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To: Board Members **Date:** October 24, 2024

From: Christy Berger, Regulatory Manager

Subject: Update on Board Rulemaking Proposals

Below is the status of Board-approved regulation proposals. See **Attachment** for information on the required steps of the regulatory process.

Disciplinary Guidelines

Status: Returned to DCA Office of Legal Affairs to Continue Initial Review Process
(Production Phase) After Additional Changes Approved by the Board at
September 2024 Meeting

This proposal would result in updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, which are incorporated by reference into the Board's regulations. The proposed changes fall into three general categories:

- Amendments seeking to amend certain penalties that are available to the Board;
- Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the Business and Professions Code; and
- Amendments to clarify language that has been identified as unclear or needing further detail.

The proposal was initially approved by the Board at its meeting in August 2023.

Unprofessional Conduct

Status: Approved by the Office of Administrative Law (OAL) - Takes Effect January 1, 2025

This proposal would result in updates to the Board's Unprofessional Conduct regulations. The proposed changes would result in striking regulations that duplicate statutory law, and would provide for transparency by adding requirements related to the Confidentiality in Medical Information Act.

The proposal was approved by the Board at its meeting in August 2023.

Telehealth

Status: Pending OAL Approval to Begin Public Comment Period

This proposal would require a license be "current and active" to engage in telehealth instead of "valid and current" to conform with the actual license status types in the Board's online licensing system; require licensees providing services via telehealth to ensure that the technology, method and equipment used to provide services complies with all applicable federal and state privacy, confidentiality and security laws; and, strike a provision that states that violation of this section is unprofessional conduct, as this authority is already provided for in statute.

The proposal was approved by the Board at its meeting in March 2024.

Continuing Education

Status: Approved by the Board at its meeting in September 2024

This proposal would do the following:

- Credit up to 6 hours of CE per renewal cycle for licensees attending California Board of Behavioral Sciences meetings.
- Credit up to 18 hours of CE per renewal cycle for licensees providing direct supervision to an associate, or marriage and family therapist trainee.
- Allow other types of healthcare providers to verify a disability or medical condition for purposes of a temporary waiver of CE, and update the waiver request forms.
- Specify that the 6-hour law and ethics course required of licensees must be based on California law and ethics.

Advertising

Status: Approved by the Board at its meeting in September 2024

This proposal would do the following:

- Delete references to MFT Referral Services, as the Board no longer registers these services.
- Delete use of the title "Registered Associate CSW," as it is not a title that is typically used by the profession.
- Permit the use of a nickname or former legal name in an advertisement.
- Add a requirement that registrants must include in an advertisement that they are supervised by a licensed person.

Attachment

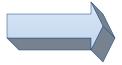
Regulation Process

Regulation Package Approval Process

Concept Phase



Production Phase



Initial Filing Phase



Final Filing Phase

- Kick-Off Meeting with relevant Board and DCA staff to discuss potential regulation.
- Board staff drafts proposed regulation.
- Regulations Counsel and Second Level Reviewer reviews and approves proposed regulation.
- Board meeting is held, proposed regulation text is presented for vote and approval.

Phase Goal: Proposed Regulation is drafted and approved by the Board to move forward.

- After the Board approves the proposed text, Board staff develop remaining documents in the initial regulatory package.
- Regulation package is prepared with assistance from DCA Budget Analyst and Board Regulations Counsel.
- Following review and approval of the regulatory package by the Budget Analyst and Regulations Counsel, the package is reviewed and approved by the DCA Director and Agency.

Phase Goal: Regulation Package is approved by Agency.

- Following Agency approval, the regulatory package is submitted to OAL for publication in the Notice Register for a 45-day comment period.
- If comments are received, Board Staff draft responses for review by the Regulations Counsel.
- Board meeting is held to approve the responses and modified text, if necessary.
- If substantial changes are made to the text, a 15-day comment period commences.

Phase Goal: Completion of the Public Comment Period with all comments appropriately addressed and any changes to the text approved by the Board.

- Board Staff develops and submits a final regulatory package to the Regulations Coordinator for review.
- If there is a fiscal impact to the regulations, the Budget Analyst submits the package to the Department of Finance (DOF) for review and approval, as necessary.
- The package is reviewed by Regulations Counsel, DCA Director, and Agency.
- Final package is submitted to OAL.
- OAL approves package, Board Staff updates the Board website with the new regulation, and contacts interested parties with notification of the effective date.

Phase Goal: OAL approves Final Regulatory Package.



Note:

All references to
timeframes
throughout the
Phases shall be
calendar days, unless
the Parties agree
otherwise during the
kick-off meeting or
subsequently to
alternative
timeframes.

Board Counsel, Second Level Reviewer, Budget Staff Purple: Second Level Reviewer

Light Blue: B/B Staff/Reg Counsel,

Purple: Second Level Reviewer

Orange: B/B Staff Gray: Reg Counsel

Concept Phase

Meet to discuss regulatory concept, confirm statutory authority, walk through six standards from OAL, and determine if there is fiscal/economic impact.

(B/B Staff, Reg Counsel, Board Counsel, Second Level Reviewer, Budget Staff)

Based upon discussion, draft text and incorporate reference documents for proposed regulation, if any, and provide draft text to Reg Counsel. (B/B staff)

Note:

30-day timeframe for reviewing of proposed regulations and legal research. Review proposed regulations, conduct necessary legal research, make necessary edits to language directly to the document, including any related documents, and pose any questions for consideration. (Reg Counsel)

Set meeting with B/B staff to present edits and discuss questions identified from review. (Reg Counsel)

After meeting, finalize regulation language with edits discussed, obtain approval from Executive Officer or Bureau Chief, and submit to Reg Counsel. (B/B staff)

May share proposed text with Board Counsel for review and edit document with any suggestions. (Reg Counsel)

Make any additional edits to the regulation language and submit to Second Level Reviewer. (Reg Counsel)

Note:

Regulation Counsel and Second Level Reviewer have a 30day timeframe for reviewing and finalizing regulation language. Review text for compliance with applicable laws and for relevant departmental uniformity and consistency. (Second Level Review)

Discuss regulation language edits with Reg Counsel. (Second Level Review)

Discuss edits with B/B [may need to meet if edits extensive]. (Reg Counsel)

Finalize regulations and submit to Reg Counsel for final review. (B/B staff)

Concur text is ready for B/B consideration. (Reg Counsel)

If necessary, prepare board meeting materials. (B/B staff)

Review agenda item and board memos or item summaries for B/B meeting at which proposed regulation text is presented. (Reg Counsel)

Attend B/B meeting at which proposed regulation text is presented to B/B for vote and approval, and answer questions or concerns. (Reg Counsel)

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Note:

If suggestions are substantial from the Board Counsel, the Regulations Counsel may need to confer with Staff and Executive Officer or Bureau Chief.

Note:

Additional revisions
to the text may raise
new legal issues not
previously identified,
which may also alter
the review
timeframe.



Production Phase After Board/Bureau approves the regulatory text, begin preparing the regulation package for submission. (B/B Staff) Review and analyze text, ISOR, and documents incorporated by reference for fiscal and economic impacts and review Std. Form 399 draft. (Budget Analyst) Make necessary edits to the ISOR and Std. Form 399 and any other documents. (Budget Analyst) Review and make necessary edits directly to the Note: regulation package. (Reg Counsel) Regulations Counsel review will be completed within a 30-day Set meeting with Staff to present edits to documents and timeframe. discuss the questions identified from the review. (Reg Counsel) Finalize the regulation package with edits discussed, obtain approval from the Executive Officer or Bureau Chief, and submit to Regulations Counsel and Budget Analyst. (B/B Staff) Complete final review of the regulation package, working with Staff, until the package is complete. (Reg Counsel) Approve the package, initial the Std. Form 399, and forward the approved form to the Regulations Coordinator with a copy to Regulations Counsel. (Budget Analyst) Request Staff to submit final initial package to Regulations Coordinator. (Reg Counsel) Review regulation package for completeness and forward the package to the Director for review and approval. (Regulations Coordinator) Review and approve regulations package. (DCA Director) Upon Director approval, submit the regulation package to Agency. (Regulations Coordinator) Notify Regulations Coordinator of regulation package approval. (Agency) Notify B/B Staff of regulation package approval. (Regulations Coordinator)



Blue: Agency

Yellow: DCA Director Green: Regulations Coordinator

Red: Budget Analyst Orange: B/B Staff Gray: Reg Counsel

Initial Filing Phase

Green: Regulations Coordinator Orange: B/B Staff

Pink: OAL

Gray: Reg Counsel

Notify Staff of Agency approval and offer to electronically submit package to OAL for publication. (Regulations Coordinator)

Staff submitting package to OAL?

Submit package to OAL and copy Staff and Regulations Counsel on submission.

(Regulations Coordinator)

Note:

Regulations
Counsel and the
Second Level
Reviewer are
copied as
appropriate
throughout the
process.

Provide Form 400 and Agency's signed Std. Form 399 to Staff for submission.

(Regulations Coordinator)

Submit package to OAL and copy Regulations Coordinator on submission. (B/B Staff)

Publish rulemaking in Notice Register for 45-day comment period. (OAL)

Post the notice on B/B webpage on same day as publication. (B/B Staff)

Send email and U.S. Mail notices to the mailing list by OAL publishing date. (B/B Staff)

Adverse comments received:



Proceed to Final Filing Phase

Review comments, prepare recommended responses, and proposed modification to text, and forward to Regulations Counsel for review. (B/B Staff)

Review proposed responses to comments and any proposed modification to text, if any. Make necessary edits to documents and place questions regarding responses for B/B in comment fields. If necessary, seek Second Level Review of modified text. (Reg Counsel)

Provide approved responses and modified text, if necessary to Staff.

(Reg Counsel)

Note:

A hearing, if timely requested, must be scheduled (if a hearing is not already scheduled) and Staff shall arrange such hearing. Regulations Counsel shall attend the hearing.

Note:

Comments review
should take 15-30 days
depending upon the
number and
complexity of the
comments.

Note:

Board
commences any
15-day comment
period. Process
would repeat if
adverse
comments were
received, and
edits or
responses were

Schedule B/B meeting to approve the responses and, as needed, any modified text. (B/B Staff)

Attend any B/B meeting to address legal questions raised regarding comments or modified text, if any. (Reg Counsel)

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needed.

Blue: Agency Final Filing Phase Yellow: DCA Director Green: Regulations Coordinator Draft final regulatory package and submit completed **Red:** Budget Analyst package to Regulations Coordinator.(B/B Staff) **Orange: B/B Staff Gray: Reg Counsel Purple: Second Level Reviewer** Receive final package submission from Staff and forward to Pink: OAL Regulations Counsel and the Budget Analyst. (Regulations Coordinator) Review complete package, edit directly to the documents, and place any questions regarding the regulations for the Staff in the comments fields. (Reg Counsel) will be completed At the discretion of the Board/Bureau, set meeting with Staff to present edits to documents and discuss the questions identified from the review. (Reg Counsel) Make necessary edits and submit to Regulations Counsel. (B/B Staff) Review final package edits and forward package to the Second Level Reviewer (if necessary) and Budget Analyst. (Reg Counsel) Review package for completeness and Second Level Review Required? compliance with applicable laws. (Second Level Reviewer) Note: Confirm the Std. Form 399 is complete and consistent with As needed, return package to the FSOR and works with Regulations Counsel and Staff to Regulations update analyses if there are changes from the Initial Filing Counsel and Staff phase. (Budget Analyst) to address any leaal issues or edits. Forward to Regulations Coordinator to prepare and provide for Director review. (Reg Counsel) Prepare final package and provide it to the Director for approval. (Regulations Coordinator) Review and approve regulations package. (DCA Director) After Director approval, send package to Agency. (Regulations Coordinator) Notify Regulations Coordinator of approval. (Agency) Notify Staff and offer to electronically submit package to OAL for publication. (Regulations Coordinator) to pg. ²23 - 7

Note: Regulations

Counsel review

within a 30-day timeframe.

