

TITLE 16. BOARD OF PSYCHOLOGY

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter “Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the

Board of Psychology Board Meeting
California Institute of Integral Studies
1453 Mission Street, Namaste Hall
San Francisco, CA 94103

at 9:00 a.m., or as soon as practicable thereafter, on August 22, 2014. Written comments, 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 no later than 5:00 p.m. on August 18, 2014 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance 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 section 2930 of the Business and Professions Code, and to implement, interpret or make specific sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966, and 2969 of the Business and Professions Code, and Section 11425.50 of the Government Code, the Board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest/Policy Statement Overview:

This proposal would renumber Section 1397.12 as Section 1395.2, and amend Title 16, CCR Section 1395.2 to reference a revised version of the Board’s disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, (Amended 2/14) to now be included within Article 7, Standards Related to Denial, Discipline, and Reinstatement of Licenses or Registrations.

Business and Professions Code (BPC) section 2930 authorizes the Board of Psychology (Board) to adopt, amend, or repeal rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of laws and regulations relating to the practice of psychology. The Board currently regulates a total of 24,319 licensees and registrants. These licensees and registrants consist of 22,380 psychologists, 1,600 registered psychological assistants, and 339 registered psychologists in various settings. Pursuant to BPC section 2920.1, the Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints; disciplining licensees and registrants for violating the Psychology Licensing Law; monitoring licensees and registrants whose licenses or registrations have been placed on probation; and managing licensees or registrants, whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Government Code section 11400.20 authorizes an agency, such as this Board, that uses the Administrative Procedure Act (APA) relating to administrative adjudication (Chapter 4 [commencing with section 11370] Part 1 of Title 2 of the Government Code) to adopt regulations to govern an APA adjudicative proceeding. Under existing law, (Government Code section 11425.50), a penalty proposed by an Administrative Law Judge (ALJ) may not be based on guidelines, manuals, orders, or standards of general application unless it has been adopted as a regulation.

The Psychology Practice Act (BPC 2900 et seq.) provides that proceedings to discipline a licensee or registrant or to deny an applicant a license or registration are to be conducted in accordance with the APA. The Psychology Practice Act specifies grounds for discipline and sanctions that may be imposed against psychologists, psychological assistants, and registered psychologists found to be in violation of the Psychology Practice Act.

Article 3.6 (commencing with section 315) of Chapter 4 of Division 1 of the Business and Professions Code provided for the establishment of the Substance Abuse Coordination Committee (SACC) in the Department of Consumer Affairs (DCA), whose mandate was to develop uniform and specific standards that a DCA healing arts board must use in dealing with substance-abusing licensees. This section of law also provides for the use of a cease practice order when: a licensee tests positive for any substance that is prohibited under the terms of the licensee's probation; a licensee on probation commits a major violation of his or her probation; or a board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards authorized under section 315.

Existing regulation provides that in reaching a decision on a disciplinary action under the APA, the Board shall consider disciplinary guidelines entitled "Disciplinary Guidelines (Amended 2/07)." This proposal would renumber Section 1397.12 as Section 1395.2, and amend Title 16, CCR Section 1395.2 to reference a revised version of the Board's disciplinary guidelines entitled "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, (Amended 2/14)" to incorporate the provisions of the "Uniform Standards Regarding Substance-Abusing Healing Arts

Licensees” adopted by the DCA’s SACC (April 2011).” This proposal also updates the existing Disciplinary Guidelines to include standard and optional terms and conditions of probation, and makes other minor clarifying changes.

Anticipated Benefits of Proposal:

The Board has determined that this regulatory proposal will provide increased consumer protection for consumers of psychological services and ensure that minimum standards and uniformity among the standards established by the SACC for the healing arts licensing boards under the Department of Consumer Affairs are met.

The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. This proposal requires an Administrative Law Judge (ALJ) to apply the mandatory conditions in the Uniform Standards Related to Substance Abusing Licensees when an applicant or licensee has a substance abuse disorder and to also consider the disciplinary guidelines for all other disciplinary matters. This proposal would allow the Board to impose more restrictive conditions if necessary to protect the public from unsafe, incompetent, or negligent practitioners when exercising its licensing, regulatory, and disciplinary functions, unless a specific order is required by statute.

Consistency and Compatibility with Existing State Regulations:

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations. The Board currently uses existing Disciplinary Guidelines (2/07) for proceedings to discipline a licensee or registrant, or to deny an applicant a license or registration, in accordance with the APA. The Disciplinary Guidelines are intended for use by individuals involved in disciplinary proceedings against psychologists, psychological assistants, registered psychologists, or applicants for licensure, in addition to administrative law judges and attorneys, and ultimately the Board to make final decisions when reviewing proposed decisions and stipulations.

INCORPORATION BY REFERENCE

This proposal would incorporate by reference the following documents:

1. Uniform Standards Regarding Substance-Abusing Licensees, April 2011
2. Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, February 2014

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

The Board has made an initial determination that the amendment of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States.

AND

The Board relied upon the following facts in making the above determination. The Board only has authority to take administrative and disciplinary action against a licensee, not a business where psychological services are performed. The Board does not regulate businesses where psychological services are performed and does not maintain data relating to the number or percentage of licensees who own a business; therefore, the actual number or percentage of businesses that may be impacted is not known.

Accordingly, the initial or ongoing costs for a business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law, as well as licensees employed by these businesses who are in compliance with the law, will not incur any fiscal impact.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action that are known to the Board are costs associated with a disciplinary order. Costs only affect licensees or registrants disciplined by the Board.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulation will not affect small businesses. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. 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. The Board only has authority to take administrative and/or disciplinary action against a licensee and not a small business.

Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. This proposal could eliminate a business's ability to employ an individual who has been disciplined by the Board, but should not eliminate the position itself or any new businesses. However, the Board is unable to determine the impact, if any, on the creation of jobs or new businesses. Licensees who are in compliance with the law will not incur any fiscal impact.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, and worker safety: increased consumer protection for consumers of psychological services ensure that minimum standards and uniformity among the standards established by the SACC for the healing arts licensing boards under the Department of Consumer Affairs are met.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons that 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 present statements or arguments orally or in writing relevant to the above determinations to the Board at the address referred to below and at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. It may be obtained at the hearing or prior to the hearing upon request from the Board at 1625 North Market Boulevard, Suite N-215, Sacramento, California 95834, or on the Board's website at: www.psychology.ca.gov.

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 Board at: 1625 North Market Boulevard, Suite N-215, Sacramento, California 95834, or on the Board's website: www.psychology.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the 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 person named below or by accessing the website listed below.

CONTACT PERSON:

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

Name: Jonathan Burke
Address: 1625 North Market Blvd., Suite N215
Sacramento, CA 95834
Telephone No.: (916) 574-7137
Fax No.: (916) 574-8672
E-Mail Address: Jonathan.Burke@dca.ca.gov

The backup contact person is:
Name: Jeffrey Thomas
Address: 1625 North Market Blvd., Suite N215
Sacramento, CA 95834
Telephone No.: (916) 574-7116
Fax No.: (916) 574-8672
E-Mail Address: Jeffrey.Thomas@dca.ca.gov

Website Access: Materials regarding this proposal can be found at: www.psychology.ca.gov. Click on "Laws/Regulations," "Proposed Regulations."