.
5. Affirm that employers, whether a temp agency or other employer, must issue the employee either a W-2 tax form or provide a letter verifying the status as a volunteer as required by subsection (a) of BPC §§4980.43.3, 4996.23.2, and 4999.46.3. Temp agencies often employ individuals as independent contractors (under a 1099) which is not permitted under the BPC.

Factual Basis/Rationale:

1. Defining “temporary staffing agency” (temp agency) and “contracting agency” is necessary to clarify the parties involved when a supervisee has been placed by a temp agency.

2. & 3. Clarifying the law in the special temp agency context to reflect the reality that the contracting agency (as opposed to the temp agency) has full responsibility for the supervisee's clients, and therefore controls the parameters for service locations and supervision, is necessary to protect consumers and remove confusion for supervisors and employers in this context.
4. Specifying that a written agreement is not required when the supervisor is an employee of the contracting agency provides clarity for supervisors and employers, and provides for consistency in the law.
5. Affirming that employers, including temp agency employers, must issue the employee either a W-2 tax form or provide a letter verifying the status as a volunteer helps to avoid supervisees losing experience hours because they were issued a 1099.

Anticipated Benefit: This proposal would provide clarity and consistency between the Board's statutes and regulations, and enhance consumer protection by clarifying that the entity responsible for clients has the authority over components of the written oversight agreement that pertain to clients.

#### **F. AMEND §§1821 (LPCCs), 1833.1 (LMFTs) and 1870 (LCSWs) – REQUIREMENTS FOR SUPERVISORS**

Purpose of Proposed Changes:

***The following changes apply across §§1821, 1833.1 and 1870 unless otherwise indicated.***

The proposed amendments would:

- Make technical and nonsubstantive changes.
- Subsection (a): Clarify that the provisions apply to supervision of an applicant for associate registration, as paragraph (b)(1) of BPC §§ 4980.43, 4996.23 and 4999.46 allow applicants to gain supervised experience hours.
- Subsection (a)(1): State that a supervisor's license must meet the qualifications listed in BPC §4980.03(g)(6), 4996.20(a)(5) or 4999.12(h)(6).
- Subsection (a)(2): Strike language that is duplicated in BPC §§ 4980.03(g), 4996.20(a) and 4999.12(h).
- Subsection (a)(2) of §1870: Add language that mirrors regulatory provisions of LPCC and LMFT law (subsection (a)(2) of §§1821 and 1833.1) that help to ensure supervisor competency.

- Subsection(a)(2)(A) of §1833.1: Clarify that supervisors who hold a LPCC license must meet statutory requirements pertaining to treatment of couples or families for consistency with BPC §4999.20(a).
- Subsection (a)(3): Require supervisors to be competent in the areas of clinical practice and techniques being supervised. This will help ensure that appropriate and competent supervision is provided, and is consistent with the current practice of supervisors who wish to avoid liability issues.
- Subsection (a)(4): Require the supervisor to self-monitor for and address dynamics that may negatively affect supervision. This would help ensure that underlying issues are addressed that may result in ineffective supervision, and is consistent with the current practice of supervisors who wish to avoid liability issues.
- Subsection (a)(5) of §§1821 and 1833.1 and (a)(3) of §1870 (now (a)(5)): Strike language that duplicates subsection (a)(1), and require notification to the supervisee of any license-related issue that affects the supervisor's ability or right to practice. This will avoid the supervisee losing experience hours.
- Subsection (a)(6) of §§1821 and 1833.1 and (a)(4) of §1870: Strike language that is duplicated in BPC §§4980.03(g)(3), 4996.20(a)(2) and 4999.12(h)(3).
- Subsection (a)(7) of §§1821 and 1833.1 (now (a)(6)); and subsection (a)(6) of §1870 (now (a)(7)): Replace text specifying training requirements for supervisors with general language that refers to revised supervision training requirements specified in proposed §§1821.3, 1834 and 1871. This will direct supervisors to the code sections that contain the specific training requirements.
- Subsection (a)(9) of §§1821 and 1833.1: Strike language that is duplicated in BPC §§4980.43.1(b) and 4999.12(m).
- Subsection (a)(9) of 1870: Strike the "Supervisory Plan" requirement as this will be incorporated into the supervision agreement proposed in §1869(c).
- Subsection (a)(10) of §§1821 and 1833.1 (now (a)(8)) and §1870(a)(8): Streamline language that is duplicated in BPC §§ 4980.43.1(b), 4996.20(b) and 4999.12(m).
- Subsection (a)(9) of §§1821 and 1833.1: Require supervisors to complete assessments of the strengths and limitations of the supervisee and to provide the supervisee with a copy. This will assist the supervisee in continuing to develop professional competence and is consistent with current LCSW law, §1870(a)(12).

- Subsection (a)(11) of §1821 and 1833.1 (now (a)(10)) and §1870(a)(11): Require supervisors to provide supervisees with written procedures to assist in handling crises and emergencies prior to commencing supervision. This includes contacting an alternative on-call supervisor. This will protect the safety of the supervisee as well as the client.
- Subsection (a)(11) of §1821: Clarify that a supervisor who holds an LPCC license must meet the additional training and education required by BPC §4999.20 if they are supervising an APCC or LPCC who is seeking experience to assess and treat couples or families. This change is for consistency with BPC §4999.12(h)(2), and consistent with the change proposed to §1820.5(c). In addition, this would strike references to marriage and family therapist supervisees as this section only applies to professional clinical counselors per §1821(a).
- §§1821(b)&(c), 1833.1(a)&(b) and 1870(a)&(a)(9): Strike the requirements pertaining to completing and submitting a “Responsibility Statement for Supervisors” as it proposed to be replaced by both the supervisor self-assessment report set forth in subsection (d) of §§1821, 1833.1 and 1870, and the supervision agreement set forth in subsection (c)(1) of §§1820, 1833 and 1869.
- Subsection (b) of §1870: Strike text that is being moved to §1871(e) and add text that is being moved from §1870(a)(10).
- Subsection (c) of §1870: Require supervisors to obtain from each supervisee the name, address and telephone of number of the most recent supervisor and employer for consistency with LPCC and LMFT law (§§1821(e) and 1833.1(d)).
- Subsection (d): Require supervisors, effective January 1, 2022, to complete a self-assessment report signed under penalty of perjury that includes the supervisor’s qualifications, contact information, the date the licensee began supervising, compliance with training requirements, and an affirmation that the supervisor understands his or her responsibilities. This will help ensure that experience hours are not lost due to an unqualified supervisor, will provide the Board with a list of licensees currently supervising and help ensure truthful reporting by supervisors.
- §§1821(f) and 1833.1(e): Strike language that duplicates (or is substantially equivalent to) BPC §§4980.43.3(b)(1)(C), 4980.43.4(d)(2), 4999.46.4(d)(2) and 4999.46.3(d)(1)(B).
- Subsection (e): Require new supervisors to submit a self-assessment report to the Board within 60 days of the commencement of supervision. This is consistent with the time frame required for submission of the “Supervisor Responsibility

Statement” set forth in §§1821(b), 1833.1(b) and 1870(a), which this report would replace.

- Subsection (f): Require current supervisors (those supervising prior to January 1, 2022) to submit a self-assessment report to the Board by December 31, 2022. This will provide adequate time to communicate the new requirements to current supervisors, as the Board does not have a list. It would also allow the Board’s workload to be distributed.
- §§1821(h) and 1833.1(g): Strike language that is being added to subsection (e) of §§1821.3 and 1834.

Factual Basis/Rationale:

- The proposed technical and nonsubstantive changes are for the purpose of consistency, as well as clarifying and updating the Board’s regulations.
- Deleting duplicative language achieves the nonduplication standard of the Administrative Procedure Act (*Government Code section 11349(f); Title 1, California Code of Regulations section 12*).
- Changing the Board’s regulations for consistency with statutes is necessary for consistency in the law.
- Changing the Board’s regulations for consistency among substantially equivalent license types assists licensees who may be supervising individuals pursuing any of the three professions, as they must currently must keep track of and meet different requirements depending on the license type being pursued by the supervisee. There is no reason to treat the professions differently in this area.
- Subsection (a)(3): Requiring supervisors to be competent in the areas of clinical practice and techniques being supervised will help supervisees develop competency and protect consumers receiving services.
- Subsection (a)(4): Requiring the supervisor to self-monitor for and address dynamics that may affect supervision will help ensure that supervisees receive appropriate and effective supervision and will protect consumers receiving services.
- Subsection (a)(5) of §§1821 and 1833.1 and subsection (a)(3) of §1870 (now (a)(5)): Requiring notification to the supervisee of any license-related issue that affects the supervisor’s ability or right to practice will avoid the supervisee losing experience hours.
- Subsection (a)(9) of §§1821 and 1833.1: Requiring supervisors to complete assessments of the strengths and limitations of the supervisee and to provide the supervisee with a copy will assist the supervisee in developing professional

competency. This will be required annually as the supervisee's progress will change as they gain experience.

- Subsections (a)(10) of §§1821 and 1833.1 and (a)(11) of §1870: Requiring supervisors to provide supervisees with written procedures to assist in handling crises and emergencies will protect the safety of both the supervisee and consumers.
- Subsections (d), (e) and (f): Requiring supervisors to complete and submit a self-assessment report will help ensure that experience hours are not lost due to an unqualified supervisor and will provide the Board with a list of licensees currently supervising (and therefore allow for a direct line of communication). Certification by the supervisor under penalty of perjury helps ensure that the documentation contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications].) This will help to ensure that only those supervisors who meet all requirements are eligible to supervise individuals gaining experience hours toward licensure. Setting forth time frames for submission to the Board is necessary for clarity in how to comply with the new law. The specific time frames proposed will allow supervisors adequate lead time for submission, and also help manage the Board's workload upon implementation.

Anticipated Benefit: The amendments would provide for consistency and clarity in the Board's laws, help to ensure effective supervision, help ensure that consumers receive effective services, facilitate supervisee development and competency, help protect the safety of the supervisee and clients, protect supervisees from losing experience hours and allow the Board to target communications with supervisors.

#### **G. ADD §§1821.1 (LPCCs), 1833.1.5 (LMFTs) and 1870.1 (LCSWs) – SUBSTITUTE SUPERVISORS**

Purpose of Proposed Changes: The proposed amendments would clarify the requirements necessary in situations where a temporary substitute supervisor is in use. This includes requiring substitutes to meet all of the normal qualifications for supervisors specified in law, requiring the substitute and the supervisee to sign a supervision agreement, and requiring the substitute to sign the supervisee's weekly log forms.

The amendments also specify that when the substitute will be supervising for more than 30 days, a new supervisory plan (as specified in subsection (c)(3)(F) of §§1820, 1833 and 1869) is required, and that the experience gained under the substitute must be signed off by the substitute. If supervision for 30 days or less, a new supervisory plan is not required and the regular supervisor may verify the experience.

Factual Basis/Rationale: It is sometimes necessary for supervisees to temporarily have a substitute supervisor. This situation may happen with or without warning when the supervisor has a vacation or unplanned absence. The Board often receives calls from supervisors and supervisees asking about the specific requirements and necessary documentation for a temporary substitute supervisor. However, current law does not address this situation. This addition is necessary to allow for continued supervision on a short-term basis when the regular supervisor is absent. A new supervision plan will not be required if the substitute supervisor will only supervise for 30 days or less. 30 days is a reasonable time to permit substitute supervision under the existing plan, since it is anticipated that the regular supervisor will resume supervision after that period. Substitutions greater than 30 days, however, can amount to a high number of supervision hours and require greater planning, and since the supervision plan is specific to the supervisor and supervisee, periods greater than 30 days should be governed by a plan tailored to the new supervisor.

Anticipated Benefit: This proposal would provide clarity to supervisors and supervisees, and would simplify and streamline a substitute supervisor's responsibilities.

#### **H. REPEAL §§1822 (LPCCs) and 1870.1 (LCSWs) – SUPERVISORY PLAN**

Purpose of Proposed Changes: The proposed amendments would repeal the standalone "Supervisory Plan" requirement as it is being incorporated into the supervision agreement set forth in proposed subsection (c)(1) of §§1820, 1833 and 1869.

Factual Basis/Rationale: The supervision agreement will incorporate a supervisory plan and therefore a separate requirement is not necessary.

Anticipated Benefit: This proposal would ensure there is not a duplicative requirement that would create confusion for supervisors and supervisees.

#### **I. ADD §§1821.2 (LPCCs) and 1870.5 (LCSWs); AMEND §1833.2 (LMFTs) – SUPERVISION OF EXPERIENCE GAINED OUTSIDE OF CALIFORNIA**

Purpose of Proposed Changes: The proposed amendments would modify the requirements pertaining to supervision of experience gained outside of California for those pursuing LMFT licensure, and would add a section that mirrors LMFT law in LPCC and LCSW law.

The amendments to the section pertaining to LMFT law (§1833.2) would:

- Add "jurisdiction" in addition to "state" as a more all-encompassing term.
- Clarify that the supervisor's license must have been active at the time the supervision occurred, and that the license must have been held for at least two of the last five years preceding supervision. This is for consistency with

requirements for in-state supervisors. Current law (BPC §§4980.72(b)(3), 4980.74(c), 4996.17(a)(1), 4999.60(b)(3), 4999.61(c)) requires experience gained in another state to be “substantially equivalent” and this will help clarify for applicants what that means.

- Allow for the supervisor to hold an equivalent license or certification that permits the practitioner to independently provide clinical mental health services, as other jurisdictions may use different titles.

Factual Basis/Rationale: Adding sections to LPCC and LCSW law that mirror LMFT law is necessary to provide for consistency among the professions, because there is no reason to treat the professions differently for purposes of out-of-state supervision, and provide clarity for applicants who gained, or are gaining, experience hours outside of California. The amendments are also necessary to ensure consistency with certain supervisor requirements for in-state experience so that in-state and out-of-state supervisors and supervisees are treated uniformly. There is no legitimate basis to treat the similarly-situated supervisors and supervisees differently. The amendments would allow supervision under equivalent license or certification types that have a different title than those listed in current law. License titles and types vary in different jurisdictions, and this change will provide for flexibility when the supervisor held a different type of license that is equivalent.

Anticipated Benefit: This proposal would provide clarity for applicants and will help reduce the possibility of hours being denied due to an unqualified out-of-state supervisor. It would provide for consistency among substantially equivalent professions, and enhance portability of experience hours from another state to California.

#### **J. ADD §§1821.3 (LPCCs), 1834 (LMFTs) and 1871 (LCSWs) – SUPERVISOR TRAINING AND COURSEWORK**

Purpose of Proposed Changes: The proposed amendments would expand supervisor training requirements in order to help ensure adequate and effective supervision, and make the requirements consistent across the professions as follows:

- New supervisors must take a one-time 15-hour supervision training course from a governmental agency or an acceptable continuing education provider. The training shall include current best practices and industry standards and must not be more than 2 or 4 years old (depending on the type of course provider) in order to ensure currency. The content of the course is based on current LCSW-related supervisor regulations (§1870(a)(5)), and contains the fundamentals that stakeholders determined to be necessary in order for new supervisors to provide effective supervision. The course must be taken no later than 60 days after commencing supervision, consistent with the 60-day time frame required for submission of the supervision agreement as is proposed to be required by subsection (c)(3) of §§1820, 1833 and 1869.

The amendments also specify training requirements for former supervisors returning after a two-year absence in order to ensure supervisor competency. Training will help supervisors to understand the basic competencies necessary to be a supervisor, the legal and ethical issues pertaining to supervision, the intricacies of the supervisor-supervisee relationship, evaluation of the supervisee, documentation requirements and more.

- The amendments specify ongoing supervisor professional development requirements, which may include supervision-related training, coursework, teaching, or authoring research; collaboration with other supervisors through mentoring or consultation; or, attendance at supervisor peer discussion groups. This will help to ensure that supervisors are actively involved in maintaining their competency as a supervisor and are exposed to current issues related to supervision.
- The amendments provide flexibility by allowing a supervisor who holds a valid and active approved supervisor certification from one of several specified entities to be exempt from initial training requirements, ongoing professional development requirements, and the requirement to have held an active license and have been practicing for two of the past five years. Allows for an equivalent type of supervisor certification to be accepted upon review.
- The amendments prohibit the Board from denying experience hours due to the supervisor's failure to complete the training or continuing professional development requirements, consistent with subsection (e) of §§1821, 1833.1, and 1871.

Factual Basis/Rationale: The proposed changes are necessary in order to create consistency among substantially equivalent professions and to help ensure that supervisors are competent to provide effective supervision. Specifically:

- Subsection (a): The length of new training was set at 15 hours because a two-day course was deemed long enough to cover the specified training content while allowing for natural breaks in the program that would prevent it from being a full 16 hours. Requiring the course to be taken from a governmental agency or continuing education provider is consistent with current LCSW-related supervisor training regulations (§1870(a)(5)(A)) and helps to ensure the quality of the course.
- Subsection (a)(1): The content of the course is based on current LCSW-related supervisor regulations (§1870(a)(5)), and contains the fundamentals that stakeholders determined to be necessary in order for new supervisors to provide competent and effective supervision. The training content is consistent with the supervisor responsibilities specified in §§ 1821, 1833 and 1870 and is consistent with supervision-related provisions of each profession's code of ethics.

- Subsections (a)(2)&(3): Allowing for the training to be taken early presents opportunities for would-be supervisors are planning to supervise at some point in the future; allowing for training to be taken within 60 days after commencing supervision permits last-minute step-ins while still ensuring that the supervisor is fit to supervise.

Requiring a supervisor training course offered by a governmental entity or continuing education provider to be two years old or less helps to ensure the currency of the course. Allowing a course taken at the master's or higher level recognizes that such courses are typically greater than 15 hours, have more depth and are more rigorous, thus negating concerns about the course being slightly older.

- Subsection (b): Six hours of training for supervisors who have not supervised in two or more years is necessary because pertinent concepts may have evolved or laws may have changed, and this will help ensure that returning supervisors provide effective supervision.
- Subsection (c): This proposal provides flexibility by allowing continuing professional development (CPD) activities, as opposed to only allowing a training course, to count toward ongoing supervisor requirements. Currently, the LMFT and LPCC professions must complete six hours of supervision training during every two-year renewal period. This proposal would instead require six hours of CPD every renewal period for all three professions. Six hours was determined to be adequate for maintaining competency to supervise, and each of the CPD activities were determined to provide adequate professional supervision development.
- Subsection (c)(1): Allowing training or coursework provided by a governmental entity or continuing education provider to count toward CPD is consistent with current supervisor training requirements.
- Subsection (c)(2): Allowing teaching of a supervision course to count toward CPD reflects the amount of knowledge and preparation that is necessary in order to teach such a class, and is consistent with current §1887.3(e) which allows a licensee who teaches a continuing education (CE) course to claim CE credit for the course.
- Subsection (c)(3): In allowing authorship of professional research materials related to supervision, the Board is encouraging high-level contributions to the profession by way of academic scholarship. No word requirement is contemplated at this time because academic journals and reviews have their own page or word counts for publication.

- Subsection (c)(4)&(5): Similarly, allowing mentoring or supervision peer discussion groups provides for intellectual broadening and professional enrichment which, although perhaps harder to quantify, are immeasurable to the field at large.
- Subsection (d): Using the principles of “status conferred,” these national entities listed have shown, over time, to be reliable and credible certifying entities and it is therefore appropriate that the Board should accept a supervisor certification from them. (Should an additional entity wish to be added to the list, that entity could contact the Board through the petition process outlined in Government Code 11340.6.)

Because the supervisor certification programs offered by these entities are far more rigorous than the Board’s proposed requirements for supervisors and lead to a highly qualified supervising professional, those holding such a certification are proposed to be exempt from holding an active license status for two of the past five years, and to have been practicing for at least two of the past five years. Specifying exemptions from certain requirements for those holding a supervisor certification may increase the pool of available supervisors.

- Subsection (e): The proposed changes also permit supervisees to claim experience hours even if their supervisor fails to complete training, consistent with current regulations. This is necessary to ensure that supervisees are not unfairly prevented from counting experience hours completed in good faith.

Anticipated Benefit: This proposal would provide for consistency and clarity in the Board’s laws, help to ensure competent and effective supervision, help protect consumers receiving services from harm due to improper or ineffective supervision of their therapist, facilitate supervisee development and competency, protect hours of supervised experience gained by supervisees, and address supervisor shortages.

### **Underlying Data**

- The Budget Change Proposal (BCP) for Fiscal Year 2019-2020, wherein costs and workload from AB 93 were identified.
- Supervision Survey Memo April 2015
- Supervision Survey Memo June 2015
- Supervisor Survey Responses June 22, 2015
- Supervisee Survey Responses June 22, 2015

### **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:

- **Analysis of creation/elimination of jobs:** The vast majority of the proposed amendments are for the purpose of clarifying, streamlining, or creating consistency or flexibility. The proposed amendments that are more substantial in nature simply impose new minor training requirements for supervisors every two years, new one-time paperwork requirements, and new yearly supervisee evaluations. None of the proposed amendments are anticipated to create or eliminate jobs within California.
- **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 help protect consumers who are receiving mental health treatment from an individual who is not yet licensed by setting standards that lead to proper and effective supervision of the unlicensed individual. Requiring supervisors to create written procedures to assist in handling crises and emergencies will help protect the safety of both the supervisee and consumers. The proposal will have no effect on 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. This initial determination is based on the fact that most of the proposed amendments are minor in nature and are for the purpose of clarifying, streamlining, or creating consistency or flexibility. The proposed amendments that are more substantial in nature simply impose new minor training requirements for supervisors every two years, and new one-time paperwork requirements. Other requirements including new yearly supervisee evaluations, creating a crisis or emergency plan, remaining competent in areas of practice being supervised, and monitoring for and addressing supervision dynamics, are consistent with current practice of the vast majority of supervisors as these actions are necessary in order for the licensee to meet standards of care that would avoid liability. If a licensee does not comply with the new requirements, minor impacts to that licensee could be realized through the Board's disciplinary process.

## **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 has made an initial determination 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:
  - 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.