

Board of Behavioral Sciences
FINAL STATEMENT OF REASONS

Hearing Date: None

Subject Matter of Proposed Regulations: Unprofessional Conduct

Section(s) Affected: Sections 1845, 1858, 1881, 1886.30 and 1886.40 of Division 18 of Title 16 of the California Code of Regulations (CCR).

The Initial Statement of Reasons (ISOR) is included in the file. The information contained therein is updated as follows:

UPDATED INFORMATION

1. The public comment period was originally noticed by mail and email to persons according to Government Code section 11346.4 beginning on February 2, 2024 with a proposed ending date of March 19, 2024. On February 7, 2024, the comment period was later extended due to technical difficulties with posting the Notice of Proposed Regulatory Action, Proposed Language and Initial Statement of Reasons to the Board's website. Thereafter, the Board sent a Notice of Extension of Comment Period for Proposed Regulations on February 7, 2024 that extended the public comment period to March 25, 2024 to parties required to be noticed in accordance with Government Code section 11346.4(a)(1) through (4) and posted that Notice to its website on the same day. The Board received one comment letter on March 21, 2024, which is summarized below.
2. The comments received during the 45-day public comment period and the Board's responses are detailed under "Objections or Recommendations/Responses to Comments." The Board approved the responses to comments at its meeting on May 17, 2024.
3. The Board first approved the text of the proposal at its meeting on August 18, 2023. The regulations were noticed on February 2, 2024. The following amendments were made to the proposed regulation text after the 45-day public comment period in response to public comments received as detailed below. The Board approved changes at a meeting on May 17, 2024, and a subsequent 15-day public comment period was noticed and held. Board meeting minutes have been added to the file where the comments were accepted, and the Board approved adoption of the modified text made in response to the public comments if no further adverse comments were received during the 15-day public comment period. No comments were received during the 15-day public comment period on the modified text.

4. The additional Board-approved text changes are as follows and would resolve ambiguity concerns raised by the public. Specifically, the proposed amendments would more clearly specify that fines involving unlawful breaches of confidentiality would be assessed at an amount not to exceed \$5,000 except as provided in subsection (b) where the citation alleges a violation of the Confidentiality of Medical Information Act, as follows:

- a. Section 1886.40(d): Except as provided in subsection (b) for citable offenses where the citation alleges a violation of the Confidentiality of Medical Information Act, ~~the~~ the executive officer of the board may assess fines for citable offenses which shall not exceed five thousand (\$5,000) for each investigation if the violation or count includes one or more of the following circumstances:
- b. Section 1886.40(d)(5): The citation involves an unlawful or unauthorized breach of confidentiality, and the citation does not allege a violation of the Confidentiality of Medical Information Act.

This is necessary to ensure that the regulated community has notice of, and is fully informed about, the Board's authority to assess a fine exceeding the \$5,000 cap for breaches of confidentiality if the citation alleges a violation of the Confidentiality of Medical Information Act (CMIA). The CMIA authorizes this Board to assess fines ranging from \$2,500 to \$250,000 per violation depending on the conduct at issue (negligently vs. knowingly and willfully obtain, disclose or use medical information) pursuant to Civil Code section 56.36.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES TO COMMENTS RECEIVED DURING 45- DAY PUBLIC COMMENT PERIOD

Comment from the California Association for Marriage and Family Therapists (Received March 21, 2024)

Summary of comment:

The commenter expressed concern that there is an inconsistency in the originally approved text, between subsection (b) and renumbered subsection (d)(5) of section 1886.40. Subsection (d)(5) states that the board may assess fines not exceeding \$5,000 if the violation includes an unlawful or unauthorized breach of confidentiality. Subsection (b) states that the fine for violating the Confidentiality of Medical Information Act shall not exceed the amount specified in section 56.36 of the Civil Code. The commenter believes this may cause confusion as to whether fines involving unlawful breaches of confidentiality in violation of the CMIA would be assessed at the maximum amount specified in subsection (b) or at the maximum amount specified in subsection (d)(5).

Response: The Board accepts the comment and has made changes to the text to address this concern as detailed above under “Updated Information”.

COMMENTS RECEIVED DURING THE 15-DAY MODIFIED TEXT PUBLIC COMMENT PERIOD (JUNE 7, 2024 TO JUNE 25, 2024)

No comments were received.

LOCAL MANDATE

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT

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 in the Initial Statement of Reasons. 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.

ANTICIPATED BENEFITS

The objectives and anticipated benefits of the amendments in this regulatory proposal are 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.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board’s meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. All recommendations provided during this rulemaking were considered by the Board and accepted as discussed above.