

BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action

Subject Matter of Proposed Regulations: Examination Waiting Periods;
Corporations; Accreditation

Section(s) Affected: California Code of Regulations (CCR), Title 16, Division 18:
Amend sections 1805.05, 1850.6, 1850.7 and 1854; and repeal section 1832.

Background and Statement of the Problem:

The Board of Behavioral Sciences (board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), Licensed Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCs).

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.

Current law specifies the requirements pertaining to the education and degree requirements for licensure, the examinations required for licensure and the examination process, and the requirements for a licensee who would like to form a professional corporation.

The proposed regulatory changes address multiple articles within Title 16, Division 18, of the CCR¹, including Article 1, General Provisions (section 1805.05); Article 4.5, Professional Corporations (sections 1850.6 and 1850.7); and Article 5, Licensed Educational Psychologists (sections 1805.05, 1850.6, 1850.7, 1832 and 1854).

¹ All CCR references are to Title 16, Division 18

Specific Changes: Purpose, Factual Basis/Rationale, and Anticipated Benefits:

The following proposed changes to Title 16, Division 18, of the CCR are listed in order by section.

A. AMEND SECTION 1805.05. REEXAMINATION.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

A waiting period is currently required between attempts for applicants retaking an examination required for licensure. This helps to ensure that the test taker does not take the same version of the examination they took during the prior attempt, which helps to maintain the security and confidentiality of the examination. Applicants for licensure are currently required to take the following examinations:

LMFT	California Law and Ethics Examination and Board-Administered Clinical Examination	BPC section 4980.397 and 16 CCR section 1829.1
LCSW	California Law and Ethics Examination and National Clinical Examination	BPC section 4992.05 and 16 CCR section 1877.1
LPCC	California Law and Ethics Examination and National Clinical Examination	BPC section 4999.53 and 16 CCR section 1822.50
LEP	Written Examination	BPC section 4989.22

The proposed amendments would reduce the waiting period required between attempts for applicants retaking a clinical examination from 180 days to 120 days. This subsection only applies to board-administered clinical examinations, which is currently the LMFT clinical examination only. The reduction in waiting period is consistent with existing operational practice, as the board’s Executive Officer, as allowed by subsection (d) (now (e), as amended under this proposal), had already shortened the waiting period in 2018 to 120 days. This was made possible because a sufficient pool of test questions became available to create additional versions of the examination.

Currently, subsection (c) (now (d)), as amended under this proposal) specifies that the waiting periods for examinations offered by national testing entities, which are currently contracted for the LCSW and LPCC clinical examinations, shall be determined by those entities. The board does not anticipate going back to board-administered clinical examinations for these professions. However, should this need ever arise, a 120-day waiting period would likely be sufficient, and thus no changes are needed to this subsection.

Proposed subsection (c) would require a 180-day waiting period between attempts for applicants retaking the LEP written examination. Applicants for LEP licensure only take one combined examination, whereas the LMFT, LCSW and LPCC professions take two examinations – a California Law and Ethics Examination and a clinical examination. A 180-day waiting period for the LEP written examination is consistent with current operational practice. The LEP written examination is primarily a clinical examination², and thus the waiting period for a clinical examination was applied. However, at this time the board is unable to shorten the waiting period due to limitations in the test question pool. Thus, it needs to remain a 180-day waiting period.

Lastly, a reference citation has been stricken due to a repealed statute.

The board anticipates that the public and its licensees will benefit from improved clarity and consistency in the board’s regulations. Permanently shortening the waiting period for those retaking a board-administered clinical examination will shorten the licensure process for some applicants.

B. AMEND § 1850.6. NAME OF CORPORATION.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

This section specifies the wording or abbreviations that must be used in a LMFT or LCSW corporation’s name to denote corporate existence. This amendment, which is nonsubstantive, simply proposes adding a reference citation to LPCC statute, and is necessary because Business and Professions Code (BPC) section 4999.125 requires LPCC corporations to use wording or abbreviations denoting corporate existence, but does not specify the acceptable wording or abbreviations.

The LPCC profession was new to California via legislation that took effect in 2010 (Senate Bill 788, Chapter 619, Statutes of 2009). Adding a reference to the LPCC statute was mistakenly overlooked when the original regulations implementing the program were passed.

The board anticipates that the public and its licensees will benefit from improved clarity and consistency in the board’s regulations.

C. AMEND § 1850.7. SHARES: OWNERSHIP AND TRANSFER.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments make grammatical and technical nonsubstantive changes to the regulatory text. To be more gender inclusive, instances of “he or she”

² See LEP Examination Outline at: <https://home.pearsonvue.com/getattachment/177a0d14-6778-4f7e-8da7-e4244c5a6cd2/Licensed%20Educational%20Psychologist%20Examination%20Outline.aspx>

are replaced with “person.” Merging and deleting duplicative text has also required renumbering.

In addition, proposed changes to the reference citations are as follows:

- Add BPC sections 4987.8, 4998.3, and 4999.126, which specify that directors, shareholders, and officers of LMFT, LCSW or LPCC corporations must be licensed persons, due to being newly identified as pertinent.
- Strike BPC section 4998.5, pertaining to corporate unprofessional conduct, as it is not relevant.
- Add BPC section 4999.127, which pertains to the LPCC profession and addresses income of disqualified shareholders, for consistency with the sections that mirror LMFT and LCSW corporations (BPC sections 4988 and 4998.4). The LPCC profession was new to California via legislation that took effect in 2010 (Senate Bill 788, Chapter 619, Statutes of 2009). Adding a reference to the LPCC statute was mistakenly omitted when the original regulations implementing the licensing act were passed.

The board anticipates that the public and its licensees will benefit from improved clarity, consistency, and streamlining in the board’s regulations.

D. REPEAL § 1832. EQUIVALENT ACCREDITING AGENCIES.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

This section, which specifies equivalent accrediting agencies for degrees that qualify for LMFT licensure, is no longer necessary.

The entities listed in subsections (a) through (d) are regional accrediting bodies. Senate Bill 33 (Chapter 26, Statutes of 2009) (SB 33) allowed applicants with degrees from educational institutions accredited by a “regional or national institutional accrediting agency recognized by the United States Department of Education” to qualify for licensure or registration, and struck language that specified the degree be obtained from an institution accredited by “the Western Association of Schools and Colleges”.

Section 1832 identifies regional accrediting agencies that “are essentially equivalent to Western College Association, which has been renamed the Western Association of Schools and Colleges, and Northwest Association of Secondary and Higher Schools.” As a result of SB 33, these regional accrediting agencies listed as equivalent are now explicitly allowed by BPC sections 4980.36 and 4980.37, rendering subsections (a) through (d) duplicative.

Subsection (e) specifies the credentials evaluation service that is acceptable for evaluating a “foreign degree.” However, BPC section 4980.76 requires a degree earned outside of the United States to be evaluated by a service that is a member of the National Association of Credential Evaluation Services (NACES), and therefore subsection (e) is superseded. In addition, the entity specified in section 1832(e), the International Education Research Foundation (IERF), is a member of NACES. This can be verified at www.naces.org/members.

Subsection (f) specifies the “State of California, Department of Education, Bureau of School Approvals” as an equivalent “accrediting agency”. However, this agency was dissolved in 2007 and reconstituted in 2010 as the “Bureau for Private Postsecondary Education” (BPPE) via Assembly Bill 48 (Chapter 310, Statutes of 2009). Degrees from BPPE-approved schools are explicitly allowed in statute per BPC sections 4980.36 and 4980.37. In addition, subsection (f) refers to 16 CCR section 1830, which was repealed on August 10, 1987 (Register 87, No. 34).

The board anticipates that the public and its licensees will benefit from improved clarity and currency in the board’s regulations.

E. AMEND § 1854. EQUIVALENT DEGREES. (RENAMING TO “APPROVED EDUCATIONAL INSTITUTIONS”)

Purpose, Factual Basis/Rationale and Anticipated Benefits:

This section specifies equivalent degrees that qualify for LEP licensure per BPC section 4989.20(a)(1), which states, “This degree shall be obtained from an educational institution approved by the board according to the regulations adopted under this chapter.” Section 1854 lists approved regional accrediting agencies, and also specifies the entity approved to evaluate foreign degrees.

This amendment would replace the list of regional accrediting agencies in section 1854 with language that would allow an individual with a degree from an educational institution accredited by a “regional or national accrediting agency recognized by the United States Department of Education” (USDE) to qualify for licensure as an LEP. The USDE does not recognize a specific category of regional-only accrediting agencies. Instead, the USDE recognizes two basic categories of accreditation: institutional accrediting agencies (which may be regional or national), and programmatic (specialized) accrediting agencies (Code of Federal Regulations, Title 4, Subtitle B, Chapter VI, Part 602; also see https://www2.ed.gov/admins/finaid/accred/accreditation_pg2.html#U.S.).

This amendment would create consistency between the types of accreditation that satisfy the requirements for LMFT, LPCC and LEP licensure (see BPC sections 4980.36, 4980.37, 4999.12, 4999.32 and 4999.33), and is consistent with the

accreditation categories that USDE recognizes. This change may allow a small number of additional individuals to qualify for LEP licensure, limited to applicants with an out-of-state degree from a school that possesses national or programmatic accreditation via USDE, rather than regional accreditation. Applicants who earned their degree and school psychologist credential in another state with a degree from a school with national or programmatic USDE accreditation currently do not qualify for California LEP licensure. The proposed change to section 1854 would allow these applicants to satisfy this requirement. Applicants who earned their degree in California and gained the required experience as a credentialed school psychologist must possess a regionally accredited degree in order to qualify for a school psychologist credential issued by the California Commission on Teacher Credentialing.

Subsection (g) currently designates the Credentials Evaluation Service of the International Education Research Foundation (IERF) as approved to evaluate a “foreign degree.” The IERF is a member of the National Association of Credential Evaluation Services (NACES), and this can be verified at www.naces.org/members. The LMFT and LPCC professions allow foreign degree evaluations to be performed by any member of NACES (see BPC sections 4980.76 and 4999.40(c)), as NACES has set standards for foreign degree evaluations that all member entities must follow. The LCSW profession requires the applicant to provide “a comprehensive evaluation of the degree” but does not specify acceptable evaluating agencies (see BPC section 4996.18(e)). Therefore, limiting the entities authorized to perform foreign degree evaluations to IERF only is inconsistent with the LMFT, LPCC and LCSW professions, which allow the applicant greater choice in evaluation agencies.

The board anticipates that the public and its licensees will benefit from improved clarity, consistency and currency in the board’s regulations. In addition, the amendment will allow applicants with an out-of-state degree earned from an institution that holds a national accreditation to qualify for LEP licensure, thus providing the potential for a small increase in the LEP workforce. Lastly, the amendment will provide LEP applicants who earned a degree outside the United States with a broader range of evaluation agencies to choose from.

Underlying Data

- Board meeting materials and minutes – November 22, 2019 (Item XXXI. c)
- Board meeting materials and minutes – May 5, 2022 (Item VII.)
- Board of Behavioral Sciences, Licensed Educational Psychologist Application and Licensing Workload

Business Impact

The board has made an 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. The proposed amendments are for the purpose of clarifying, streamlining, and/or creating currency and consistency in the board's regulations, as well as reducing barriers to licensure.

This proposal could slightly increase the pool of potential employees to businesses who are seeking to hire a LEP due to the changes in section 1854. The board receives an average of 133 applications for LEP licensure per year (as averaged for 2019, 2020 and 2021). An average of 18 of those applicants possess an out-of-state degree. The board estimates that ten additional applicants the first year, and two additional applicants per year ongoing will qualify for LEP licensure as a result of the proposed change.

This could affect businesses seeking to hire because they have more employees to choose from, or they may choose to hire more employees. It also may affect the number of small businesses, because some Board licensees choose to start their own private practice (a small business), instead of working for a larger entity. The types of businesses that may be affected range from small private practices to larger entities that employ LEPs such as schools, government entities, clinics, or nonprofits.

The total number of businesses affected or what percentage of these businesses may be small businesses is unknown.

Economic Impact Assessment/Analysis

The board has made an 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 on the following facts:

- **Analysis of creation/elimination of jobs:** This proposal is not anticipated to eliminate any jobs within California as the proposed amendments are minor in nature and are for the purpose of clarifying, streamlining or creating currency and consistency in the board's regulations, as well as reducing barriers to licensure. The proposal may create a small number of jobs due to having a small additional pool of LEP licensees.
- **Analysis of creation/elimination of businesses.** This proposal will not eliminate any businesses in California because it does not directly affect those hiring the Board's licensees. However, the changes to section 1854 may result in a slight increase in businesses since a small number of individuals who do not

qualify for LEP licensure under current law will be able to do so and may choose to open a private practice.

- **Analysis of expansion of business:** This proposal may expand some businesses that provide educational psychology services. If more individuals who were previously unable to obtain an LEP license are now able to obtain one, there may be an increased pool of applicants. Therefore, businesses may choose to hire more LEPs.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** This regulatory proposal benefits the health and welfare of California residents, because it may increase the supply of LEPs, and therefore increase consumer access to educational psychology services. It will also benefit individuals who will be able to obtain an LEP license when they were previously unable to.

This regulatory proposal does not benefit worker safety because it does not involve any topic that affects worker safety. This regulatory proposal does not benefit the State’s environment because the proposed regulatory action does not involve any topic that affects the environment.

Estimated Costs (individuals): The board receives approximately 133 applications for LEP licensure per year with 18 of those applicants possessing an out-of-state degree. The board estimates it will receive 10 additional applications for LEP licensure in the first year, and two applications per year ongoing as a result of the proposed regulations.

Applicants will be required to pay a \$250 application fee plus a \$200 initial license fee to become licensed. These individuals will also be required to pay biennial renewal fees of \$200 and continuing education fees of approximately \$360 each renewal cycle.

Costs are estimated to range from \$900 to \$9,860 per year and up to \$52,920 over a ten-year period as follows:

Board of Behavioral Sciences Economic Impact (costs)												
Registration and License Type	Fees	Years Ongoing										Total
		1	2	3	4	5	6	7	8	9	10	
Initial Applicants		10	2	2	2	2	2	2	2	2	2	28
Application - LEP	\$250	\$2,500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$7,000
Initial License - LEP	\$200	\$2,000	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$5,600
Renewal Applicants		-	-	10	2	12	4	14	6	16	8	72
Biennial License Renewal - LEP	\$200	-	-	\$2,000	\$400	\$2,400	\$800	\$2,800	\$1,200	\$3,200	\$1,600	\$14,400
Continuing Education	\$360	-	-	\$3,600	\$720	\$4,320	\$1,440	\$5,040	\$2,160	\$5,760	\$2,880	\$25,920
Total Costs:		\$4,500	\$900	\$6,500	\$2,020	\$7,620	\$3,140	\$8,740	\$4,260	\$9,860	\$5,380	\$52,920

LEP - Licensed Educational Psychologist

Fiscal Impact Assessment: The regulations are anticipated to create a minor and absorbable workload as a result of a small number of new LEP licensure applications.

The board estimates it will receive 10 additional applications for LEP licensure in the first year, and two additional applications per year ongoing. The board anticipates a higher number of applications in the first year of implementation because some individuals previously denied may reapply because their degree would now qualify.

The board estimates workload costs (per application) of approximately \$253 to complete the application process, \$204 to complete and issue an initial license, and \$205 for each (biennial) license renewal. Total workload costs are estimated to range from approximately \$941 to \$5,313 per year and up to \$31,711 over a ten-year period as follows:

Board of Behavioral Sciences Fiscal Impact (costs)												
License Type	Initial Costs*	Years Ongoing*										
		1	2	3	4	5	6	7	8	9	10	Total
Application - LEP		10	2	2	2	2	2	2	2	2	2	28
Application Workload (295 minutes)	\$253	\$2,530	\$521	\$537	\$553	\$570	\$587	\$604	\$622	\$641	\$660	\$7,825
	Costs:	\$2,530	\$521	\$537	\$553	\$570	\$587	\$604	\$622	\$641	\$660	\$7,825
Initial License - LEP		10	2	2	2	2	2	2	2	2	2	28
Licensing Workload (240 minutes)	\$204	\$2,040	\$420	\$433	\$446	\$459	\$473	\$487	\$502	\$517	\$532	\$6,309
	Costs:	\$2,040	\$420	\$433	\$446	\$459	\$473	\$487	\$502	\$517	\$532	\$6,309
Biennial License Renewal - LEP		-	-	10	2	12	4	14	6	16	8	72
Licensing Workload (235 minutes)	\$205	-	-	\$2,175	\$448	\$2,769	\$951	\$3,427	\$1,513	\$4,155	\$2,140	\$17,577
	Costs:	-	-	\$2,175	\$448	\$2,769	\$951	\$3,427	\$1,513	\$4,155	\$2,140	\$17,577
	Total Costs:	\$4,570	\$941	\$3,145	\$1,447	\$3,797	\$2,010	\$4,518	\$2,637	\$5,313	\$3,332	\$31,711

LEP - Licensed Educational Psychologist

*Includes 3 percent workload cost growth factor ongoing

The board estimates revenues ranging from approximately \$900 to \$4,100 per year and up to \$27,000 over a ten-year period as follows:

Board of Behavioral Sciences Fiscal Impact (revenues)												
Registration and License Type	Fees	Years Ongoing										
		1	2	3	4	5	6	7	8	9	10	Total
Initial Applicants		10	2	2	2	2	2	2	2	2	2	28
Application - LEP	\$250	\$2,500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$7,000
Initial License - LEP	\$200	\$2,000	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$5,600
Renewal Applicants		-	-	10	2	12	4	14	6	16	8	72
Biennial License Renewal - LEP	\$200	-	-	\$2,000	\$400	\$2,400	\$800	\$2,800	\$1,200	\$3,200	\$1,600	\$14,400
	Total Revenues:	\$4,500	\$900	\$2,900	\$1,300	\$3,300	\$1,700	\$3,700	\$2,100	\$4,100	\$2,500	\$27,000

LEP - Licensed Educational Psychologist

The proposed regulations do not result in costs or savings in federal funding to the state.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The board has made an initial determination 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 or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. However, the Board welcomes comments from the public.