

## TITLE 16 CALIFORNIA BOARD OF BEHAVIORAL SCIENCES

### NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:

#### Disciplinary Guidelines

**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 FEBRUARY 25, 2025**, 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 315, 315.2, 315.4, 495, 4980.60 and 4990.20 of the Business and Professions Code (BPC), and Section 11400.20 of the Government Code; and, and to implement, interpret, or make specific Sections 315, 315.2, 315.4, 480, 488, 495, 865.1, 865.2, 4982, 4989.54, 4992.3 and 4999.90 of the BPC, and Sections 11400.20, 11519, and 11425.50(e) of the Government Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (16 CCR) as follows:

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

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), and applicants pending registration.

The Board is responsible for licensing and discipline of the above professionals and enforcement of Chapters 13, 13.5, 14 and 16 of Division 2 of the BPC which regulates the above professions as set forth in BPC section 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. 16 CCR section 1888 requires the Board, in reaching a decision on a disciplinary action under the Administrative Procedure Act, to consider the Disciplinary Guidelines.

The Uniform Standards contained within the Board's Uniform Standards/Disciplinary Guidelines document is based on the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" that was developed in response to Senate Bill 1441 (Statutes of 2008, Chapter 548), which created the Substance Abuse Coordination Committee. The Committee formulated standards that healing arts Boards must use "in dealing with substance-abusing licensees". The Uniform Standards document was originally published in April 2010 and was most recently revised in March 2019, with those revisions published to DCA Boards in March 2021.

In order to better protect the public from licensees who have committed one or more violations of the BPC or the CCR, conform the Disciplinary Guidelines to recent statutory changes, and provide notice and up-to-date guidance to users of the Disciplinary Guidelines, the Board needs to revise its Disciplinary Guidelines. The current Disciplinary Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in December 2020. If the Guidelines are amended, the corresponding regulation, 16 CCR section 1888, must also be amended to incorporate by reference the revised Guidelines as revised and approved by the Board at its August 2023 meeting.

## **Proposed Amendments to the Uniform Standards/Disciplinary Guidelines**

### Section 1888

Amends 16 CCR section 1888 as follows:

- Incorporate by reference and update the “Quarterly Report Form” required to be submitted by probationers. This proposal would move the existing requirement for probationers to complete and submit quarterly reports using the prescribed form from the standard term of probation in the Guidelines document into the regulatory language of 16 CCR section 1888.
- Update the revision date of the Uniform Standards/Disciplinary Guidelines document incorporated by reference.
- Update the authority and reference note to add relevant code sections.
- Specify that a violation involving drugs and/or alcohol is “presumed to be” a substance abuse violation; and if the licensee does not “successfully” rebut the “presumption” that the violation is a substance abuse violation, then the Uniform Standards shall apply.

### Uniform Standards/Disciplinary Guidelines Document

Amends the Uniform Standards/Disciplinary Guidelines as follows:

- Update the revision date and table of contents.
- Amends the Introduction as follows:
  - Explain how the Model Disciplinary Orders section is organized and how the section is to be applied.
  - Specify that all disciplinary actions will be published on the Internet by law, as specified.
  - Add a note that all references to the terms “license” or “licensee” throughout the document shall also be interpreted as meaning “registration” or “registrant” unless otherwise specified.
- Change “controlled substance” to “drugs” throughout.
- Makes non-substantive changes throughout, including grammatical and capitalization changes, providing abbreviations to be used throughout the document along with other readability improvements such as adding bullets, and changing to gender-neutral pronouns.

### Uniform Standards

- Change substance “abuse” disorder or disorders to substance “use” disorder or disorders throughout.
- Add an introduction to the Uniform Standards that clarifies the process for determining whether a licensee is “a substance abusing licensee”, including the following:

- Specify that the Uniform Standards shall be used in lieu of any similar standard or optional terms and conditions of probation unless otherwise specified (in accordance with BPC section 315), but that the standard and optional terms of probation should still be used in formulating the penalty or probationary order in addition to those listed in the Uniform Standards when appropriate for greater public protection.
  - Specify that if a violation involves drugs and/or alcohol, then the violation is “presumed to be” a substance abuse violation.
  - Specify that if the licensee does not “successfully” rebut the “presumption” that the violation is a substance abuse violation, then the Uniform Standards shall apply, as well as the converse (if the licensee does successfully rebut the finding then the Uniform Standards do not have to be used).
  - Make changes to the paragraph below the subheading titled “Uniform Standards for Licensees or Registrants Whose License or Registration is on Probation due to a Substance Abuse Violation” to specify that the Uniform Standards apply when a license is placed on probation “in whole or” in part due to a substance abuse violation, and to clarify that if the licensee “successfully” rebuts “the presumption that” the violation is a substance abuse violation, then the Uniform Standards do not apply.
- Amend the “Clinical Diagnostic Evaluations” and “Clinical Diagnostic Evaluation Reports” sections to specify that practice restrictions apply to each licensee who “is ordered to” undergo a clinical diagnostic evaluation; specify that the evaluator shall not have a “current or prior” financial, personal, business, professional, “or therapeutic” relationship with the licensee; and clarifies that a final written report shall be provided to the Board no later than 10 “calendar” days from the date the evaluator is assigned the evaluation.
  - Amend the “Supervisor Requirements” and “Chemical Dependency Support or Recovery Group Meetings” sections to prohibit a supervisor or a group meeting facilitator from having a current or former “therapeutic” relationship with the licensee.
  - Amend the “Chemical Dependency Support or Recovery Group Meetings” section to make a correction changing “Be licensed or certified by the state or ~~other~~ a nationally certified organizations”.
  - Amend the “Major and Minor Violations” section to make a correction to clarify that an unexcused “absence” (rather than unexcused “attendance”) at a required meeting is a minor violation.
  - Amend the “Positive Test for Alcohol and/or a Controlled Substance and Drug Testing Standards” section to specify that prior to vacation or absence, “any” alternative to the licensee’s drug testing ~~location(s)~~ requirements (including frequency) must be approved by the Board, and clarify that test results must be provided within 7 “calendar” days of receipt of the specimen.
  - Amend the “Drug Testing Frequency Schedule and Exceptions” section as follows:

- *Licensee Demonstrates Previous Testing and Sobriety:* Clarify that if the licensee can demonstrate previous testing and sobriety, the Board may consider altering the testing frequency schedule so that it is “equivalent to the standard schedule prescribed above”.
- *Violations Outside of Employment:* Add a number in parentheses (7).
- *Not Employed in Health Care Field:* Clarify that the time frames pertaining to Level I testing frequency is at least 60 “calendar” days after return from a period of not working in a health care field.
- *Tolling:* Specify that the licensee shall notify the Board upon their return to “practice in” California, and specify that tolling of probation will not be postponed when either a positive test result is received, or the person’s license has been suspended.
- *Substance Use Disorder Not Diagnosed:* Change “toxicology screening” to “drug testing” and change “period” to “frequency.”
- *Licensed Supervision During Practice:* Allow the Board to reduce testing frequency to a minimum of 24 times per year if the practicing licensee receives a minimum 50% supervision per day by a licensed supervisor.

## Section II: Penalty Guidelines

- Strike the word “actual” after “suspension” throughout the Penalty Guidelines chart.
- Strike “if warranted” / “and if warranted” throughout the Penalty Guidelines chart.
- Change “Education” to “Education Pertaining to the Violation” throughout the Penalty Guidelines chart.
- Amend the “Introduction to Penalty Guidelines” section as follows:
  - Clarify that the Penalty Guidelines provide information regarding violations (rather than “attempt” to provide information).
  - Clarify that the Penalty Guidelines provide the range of “appropriate” penalties for each violation.
  - Inform the reader that minimum and maximum penalty considerations are listed for each violation category.
  - Describe how each penalty listed corresponds with a description of the penalty in the following chapter, with the exception of revocation.
  - Explain that the recommended terms and conditions of probation are divided into two general categories.
  - Strike language that says “Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations.”
  - Explain that optional conditions listed under a violation category should be “considered and” imposed where appropriate “depending on the nature and circumstances of a particular case”.
- Amend the Penalty chart as follows:

- For each violation category listed on page 16, strike the word “Minimum” from the third column’s header and remove the “Maximum Penalty” column in its entirety.
- Add a note to the “Minimum Penalty” column throughout the Penalty chart that says, “See Introduction to Penalty Guidelines on page 15 before selecting penalties”.
- Amend legal references under the Statutes and Regulations column.
- Change “MFT” to “LMFT” throughout.
- Add the LPCC license type where it was previously omitted.
- Move “Standard terms and conditions” throughout the Penalty chart to combine it with the bullet and text that specifies probation and its length.
- Add “Law and Ethics Course” to the Minimum Penalty column in each place that it does not currently appear, and add it to the Maximum penalty column for the violations “Improper Supervision of Trainee / Intern / Associate / Supervisee”, “Failure to Disclose Fees in Advance”, “False / Misleading / Deceptive / Improper Advertising”, “Failure to Keep Records Consistent with Sound Clinical Judgment”, “Willful Violation of Chapter 1 (Commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code (Client Access to Records)”, and “Failure to Comply with Section 2290.5 (Telehealth)”.
- Strike “and if warranted” in each place that it appears.
- Change “exams”, “examinations”, and “examination” to “examination(s)”.
- Add a reference to Penal Code (PC) section 287 within the Violation Category column for the violation category “Engaging in Act with a Minor Punishable as a Sexually Related Crime... or Engaging in an Act Described in Section...of the Penal Code”.
- Add a violation category for engaging in sexual orientation change efforts (SOCE) with a minor client and specify that SOCE shall be considered unprofessional conduct and subject a mental health provider to discipline.
- Amend the Minimum Penalty column for the violation category “Sexual Misconduct (Anything other than as defined in B&P Section 729)” to reduce the minimum length of suspension from 120 days to 60 days; strike “Take and pass licensure examinations as a condition precedent to resumption of practice”; add “costs” after “Reimbursement of probation program”; change “enter and complete a rehabilitation program approved by the Board” to “Rehabilitation program”; change “controlled substances/use of alcohol” to “drugs and alcohol”; and strike “reimbursement of probation program costs”.
- Amend the Maximum Penalty column for the violation category “Sexual Misconduct (Anything other than as defined in B&P Section 729)” to add a reference to B&P 4990.40 and strike “The Board considers this reprehensible offense to warrant revocation/denial.”
- Amend the Minimum Penalty column for the violation category “Commission of an Act Punishable as a Sexually Related Crime” to reduce the minimum length of suspension from 120 days to 60 days.

- Amend the Minimum Penalty column for the violation category “Impaired Ability to Function Safely due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency” as follows: under “Chemical Dependency”, change “abstain from controlled substances/use of alcohol” to “Abstain from drugs and alcohol” and move this phrase to the top of the list; change “Random drug and alcohol testing” to “submit to drug and alcohol testing”; and change “therapy” to “psychotherapy”.
- Amend the Minimum Penalty column for the violation category “Chemical Dependency or Use of Drugs or Alcohol With Client While Performing Services” to modify the title of the category to clarify that it pertains to chemical dependency “or” use of drugs “or alcohol” with client while performing services; reduce the minimum length of suspension from 120 days to 60 days; change “Random drug and alcohol testing” to “Submit to drug and alcohol testing”; strike “Supervised practice”; change “controlled substances/use of alcohol” to “drugs and alcohol”; and add “Attend recovery support program”.
- Amend the Minimum Penalty column for the violation category “Intentionally / Recklessly Causing Physical or Emotional Harm to Client” to reduce the minimum length of suspension from 90 days to 60 days.
- Amend the Minimum Penalty column for the violation category “Gross Negligence / Incompetence” to add “Attend recovery support program” and change “controlled substances/use of alcohol” to “drugs and alcohol”.
- Amend the Minimum Penalty column for the violation category “General Unprofessional Conduct” to add “costs” after “Reimbursement of probation program”; change “controlled substances/use of alcohol” to “drugs and alcohol”; and add “Attend recovery support program”.
- Amend the Minimum Penalty column for the violation category “Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee” to strike “(Costs and conditions of probation depend on the nature of the criminal offense)”; add “In addition” as a heading for sections that specify additional terms and conditions for certain specific types of violations within this category; strike the word “Add:” that precedes the terms for each of these violation categories; change “Random drug and alcohol testing” to “Submit to drug and alcohol testing”; change “controlled substances/use of alcohol” to “drugs and alcohol”; and add “Attend recovery support program”.
- Amend the title in the Violation Category column for “Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence”, changing “Able” to “Ability” and “Intern” to “Associate”.
- Amend the Minimum Penalty column for the violation category “Discipline by Another State or Governmental Agency” by striking “And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.”
- Amend the Minimum Penalty column for the violation category “Impersonating Licensee / Allowing Impersonation” by adding “Supervised practice”.

- Amend the Minimum and Maximum Penalty columns for the violation category “Improper Supervision of Trainee / Intern / Associate / Supervisee” by moving “Revocation stayed” and “30-90 days actual suspension” from the Minimum Penalty column to the Maximum Penalty column; strike “and if warranted: supervised practice” from the Minimum Penalty column; and, in the Maximum Penalty Column, strike “Revocation / Denial of license or registration” and “Cost recovery” and add all of the following: “Revocation stayed, 30-90 days suspension, 2 years probation; Standard terms and conditions, Education pertaining to the violation, Law and ethics course, Cost recovery, Reimbursement of probation program costs, Supervised practice.”
- Amend the Minimum Penalty column for the violation category “Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board” by splitting it out from a penalty it was previously combined with, modifying the title of this section, striking “Registration on probation until exams are passed and license issued”, striking “License issued on probation for one year”, striking “Rejection of all illegally acquired hours”, and adding “3-5 years probation.”
- Amend the Minimum Penalty column for the violation category “Violations Involving Acquisition and Supervision of Required Hours of Experience” by splitting it out from a penalty it was previously combined with, modifying the title of this section, striking “Registration on probation until exams are passed and license issued”, striking “License issued on probation for one year”, adding “3-5 years probation” and adding supervised practice.
- Amend the Violation Category title for “Willful Violation of Chapter 1” by adding “(Client Access to Records)”.
- Add the following violations to the Penalty Guidelines: “Failure to provide records to the Board within 15 days of receipt”; “Failure to cooperate and participate in a pending Board investigation”; “Failure to report to the Board within 30 days a felony or misdemeanor conviction or any disciplinary action taken by another licensing entity or government authority”; and “Failure to comply with a court order mandating release of records to the Board”.
  - Specify the Minimum Penalty for any of these violations to include all of the following: “Revocation stayed; 60-90 days suspension; 3-5 years probation; Standard terms and conditions; Education pertaining to the violation; Law and ethics course; Cost recovery; Reimbursement of probation program costs. Specifies the Maximum Penalty for each of these violations as “Revocation / Denial of license; Cost recovery”.

### Section III: Model Disciplinary Orders

- Modify the introductory page to the Model Disciplinary Orders section, including restructuring the introductory paragraphs, and adding a note specifying that the term “designee” refers to the Board’s Executive Officer, Assistant Executive Officer, Enforcement Program Manager, and Probation Monitor(s). In addition, the list of Optional Terms and Conditions of Probation have been modified to



reflect the new section titles of several terms and conditions; to add Recovery Support Program term and condition; and to renumber the items.

- Amend the optional term and condition of probation “Suspension”, changing the title of this section from “Actual Suspension” to “Suspension”; specify that the suspension period is in “calendar” days; and strike the requirement that a licensee who has been suspended be required to complete the required licensure examinations as a condition precedent to resumption of practice.
- Amend the optional terms and conditions of probation for the sections “Clinical Diagnostic Evaluation; Psychological / Psychiatric Evaluation; Psychotherapy; Supervised Practice” to do the following:
  - Prohibit the use of licensees as an evaluator, psychotherapist or supervisor of a probationer from serving in such a role in the following situations: The licensee has or had a financial, personal, business, professional, or therapeutic relationship with the probationer; or, the licensee has been the subject of a disciplinary action against their license.
  - Define “disciplinary action” as the license having been placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned.
  - Require a licensed physician and surgeon serving in any of these roles to be certified in psychiatry by the American Board of Psychiatry and Neurology (ABPN).
- Amend the optional term and condition of probation “Psychological / Psychiatric Evaluation” as follows:
  - Specify that the time frame for undergoing an evaluation is in “calendar” days.
  - Clarify that the probationer must “undergo” (instead of “complete”) an evaluation.
  - Clarify that the Board or its designee “approves” (instead of “appoints”) the evaluator.
  - Specify required criteria for evaluators including holding a current, active, and unrestricted license as a Psychologist or Physician and Surgeon issued by the licensee’s respective California state Board, and possessing a minimum of two years of experience performing psychological or psychiatric evaluations.
  - Require the probationer to submit to the Board or its designee for prior approval a written request by mail or email that includes the name and qualifications of one or more proposed evaluators.
  - Specify that the written request shall include the proposed evaluator’s license type, license number and a statement describing how the criteria for Board approval is met.
  - Specify that failure to pay for the “evaluation” (instead of “report”) “within the time frame specified by the evaluator” (instead of “in a timely fashion”) constitutes a violation of probation.

- Specify that the report shall include an evaluation of the probationer's ability to "practice" (instead of ability to "function independently").
- Specify that the Respondent shall "sign" (rather than "execute") a Release of Information.
- Specify that the Release of Information shall authorize the evaluator to communicate with the Board; to furnish the Board with a current diagnosis; and to furnish the Board with a written report regarding Respondent's judgment and ability to practice safely.
- Require the Respondent to provide the evaluator with a copy of the Board's Decision prior to the evaluation.
- Add a subheading "Additional Conditions When Supervision is Recommended by the Evaluator".
- Specify that if supervised practice is indicated by the evaluation, the Respondent shall submit in writing to the Board, within 30 calendar days of being notified by the Board, the name and qualifications of one or more proposed supervisors and plans for supervision.
- Specify what the request for approval of a proposed supervisor and the plan for supervision must contain.
- Specify the criteria for board approval of a proposed supervisor.
- Specify that if a supervisor has not been approved within 45 calendar days of submission of the request for approval, Respondent shall cease practice until a supervisor has been approved.
- Require the supervisor to submit quarterly written reports.
- Require the probationer to sign a Release of Information authorizing the supervisor to communicate with the Board, and to sign an agreement with the supervisor and the Board pertaining to requirements and reporting responsibilities.
- Specify that failure to file the required reports within the time frames is a violation of probation.
- Require the probationer to give the supervisor access to their fiscal and client records.
- Require supervision to consist of at least one (1) hour per week in individual face to face meetings.
- Specify that all costs of supervision shall be borne by Respondent.
- Specify that supervision obtained from a probation supervisor shall not be accepted by the Board as experience gained toward licensure.
- Specify the steps that must be taken if the supervisor is no longer available.
- Require the probationer to stop practicing if a new supervisor is not approved by the Board or its designee within 20 calendar days of the date the supervisor is no longer available and until a new supervisor has been

- approved; and, if the probationer fails to cease practice in this situation it constitutes a probation violation.
- Specify that if the probationer fails to submit a proposed new supervisor and plan for supervision as required that it constitutes a probation violation.
  - Strikes the “FYI” regarding Board requirements for appointment of qualified evaluators.
- Amend the optional term and condition of probation “Psychotherapy” as follows:
- Change “therapy” and “counseling” to “psychotherapy” throughout the section.
  - Change “therapist” and “psychotherapist” to “California licensed mental health professional” or “mental health professional” throughout the section.
  - Add “according to the requirements of this section” to the first sentence.
  - Increase the time frame for a Respondent to propose a psychotherapist from 15 days to 30 calendar days.
  - Clarify that the probationer must submit proposed psychotherapists to the Board in writing by mail or email.
  - Specify that the written request shall include the proposed psychotherapist’s license type, license number and a statement describing how they meet the criteria for Board approval.
  - Specify that the psychotherapist must hold a current, active, and unrestricted license or registration issued by a California state licensing Board as a LMFT, LCSW, LPCC, Psychologist or Physician and Surgeon certified in psychiatry by the ABPN.
  - Clarify that psychotherapy shall be provided on an individual basis upon approval.
  - Specify that, in addition to the Board, the Board’s designee may determine whether to deviate from the requirement that the probationer participate in psychotherapy on an individual basis at least once a week.
  - Strike the paragraph that requires the probationer to receive the Board’s written permission to receive therapy via videoconferencing after good faith efforts to secure in-person counseling are unsuccessful.
  - Specify that the Respondent shall “sign” (rather than “execute”) a Release of Information.
  - Specify that the Release of Information shall authorize the psychotherapist to communicate with the Board, rather than “divulge information to” the Board.
  - Require the Respondent to provide the psychotherapist with a copy of the Board’s Decision prior to the first psychotherapy session.
  - Strike the “FYI” regarding Board requirements for appointment of qualified psychotherapists.
- Amend the optional term and condition of probation “Clinical Diagnostic Evaluation” as follows:

- Increase the time frame for undergoing such evaluation from within “20 days” to within “30 calendar days” of the effective date of the Decision, and add an alternative that allows the evaluation to take place “within 30 calendar days of the date of the written order” by the Board “or its designee”.
- Specify that the Board or its designee must approve the evaluator according to the requirements specified in the section.
- Require the probationer to submit to the Board or its designee for prior approval a request by mail or email that includes the name and qualifications of one or more proposed evaluators.
- Specify that the request shall include the proposed evaluator’s license type, license number and a statement describing how they meet the criteria for approval.
- Specify that an evaluator must hold a current, active, and unrestricted license as a Psychologist or Physician and Surgeon issued by the licensee’s California state Board, and must possess a minimum of three years of experience performing clinical diagnostic evaluations of health professionals with substance use disorders.
- Require the clinical diagnostic evaluation report to set forth, in the evaluator’s opinion, whether Respondent has a substance use disorder, whether Respondent is a threat to self or others, and recommendations for Respondent’s substance use disorder treatment, practice, practice restrictions, or other recommendations related to Respondent’s rehabilitation and safe practice.
- Specify that failure to pay for the evaluation within the time frame specified by the evaluator constitutes a violation of probation.
- Require the Respondent to sign a Release of Information authorizing the evaluator to communicate with the Board and to furnish the Board with a current diagnosis and written report regarding Respondent’s judgment and ability to practice safely.
- Require the Respondent to immediately cease practice for 30 calendar days pending the results of the evaluation, and strike the requirement that their license be automatically suspended for one month.
- Add “and alcohol” to “drug testing”.
- Strike the requirement that “Respondent shall cause” the evaluator to submit the report, and instead specify that the evaluator shall submit the report to the Board or its designee.
- Require the report to be submitted within 10 “calendar” days from the date the evaluation was completed, unless an extension, not to exceed 30 “calendar” days is granted.
- Specify that the Board or its designee may issue an extension for submission of the evaluation for good cause upon written request from the evaluator.
- Specifies that the request for extension must be mailed or emailed to the

- Board prior to the expiration of the 30-day period.
- Specifies when an extension is granted, the written report shall be sent to the Board prior to the expiration date of the 30-day extension period.
  - Defines “good cause” as including the inability to complete the evaluation in the time allowed due to the evaluator’s or Respondent’s personal or family illness or disability, or due to the evaluator’s workload, if applicable.
- Amend the optional term and condition of probation “Supervised Practice” as follows:
- Specify that a request for approval of a proposed supervisor and plan for supervision must be submitted within 30 “calendar” days of the effective date of the Decision.
  - Require the Respondent to submit a request for approval of a proposed supervisor by mail or email.
  - Specify that the request shall include a plan “for supervision” by each “proposed” supervisor, and specify that the supervision plan must describe how the supervisor and supervisee will meet the requirements of the section, including frequency, duration and type of supervision.
  - Specify that the request shall include the proposed supervisor’s license type, license number and a statement describing how the supervisor meets the criteria for Board approval.
  - Specify the following criteria for supervisors:
    - Holds a current, active, and unrestricted California license to practice psychotherapy or psychological counseling;
    - Specifies that a registration is not a license for purposes of this section;
    - Has practiced for at least two years immediately preceding any supervision in California or any other state as a LPCC, LMFT, LCSW, LEP, licensed psychologist, licensed physician and surgeon who is certified in psychiatry by the ABPN; or equivalent out-of-state license; and
    - Has provided psychotherapy or psychological counseling, or has provided direct clinical supervision of psychotherapy performed by marriage and family therapist trainees, AMFTs, APCCs, or ASWs, for at least two years within the five-year period immediately preceding any supervision.
  - Specify that if a supervisor has not been approved within 45 calendar days of the effective date of the Decision, the Respondent shall cease practice until a supervisor has been approved by the Board or its designee.
  - Strike the requirement that the supervisor be “independent.”
  - Strike the options that may be considered by the Board when a Respondent is unable to secure a supervisor (receiving supervision via videoconferencing or permitting Respondent to secure a supervisor not in the Respondent’s field of practice), and strike the requirement for those options to be considered and exhausted by the Board. Also strike the provision that allows the Board to

require the Respondent provide written documentation of their good faith attempts to secure face-to-face supervision, supervision via videoconferencing, or to locate a professional that is licensed in the Respondent's field of practice.

- Require the Respondent to sign a Release of Information authorizing the supervisor to communicate with the Board (instead of “completing any required consent forms”).
- Specify that failure to file the required quarterly written reports “within the time frames specified by the Board” (instead of “in a timely fashion”) is a violation of probation.
- Clarify that supervision obtained from a probation supervisor shall not be “accepted by the Board” (instead of “used”) as experience toward licensure.
- Specify the following provisions that are applicable when the supervisor is no longer available:
  - Reduces the time frame for the Respondent to notify the Board from 15 days to 10 calendar days when the supervisor is no longer available;
  - Requires the Respondent to submit by mail or email for approval by the Board “or its designee” the name and qualifications of one or more proposed new supervisors, and a plan for supervision by each supervisor;
  - Prohibits the Respondent from practicing if a new supervisor has not been approved within 20 calendar days of the date the supervisor is no longer available, until a new supervisor has been approved; and,
  - Specifies that it constitutes a violation of probation for a Respondent to fail to submit a new supervisor for approval and plan for supervision, or for the probationer to fail to cease practice in accordance with the section when there is no supervisor approved.
- Strike the optional condition that would prohibit the Respondent from practicing until they have received notification that the Board has approved Respondent's supervisor.
- Amend the optional term and condition of probation “Education” as follows:
  - Change the section title from “Education” to “Education Pertaining to the Violation”.
  - Strike “the equivalency of” and “semester units” and, replace with “hours of Board-approved coursework”.
  - Strike the requirement that coursework be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor.
  - Specify that each course selected by Respondent must be approved by the Board prior to completion as provided in the section.
  - Strike the classroom attendance requirement.

- Require courses to be completed within 18 months (instead of one year) from the effective date of the Decision.
- Specify that the education plan must be submitted “in writing by mail or email” within 90 “calendar” days.
- Allow courses to be approved by the Board’s designee.
- Specify that all courses must be selected from a Board-accepted continuing education (CE) provider as specified in 16 CCR section 1887.4.3.
- Require the plan, for each proposed course, to include the name of the course provider; a copy of the course outline or syllabus containing the title of the educational program, the length, an outline of subject matter, and instructional mode or methods. Provide examples of instructional mode or methods including in-person, or online (live and interactive or asynchronous).
- Change “course work” to “coursework”, and change “used” to “accepted by the Board” (in the sentence that prohibits counting units obtained toward continuing education required for renewal).
- Strike the FYI that specifies this term is appropriate when the violation is related to record keeping, and add a definition of applicable types of records.
- Amend the optional term and condition of probation “Take and Pass Licensure Examinations”, changing the words “examination” and “examinations” to “examination(s)”.
- Add a new optional term of probation “Attend Recovery Support Program”, which specifies the following:
  - Require the Respondent, within 30 calendar days of the effective date of the Decision, to begin attending a recovery support program approved by the Board or its designee no less than (specified frequency) times per week.
  - Require the Respondent to submit via mail or email to the Board or its designee for prior approval the name of one or more recovery support programs, and information about the program that includes the location, and the program’s elements and methods for providing recovery support services.
  - Require the Respondent to provide proof of attendance with each Quarterly Report.
  - Specify that failure to attend as required, or to show proof of attendance consisting of copies of attendance sheets from the recovery support program provider, or other document prepared by the recovery support group provider verifying Respondent’s attendance, constitutes a violation of probation.
  - Require the Board to consider the documented length of sobriety / time that has elapsed since substance use, the licensee’s treatment history, and the nature, duration and severity of substance use when determining the type and frequency of required program attendance:
- Amend the optional term and condition of probation “Rehabilitation Program” as follows:

- Specify that the Respondent shall “enter and begin attending a Board-approved rehabilitation program in accordance with this section” within 15 “calendar” days after the date of written notification of the Board’s approval of the program.
- Strike “and monitoring” after “rehabilitation” in two places.
- Specify that the Respondent shall enter a program within 15 “calendar” days after “the date of written” notification of Board’s program approval.
- Specify that the release signed by the Respondent shall allow the program to “communicate with” the Board.
- Add “components” to the end of the sentence describing components of the treatment contract.
- Combine two nearly identical optional terms and conditions of probation: “Abstain from Controlled Substances / Submit to Drug and Alcohol Testing” and “Abstain from Use of Alcohol / Submit to Drug and Alcohol Testing” into one term titled, “Abstain from Use of Drugs and Alcohol / Submit to Drug and Alcohol Testing”. Additional changes are as follows:
  - Specify that the probationer shall completely abstain from the “consumption” of controlled or illegal substances “and alcohol during the period of probation”.
  - Specify that “a controlled substance” lawfully prescribed by a medical practitioner for a bona-fide illness “or other medical condition” is exempt from the abstention requirement.
  - Clarify that any confirmed positive finding will be immediately reported to the “Respondent’s” supervisor.
  - In the third paragraph, add “or illegal” substance “or alcohol”.
  - Specify that the probationer shall “take the” drug test rather than “submit” their drug test.
- Amends the optional terms and conditions of probation under the Restricted Practice, Restitution, Physical Evaluation, and Change of Place of Employment or Place of Residence sections to clarify that the specified time frames for certain actions to be taken are in “calendar” days.
- Amends the optional term and condition of probation “Monitor Billing System” as follows:
  - Changes the title of the section to “Billing Monitor” and change references to “billing system monitoring service” to “billing monitor” throughout the section.
  - Strike the requirement that the probationer submit for approval to the Board the name(s) of billing monitor(s) within 15 days of the effective date of the Decision, and strike the requirement that the probationer obtain the services of a billing monitor within 15 days of the Board’s approval of such program; instead, require the probationer to obtain the services of a Board-approved independent billing monitor in accordance with this section within 30 calendar days from the effective date of the decision.



- Specify that if the Respondent is a registrant, they shall instead obtain the services of a billing monitor within 30 calendar days of the issuance of their license.
- Require the probationer to submit in writing by mail or email to the Board the name(s) of billing monitor(s) for approval.
- Specify that the billing monitor shall oversee Respondent’s billing processes in accordance with the Decision and all requirements of the section.
- Set the criteria for Board approval of a proposed billing monitor.
- Clarify that clients “shall” (rather than “are to”) sign documentation stating dates and times of services rendered.
- Specify that failure to pay for billing monitoring within the time frame specified by the billing monitor is a violation of probation.
- Specify the steps that must be taken if the billing monitor is no longer available.
- Amend the optional term and condition of probation “Monitor Billing System Audit” as follows:
  - Change the title of the section to “Billing Auditor” and references to “billing system auditor” to “billing auditor”.
- Specify that the probationer shall provide to the Board or its designee “in writing by mail or email” for prior approval the names and qualifications of one or more “billing” auditors within 60 “calendar” days of the effective date of the Decision, and specify that failure to pay for the audits “within the time frame specified by the billing auditor” shall constitute a violation of probation.
- Specify the criteria for approval of a billing auditor.
- Amend the optional term and condition of probation “Law and Ethics Course” as follows:
  - Add equivalent units and hours three quarter units (30 hours) after “two semester units”.
  - Strike the requirement that coursework be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor.
  - Specify that each course selected by Respondent must be approved by the Board prior to completion as provided in the section.
  - Strike the classroom attendance requirement.
  - Require courses to be completed within 18 months (instead of one year) from the effective date of the Decision.
  - Specify that the education plan must be submitted “in writing by mail or email” within 90 “calendar” days.
  - Allow courses to be approved by the Board’s designee.

- Specify that all courses must be selected from a Board-accepted continuing education (CE) provider as specified in 16 CCR section 1887.4.3.
  - Require the plan, for each proposed course, to include the name of the course provider; a copy of the course outline or syllabus containing the title of the educational program, the length, an outline of subject matter, and instructional mode or methods. Provide examples of instructional mode or methods including in-person, or online (live and interactive or asynchronous).
  - Change “used” to “accepted by the Board” (in the sentence that prohibits counting units obtained toward continuing education required for renewal).
  - Strike the FYI that specifies this term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions.
- Amend the introduction to the “Standard Terms and Conditions of Probation” section to reduce the number of terms and conditions referenced in the introductory sentence from sixteen to fifteen, remove “Notification to Referral Services” from the table of contents, and .amend section titles to conform with proposed changes to those sections.
  - Amend the standard term and condition of probation “Obey All Laws” as follows:
    - Require the probationer to submit fingerprints within 30 “calendar” days of the effective date of the Decision.
    - Specify that the probationer is not required to submit fingerprints if the “fingerprints are currently on file with the Board and Respondent has not been provided with written notice from the Board of the need to submit fingerprints in accordance with Title 16, California Code of Regulations section 1815”, instead of if the fingerprints were “previously submitted as part of the licensure application process”.
    - Define that fingerprints “on file” means the Board has received notice from the Department of Justice (DOJ) that the probationer has successfully transmitted their fingerprint images to the DOJ for the conduct of a state and federal criminal offender record information (CORI) search required by section 1815 and the Board currently has access to Respondent’s CORI in the DOJ’s database.
  - Amend the standard term and condition of probation “File Quarterly Reports” by striking “as scheduled” and replacing it with “according to the reporting schedule specified in the Quarterly Report Form”; by striking “Notwithstanding any provision for tolling of requirements of probation” from the sentence specifying that quarterly reports must continue to be submitted during the cessation of “any” practice.
  - Amend the standard term and condition of probation “Failure to Practice” as follows:

- Add “Tolling” to the title of this section and define “tolled” by specifying that probation is tolled when Respondent voluntarily stops practicing or residing in California.
- Specify that probation shall not be tolled if Respondent’s license has been suspended by the Board.
- Require the probationer to notify the Board or its designee in writing “by mail or email a minimum of” (instead of “within”) 30 calendar days prior to the dates of “departure and return to California, or the dates of” non-practice and return to practice.
- Clarify that the code sections referenced in the last sentence of the first paragraph are “as applicable”.
- Strike the text that exempts probationers from complying with certain probation terms and conditions during any period of non-practice, and instead specify that any period of non-practice will “not” relieve the probationer of the responsibility to comply with (all) probationary terms and conditions.
- Strike the requirement that the probationer’s license/registration shall be automatically cancelled if the period of non-practice totals two years.
- Specify that the probationer shall not be relieved of the obligation to maintain an active and current license with the Board (see “Maintain Valid License” term).
- Specify that it shall be a violation of probation for probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of two years.
- Amend the standard term and condition of probation “Notification to Clients” by striking the FYI stating that Respondents should seek guidance from Board staff regarding appropriate application of this condition.
- Amend the standard term and condition of probation “Notification to Employer” as follows:
  - Specify that the probationer shall provide each of their current or future employers, “including any client or third-party for whom Respondent performs or will perform contracted-for services (“contract employer”)”, with a copy of their Decision and Statement of Issues or Accusation before commencing employment.
  - Require the probationer to provide “in writing by mail or email” to the Board the names, physical addresses, and telephone numbers for all employers, supervisors, and contract employers.
  - Change “contractors” and “contractor” to “contract employer”; and, add “contract employer” to the list of employers that the probationer must sign a consent form and agreement with to allow communication with the Board regarding the licensee’s work status, performance, and monitoring.
- Amend the standard term and condition of probation “Violation of Probation” by describing the process the Board uses when probation has been violated and the

Board seeks to revoke or suspend the license, which is “by filing and serving on Respondent an Accusation and/or Petition to Revoke Probation”, and to clarify that “if the Board has requested the AG’s office to prepare an Accusation, or Petition to Revoke Probation, or Statement of Issues, that the probation period shall be automatically extended in the circumstances described in the section.

- Amend the standard term and condition of probation “License Surrender” by requiring a request for license surrender to be submitted in writing by mail or email within 30 calendar days to the Board and require the request to include the following: Respondent’s name, license number, case number, address of record, and an explanation of the reason(s) why Respondent seeks to surrender their license. The amendment also replaces “license” certificate with “renewal” certificate.
- Strike the entire standard term and condition of probation “Notification to Referral Services”.
- Amend the standard term and condition of probation “Reimbursement of Probation Program” by specifying that probationers shall reimburse the Board for costs of probation monitoring at \$100 per month for a total of \$1,200 per year.
- Amend the standard term and condition of probation “Cost Recovery” as follows:
  - Instead of requiring that a cost recovery payment plan be incorporated into the text of this term, it instead includes a statement that the Respondent shall make payments pursuant to a payment plan outlined by the Board.
  - Specify that the Board or its designee shall take into consideration the Respondent’s ability to pay, the total amount owed, and the probation length.
  - Inform the probationer that they may instead make a payment online via the Board’s website.

#### Section IV: Board Policies and Guidelines

- Amend the Board policies and guidelines for Stipulated Settlements by adding the term “Statement of Issues”, as well as language adding that the Board will consider entering into stipulated settlements to expedite “licensing” decisions. A “Petition to Revoke Probation” has also been added as a type of disciplinary order.
- Specify recommended model order language for the AGs and Board staff to use for license surrenders, which includes advising that the surrender would be effective as of the date of the Decision, requiring Respondent to relinquish and forward or deliver their wall certificate and renewal certificate, if applicable, to the Board within thirty calendar days of the effective date of the Decision, and specifying that surrender of license and acceptance of the surrendered license by the Board constitutes the imposition of discipline against the Respondent, and becomes a part of Respondent’s license history.
- Provide recommended model probation order language for Disciplinary Orders for applicants, registrants, and licensees as follows:

- For applicants and registrants, a statement has been added explaining that the terms “license” and “licensee” also includes the meanings “registration” and “registrant”.
- Strikes language stating “IT IS HEREBY ORDERED THAT” in each section.
- Strikes blank lines in the recommended language and replaces it with the specific information necessary to be provided in the order.
- Adds language, under Recommended Probation Language for Applicants for Registration, to clarify that a Respondent will be issued a registration “upon successful completion of all registration requirements”.
- Provides recommended model Revocation of License order language for Disciplinary Orders for registrants and licensees, including the following:
  - Specifies that Respondent shall relinquish and forward or deliver their wall license, if applicable, and renewal certificate to the Board within ten calendar days of the effective date of the Decision.
  - Specifies that a Respondent can reapply or petition the Board for reinstatement of their revoked license after three years have elapsed from the effective date of the Decision (or if applicable the time frame specified in BPC section 4990.30).
  - Adds a note to users that contains the option specified in BPC section 4990.30, which also explains that if a shorter reinstatement filing period is specified, an explanation shall be included in the Decision of the pertinent facts or circumstances that warrant recommendation of the imposition of the shorter, two-year filing period.
  - Includes the requirement that the Respondent pay the costs of investigation and prosecution within 30 days of the effective date of the decision.
- Amend the Board’s policies and guidelines for Reinstatement / Reduction of Penalty Hearings as follows:
  - Strike a reference to BPC section 4982.2 and add a reference to BPC section 4990.30.
  - Replace professional clinical “counselor” with “counseling”.
  - Strike “The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts” and replace it with “Whether the petitioner has demonstrated a recognition of wrongdoing” as a factor for the Board to consider in reaching its determination of whether to reinstate a license or reduce a penalty.
  - Add the following factors for the Board to consider in reaching its determination of whether to reinstate a license or reduce a penalty: Activities of the petitioner since the disciplinary action was taken; petitioner’s activities during the time petitioner’s license was in good standing (unrestricted); petitioner’s general reputation for truth; and petitioner’s professional ability.

- Adds Recommended Model Order Language for Proposed Board Actions Relating to Petitions for Reinstatement or Reduction of Penalty as follows:
  - Deny Petition. This model order language specifies that the petition for reinstatement filed by the petitioner is denied.
  - Grant Petition with No Restrictions on License/Registration. This model order language specifies that the Board grants the petition for reinstatement of the license or registration, and that the license or registration will be fully restored.
  - Grant Petition and Place Licensee or Registrant on Probation. This model order language specifies that if the Board grants the petition for reinstatement of the license or registration, the license or registration shall be reinstated and immediately revoked, stayed, and placed on probation for a (as specified) number of years with (as specified) terms and conditions.
  - Grant Petition and Place Licensee or Registrant on Probation After Completion of Conditions Precedent. This model order language specifies that once the Board grants a petition for reinstatement of the license or registration, the license or registration shall be reinstated after petitioner's completion of specified conditions within the specified time frame. The order also provides model language to be used when a condition precedent requires taking and passing the California Law and Ethics examination, and includes language stating that upon completion of the conditions precedent, the license or registration shall be reinstated and immediately revoked, stayed, and placed on probation with specified terms and conditions.

### **Proposed Amendments to Documents Incorporated by Reference**

Current regulation incorporates by reference into 16 CCR Section 1888 the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”, last revised in December 2020. This proposal would update the revision date of this document (effective date to be inserted by the Office of Administrative Law (OAL)). Current regulation also incorporates by reference the “Quarterly Report Form”, last revised January 12, 2001, within the Disciplinary Guidelines document. This proposal would instead incorporate the Quarterly Report Form by reference into 16 CCR Section 1888 and assign it Form Number DCA BBS 37M-443 and give it a new revision date (effective date to be inserted by OAL). The Disciplinary Guidelines and Quarterly Report Form are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR. The changes to these forms are as follows:

- QUARTERLY REPORT FORM: Make the following changes to the Quarterly Report Form (Form No. DCA BBS 37M-443 Revised [OAL to insert effective date]):

Add an “INFORMATION AND INSTRUCTIONS” section that contains the following:

General Information section: Provides information pertaining to the Board's authority to require probationers to provide quarterly reports pertaining to compliance with the terms and conditions of their probation, and instructs the

probationer to use the attached Quarterly Report (QR) Form when submitting their required reports. Also specifies that “No other documentation or communication can be substituted for a completed Quarterly Report Form (e.g., other Board forms, letters, emails, telephone calls, etc.)”

Quarterly Report Schedule section:

- Specifies that QR Forms must be submitted for the entire duration of probation by email, mail or faxed to the Board as specified in the instructions for submission and according to the specified schedule.
- Provides a Quarterly Report Schedule, which includes the date ranges for each quarterly reporting period and the dates by which the QR Forms are due for each quarter. Sets the due date for each quarter as 10 calendar days past the end of the quarterly reporting period.
- Specifies that completed QR Forms and any required attachments must be emailed, postmarked (if mailed), or faxed to the Board no earlier than the end of the reporting periods and no later than the due dates listed.
- Specifies that if others are required to submit quarterly reports to the Board pursuant to the probationer’s terms and conditions, their quarterly reports must also be submitted to the Board according to the schedule listed via email, mail or fax.
- Encourages the probationer to develop their own reminder system to ensure that they submit QR Forms as required.

First and Final Quarterly Reports section: Specifies that the probationer’s first and final QR Forms, including all required attachments, must be submitted by the due dates, even if the QR Form only covers a portion of the time period of the total quarter (e.g., probation started in the middle of a quarter).

Tolling of Probation Requirements section: Specifies that, except under certain circumstances, if a licensee or associate who is on probation with the Board stops practicing or residing in California, their probation may be subject to tolling. Also specifies that if probation is tolled, QR Forms and any required attachments must still be submitted to the Board according to the schedule listed in the “Quarterly Report Schedule” section.

Instructions for Submission section: Provides instructions for the probationer about how to complete and submit their QR Form and attachments. The proposed instructions read as follows:

- Make a photocopy of the QR Form or download it from the Board’s website, and complete all applicable sections, including signing and dating the form.
- Attach additional sheets if more space is needed or for further explanation.

- Attach a separate sheet with an explanation if the probationer did not comply with any term or condition of their probation, and attach additional documentation if needed to further support the explanation.
- Indicate “Not Applicable” if a section or question does not apply to their probation.
- Attach a separate sheet describing compliance with any probation requirements not specified on the QR Form.
- Attach all required documentation as specified on the QR Form and as described below:
  - Proof of payments made for any term or condition of probation requiring proof of payment as specified on the QR Form consisting of online system receipts, electronic fund transfer receipts, or other payment records such as cancelled checks, bank statements or credit card statements.
  - Proof of course completion consisting of a certificate of completion from the course provider, or an official transcript in an envelope sealed by the school, printed with their name, course title, number of hours earned, date(s) of attendance and course provider name.
  - Proof of attendance, consisting of attendance sheets from the recovery support program provider, or other document provided by the program representative. Requires proof of attendance to include all of the following for each meeting attended:
    - In-Person Meetings: Meeting name, date, time, location and designated recovery support program representative signature.
    - Live Videoconferencing Meetings: Meeting name, date, time and meeting/conference ID or number.
- Submit the form with attachments via email, mail, or fax to their assigned Probation Analyst.
- Specifies that failure to submit the QR Form and attachments as required is considered non-compliance with the terms and conditions of probation and may result in further disciplinary action.

Questions section: Directs the probationer to contact their assigned Probation Analyst for questions and specifies that in an urgent matter the probationer may contact the Board’s Probation Unit at the email address provided.

Notice on Collection of Personal Information: Provides a notice pertaining to handling of personal information, which specifies that the information required on the QR Form is mandatory and will be used to determine compliance with the requirements of their probation; explains that the information may be provided to other governmental agencies, or in response to a court order, subpoena, or public records request; explains that the probationer has a right of access to records



containing personal information unless the records are exempted from disclosure pursuant to Civil Code section 1798.40; and, provides information on how individuals may obtain information regarding the location of their records.

QR FORM – PORTION FILLED OUT BY PROBATIONER: Amend the portion of the QR Form that is filled out by the probationer as described below:

- Strikes the Board’s letterhead and adds the Board’s logo.
- Amends the form footer to add the form number, strikes “rev 1/12/01” and replaces it with “(Revised [OAL to insert effective date])” and adds “State of California”.
- Adds a form header on all pages, except for the first page, which provides the form title and a field for the probationer’s name.
- Changes the form title as follows: “Quarterly ~~Written~~ Report Form”.
- Makes nonsubstantive capitalization, formatting, and minor grammatical changes.
- Strikes “Please complete this report and submit it to the Board quarterly (following the reporting schedule) during your probationary period. Any other type of form, correspondence, or telephone call will not be accepted. Reports are due postmarked seven (7) days from the close of each quarter. Early submission of the report will be returned to you. Failure to submit a quarterly report seven (7) days from the close of each quarter may constitute a violation of probation.” and strikes “Complete only those provisions below that are applicable to your probationary terms and conditions.”
- Adds a line for case number.
- Adds the quarterly reporting period dates, QR Form due dates, and check boxes for the probationer to mark to indicate the reporting period for the form being submitted. Also provides date fields for the first and last quarterly reports.

Personal Information section: Changes “Address” to Address of Record” and specifies “number and” in addition to street, city and zip code. Strikes the language pertaining to “residence address”. Strikes the box asking if this is an address change, and adds a field for an email address.

Employment section: Adds a note specifying that if the probationer is self-employed, they are to write “Self” next to “Employer”, indicate the address where they see clients, and provide their business telephone number. Adds “Is this a change of your place of employment? If Yes, specify the date of change”.

Suspension section: Changes “If Yes, did you submit certification verifying suspension of practice?” to “If Yes, did you cease any and all activities authorized by your license or registration?” It also adds immediately after this question, “If Yes, specify the dates that you suspended your practice:” and “If No, attach a

separate sheet providing an explanation.”

Restricted Practice section: For probationers who mark “Yes” to having any special Board-ordered restrictions on their practice, the form now directs them to complete all of the following (questions) which are now numbered. Strikes, “on a separate sheet, please explain in what way(s) your practice is restricted and steps you have taken during this quarter to comply” and replaces it with question 4 which states, “Attach a separate sheet, providing an explanation of the way(s) in which your practice is restricted and the steps that you have taken during this quarter to comply.” Also adds “or Individual’s” name to question 2.

Supervision section: Changes the title of the section from “Supervision” to “Supervised Practice – Licensees Only”, and adds a note that says, “This section is only for Board licensees who are required to have supervised practice pursuant to the terms and conditions of their probation.” The following additional changes are proposed to this section:

- Adds question numbers.
- Makes the following changes: “In this quarter, were you required to have ~~supervision~~ a supervisor monitor your practice?”, and if yes, to indicate the required frequency per week or month.
- Strikes the language that requires specifying dates of supervision separately depending on where the supervision was held, and instead just requires all dates of supervision to be listed.
- Adds “Did you or your supervisor miss or cancel any required supervision appointment(s)? If Yes, attach a separate sheet listing the date(s) and reasons(s) for each missed or cancelled supervision appointment(s).”
- Strikes “This quarter” in question 4.
- Strikes “Number of billing logs \_\_\_” (that the supervisor reviewed).
- Adds the question “Did you confirm that your Supervisor submitted their quarterly report to the Board as required? If No, attach a separate sheet providing an explanation.”
- Adds the question, “In this quarter, were you required to submit to the Board for prior approval the name and qualifications of one or more proposed supervisors?” and “If Yes did you submit this information to the Board?”

Examination section: Strikes “or special” examination”.

Law and Ethics Course section: Adds this section, including the following questions:

- “In this quarter, were you required to submit a plan for taking a Law and Ethics course to the Board for approval?”

- “If Yes, did you submit the plan as required?”
- “If No, attach a separate sheet providing an explanation.”
- “If Yes, was your plan approved by the Board?”
- “If the Board **approved your plan**, have you completed the course(s) in your plan? If Yes, specify the course(s) below and attach proof of completion (See “INSTRUCTIONS FOR SUBMISSION #7.B”).”
- “If No, list the course(s) in your plan that you have not completed and the status of it/them.”

Education section: Changes the title of this section from “Remedial Education” to “Education Pertaining to the Violation”. Makes the following additional changes:

- Clarifies that the educational plan is submitted “to the Board” for approval and adding “educational” before the word “plan”.
- Changes the question about submitting the educational plan “for approval” to submitting the plan “as required”.
- Adds the following questions:
  - “If No, attach a separate sheet providing an explanation.”
  - “If Yes, was your educational plan approved by the Board?”
  - “If the Board **approved your educational plan**, have you completed the course(s) in your educational plan?”
  - “If Yes, specify the course(s) below and attach proof of completion (See “INSTRUCTIONS FOR SUBMISSION” #7.B).”
  - “If No, list the course(s) in your educational plan that you have not completed and the status of it/them.”
- Strikes all of the following questions/instructions:
  - “Are you attending or have you completed the assigned remedial coursework?”
  - “In this quarter, did you enroll in any required courses?”
  - “If yes, please attach an attendance sheet signed by your instructor and include transcripts in a sealed envelope. If transcript is not available, please explain on a separate sheet.”
  - “If you are developing your education plan for Board approval or continuing with a class/course from a prior quarter, please submit a separate sheet detailing all actions you have taken to meet this requirement.”

Psychological Evaluation section: Changes the title to add “/ Psychiatric” and adds “or psychiatric” to the first question in this section. Makes the following additional changes:

- Directs the probationer to “complete all of the following” (questions) if they were required to undergo an evaluation, and adds question numbers for clarity and readability. Clarifies that the probationer needs to add “Date(s) of” the evaluation instead of dates “scheduled for and/or occurred”. Adds instructions to “(See “INSTRUCTIONS FOR SUBMISSION” #7.A).” after “Attach Billing/Proof of Payment”.
- Strikes “If you are awaiting Board notification of some aspect of this process, or if evaluation was required, but not begun, please attach a separate sheet explaining the status.” and adds, “If you are required to undergo a psychological or psychiatric evaluation during this quarter but have not done so, attach a separate sheet providing an explanation.”

Psychotherapy section:

- Specifies to the probationer “If Yes, complete all of the following” (questions), and adds question numbers.
- Changes “Doctor/Therapist’s” Name to “Mental Health Professional’s” Name.
- Strikes the requirement to provide the psychotherapist’s license type and number.
- For the question that asks the probationer to “List the dates” of appointments, the amendments change (List the dates) “of your scheduled appointments during the quarter” to (List the dates) “that you completed psychotherapy sessions with the above listed mental health professional”. In addition, “during the quarter” is proposed to be stricken.
- Changes “your therapist” to “the above listed mental health professional” in two places.
- Adds the questions, “In this quarter, were you required to submit to the Board for prior approval the name and qualifications of one or more mental health professionals? If Yes, did you submit this information to the Board as required?”
- Strikes “If you or your therapist missed/cancelled any appointments please explain on a separate sheet.”

Rehabilitation Program/Biological Fluid Testing section:

- Moves Rehabilitation Program” to its own section, including moving pertinent questions to that section.
- Changes the title of this section to “Abstain from Drugs and Alcohol / Submit to Drug and Alcohol Testing”.

- Changes “random biological fluid” (testing) to “drug and alcohol” (testing).
- Strikes the question that asks the probationer to list the dates they were tested.
- Adds “If Yes, complete questions 1 – 3 (if applicable):” and adds question numbers.
- Strikes “In this quarter”.
- Changes the question “Were you required to abstain from alcohol and/or controlled substances” to “Were you required to abstain from the use, possession, and consumption of drugs and alcohol and to submit to drug and alcohol testing?”
- Adds “If Yes, complete both of the following: a. Did you abstain from the use, possession, and consumption of drugs and alcohol during this quarter? b. Did you complete your testing as required?”.
- Strikes “If yes, and you did not, attach a separate sheet giving an explanation regarding the circumstances surrounding your use of controlled substances and/or alcohol.” Also adds “If you answered “No” to #1a. or #1b. above, attach a separate sheet providing a detailed explanation.”
- Adds the questions, “Did the Board order you to cease practice as a licensee or registrant due to a positive test result? If Yes, did you cease practice as required?”. Also adds “If No, attach a separate sheet providing a detailed explanation.”
- Adds the questions, “In this quarter, have there been any additions or changes to your prescription or over-the-counter medications? If Yes, submit a letter from your prescribing physician listing all prescription medications and a list of your current over-the-counter medications to the Board.”
- Strikes, “Contact the Probation Monitor for guidance about documentation in your specific case.” since the proposed changes to this section clarify the required documentation, and because the Information and Instructions section directs probationers to contact their probation analyst for any questions.

Recovery Support Program section: Adds a section for the newly proposed probation term and condition in the Disciplinary Guidelines titled “Recovery Support Program”. The proposal adds the following questions and instructions:

“In this quarter, were you required to attend a recovery support program? If Yes, complete all of the following:

1. Recovery Support Program Name:
2. Required Frequency: \_\_\_\_\_ times per  week  month (mark one)
3. Did you miss any required recovery support program meetings? If Yes, attach a separate sheet providing the date(s) and reason(s) for each missed

meeting.

4. Attach proof of attendance **for each meeting** (See (INSTRUCTIONS FOR SUBMISSION” #7.C).”

Rehabilitation Program section: Makes “Rehabilitation Program” its own section and moves the questions pertinent to rehabilitation programs from the former “Rehabilitation Program/Biological Fluid Testing section” to this section. Also changes “substance abuse treatment program” to “rehabilitation” program; adds “If Yes, complete all of the following”; and adds the questions “Did you confirm that your program submitted their quarterly report to the Board as required? If No to either of the above, attach a separate sheet providing an explanation.”

Community Service section: Completely strikes the “Community Service” section.

Obey All Laws section: Makes the following changes to this section:

- Strikes, “did you violate any federal, state or local law?” and replaces it with “have you been cited for, arrested for, charged with, convicted of, or pled no contest to, a violation of any law of the United States, in any local, state, federal jurisdiction or territory of the United States, including criminal convictions, traffic or driving infractions, or convictions that were subsequently dismissed”.
- Adds to the question that begins with “If yes”, to attach “a detailed explanation” and adds original certified copies of “police records and court documents (e.g., police or arrest report ” to the list of documents required that pertain to the conviction and/or sentencing.
- Strikes the following questions pertaining to individuals on criminal probation “If yes, complete the following: Formal Probation (submit a statement from probation officer); Summary Probation (attach a statement indicating what actions you have taken to comply this quarter); and Discharged/Expunged this quarter (attach certified copy of court documents)” and replaces it with, “If Yes, and your case was discharged or expunged during this quarter, attach a certified copy of the court record(s).”
- Adds, “In this quarter, do you have any other license or registration (in California, another state or territory of the United States, or a foreign country) that was cited, denied, suspended, disciplined or voluntarily surrendered? If Yes, attach a separate sheet providing a detailed explanation.”

Cost Recovery/Restitution section: Changes the title from “Recovery Costs/Restitution” to “Cost Recovery/Restitution”, and makes the following additional changes:

- Adds “and conditions” (of probation).

- Modifies the following question: “If Yes, have you paid cost recovery in full or as directed in accordance with a payment plan?” Also strikes the question “Do you want to establish a payment plan?”
- Modifies the question about financial restitution to add “Board” and strikes “or your criminal probation”.
- Adds the questions, “If Yes, have you paid the financial restitution in full or as directed in accordance with a payment plan?” and “If Yes, attach proof of compliance with your financial restitution requirements (See “INSTRUCTIONS FOR SUBMISSION” #7.A).”
- Modifies the following question as shown: “If ~~yes, please~~ you are required to pay cost recovery or financial restitution and have not paid as required, attach a separate sheet ~~and provide~~ providing a detailed explanation, ~~status of the investigation, all documentation relating to the imposed discipline, and/or proof of payment.~~”

Tolling section: Changes “twelve consecutive weeks” to “30 calendar days”.

Shaded Box Above the Declaration: Strikes, “if your particular probation has any terms and conditions or deadlines not specified on this form, please attach a separate sheet outlining the other term(s) and what actions toward compliance you have taken during this quarter.” and adds “Attach additional sheets if more space is needed or if further explanation is required.”

Declaration section: Modifies the Declaration to read, “I declare under penalty of perjury under the laws of the State of California that ~~the foregoing, and the enclosed statements or documents are true and correct, and I further declare that I have obeyed all federal, state and local laws, including all statutes and regulations governing my license and that during this period of my probation all~~ statements within, and all documents attached in support of this Quarterly Report, contain true, correct, and complete information. I further declare that during this quarter, unless otherwise noted in this Quarterly Report or its attachments, I have fully complied with the terms and conditions of my probation program established by the Board.” Also adds “Probationer” prior to “Signature”.

## **ANTICIPATED BENEFITS OF PROPOSAL**

This regulatory proposal strengthens consumer protection and promotes fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable. This proposal and provides for clarity and consistency by making the Uniform Standards and Disciplinary Guidelines consistent with current law and the current probationary environment, and by providing model disciplinary orders. The Board anticipates that the updated Disciplinary Guidelines will be a more useful educational and guidance tool for the Board, applicants and licensees, Deputy Attorneys General (DAGs), legal counsel, Administrative Law

Judges (ALJs) and the public by providing a more accurate overview of the Board's processes in formal disciplinary actions and making improvements for readability and inclusivity.

## **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.

## **INCORPORATION BY REFERENCE**

Current regulation incorporates by reference into 16 CCR Section 1888 the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines", last revised in December 2020. This proposal would update the revision date of this document (effective date to be inserted by the Office of Administrative Law (OAL)). Current regulation also incorporates by reference the "Quarterly Report Form", last revised January 12, 2001, within the Disciplinary Guidelines document. This proposal would instead incorporate the Quarterly Report Form by reference into 16 CCR Section 1888 and assign it Form Number DCA BBS 37M-443 and give it a new revision date (effective date to be inserted by OAL). The Disciplinary Guidelines and Quarterly Report Form are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR.

## **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:** The proposed regulation do not result in a fiscal impact to the state.

The regulations help to provide consistency in the application of discipline for violations of laws and/or regulations. This proposal does not change fine amounts for violations, so no additional revenues are anticipated. This proposal provides a more accurate overview of the Board's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the AG, and ALJs by outlining relevant and transparent standards directly related to violations outlined in law or regulation.

The Board does not anticipate additional workload or costs resulting from the proposed regulations. The Board will ensure compliance with the proposed regulations through its existing continuing licensing and enforcement activities and does not anticipate a change in enforcement cases based on the proposed changes to regulations.

There is also no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency.



**Nondiscretionary Costs/Savings to Local Agencies:** None

**Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement:** None

**Mandate Imposed on Local Agencies or School Districts:** None

**Significant Effect on Housing Costs:** None

### **BUSINESS IMPACT ESTIMATES**

The Board has made the 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 upon the following facts:

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number of licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction.

Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the professions regulated by the Board.

### **Cost Impact on Representative Private Person or Business**

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS**

#### **Impact on Jobs / Businesses**

The Board has determined that the proposed regulatory action would not have a significant statewide adverse economic on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

## **Benefits of the Regulation**

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents: This regulatory proposal affects the health and welfare of California residents because the proposed regulation will enhance the Board's ability to take appropriate action against licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations.

Additionally, this proposal will benefit DAGs, ALJs, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary and denial actions. This regulatory proposal will have no impact on worker safety because the proposal does not address worker safety. This regulatory proposal will have no impact on the California environment as the proposal is not related to the environment.

## **Business Reporting Requirements**

This proposed regulation does not require businesses to file a report with the Board.

## **Effect on Small Business**

While the Board does not have, nor does it maintain, data to determine if any of its licensees are a "small business," as defined in Government Code section 11342.610, the Board has made an initial determination that the proposed regulatory action will have no significant impact on small businesses as it only affects the Board's licensees and applicants who are disciplined or denied unrestricted licenses or registrations for violations of the Board's laws and/or regulations.

Businesses operated by the Board's licensees and applicants who follow the law will not incur any fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

## **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 be more effective in carrying out the purpose for which the action is proposed; 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](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: [BBS.Rulemaking@dca.ca.gov](mailto:BBS.Rulemaking@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](mailto: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](https://www.bbs.ca.gov/about/law_reg.html).