STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF PSYCHOLOGY
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MEMORANDUM

DATE	October 10, 2013
TO	Psychology Board Members
FROM	Colette McDowell Colette McDowell Continuing Education Analyst
SUBJECT	**Agenda Item 10 (Continuing Education Committee) (c):** Discussion Regarding Implementation of AB 1588 (Atkins) – Military Duty Licensees: Fees and Continuing Education

Background:
In 2012, Assembly Bill 1588 (Atkins, ch. 742, Stats. 2012) added Section 114.3 to the Business and Professions (B&P) Code. Section 114.3 allows a licensee called to active military duty to request a waiver from the renewal fee and continuing education requirements.

B&P Code section 2987.5 exempts licensees from the renewal fee while engaged in full-time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista. This section also prohibits licensees from engaging in private practice during the exemption period. It does not specifically apply to members of the California National Guard currently.

Action Requested:
Review attached:

- Memo from Director Brown regarding implementation of AB 1588,
- Bill analysis, and
- The text of the bill, and related information, from (http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml), and
- Existing Related Regulations [B&P Code Sections 2987.5 & 1397.62(a)(1)].

Discuss to determine if modifications to existing regulations are required due to AB 1588.

STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	**August 29, 2013**
TO	**Executive Officers, Executive Directors, Registrars & Bureau Chiefs**
FROM	Denise Brown **DENISE BROWN, Director** **Department of Consumer Affairs**
SUBJECT	**Implementation of AB 1588**

Last year, Assembly Bill 1588 (Atkins, ch. 742, Stats. of 2012) added Section 114.3 to the Business and Professions Code ("Section 114.3"). Section 114.3 allows a licensee to receive a waiver from renewal requirements if the licensee is called to active military duty. Over the past few months, the Department has received a number of inquiries from some of its boards and bureaus ("programs"), other state agencies, and the Legislature regarding the implementation of Section 114.3. This memo attempts to address some general implementation issues and to provide background on the Department's current efforts.

THE LAW

Reinstatement v. Renewal Waiver

Prior to the enactment of Section 114.3, only Section 114 of the Business and Professions Code addressed licensees serving in the military ("service members"). Section 114 forgives delinquency penalties associated with the reinstatement of licenses that expired while a service member was *on* active duty, while Section 114.3 provides licensees *called to* active duty with a renewal option (emphasis added).

The law is silent as to whether licensees who wish to avail themselves of the Section 114.3 renewal waiver must do so at the time of renewal, or may do so retroactively upon discharge.

Note that those called-up service members who make a retroactive renewal waiver request upon discharge will be situated much like service members seeking reinstatement after a license expired while on active duty. The way in which programs choose to characterize these retroactive requests is particularly important. Renewal waivers under Section 114.3 only require that a service member meet certain renewal requirements. Reinstatements under Section 114, however, give programs the discretion to require a service member who did not practice the profession while on active duty to pass an

examination (Section 114(c)). Additionally, if a retroactive Section 114.3 renewal waiver is granted, no lapse should then appear in that service member's licensure.

Each program will have to determine how to approach this issue in light of public protection, given the types of requests each program receives and practical limitations on what may be expected of service members while on active duty.

Programs Subject to Section 114.3

The renewal waiver scheme set forth in Section 114.3 does not apply to any program that has a similar statutorily authorized renewal waiver process. Some examples of programs that already have similar military renewal laws include the Accountancy Board, the Medical Board, and the Board of Podiatric Medicine. Many programs already have regulations that provide waivers for particular renewal requirements in situations like a licensee's absence due to military service, residence in another country, or disability. These programs do not qualify for exemption from the applicability of Section 114.3, as the similar license renewal waiver process must be set forth in statute (Section 114.3(f)).

"Called to Active Duty"

Service members may only avail themselves of the Section 114.3 military renewal waiver if "called to active duty" (Section 114.3(a)). Legislative notes indicate that Section 114.3 presupposes a service member's temporary change in lifestyle and circumstance whereby the fulfillment of renewal requirements like continuing education ("CE") and the submittal of fees would be near impossible. The waiver applies equally to those reservists called up to active duty, or to career active duty military personnel that are ordered to a change in circumstance. Not all career military licensees that fall under the broader definition of 'active' military by working full time, then, would be eligible for the waiver. Only career active-duty licensees that have a temporary change in assignment to a remote location in order to perform a military task would qualify for the waiver. Conversely, those military personnel that have orders to serve in a permanent, career position at a base are not "called to active duty" within the meaning of the exemption.

Note that similar language is not used in Section 114, which simply requires that a service member be on active duty to avail themselves of that section's reinstatement process. The granting of military renewal waivers, however, should be reserved for what is commonly referred to as a "TDY" or temporary duty assignment.

Waiver of Renewal Requirements

Section 114.3 requires that programs "...shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board" for those licensees called to active duty (Section 114.3(a)). This means that waiver of the renewal obligations at issue is permanent and is not paused, tolled, or accrued while the service member is away. These obligations are permanently forgiven. For temporary duty assignments that span an entire renewal period, no CE or renewal fees should be due.

This interpretation is supported by the Assembly Committee on Appropriations dated March 28, 2012 on this bill, which estimated that the revenue loss resulting from the fee

waivers made under Section 114.3 would be anywhere from $150,000 to $500,000 annually. This suggests that the Legislature's intention was that these waivers be permanent. Conversations with the author of this bill also support this interpretation.

Programs will have to determine how renewal requirements should be waived when a service member returns from a temporary duty assignment mid-renewal cycle. Some options include doing a straight proration of CE and renewal fees based on the number of months a service member is away. Another option is to do a modified proration whereby certain units are waived depending on where a service member's discharge date falls into specific cutoff periods. Programs that have specific course requirements for CE may wish to require the completion of those courses only.

The possible permutations of modified renewal responsibilities are too numerous to discuss at length for purposes of this memo. Each program is encouraged to meet with its respective counsel when determining how to approach the issues raised here, taking into account the unique nature of each program's renewal requirements.

Upon Discharge

A licensee who has renewed under a military waiver and who has been discharged from active duty and returned home may wish to exist in a military waiver status until the next time of renewal, but this means that the licensee may not practice on the public. Or, the licensee may wish to return to a normal, active license status as soon as possible in order to be able to work. Either way, before the licensee may return to an active license status, the service member must fulfill whatever modified requirements exist. Section 114.3(c) states that the service member shall have six months from discharge to fulfill renewal requirements (unless, of course, the licensee would have more time under normal renewal timelines). For service members who return from active duty with less than six months left until the next renewal cycle, this means that the six month grace period will necessarily extend into the beginning of the new renewal cycle.

For example, if a service member is discharged from active duty with three months left until the next renewal cycle, and the service member is responsible for a modified amount of CE (assume 3 units for this hypothetical) the service member will have six months from the date of discharge to fulfill the 3 unit obligation. If the service member does in fact take advantage of the entire six month grace period, this means that the period will extend three months into the new renewal cycle. Assuming all other conditions for renewal are met at the end of the grace period, the service member will then have an active, current license, will be able to practice on the California public, and will have 21 months left in that 24-month renewal cycle. During the latter renewal cycle, the service member will be responsible for the full amount of CE, fees, and other requirements in order to renew again.

Consider, on the other hand, a service member who has renewed in military waiver status and is discharged with, for example, 18 months left until the next renewal cycle. The service member will, by virtue of the regular renewal cycle timeline, have 18 months to

fulfill a modified CE obligation, which is longer than the six-month grace period provided by statute, provided the service member does not resume active practice in California.

Documentation of Being Called to Active Duty
Section 114.3(a)(3) requires that service members provide programs with written documentation substantiating the active duty service in order to avail themselves of the Section 114.3 renewal waiver. If your program has particular requirements for acceptable documentation (*e.g.* orders from a commanding officer versus a signed statement from the service member), these requirements must be specified in regulation.

Regulatory Changes
As mentioned above, programs' determinations on how to implement Section 114.3 may necessitate regulation. Programs are encouraged to meet with their respective counsel in making these determinations. Some factors to consider in determining if and what regulations are necessary are (1) what the program's historical practice has been in providing military renewal waivers under a general waiver regulation, if one exists; (2) program requirements for converting an inactive license into an active status, and whether similar requirements are appropriate for Section 114.3 modified renewal requirements; (3) any renewal requirements particular to that program; (4) effective ways to prevent a licensee's status from going into delinquency while the licensee is serving on active duty; and (5) whether particular forms are necessary to effectuate the program's goals.

OUTREACH & DATA COLLECTION

Outreach to your licensee populations and associations is vital to the successful implementation of Section 114.3.

Website Updates
The Department has placed information on this new law as well as other military legislation on its website. We recommend that you visit the website, as it will be updated. All programs are highly encouraged to provide a link to this webpage on the program's website: http://www.dca.ca.gov/about_dca/military.shtml

This should reduce program workload relating to the development and maintenance of this information (as it is likely that additional information will be necessary should further legislation impacting military personnel be passed). The Department is currently tracking and analyzing 12 pieces of legislation this session relating to the military.

Other Public Outlets - Email Lists/Social Media
In addition, other outreach efforts, such as updating email lists with the new information or mentioning the information on social media outlets, can significantly help. It is important for licensees to understand their options.

Data Collection
The Department has received a number of requests for data and statistics regarding the military, although this is currently unavailable. Pending legislation would require each

program to include a question on an application regarding whether an applicant previously served in the military (AB 1057, Medina).

Keeping track of the number of applications expedited (under AB 1904 – also passed in 2012), the number of waivers issued, etc. would be extremely helpful for the Department with responding to requests regarding the implementation of these new laws and will facilitate any necessary changes in the future. Please provide this information (the number of applications for expedite/waiver and the number of approvals) on a quarterly basis to the Division of Legislative & Policy Review (via Scott Allen – scott.allen@dca.ca.gov).

Military Email
The Department has also created a military email (military@dca.ca.gov) in order to assist in the implementation of the recent military legislation and provide support for each program in dealing with requests that may come to the Department rather than directly to the program. This email will be run through the Consumer Information Center (CIC). This will also assist the Department in tracking information related to military applicants and licensees.

TECHNICAL IMPLEMENTATION

The Department is in the process of transitioning to BreEZe, which precludes any additional changes to the legacy system. Programs not in Release 1 of BreEZe must work within the existing structure of the Consumer Affairs System ("CAS") for the time being. Therefore, the Department is modifying some of its previous suggestions from its December memo to its programs regarding the technical implementation of Section 114.3. The Department also suggests that each program work with their legal counsel to ensure a compliant process is developed.

Effective immediately,

- The Department is no longer suggesting that each program pursue the creation of a "Military Active" or "Military Inactive" status code if one does not already exist for your program at this time.

- Each program, until fully on BreEZe, should use a manual tracking process (Name, License #, Discharge Date, Expiration Date, etc.) for licensees who receive a renewal waiver similar to what is used for AB 1424 for tax debt suspensions.

- If a program has access to the status code "8" AND that status reflects a military designation –status code "8" should be used. If that is not possible, the program is advised to set the license status to "Active" or "Clear." This process should be sufficient in the short term for the majority of licensees seeking a renewal waiver.

- If a licensee has requested the "Military Active" status authorized by the bill and provided sufficient evidence/documentation, the program should keep that licensee as "Active."

- Each program is advised to set a secondary status code for "Military," if one does not currently exist. If you run into issues, contact OIS for assistance. This will also help the program with tracking these licensees. This process will be somewhat similar to what each program has implemented for AB 1424.

- Each program should also modify the automatic renewal flags, such as a renewal notice, from "Y" to "N" in order to avoid triggering other actions, such as switching the license to "Delinquent."

Should you have any further questions in regards to technical implementation requirements please contact the OIS Service Desk at (916) 574-8000 and request to speak with Gerry Lobo.

cc: Gerry Lobo

AB 1588 (Atkins) – Professions and Vocations: Reservist Licensees: Fees and Continuing Education

Introduced February 6, 2012, Chaptered September 29, 2012

This bill requires boards under the Department of Consumer Affairs (DCA) to waive professional license renewal fees, continuing education (CE) requirements, and other renewal requirements as determined by the licensing board, for any licensee or registrant called to active duty.

Existing law authorizes members of the CNG or the U.S. Armed Forces to reinstate his or her professional license or registration without examination or penalty if their license expired while the licensee or registrant was on active duty. Any licensee or registrant who continues to practice the profession for which he or she is licensed or registered for, either part-time or full-time, must maintain an active license in good standing, even while serving in the military. This bill only applies to military reservists called to active duty, and would exempt them from paying license renewal fees or fulfilling CE requirements during military service. License renewal fees and CE requirements vary according to each profession and its regulatory board, commission, or bureau.

The Board of Psychology's existing law, Business & Professions Code Section 2987.5, exempts licensees from the renewal payment under specific circumstances. This section prohibits licensees from engaging in private practice during the exemption period, thus the exemption shall not apply if the person engages in any practice for compensation other than full-time service in the Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista. The Board's existing statute does not specifically apply to members of the California National Guard as it is currently written. It also provides that if a license is renewed within 60 days of the expiration of the license, the renewal fee for that period is waived.

Additionally, Business & Professions Code Section 114, as amended pursuant to AB 2500, Statutes of 2010, provides that a licensee may reinstate his or her license or registration without examination or penalty when certain circumstances apply.

<u>Senate amendments August 22, 2012</u>:

1) Replace all references to military reservists with references to licensees or registrants called to active duty.

2) Require the licensing board, if a licensee or registrant provides services for which he or she is licensed while on active duty, to convert the license status to military active status and disallow private practice of any type.

3) Prohibit a licensee or registrant from engaging in any activity requiring a license during the period that the waivers provided by this bill are in effect, unless the licensee or registrant will provide services for which he or she is licensed while on active duty and his or her license status is changed to military active status. In order

to engage in any licensed activities once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the licensing board within six months from the licensee's or registrant's date of discharge from active duty service.

4) Require a licensee or registrant, upon receiving notice of his or her discharge date, to notify the licensing board of his or her discharge from active duty within 60 days.

5) Authorize a licensing board to adopt regulations to carry out the provisions of this bill.

6) Make technical and clarifying changes.

Assembly Bill No. 1588

CHAPTER 742

An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 29, 2012. Filed with Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards within the Department of Consumer Affairs and for the licensure or registration of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards described above, with certain exceptions, to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, of any licensee or registrant who is called to active duty as a member of the United States Armed Forces or the California National Guard if certain requirements are met. The bill would, except as specified, prohibit a licensee or registrant from engaging in any activities requiring a license while a waiver is in effect. The bill would require a licensee or registrant to meet certain renewal requirements within a specified time period after being discharged from active duty service prior to engaging in any activity requiring a license. The bill would require a licensee or registrant to notify the board of his or her discharge from active duty within a specified time period.

The people of the State of California do enact as follows:

SECTION 1. Section 114.3 is added to the Business and Professions Code, to read:

114.3. (a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

(1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.

(2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.

(3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

(b) (1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.

(2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.

(c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.

(d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.

(e) A board may adopt regulations to carry out the provisions of this section.

(f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

O