

TITLE 16 CALIFORNIA BOARD OF BEHAVIORAL SCIENCES

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:

Unprofessional Conduct

NOTICE IS HEREBY GIVEN that the California Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest below, 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 their 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 Person** 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 Person** in this Notice, must be received by the Board at its office not later than **5:00 p.m. on Monday, March 25, 2024**, or must be received by the Board at the hearing, should one be scheduled.

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 or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person 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.

Authority and Reference: Pursuant to the authority vested by Sections 125.9, 148, 149, 4980.60, 4989.18 and 4990.20 of the Business and Professions Code (BPC), and Section 56.36 of the Civil Code, and to implement, interpret, or make specific Sections 125.9, 148, 149, 480, 702, 4980, 4980.02, 4980.30, 4980.60, 4982, 4989.10, 4989.12, 4989.14, 4989.18, 4989.54, 4990.20, 4992.3, 4992.36, 4996, 4996.5, 4996.9, 4996.11, 4998.1, 4998.5, 4999.20, 4999.24, 4999.30, 4999.90, 4999.124 and 4999.128 of the Business and Professions Code, Section 56.36 of the Civil Code, Section 1000.4 of the Penal Code, Sections 11357, 11360, 11361.5 and 11361.7 of the Health and Safety Code, and Section 15630 of the Welfare and Institutions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

Informative Digest / Policy Statement Overview

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs) (Bus. & Prof. Code (BPC), §§ 4980 et seq.), Licensed Educational Psychologists (LEPs) (BPC §§ 4989.10 et seq.), Licensed Clinical Social Workers (LCSWs) (BPC §§ 4991 et seq.), and Licensed Professional Clinical Counselors (LPCCs) (BPC §§ 4999.10 et seq.).

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

BPC section 4990.16 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

BPC section 4990.20 authorizes the Board in accordance with the Administrative Procedure Act (APA) (Government Code sections 11400 et seq.), to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of BPC Chapters 13, 13.5, 13.7, 14 and 16.

The Board is authorized to investigate allegations of unprofessional conduct and to take disciplinary action against a licensee, registrant or applicant found to be in violation and to deny applications, discipline or cite licensees or registrants for such unprofessional conduct in accordance with BPC sections 108, 4982, 4989.54, 4992.3, and Title 16, California Code of Regulations (CCR) section 1886. The Board's original unprofessional conduct statutes for LMFTs, LEPs, and LCSWs did not specify all grounds considered unprofessional conduct by the Board. The Board then adopted implementing regulations to further specify what it considered "unprofessional conduct" as used in BPC sections 4982, 4989.54 and 4992.3 at CCR sections 1845, 1858 and 1888.

However, since that time, certain provisions of the Board's unprofessional conduct regulations have been replicated in the Board's statutes. This renders the corresponding Board regulations redundant and unnecessary. As a result, the regulations need to be updated for clarity and transparency consistent with these statutory changes, and to repeal subsections that duplicate provisions of the Business and Professions Code (BPC).

The Confidentiality of Medical Information Act (commencing with section 56 of the Civil Code -- CMIA) prohibits a provider of health care from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization as specified. Section 56.36 of the CMIA authorizes licensing agencies to issue administrative fines for violations of the

CMIA, as specified, and requires licensing agencies to consider specified factors before issuing said fines. The Board's current regulations that specify its authority to issue citations, the grounds for such issuance, citation factors and fine amounts do not refer to this CMIA authority, list the required factors the Board must consider, or the amount of the fines authorized by the CMIA to be issued. This proposal would update those sections of the Board's regulations to add those provisions consistent with the authority to issue such fines in accordance with the CMIA.

The proposal would make other non-substantive changes including grammatical changes, renumbering sections affected by the repeal or adoption of others, the addition of gender neutral pronouns and changes to the authority and reference note sections of the proposed regulations to revise or repeal outdated and changed statutory references.

The proposal would include the following changes:

Unprofessional Conduct

The Board's statutes and regulations specify acts that are considered unprofessional conduct. This proposal makes amendments to certain subsections of CCR sections 1845, 1858 and 1881 to repeal regulatory provisions that duplicate provisions of the Business and Professions Code.

The proposal would also update the authority and reference sections of the regulation to add relevant sections and delete unnecessary sections.

Citation Factors and Amount of Fines for Violations of the Confidentiality of Medical Information Act

Existing regulation at CCR section 1886.30 requires the Board, when assessing an administrative fine or issuing an order of abatement, to give consideration to certain factors. Section 1886.40 defines "citable offense" and specifies the amount of fines that may be levied for a violation.

This proposal clarifies that the Board's Executive Officer must also consider the factors listed in the Confidentiality of Medical Information Act (CMIA, Civil Code section 56 etseq.) when assessing an administrative fine or issuing an order of abatement for violations of the CMIA. It would also add a violation of the CMIA to the definition of a "citable offense" and specify that the fine for violating the CMIA shall not exceed the amount specified in Section 56.36 of the Civil Code (a section included in the CMIA).

All of these changes are consistent with current Board practice, as the Board already follows the requirements specified in the CMIA. Incorporating references to the CMIA into the Board's regulations will provide clarity and transparency by citing the source of factors considered when assessing an administrative fine or issuing an order of abatement for breaches of the CMIA, and making transparent that the fine for violation of the CMIA shall not exceed the amount specified in the CMIA.

Anticipated Benefits of Proposal

The objectives of the amendments in this regulatory proposal are intended to achieve the following:

- Increase clarity and conciseness in regulation by removing unnecessary language that duplicates statute.
- Increase clarity and transparency in regulation by citing the source of the statutory authority for a citation and fine for a breach of confidentiality violation.
- Increase awareness of and compliance with the CMIA among Board licensees, thus benefitting consumers of mental health services, as it may lead to fewer confidentiality violations by the Board's licensees.

Evaluation of Consistency and Compatibility with Existing State Regulations

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

DISCLOSURES REGARDING THIS PROPOSED ACTION

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency because this proposal would merely strike regulations that duplicate existing statutes and the Board already applies the requirements of the CMIA when reviewing potential violations of the CMIA and when determining citation factors, assessing an administrative fine, or issuing an order of abatement. The Board does not anticipate additional workload or costs from the proposed regulations. Any workload or costs of implementation are a result of current law.

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

Significant Effect on Housing Costs: None

Business Impact Estimates: 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/evidence/documents or testimony:

- Striking regulations that duplicate statute has no adverse economic effect because the statutory provisions will continue to be in effect.
- Adding references to the CMIA has no adverse economic effect because it already applies to Board licensees, and the Board already applies the requirements of the CMIA when reviewing potential violations of the CMIA and when determining citation factors, assessing an administrative fine, or issuing an order of abatement.

The rulemaking file includes the facts, evidence, documents, testimony, and other evidence which supports this determination.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that are representative private person or business would necessarily incur in reasonable compliance with the proposed action for the reasons set forth above in the “Business Impact Estimates” section.

Effect on Small Business: The Board has determined that the proposed regulations will not affect small businesses. This is because striking language duplicated in statute has no effect on small businesses as described in the “Business Impact Estimate” section above. In addition, the CMIA already applies to Board licensees, and the Board already applies the requirements of the CMIA when reviewing potential violations of the CMIA and issuing a citation and fine or order of abatement.

Results of Economic Impact Assessment / Analysis

Impact on Jobs / Businesses: The Board has determined that the proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This is because striking language duplicated in statute has no effect on jobs or businesses. In addition, the CMIA already applies to Board licensees, and the Board already applies the requirements of the CMIA when reviewing potential violations of the CMIA and issuing a citation and fine or order of abatement.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, as it may increase awareness of the CMIA among Board licensees and increase compliance, potentially leading to fewer violations of client confidentiality. The proposal will have no effect on worker safety or the State’s environment because it does not relate to worker safety or the environment.

Business Reporting Requirements: This proposed regulation does not require businesses to file a report with the Board.

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 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 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 at 1625 North Market Blvd, Suite S200, Sacramento CA 95834 during the written comment period, or at the hearing if one is scheduled or requested.

Availability of Initial Statement of Reasons and Rulemaking File

The Board has compiled a record of 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 upon request to the Contact Persons named in this notice.

Text of Proposal

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person listed below, or by accessing the Board's website at https://www.bbs.ca.gov/about/law_reg.html.

Availability and Location of the Final Statement of Reasons and Rulemaking File

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person 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 Person

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

Name: Christy Berger
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7995
Fax: 916-574-8625
Email: Christy.Berger@dca.ca.gov

The backup contact person is:

Name: Rosanne Helms
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7939
Fax: 916-574-8625
Email: Rosanne.Helms@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at: https://www.bbs.ca.gov/about/law_reg.html.