
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: SB 801
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Urgency: No
Consultant: Elissa Silva

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Fiscal: No

Subject: Healing arts: Board of Behavioral Sciences: licensees

SUMMARY: Makes various changes to the regulation of a number of licensed professionals by the Board of Behavioral Sciences (BBS) intended to improve oversight of licensees, including Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), Licensed Professional Clinical Counselors (LPCCs), Associate Clinical Social Workers registrants (ASWs), Associate Marriage and Family Therapists registrants (AMFTs), and Associate Professional Clinical Counselors registrants (APCCs), stemming from the joint sunset review oversight of the BBS.

Existing law:

- 1) Establishes, until January 1, 2022, the Board of Behavioral Sciences (BBS) to administer the LMFT Act, the LEP Practice Act, the LCSW Practice Act, and the LPCC Act. (Business and Professions Code (BPC) § 4990.12)
- 2) Defines a MFT corporation a PCC corporation and a CSW corporation as a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees who are rendering professional services and who are LPCCs, LMFTs, physicians and surgeons, psychologists, LCSWs, registered nurses, chiropractors, or acupuncturists, are in compliance with the Moscone-Knox Professional Corporation Act, as specified. (BPC §§ 4987.5, 4998, 4999.123)
- 3) Requires an LPCC, prior to renewing their license, to complete 36 hours of continuing education (CE), from an accredited school of social work, as defined, or a school or department of social work that is a candidate for accreditation, as specified, and other CE providers approved by BBS regulations. (BPC § 4996.22(d))
- 4) Defines “supervision” for purposes of the LPCC act, to mean responsibility for, and control of, the quality of mental health and related services provided by the supervisee, as specified,. Supervision includes, but is not limited to, all of the following:
 - a) Ensuring the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the supervisee.

- b) Monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions and providing regular feedback.
 - c) Monitoring and evaluating the supervisee's ability to provide services at the site or sites where he or she is practicing and to the particular clientele being served.
 - d) Monitoring and addressing clinical dynamics, including, but not limited to, countertransference-, intrapsychic-, interpersonal-, or trauma-related issues that may affect the supervisory or practitioner-patient relationship.
 - e) Ensuring the supervisee's compliance with laws and regulations governing the practice of licensed professional clinical counseling.
 - f) Reviewing the supervisee's progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor.
 - g) With the client's written consent, providing direct observation or review of audio or video recordings of the supervisee's counseling or therapy, as deemed appropriate by the supervisor. (BPC § 4999.46.1)
- 5) Prohibits any LMFT, LCSW, LPCC who conducts a private practice under a fictitious business name from using any name that is false, misleading, or deceptive and must inform the patient prior to commencing treatment of the name and license designation of the owner or owners of the practice, as specified. (BPC §§ 4980.46, 4998.2, 4999.125)
- 6) States that MFT, CSW, and PCC licenses expire at no more than 24 months after the issue date. (BPC §§ 4984, 4996.102)
- 7) Requires startup funds for implementation of the LPCC program to be a loan, from the reserve fund of the BBS subject to appropriation by the Legislature, as specified. (BPC § 4999.122)
- 8) Requires the BBS to fund the administration of approving CE providers through continuing education provider fees, as specified. (BPC §§ 4980.54(j), 4989.34(f), 4996.22(j), 4999.76(h))

This bill:

- 1) Clarifies that an ASW and an APCC are providers of services via telehealth, as specified.
- 2) Updates the requirement for a notice to be provided to consumers prior to initiating psychotherapy services, to include or as soon as practicably possible thereafter.
- 3) Requires exempt individuals to include in a notice to patients, information about the BBS, and where to submit complaints, as specified, and requires the delivery of this notice to be documented.

- 4) Deletes the requirement that the BBS determine, by regulation, CE provider fees, as specified.
- 5) Clarifies that the renewal fee for an associate registration for an associate MFT registration is an annual fee and that the renewal fee for a LMFT and LEP is two years.
- 6) Clarifies that a denial issued pursuant to the conviction of a specified crime, must comply with the conditions of denial as specified in BPC § 480.
- 7) Adds conforming language for LEPs, which prohibits a LEP who conducts a private practice under a fictitious business name from using any name that is false, misleading, or deceptive, and must inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.
- 8) Requires an applicant, registrant, or licensee who has an electronic mail address to provide the BBS with that electronic mail address no later than July 1, 2022, and further requires an applicant, registrant, or licensee to provide to the BBS any and all changes to their electronic email address no later than 30-calendar days after the changes have occurred.
- 9) States that the electronic mail address is considered confidential and not subject to public disclosure.
- 10) Requires the BBS, with each renewal application, to remind licensees and registrants of their obligation to report and keep current their electronic mail address with the BBS.
- 11) Adds a school, college, or university accredited by a regional or national institutional accrediting agency that is recognized by the United States Department of Education or a school, college, or university that is approved by the Bureau for Private Postsecondary Education to the list of approved CE providers for LCSWs.
- 12) Deletes obsolete language pertaining to a fund for the initial licensure program for LPCCs.
- 13) Deletes a duplicative definition of supervision, under the LPCC practice act.
- 14) Makes numerous other technical, updating, and clarifying changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** This bill is sponsored by the Author, and is one of a number of sunset bills the Author is advancing this year. According to the Author, this bill is necessary to make changes to BBS operations and the various practice acts BBS administers in order to improve oversight of oversight of BBS licensees.

2. Oversight Hearings and Sunset Review of Licensing Boards and Programs.

Beginning in 2020, the Senate Business and Professions Committee and the Assembly Business and Professions Committee (Committees) began their comprehensive sunset review oversight of 16 regulatory entities including BBS, the Bureau of Real Estate Appraisers, The California Massage Therapy Council, The Physician Assistant Board, The Board of Podiatric Medicine, The Board of Pharmacy, The Board of Psychology, The Veterinary Medical Board, The Bureau for Private Postsecondary Education, Department of Real Estate, The Board of Vocational Nursing & Psychiatric Technicians, The Medical Board of California, The Osteopathic Medical Board of California, The Board of Registered Nursing, The Board of Optometry, and The Board of Barbering & Cosmetology.

The Committees conducted several oversight hearings in November 2020 and March/April 2021. This bill and the accompanying sunset bills implement legislative changes as recommended by staff of the Committees, and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

3. Background on BBS. The BBS is responsible for the regulatory oversight of over 120,000 licensees and registrants. Each profession has its own scope of practice, entry-level requirements, and professional settings with some overlap in areas.

- LMFTs are employed in mental health agencies, counseling centers, and private practice. LMFTs utilize counseling or therapeutic techniques to assist individuals, couples, families, and groups with a focus on marriage, family, and relationship issues.
 - AMFTs have completed the required educational program and are in the process of obtaining the hours of supervisory experience required for licensure.
- LCSWs are employed in health facilities, private practice, and state and county mental health agencies. LCSWs utilize counseling and psychotherapeutic techniques to assist individuals, couples, families, and groups.
 - ASWs have completed the required educational program and are in the process of obtaining the hours of supervisory experience required for licensure.
- LEPs work in schools or in private practice and provide educational counseling services such as aptitude and achievement testing or psychological testing. LEPs may not provide psychological testing or counseling services that are unrelated to academic learning processes in the education 2 system.
- LPCCs apply counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including

personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. LPCCs work in a variety of settings including hospitals, private practice, and community-based mental health organizations.

- APCCs have completed the required educational program and are in the process of obtaining the hours of supervisory experience required for licensure.

4. **Review of BBS.** The following are some of the issues pertaining to BBS along with background information concerning the particular issue. Recommendations were made by Committee staff regarding the particular issue areas that needed to be addressed. The Background paper recommended the following technical changes.

a) **Issue 10: Technical Changes may Improve Effectiveness of the Laws Administered by the BBS**

Background: Under current law, BPC § 4999.46.1 and BPC § 4999.12 both define the term of “supervision” under the LPCC practice act. However, BPC § 4999.12 additionally defines other terms commonly referenced throughout the LPCC practice act. Because BPC § 4999.12 defines multiple terms, the more appropriate place for a definition of “supervision” is under the section pertaining to supervision.

Background: BPC § 2290.5 specifies who is eligible to provide telehealth services and includes all healing arts licensees and specifies that MFT associates and trainees are authorized providers. However, the same code section does not specifically list PCC and ASW registrants. The Board notes that although PCC and ASW registrants are authorized to provide telehealth, adding them into the telehealth statute will help provide clarity to the public in who can provide telehealth services. This bill adds PCC and ASW registrants to the list of telehealth providers defined in BPC § 2290.5.

Background: BPC §§ 4987.5, 4998, and 4999.123 define professional corporations for purposes of the Acts and include lists of other professions who are also required to abide by similar requirements in the Corporations Code (CC). Because the CC can change with respect to other professions that fall under the corporations law, the BBS proposes to strike the list of professions under the Acts as they are already specified in the CC.

Background: In 2019, AB 630, (Arambula and Low), Chapter 229, Statutes of 2019) clarified exemptions from the Acts, for unlicensed or unregistered employees or volunteers working in specified locations; required employees or volunteers to provide a notice to clients about complaint procedures; and required LMFTs, LCSWs, LEPs, LPCCs, and their respective trainees to provide BBS contact information to their clients. This bill would add to the current disclosure requirement by adding additional information about where an individual could file a complaint, including the BBS’s phone number and internet website. In addition, this bill would revise current law to allow the practitioner to provide the disclosure information noted above as soon practicably possible after initiating services in addition to prior to initiating services in order to allow for

emergency situations when there may not be the appropriate time to provide the notice before. This bill revises the timeframe for providing the disclosure document and further requires that information about the BBS be provided, and that providing the information be documented.

Background: Under current law, BPC 4996.22(d), LPCCs are required, prior to renewing their license, to complete 36 hours of CE from an accredited school of social work, as defined, or a school or department of social work that is a candidate for accreditation, as specified, and other CE providers approved by BBS regulations. However, current law does not specifically authorize CE to be obtained from schools accredited by the US Department of Education or the Bureau of Private Postsecondary Education. This bill would allow LCSWs to obtain CE from schools approved by those entities.

Background: Current law for LMFTs, LPCCs, LEPs and LCSWs specifies that renewal cycles are every two years and in order to renew, the licensee must pay a two-year renewal fee. However, the two-year renewal fee requirement specified in the Act for LEPs does not specify that it is a two-year renewal fee. This bill add the two-year fee renewal language for consistency in statute. In addition, this bill clarifies that the renewal fee for registrants is one year.

Background: Neither licensees nor applicants, regulated under the BBS, are required to provide an email address as part of any application or renewal for licensure or registration. The BBS has requested that applicants, licensees and registrants be required to provide an email address to the BBS, if an email address is available. Email addresses provide the BBS with another communication tool to communicate with licensees, registrants and applicants, in addition to mail or the voluntary sign up for listservs. This bill would require that all applicants, licensees and registrants provide this information by January 1, 2022; and would prohibit the BBS from making this information public.

In addition, this bill makes other technical and clarifying changes and revisions to the Acts including deleting an outdated fund; clarifying that the BBS does not charge accrued renewal or delinquency fees; and, updates references to changes in the Penal Code, and clarifies that the BBS must follow the current procedures for issuing a denial among other clarifying revisions.

SUPPORT AND OPPOSITION:

Support:

None received.

Opposition:

None received.

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