

TITLE 16. CALIFORNIA BOARD OF BEHAVIORAL SCIENCES

INITIAL STATEMENT OF REASONS

Hearing Date: The Board of Behavioral Sciences (Board) has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Advertising

Sections Affected: Section 1811 of Division 18 of Title 16 of the California Code of Regulations (16 CCR)¹.

INTRODUCTION AND PROBLEM STATEMENT

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs) (Business and Professions Code (BPC) sections 4980 et seq.), Licensed Educational Psychologists (LEPs) (BPC sections 4989.10 et seq.), Licensed Clinical Social Workers (LCSWs) (BPC sections 4991 et seq.), and Licensed Professional Clinical Counselors (LPCCs) (BPC sections 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) (aka “registrant”).

The Board is responsible for licensing and discipline of the above professionals and enforcement of Chapters 13, 13.5, 13.7, 14 and 16 of Division 2 of the BPC which regulates the above professions as set forth in BPC sections 4990.2, 4990.12, and 4990.18. 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.

A statutory definition of “advertise” for each profession regulated by the Board is specified in BPC section 4980.03(e) (marriage and family therapists), BPC section 4989.49 (licensed educational psychologists), BPC section 4992.2 (licensed clinical social workers), and BPC section 4999.12(j) (licensed professional clinical counselors). These sections define “advertise” as including but not limited to any public communication as defined in BPC section 651, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. (Note that BPC § 4999.12(j) additionally includes “business solicitations communicated by radio or

¹ All CCR references are to Title 16 unless otherwise noted.

television broadcasting”). BPC section 651, which applies to the Board’s licensees in Division 2 of the BPC, prohibits false or misleading advertising and contains a definition of a false, fraudulent, misleading, or deceptive statement or claim.

Existing 16 CCR section 1811 sets forth requirements for information that must be specifically included in any advertising of services by the Board’s licensees and registrants in compliance with the Board’s statutory requirements, including their full name as filed with the Board, the complete title of the license or registration held or an acceptable abbreviation as specified, and the license or registration number. It also requires registrants to include their name of their employer or, if not employed, the entity for which they volunteer.

In addition to non-substantive changes to remove gendered pronouns, correct grammar and spelling, add paragraph numbering and correct capitalization, this proposal would amend 16 CCR section 1811 to remove references in the current advertising regulation to “registered referral service” and “Registered MFT referral service.” This is necessary as the Board no longer regulates these services due to the repeal of the Board’s authorizing statute per Senate Bill 1491 (Chapter 703, Statutes of 2018).

In addition to retaining the existing requirement for disclosing the name of their employer or the entity for which they volunteer, this proposal would require all registrants to include in any advertising that they are supervised by a licensed person. Currently, AMFT registrants are the only registrant type that must disclose “that they are supervised by a licensed person” in accordance with the requirements in BPC section 4980.44. To ensure adequate notice to the public of the fact that an associate must only practice “under supervision” (regardless of type) and greater consistency of standards among the professions, the Board proposes adding this same disclosure to the advertising regulations for all associate types, instead of just AMFTs.

The Board has received inquiries from licensees or registrants regarding the use of a “nickname” or former legal name in advertising. Currently, it is unclear whether it would be consistent with the laws enforced by the Board and the Board’s mandate to permit the use of a nickname or former legal name in an advertisement. This proposal would provide a balanced approach to this issue by permitting the use of a nickname or former legal name in an advertisement only if the full name as filed with the Board (as required by subsection (a) of this section) is also included in that advertisement. If a nickname is used, it also shall not be false, fraudulent, misleading or deceptive as specified in BPC section 651. The specific proposed changes to the Board’s advertising regulations and the reasons for those changes are provided in detail below.

ANTICIPATED BENEFITS OF THE REGULATIONS

The objectives of the amendments and anticipated benefits in this regulatory proposal are to provide for clarity and currency in the advertising regulations, increase public protection by requiring all registrants to include that they are supervised by a licensed professional in advertising, and resolve questions about the use of a former legal name or nickname in advertising while still maintaining public protection.

SPECIFIC CHANGES: PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT, OR REPEAL:

The Board proposes the following changes:

Proposed Amendments to Section 1811: Advertising

Subsections (a), (a)(1) and (a)(2)(F)

Purpose and Rationale: The amendments would repeal references to MFT referral services as the Board no longer regulates MFT referral services per Senate Bill 1491 (Chapter 703, Statutes of 2018). This change is necessary to avoid confusion in the regulated community and ensure consistency with the laws under the Board's jurisdiction. The Board would also strike a comma and add the word "or" for grammatical reasons to the sentence that is proposed to be amended in subsection (a)(1).

Subsection (a)(2)(D)

Purpose and Rationale: The proposed amendment capitalizes the first letter of each word in the existing title so that it reads "Registered Associate Marriage and Family Therapist", which must be used in advertisements for AMFTs when the abbreviation "AMFT" appears in the advertisement. This provides for consistency with the other spelled-out title options included in this section, which are capitalized.

Subsection (a)(2)(E)

Purpose and Rationale: The proposed amendment capitalizes the first letter of each word so that it reads "Registered Associate Clinical Social Worker" in the title that must be used in advertisements for ASWs when the abbreviation "ASW" appears in the advertisement. This provides for consistency with the other spelled-out title options included in this section, which are capitalized. In addition, the amendment corrects a spelling error changing "clincal" to "Clinical".

Subsection (a)(2)(G) renumbered to (a)(2)(F)

Purpose and Rationale: The proposed amendment would renumber this section for greater comprehension and organization after the removal of the existing paragraph (F) of this subsection as explained above.

Subsection (a)(2)(H) (renumbered to (a)(2)(G))

Purpose and Rationale: The proposed amendment capitalizes the first letter of each word in the existing registration title to read "Registered Associate Professional Clinical Counselor" that must be used in advertisements for APCCs when the abbreviation "APCC" appears in the advertisement. This provides for consistency with the other spelled-out title options included in this section, which are capitalized.

Subsection (b)

Purpose and Rationale: The proposed amendments would do the following for the reasons stated below:

- Replace gendered language “his or her” with gender-neutral language “their” to bring the regulations into compliance with Assembly Concurrent Resolution No. 260 of 2018 which specifies that state agencies should use gender neutral pronouns and avoid the use of gendered pronouns.
- Relocate the existing requirement for registrants to include the name of their employer, or if not employed, the name of the entity for which they volunteer to new paragraph (1). The Board proposes to retain this requirement for greater notice to the consumer of who to contact in the event of questions about the registrant and who they may contact in the event there are issues with the services provided. In the Board’s experience, this information also provides for consistency of access for the consumer to responsible parties as employer-employee relationships tend to be more static and supervisor-supervisee assignments may change more frequently (potentially before the advertising can be posted or corrected).
- Adds a requirement that registrants must comply with “both” requirements in this subsection to ensure greater comprehension and notice to the regulated community of the need for registrants to include “both” requirements in advertising to remain compliant with the Board’s regulations. It would also add a new paragraph (2) and requirement for a registrant to include “that they are supervised by a licensed person” in any advertisement. Currently, AMFTs are the only type of registrants who must state in their advertisements that they are supervised by a licensed person (BPC section 4980.44). Adding this requirement to the advertising regulations applies it to all types of registrants instead of just AMFTs. This provides notice to the public that the registrant is under supervision, which helps to avoid the impression that a registrant is an independent practitioner. It informs a potential or current client that there is a supervisor who they can contact if they have a concern. The Board acknowledges that there is duplication of BPC section 4980.44 that occurs in this regulatory proposal as it would apply to AMFTs who are already subject to this requirement. However, the Board finds that it is important for the convenience of the regulated community to restate all requirements in this one location, which contains the Board’s specific advertising requirements as they apply to all professions.

Subsection (g)

Purpose and Rationale: The proposed amendment would add subsection (g) which would allow a licensee or registrant to use a nickname or former legal name in advertising under specified conditions. The Board often receives inquiries from licensees and registrants about whether a nickname or formal legal name may be used in advertising as it is not addressed in current statute or regulation. The proposed change would resolve ambiguity by providing a clear guideline in that regard. This proposal also protects the public by specifying that use of a former legal name or

nickname is allowed only if all information in subsection (a) of this section is included in the advertisement, which requires the licensee or registrant to also include their name as filed with the Board. Including their name as filed with the Board ensures advertising is not false or misleading as to the identity of the advertised professional and their status with the Board in compliance with BPC section 651, enables the public to locate an individual's license or registration status online or file a complaint with the Board, and ensures the Board can identify the licensee should a complaint be received. The proposal also prohibits a nickname from being false, fraudulent, misleading, or deceptive, which is consistent with section 651 of the BPC. BPC section 651(a) makes it unlawful for any registrant or licensee to:

disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.

BPC section 651(b) then specifies what false, fraudulent, misleading, or deceptive means and under what conditions these statements would make the advertising noncompliant. These include, in part:

- (1) Contains a misrepresentation of fact.
- (2) Is likely to mislead or deceive because of a failure to disclose material facts*.
- (3)(A) Is intended or is likely to create false or unjustified expectations of favorable results. . . .

- (5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
 . .
- (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(Bus. & Prof. Code, BPC section 651.)

This ensures that the use of a nickname meets statutory requirements intended to protect the public from representations that can cause a wide range of harm, including erosion of trust in the profession, adverse impacts on mental health, and the undermining of the consumer's right to make an informed decision. These criteria in BPC section 651 are necessary to help inform the Board's decision regarding whether the use of the nickname would violate BPC section 651's prohibitions on false, fraudulent, misleading, or deceptive public communications and therefore grounds for

discipline by the Board. These criteria also help the Board meet its consumer protection objective of preventing licensees and registrants from providing false, fraudulent, deceptive or misleading information to the consumer about their identities, which, if permitted without condition, would prevent the consumer from understanding who is truly providing the services advertised. This adoption would ensure a balanced approach of allowing the use of nicknames while ensuring that consumers are not misled as to the licensee or registrant’s identity or qualifications based on the definition and criteria provided in BPC section 651.

In construing the meaning of “material facts”, the Board interprets the term “material facts” in BPC Section 651 as would be commonly understood to mean:

“Material:”

- (1) being an essential component, or,
- (2) being relevant to a subject under consideration,
specifically : being such as would affect or be taken into consideration by a reasonable person in acting or making a decision.

(Source: “Material.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/material>. Accessed 3 Dec. 2024.)

“Fact”: a piece of information presented as having objective reality.

(Source: “Fact.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/fact>. Accessed 3 Dec. 2024.)

As a result, the Board does not ascribe any unique meaning to these terms used in the definition and would rely on the commonly understood meaning of “material facts” in the implementation of this proposal.

Reference Section

Purpose and Rationale: The proposed amendment would strike BPC section 650.4 from the Reference section, as BPC section 650.4 was repealed in its entirety via Senate Bill 1491 (Chapter 703, Statutes of 2018), thereby ensuring currency in the Reference section of the regulation.

UNDERLYING DATA

Documents relied upon:

1. Policy and Advocacy Committee Meeting October 27, 2023: Agenda, Relevant Meeting Materials and Meeting Minutes
2. Policy and Advocacy Committee Meeting January 19, 2024: Agenda, Relevant Meeting Materials and Meeting Minutes

3. Policy and Advocacy Committee Meeting April 12, 2024: Agenda, Relevant Meeting Materials and Meeting Minutes
4. Board Meeting September 20, 2024: Agenda, Relevant Meeting Materials and Draft Meeting Minutes
5. Senate Bill 1491 (Stats. 2018, Ch. 703)

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the requirements for information included in an advertisement for licensees or registrants regulated by the Board who advertise their services and individuals in compliance with advertising statutes and regulations will not be affected by the proposed regulations. Permitting the use of a former legal name or nickname in advertising will not affect businesses because licensees or registrants will still be required to provide the full name of the licensee or registrant as filed with the Board along with the alias (nickname or former name) and not make any false, fraudulent, misleading, or deceptive statements, all of which are requirements of existing law and regulations.

ECONOMIC IMPACT ASSESSMENT

This Board has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California.
- It will not create new businesses or eliminate existing businesses within the State of California.
- It will not affect the expansion of businesses currently doing business within the State of California.

The above determinations were made for the following reasons: The proposed regulation simply sets out standards for advertising for individuals regulated by the Board. Individuals in compliance with the Board's advertising statutes and regulations will not be affected by the proposed regulations.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

This regulatory proposal affects the health and welfare of California residents because the proposed regulation ensures that all registrants state that they are supervised by a licensed person in any advertisements, thereby avoiding the impression that they are an independent practitioner and providing the ability for a current or potential client to contact the current supervisor with any concerns. The objectives of the amendments and anticipated benefits in this regulatory proposal are also to provide for clarity and currency in the advertising regulations, and to resolve questions about the use of a former legal name or nickname in advertising while still maintaining public protection.

This regulatory proposal does not affect worker safety because it does not relate to worker safety.

This regulatory proposal does not affect the state's environment because it is not related to the environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the laws being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.