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## Policy and Advocacy Committee Meeting Minutes April 12, 2018

Department of Consumer Affairs  
Hearing Room  
1625 North Market Blvd., #S-102  
Sacramento, CA 95834

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### **Members Present**

Christina Wong, Chair, LCSW Member  
Samara Ashley, Public Member (*left the meeting at 2:57 p.m.*)  
Deborah Brown, Chair, Public Member  
Dr. Christine Wietlisbach, Public Member

### **Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Assistant Executive Officer  
Sabina Knight, Legal Counsel  
Rosanne Helms, Legislative Analyst  
Christy Berger, Regulatory Analyst  
Christina Kitamura, Administrative Analyst

### **Guests**

*See sign-in sheet*

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### **I. Call to Order and Establishment of Quorum**

Christina Wong, Chair of the Policy and Advocacy Committee (Committee), called the meeting to order at 10:29 a.m. Christina Kitamura called roll, and a quorum was established.

### **II. Introductions**

Committee members, Board staff introduced themselves. Meeting attendees voluntarily introduced themselves.

Ms. Wong announced that items VIII (AB 1973), XIII (AB 2302), and XV (AB 2483) are removed from the agenda.

**III. Approval of February 3, 2017 Meeting Minutes**

Dr. Ben Caldwell submitted suggested edits via email. The edits were provided to Christina Kitamura.

***Deborah Brown moved to direct staff to make non-substantive changes to the February 3, 2017 meeting minutes, and accepted the minutes as amended. Christina Wong seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown - yes
- Samara Ashley - yes
- Christina Wong - yes
- Dr. Christine Wietlisbach - abstain

**IV. Discussion and Possible Recommendation Regarding Assembly Bill 456 (Thurmond) Healing Arts: Associate Clinical Social Workers, 90-Day Rule**

AB 456 would extend the Board's "90-day rule" to applicants for registration as an associate clinical social worker (ASW).

Intent

The author's office states that the delay between graduation and receipt of a registration number creates a hiring barrier for ASW applicants, and creates an unnecessary inequity between ASW applicants, who cannot utilize the 90-day rule, and associate MFT and PCC applicants, who can. They note that removal of barriers for the public mental health workforce has been recognized as a major priority of both the California Office of Statewide Health Planning and Development and the Mental Health Services Act (MHSA).

Related Legislation

AB 93 is a Board-sponsored bill running this year to strengthen the Board's requirements related to supervision. AB 93 affects code sections that contain the 90-day rule. This bill and AB 93 both became two-year bills last year, due to consumer-protection related concerns in the Senate. The Senate had concerns that the 90-day rule allowed unregistered individuals to provide mental health services without a fingerprint clearance.

AB 93 has been amended to contain the agreed-upon 90-day rule language for LMFT and LPCC applicants. AB 456 adds the 90-day rule for LCSW applicants, with the same agreed-upon language.

Double-Jointing Language

AB 93 makes significant amendments to several of the Board's statutes related to supervised experience. This includes both sections contained in AB 456: BPC sections 4996.18 and 4996.23.

If AB 93 passes, the two code sections in AB 456 will be significantly different than current law. To account for this, double-jointing language is needed. Staff has requested that the legislature draft double-jointing language in time for the Board's May meeting so that the Board can maintain a current position on AB 456. This

means that the Board will consider two versions of AB 456: one version if AB 93 were to pass, and a second version if AB 93 were to fail.

Rebecca Gonzales, National Association of Social Workers - California Chapter (NASW-CA), stated that NASW-CA supports AB 456.

***Samara Ashley moved to recommend to the Board to support AB 456. Christina Wong seconded. The Committee voted to pass the motion.***

Vote:

Deborah Brown - yes  
Samara Ashley - yes  
Christina Wong - yes  
Dr. Christine Wietlisbach - yes

**V. Discussion and Possible Recommendation Regarding Assembly Bill 767 (Quirk-Silva) Master Business License Act**

AB 767 bill was amended on April 9<sup>th</sup>. This bill creates a master business license under the Governor's Office of Business and Economic Development (GO-Biz). It would allow a person who needs to apply for more than one business license to submit a single master application through GO-Biz, which would then distribute the application information to the various relevant licensing entities.

Current law establishes the Permit Assistance Program within GO-Biz to provide permit and regulatory compliance assistance to businesses, and requires the agency to post licensing, permitting, and registration requirements of state agencies on its web site.

AB 767 would do the following:

- Establish the Master Business License Act, and create a business license center under GO-Biz that would develop and administer an online master business license system capable of storing, retrieving, and exchanging license information. It would also incorporate licenses into the system.
- Require the office to adopt and update a schedule for the buildout of the system to allow for integration of additional licenses if funding is available.
- Require each state regulatory agency to cooperate and provide assistance to GO-Biz in implementing the Act. However, the state agency may deny or limit the ability of GO-Biz to establish an application to obtain multiple licenses from that agency.

Intent

The author's office states that the most common form of business in California are sole proprietorships. They note that these small businesses face regulatory hurdles when starting or expanding. The goal of this bill is to take the California Business Portal website to the next level by creating a single online interface to sue for numerous application processes.

Effect on Board Applicants

- An entity that is not familiar with the details of the process for each Board license type and that is accepting applications, could add an unnecessary level of complexity to the licensure process.
- It may be unreasonable to assume that an outlying agency can take on the task of tracking the licensing requirements for each Department of Consumer Affairs' (DCA) boards and bureaus, and keeping that information up-to-date.

Board Acceptance of Online Applications

The Board does not accept online applications, except for renewal applications.

Recommended Position

At its May 2017 meeting, the Board took a "support if amended" position on AB 767, requesting that its license types not be included in the proposed language.

***Samara Ashley moved to recommend to the Board to support AB 767 if amended to ensure BBS licensees are removed from the bill. Dr. Christine Wietlisbach seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown - yes
- Samara Ashley - yes
- Christina Wong - yes
- Dr. Christine Wietlisbach - yes

**VI. Discussion and Possible Recommendation Regarding Assembly Bill 1436 (Levine) Board of Behavioral Sciences: Suicide Prevention Training**

AB 1436 is not in print yet. However, the language was provided to staff for analysis.

This bill would require, beginning January 1, 2021, applicants for licensure as a marriage and family therapist, clinical social worker, or professional clinical counselor to demonstrate completion of at least six hours of coursework or supervised experience in suicide risk assessment and intervention. Current licensees would also be required to demonstrate completion of this coursework or supervised experience in their first renewal period after this date.

AB 1436 would do the following:

Require that coursework or experience must be gained via one of the following methods:

- As part of a qualifying degree; or
- As part of the applicant's applied experience via practicum, internship, formal doctoral placement, or other qualifying supervised professional experience; or
- Via a continuing education (CE) course from a provider designated as acceptable by the Board.

Intent

The purpose of this bill is to establish a baseline coursework requirement in suicide risk assessment and intervention. Several organizations, including the United States

Department of Health and Human Services, and the Institute of Medicine, have indicated a need for improved education and training in suicide assessment.

#### Previous Legislation and Board Findings

During the 2013-2014 Legislative Session, AB 2198 was introduced to ensure that licensed mental health professionals were receiving adequate training in suicide assessment, treatment, and management. The bill would have required licensees of the Board and the Board of Psychology (BOP) to complete a six-hour training course in the subject. New applicants for licensure would have been required to complete a 15-hour course in the subject.

While the Board shared the author's concerns that some health care professionals may lack training in suicide assessment, treatment and management, it indicated that it did not believe the bill, as written, would accomplish its objective. At its May 2014 meeting, the Board took an "oppose unless amended" position on the bill. The Board asked that it be amended to instead form a task force to include members of the Board, stakeholders, the BOP, county mental health officials, and university educators. However, the bill was not amended.

The Governor vetoed AB 2198. In his veto message, he asked that the licensing boards evaluate the issues the bill raised and take any necessary actions.

In response to the Governor's veto message, in the spring of 2015 the Board designed a survey for schools in California offering a degree program intended to lead to Board licensure. The purpose was to determine the extent of exposure to the topics of suicide assessment, treatment, and management for students enrolled in these degree programs. These programs were asked to report courses required by the program covering these topics, and the number of hours or units devoted to the subject.

Twenty-eight Master's degree programs responded to the 2015 survey. The Board found that schools commonly integrated the topic across a variety of courses, including practicum. Due to these findings, the Board concluded that mandating a specified number of hours was unlikely to be effective. However, the Board offered alternative solutions:

- Ensuring frontline healthcare professionals had adequate training;
- Formation of a task force to discuss the latest research and to develop a model of curriculum;
- Assess resources at the county mental health level to determine if there is an adequate level of support; and
- Increase public awareness through media campaigns to reduce stigma and identify local resources.

In 2017, the Board took a support position on AB 1372, which allows a crisis stabilization unit to provide medically necessary crisis stabilization services to individuals in crisis beyond the allowable treatment time of 24 hours if the individual needs psychiatric care, and beds or services are not available. AB 1372 is a two-year bill.

### Board of Psychology Actions

The BOP conducted surveys of its programs. The surveys found that most respondents provided some education and training on suicided risk assessment and intervention. However, the amount varied widely. Due to these findings, the BOP sponsored AB 89, which requires its applicants and licensees to demonstrate completion of at least 6 hours of coursework or supervised experience in suicide risk assessment and intervention.

### Board Survey

In late 2017, the Board conducted a second survey to gain updated information. The survey results were as follows:

- a. How many total clock hours of coverage does the school's degree program curriculum provide on suicide risk assessment and intervention?
  - No responding school programs reported less than 2 hours of coursework coverage.
  - Eight school programs (18% of respondents) reported having 3-5 hours.
  - Twenty-two programs (50%) reported having 6-10 hours.
  - Eight programs (18%) reported having 11-20 hours.
  - Six programs (14%) reported having more than 20 hours.
- b. Is the coursework contained in one course, or integrated across several courses?

Approximately 20% of programs indicated that their suicide risk assessment and intervention coursework is contained in one course; 79% indicated it is integrated throughout the program in several courses.

- c. Which required courses cover this topic, and the clock hours of coverage in each?

The responses identifying courses containing suicide risk assessment and intervention varied widely. Commonly mentioned courses were:

- Law and Ethics
- Practicum
- Psychopathology
- Assessment
- Crisis/Trauma
- Substance Abuse

### Fiscal Impact

The fiscal impact of this bill would be absorbed within existing resources, with minor changes in the BreEZe system.

### Suggested Technical Amendments

- a. Reference to "supervised professional experience." This term is defined in the BOP's regulations. The reference should be corrected to the Board's term "supervised experience."
- b. Reference to "formal postdoctoral placement" as one type of applied experience. The Board's licensing chapters do not set requirements for formal postdoctoral

placements. If the Board wishes to accept this type of experience, it should be changed to reference the BOP's postdoctoral placement requirements.

- c. Requirement for current licensees. Staff suggested clean-up language regarding methods of coursework requirements.

Gordon Doughty, American Foundation for Suicide Prevention, commented that suicide one of the top ten leading causes of death for over a decade, and that the number of suicides is increasing. He added that:

- In 2016, there were 44,695 suicides in the United States.
- 10% of the national suicide total was in California.

Mr. Doughty asked the Board to sponsor or support AB 1436.

Victor Ojakian stated that in talking to people in the professions licensed by the Board, they do not feel adequately trained in suicide assessment and intervention, and that some state government agencies, such as the California Department of Corrections and Rehabilitation, have corroborated that. Mr. Ojakian added that 9 other states have passed this type of legislation.

Ms. Madsen commented on the idea of supporting versus sponsoring AB 1436. She stated that the Board is not in a position to sponsor the bill due to other major legislation that the Board is currently working on. However, given the topic and current rising numbers of suicide, the Board is in a better position to support AB 1436, if it so chooses.

David Jensen, California Association of Marriage and Family Therapists (CAMFT), stated that CAMFT has been supporting this effort in general, however, CAMFT has always been opposed to forced CE.

Ms. Gonzales stated that NASW-CA does not have a position on AB 1436.

G.V. Ayers, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that CALPCC does not have a position on AB 1436.

Since a formal bill has not been introduced, no action was taken.

## **VII. Discussion and Possible Recommendation Regarding Assembly Bill 1779 (Nazarian) Sexual Orientation Change Efforts**

AB 1779 was amended on April 5<sup>th</sup>. This bill would prohibit a mental health provider from engaging in sexual orientation change efforts with a patient of any age who is under a conservatorship or guardianship. This bill also makes it unprofessional conduct for a mental health provider to attempt sexual orientation change efforts on a patient of any age who is under a conservatorship or guardianship.

### Intent

According to the author's office, AB 1779 seeks to close a loophole in current law to expand the protection of a vulnerable population from the effects of sexual orientation change effort therapy.

Previous Legislation

SB 1172 in 2012 established the existing law that prohibits a mental health provider from engaging in sexual orientation change efforts with a patient under 18. The Board took a support position on SB 1172.

Ms. Gonzales stated that NASW-CA supports AB 1779.

***Dr. Christine Wietlisbach moved to recommend to the Board to support AB 1779. Samara Ashley seconded. The Committee voted to pass the motion.***

Vote:

Deborah Brown – no vote (stepped out of the meeting)

Samara Ashley – yes

Christina Wong – yes

Dr. Christine Wietlisbach – yes

**VIII. Discussion and Possible Recommendation Regarding Assembly Bill 1973 (Quirk) Reporting Crimes**

This item was removed.

**IX. Discussion and Possible Recommendation Regarding Assembly Bill 2088 (Santiago) Patient Records: Addenda**

AB 2088 is sponsored by CAMFT. This bill would allow any patient, adult or minor, who inspects his or her patient records to provide the health care provider with a written addendum to any item or statement in the records that the patient believes is incomplete or incorrect.

Current law only allows for an adult patient to provide a written addendum to their records.

Intent

According to author's office, the right to addend a treatment record "is critical given that these records may be subject to disclosure and have the potential to impact the patients' lives and their ability to pursue various endeavors."

Mr. Jensen stated that if the minor can consent to their own therapy, they should have the right to addend their records.

Janlee Wong, NASW-CA, stated that allowing the client to addend his or her record is problematic. He explained that the record is the clinician's account of what took place in treatment. The addendum could be a difference of opinion between the patient and clinician. Furthermore, changing the official record could have consequences in court if the record is challenged or subpoenaed.

Mr. Ayres stated that CALPCC supports AB 2088.

Dr. Wietlisbach disagreed with Mr. Wong, stating that it is important for the addendum to become part of the official record. It is her opinion that it will be seen for what it is.



***Dr. Christine Wietlisbach moved to recommend to the Board to support AB 2088. Christina Wong seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown – yes
- Samara Ashley – yes
- Christina Wong – yes
- Dr. Christine Wietlisbach – yes

*The Committee took a break at 11:45 a.m. and reconvened at 11:56 a.m.*

**X. Discussion and Possible Recommendation Regarding Assembly Bill 2138 (Chiu)  
Licensing Boards: Denial of Application: Criminal Conviction**

AB 2138 was amended on April 2<sup>nd</sup>. This bill would make significant amendments to the Board's enforcement process, including limits on when a board can deny, revoke or suspend a license based on a conviction or other act and limits on the length of probation. It also limits the Board's timeframe to decide on a petition to modify probation to 90 days.

Amendments to denying a license

1. AB 2138 only permits a board to deny a license on grounds that the applicant has been convicted of a crime or subjected to formal discipline under the following circumstances:
  - a. The applicant is presently incarcerated for the conviction, or the conviction occurred within the past 5 years. (The 5-year limit does not apply to a violent felony as defined in the Penal Code.) A board may only deny for these reasons if the crime is directly and adversely related to the qualifications, functions, or duties of the business or profession; or
  - b. The applicant has been subject to formal discipline by a licensing board in the past 5 years based on professional misconduct that would have been cause for discipline by the board to which he/she is applying, and the misconduct is directly and adversely related to the qualifications, functions, or duties of the business or profession. However, disciplinary action within the past 5 years cannot be a basis for denial if the basis for the disciplinary action was a conviction that has been dismissed pursuant to the Penal Code (PC).
2. AB 2138 also prohibits a board from denying a license on the basis that he or she was convicted of a crime, or on the basis of acts underlying a conviction of a crime if the applicant has obtained a certificate of rehabilitation or expungement.
3. AB 2138 prohibits a board from denying a license based on an arrest that resulted in an outcome other than a conviction, such as an arrest that resulted in an infraction, citation, or juvenile adjudication.
4. AB 2138 prohibits a board from denying a license solely on the applicant's failure to disclose a fact that would not have been cause for denial of the license.
5. AB 2138 prohibits a board from requiring an applicant to disclose any information or documentation regarding criminal history. If the board decides to deny an

application based on an applicant's conviction history, it must notify the applicant of the denial, the procedure to challenge the decision or request reconsideration, the right to appeal, and the process for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record.

6. AB 2138 requires a board to retain documents submitted by the applicant, notices provided to the applicant, all communications from and provided to the applicant, and criminal history reports, for at least 3 years.
7. AB 2138 requires a board to retain the following data and report it each year on its web site and to the Legislature:
  - a. Number of applications received for each license type;
  - b. Number of applications requiring criminal history inquiries;
  - c. Number of applicants with a criminal record who were denied or disqualified from licensure;
  - d. Number of applicants with a criminal record who provided evidence of rehabilitation;
  - e. Number of applicants with a criminal record who appealed a denial or disqualification from licensure; and
  - f. Outcome and demographic information, including voluntarily provided information on race or gender, of any applicant described in items c, d, or e above.
8. AB 2138 allows a probationer to petition the board for a modification or termination of probation after one year. The board would then have 90 days to make a decision. If the board does not deny the petition within 90 days, it is considered granted.

#### Amendments to suspending or revoking a license

1. AB 2138 permits the board to suspend or revoke a license on grounds the licensee has been convicted of a crime, only if the crime is directly and adversely related to the qualifications, functions, or duties of the profession, and if one of the following is met:
  - a. The applicant is presently incarcerated; or
  - b. The conviction occurred within the past 5 years (except for a "violent felony").
2. AB 2138 prohibits a board from requiring a licensee to disclose any documentation or information about his or her criminal history.
3. AB 2138 deletes the provision in law allowing a board to suspend a license if the licensee is not in compliance with a child support order.
4. AB 2138 removes the board's ability to inquire into the circumstances surrounding the commission of the crime to determine discipline or to determine the conviction is substantially related to the qualification, functions, or duties of the licensee.

#### Intent

According to the author, approximately 1 in 3 adults in California have arrest or conviction records. They note that California has one of the highest re-offense rates in

the country, with many committing new crimes within a year of release. A root cause of this is the inability of these individuals to gain employment after release from jail. However, nearly 30% of California jobs require licensure, and qualified individuals are often denied a license, or their license is revoked or suspended based on prior arrests or convictions, many of which are old, unrelated to the job, or dismissed. The author is seeking to remove barriers on these individuals' ability to gain employment.

#### Board Denials Based on Convictions

The Board compiled data on applications denied based on convictions for fiscal years (FY) 2015/2016 and 2016/2017:

- During FY 2015/2016, 28 application denials were appealed. Of these denials, 20 (71%) were for non-violent convictions.
- During FY 2016/2017, 17 application denials were appealed. Of these denials, 16 (94%) were for non-violent convictions.

The data only includes denied applications that were appealed.

#### Effect on Penal Code 23 Revocations

At times, when a Board licensee is charged with a serious crime, PC §23 permits a state agency to appear in court to provide information or make recommendations to the court that the license be temporarily revoked. It is unclear how or if this bill would inhibit the Board's ability to seek a PC §23 revocation.

#### Department of Justice Background Checks

This bill prohibits the Board from requiring a licensee or applicant to self-disclose criminal history information. The rationale for this is that any criminal history will show up on the person's Department of Justice (DOJ) background check.

However, according to the Board's enforcement unit, there are times that some criminal history is left off the DOJ background check, especially for more recent crimes.

#### Effect on Probation Process

This bill restricts most probation terms to two years or less. According to the Board's enforcement unit, current probation terms typically range between 3 and 5 years.

Current law allows a probationer to petition to modify probation after 2 years for a probation term of 3 years or more, or after 1 year for a probation of less than 3 years. Upon filing of the petition, the hearing must be held within 180 days.

This bill allows a probationer to petition to modify probation after 1 year and requires the Board to decide within 90 days of the petition's filing.

#### Fiscal Effect

This bill would likely have a substantial fiscal impact on the Board due to two factors:

- It shortens the timeframe for a probation petition. Currently, a hearing must be held within 180 days, but under the bill, the Board must decide within 90 days. Therefore, the Board would be required to meet more frequently to make these decisions. It would also likely need additional legal staff and enforcement staff to comply with the 90-day time limit.

- It requires extensive data collection on applicants and licensees who have a criminal record. The Board would need modifications to its Breeze database system to track the required information, and potentially an additional staff position to collect and compile the information.

#### Conflict with Current Board Law

The provisions of this bill contradict and override several existing enforcement provisions in the Boards existing licensing laws. For example, the Board's unprofessional conduct sections state criteria for denying a license or registration, much of which would be overridden. If this bill passes, the Board will need to work with its legal counsel to determine which areas of its licensing laws are in conflict and would need to be revised. The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines would also need significant revisions.

Ms. Madsen expressed concerns regarding AB 2138, stating that the intent to assist applicants who have prior criminal conviction history in the licensure process is an overreach. This bill removes the Board's discretion, meaning it cannot look at anything older than 5 years even if there is a significant pattern. It also means that if the Board wants to impose a longer probation period than what is specified, it must demonstrate clear and convincing evidence, which is the standard that is used to revoke a license. The bill redefines "substantially related" to "directly and adversely related," which is another threshold. The Board takes various information and evidence into account when making decisions. This information and evidence will not be considered due to the "5 years or less" standard. The legislature mandates that the Board's priority is consumer protection. This bill undermines that.

Ms. Gonzales commented that the bill streamlines the process for licenses with a criminal record to obtain a license under DCA. She noted the following points:

- California has nearly 8 million people living with criminal records;
- Employment is the most important factor in reducing recidivism;
- Almost 30% of jobs require occupational licensing.

Ms. Gonzales claimed that DCA's licensure process can deter people with a criminal record from applying for licensure, as well as rejecting qualified workers from their chosen profession. NASW-CA believes that social workers who have overcome barriers and have gone through a graduate program can become good clinicians because they can relate to their clients. NASW-CA supports AB 2138.

Sanda Lindner, Chair of NASW Rehabilitation and Inclusion Council, stated that the council was tasked with looking into the BBS licensure process for social work applicants with criminal history. They found that the process was frustrating and deterring because BBS does not provide clear rehabilitation guidelines that defines rehabilitation. In 2017, the council conducted a survey and gathered data related to the population in the "community." Out of 103 respondents, nearly 19.5% stated that the largest obstacle and most challenging experience for them in applying for licensure was the potential for, and actual denial, of the application. Ms. Linder shared results of the council's survey pertaining to how the community defines rehabilitation.

Dr. Wietlisbach commented that she understands the intent of this bill and the fact that people can be rehabilitated. However, there is the consumer protection mandate. She asked if there are amendments that would make this “workable.”

Ms. Madsen expressed that it is important to be cautious about specifying which conviction categories will not allow you to become licensed and which categories will let you in. If the Board starts specifying, then that eliminates the ability to consider life experiences that paved the way to turning the applicant’s life around. Once the language gets too specific, there is no allowance for discretion.

The Committee directed staff to continue to work with the author’s office and report to the Board in May.

**XI. Discussion and Possible Recommendation Regarding Assembly Bill 2143 (Cabalero) Licensed Mental Health Service Provider Education Program: Providers**

AB 2143 would include the Board’s Licensed Educational Psychologist (LEP) licensees in the Mental Health Practitioner Education Fund loan repayment grant program.

AB 2143 would do the following:

1. Require the Board to collect an additional \$20 fee from LEPs upon license renewal, for deposit into the Mental Health Practitioner Education Fund.
2. Allow LEPs, psychiatric mental health nurse practitioners and physician assistants to be eligible to apply for grants to reimburse education loans under the Licensed Mental Health Service Provider Education Program if they are providing direct patient care in a publicly funded facility or a mental health professional shortage area.

Intent

The author’s intent is to provide incentives for LEPs, physician assistants, and psychiatric mental health nurse practitioners to practice in community mental health or in underserved settings by extending the Licensed Mental Health Service Provider Education loan repayment program to them. They hope that doing so will attract these professionals to underserved communities and will also decrease wait times for services in these communities.

Ms. Brown requested information regarding how these fees are spent, and if the fees are providing the services that it is intended to provide.

***Dr. Christine Wietlisbach moved to recommend to the Board to support AB 2143. Samara Ashley seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown – yes
- Samara Ashley – yes
- Christina Wong – yes
- Dr. Christine Wietlisbach – yes

**XII. Discussion and Possible Recommendation Regarding Assembly Bill 2296 (Waldron) Professional Clinical Counselors**

AB 2296 was amended on April 10, 2018. This bill seeks to add licensed professional clinical counselors (LPCCs) and licensed clinical social workers (LCSWs) to areas of California law where other comparable licensed mental health professionals are included.

AB 2296 would do the following:

1. Add LPCCs and LCSWs to various statutes where similar mental health professionals are already included.
2. Remove the half-quarter unit requirement for LPCC core content areas. Currently, LPCC applicants must have 3 semester units or 4.5 quarter units of coursework in each core content area. Under this proposal, they would instead need 3 semester units or 4 quarter units of coursework in each core content area.
3. For in-state applicants only, AB 2296 pushes back the requirement that applicants must not be deficient in the “assessment” or “diagnosis” core content areas, until August 31, 2020. Under the proposed amendments, the following individuals must not be deficient in the “assessment” or “diagnosis” core content areas:
  - a. Applicants whose application for a license is received after August 31, 2020; or
  - b. Applicants who are not registered as an associate by August 31, 2020.

Intent

This is primarily a cleanup measure to add LPCCs to provisions of law where other licensed mental health professionals are already included. There are several instances in California law that have not been updated to include them.

In addition, the bill makes two amendments to LPCC education requirements regarding core content areas of study. These amendments have previously been considered by the Committee.

Mr. Jensen expressed that CAMFT supports AB 2296.

Ms. Gonzalez expressed that NASW-CA supports AB 2296.

***Dr. Christine Wietlisbach moved to recommend to the Board to support AB 2296. Samara Ashley seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown – yes
- Samara Ashley – yes
- Christina Wong – yes
- Dr. Christine Wietlisbach – yes

**XIII. Discussion and Possible Recommendation Regarding Assembly Bill 2302 (Baker) Child Abuse: Sexual Assault: Mandated Reporters**

This item was removed.

**XIV. Discussion and Possible Recommendation Regarding Assembly Bill 2409 (Kiley) Professions and Vocations: Occupational Regulations**

AB 2409 is the “sister bill” to AB 2138. This bill establishes that a person has a right to engage in a lawful profession without being subject to occupational regulation that imposes a substantial burden on that right. The bill also specifies criteria a licensing board must meet to disqualify a person from obtaining a license based on a criminal record.

AB 2409 does the following:

1. Establishes that, regardless of BPC §480 or any other law, a person has a right to engage in a lawful profession without being subject to occupational regulation that imposes a substantial burden on that right. This includes the right of a person with a criminal record to obtain a license, and a right not to have a board use the person’s criminal record as an automatic or mandatory permanent bar to engaging in a profession.
2. States that, overriding any other law, a person behind on taxes or student loans has a right to obtain a license to engage in a profession, and a right not to have a board use the person’s status regarding taxes or student loans be an automatic or permanent bar to engaging in a profession.
3. Permits the board to find the person’s criminal record disqualifies him or her from obtaining a license only if all the following are met by clear and convincing evidence:
  - a. The conviction was for a felony or a violent misdemeanor and the board concludes that the state has an important interest in protecting public safety that is superior to the person’s individual right;
  - b. The offense is substantially related to the qualifications, functions, or duties of the profession;
  - c. Based on the nature of the specific offense and current circumstances, the person would be put in a position in which he or she is more likely to reoffend by having the license versus not having the license; and
  - d. A re-offense would cause greater harm that it would if the person did not have a license and was not put in a position in which the person is more likely to reoffend.
4. Requires the board to decide on a petition within 90 days of it being filed.
5. If a board denies a petition, allows the person to file an appeal to a court of general jurisdiction.

### Intent

The author's office is seeking to create a statutory right to challenge unfair licensing requirements that pose unnecessary barriers to work. They state that California's occupational laws are particularly restrictive in comparison to other states, and that these licensing laws make it difficult for people with a criminal record to find jobs.

### Current Board Process for Denial

Current law already outlines a process for an individual to appeal a license denial. The Board's regulations also outline specific criteria that the Board must consider when evaluating an applicant's rehabilitation

### Unclear Denial Criteria

To deny a license, this bill requires a board to provide clear and convincing evidence that having a license would make him or her more likely to reoffend, and that a re-offense would cause greater harm than it would if the person did not have a license and was not put in a position where he or she is more likely to reoffend.

The Board's highest priority is protection of the public. In addition, the Board is only allowed to deny a license if the crime or act is substantially related to the qualifications, functions, or duties of the profession. The Board must consider the person's rehabilitation efforts when making this decision.

It is unclear how the Board would be able to provide "clear and convincing evidence" that having or not having a license would make a person more likely to reoffend. Such a determination would be conjecture, making the Board unable to meet the criteria to deny a license.

### Fiscal Impact

This bill would likely result in significant increased legal costs to the Board. Because it sets unclear criteria that must be met by clear and convincing evidence, it opens the door for costly legal challenges in general court. In addition, this bill decreases the amount of time a board must decide on a petition. This will create a need for additional enforcement staff so that these timelines can be met.

Ms. Madsen stated that her comments that were made concerning AB 2138 applies to AB 2409. A concern regarding AB 2409 is that it reverses the burden of proof to the Board, not the applicant.

Dr. Wietlisbach and Ms. Wong agreed that AB 2138 has more depth than AB 2409.

Ms. Ashley suggested that the Board continue to monitor AB 2409. The Committee agreed.

*The Committee took a break 1:00 p.m. and reconvened at 2:21 p.m.*

## **XV. Discussion and Possible Recommendation Regarding Assembly Bill 2483 (Voepf) Department of Consumer Affairs: Office of Supervision of Occupational Boards**

This item was removed.



**XVI. Discussion and Possible Recommendation Regarding Assembly Bill 2608 (Stone) Licensed Mental Health Service Provider Education Program: Former Foster Youth**

This bill creates a new fund under the Mental Health Practitioner Education Fund loan repayment grant program specifically for loan repayment grants for LMFT and LCSW licensees and registrants who were formerly in California's foster youth care system. The program would be funded by levying an additional \$10 fee on LMFT and LCSWs each renewal cycle.

AB 2608 does the following:

1. Beginning January 1, 2019, requires the Board to collect an additional \$10 fee to LMFTs and LCSWs upon renewal, for deposit into the Mental Health Practitioner Education Fund.
2. Requires the money deposited from the extra \$10 fee to be used solely to fund grants to repay educational loans for applicants who meet the following criteria:
  - Commit to provide direct patient care in a publicly funded facility or mental health professional shortage area for at least 24 months;
  - Are LMFTs, associate MFTs, LCSWs, or ASWs; and
  - Were formerly in California's foster youth care system.
3. Allows this grant to a former foster youth to be combined with other Licensed Mental Health Service Provider Education Program grants.
4. Requires individuals formerly in California's foster youth system to be given priority over other grant applicants for the regular Mental Health Practitioner Education Fund loan repayment grants.

LPCCs and Associate Professional Clinical Counselors Not Included

This bill creates a loan repayment grant program for former California foster youth who are marriage and family therapist and clinical social work licensees and associates. However, LPCC licensees and associates are not included in the program.

Ms. Madsen expressed that this is targeted for a specific group. Furthermore, the Board is looking at a fee audit and possible adjustment. With additional fees, it will be tough to justify the fee increase. The Board has not raised its fees in at least 15 years.

Dean Porter, CALPCC, asked that if the Board adds additional fees, giving priority to a particular group of applicants, where will it stop?

Ms. Helms added that the language is written to implement the bill by January 1<sup>st</sup>, which is not enough time to implement.

Ms. Brown expressed that the Board cannot continue to add these fees when the license fees need to be increased in order for the Board to be productive. The Board's license population continues to increase every year, and additional staff is required to absorb the additional work. The Board needs to evaluate its needs before adding more fees for other funds.

Mr. Jensen suggested making this a voluntary program. Ms. Madsen stated that this will be a problem due to BreEZe programming.

Ms. Porter suggested developing a policy stating that the Board cannot collect funds through its licensing renewal fees on behalf of “special groups.”

Ms. Berger clarified that this fund is not like OSHPD. This fund helps getting professionals to serve in underserved areas; it is not necessarily to help professionals pay off their loans.

The Committee directed staff to work with the author’s office and express its concerns.

**XVII. Discussion and Possible Recommendation Regarding Assembly Bill 2780 (Bloom) Family Law: Support Orders and Child Custody**

*Samara Ashley left the meeting at 2:57 p.m. A quorum remained.*

AB 2780 would add mediators and court expert witnesses to the list of individuals a court can appoint to conduct a child custody evaluation.

AB 2780 does the following:

1. Adds a mediator or an expert witness pursuant to Section 730 of the Evidence Code, to the list of individuals a court may appoint to conduct a child custody evaluation.
2. Expands the educational requirements for a vocational training counselor, allowing them to have either a master’s degree in the behavioral sciences, or another postgraduate degree that the court finds provides sufficient training to perform a vocational evaluation.

Intent

The author indicates that there is a shortage of child custody evaluators and vocational training counselors. By expanding the individuals who may work on these cases, they hope to increase the supply of evaluators.

Inclusion of LPCCs

Currently, the Family Code specifies that LMFTs and LCSWs can be child custody evaluators. LPCCs are not included in this list. One way to increase the supply of child custody evaluators would be to allow LPCCs to do these evaluations.

Fiscal Impact

This bill adds mediators to those professionals who can conduct child custody evaluations. Although mediators are not required to be licensed, they are required to have a master’s degree in psychology, social work, marriage and family therapy, or other related behavioral science. Therefore, some of them may be Board licensees.

It is unclear whether the Board would be required to investigate a mediator if he or she held a Board license. If that were the case, the Board could expect a substantial increase in workload and investigative costs in its Enforcement Unit.

The author indicated that they are still working on this bill.

The Committee directed staff to monitor AB 2780.

**XVIII. Discussion and Possible Recommendation Regarding Assembly Bill 2943 (Low)  
Unlawful Business Practices: Sexual Orientation Change Efforts**

This bill would make advertising, offering to engage in, or engaging in sexual orientation change efforts with an individual an unfair or deceptive act under the Consumer Legal Remedies Act, allowing harmed consumers to bring legal action against violators to recover damages.

AB 2843 would do the following:

1. Provide that advertising, offering to engage in, or engaging in sexual orientation change efforts with an individual is an unlawful and unfair or deceptive act or practice for purposes of the Consumer Legal Remedies Act.
2. Define “sexual orientation change efforts” for purposes of the Consumer Legal Remedies Act. The definition is similar to the definition currently in the Business and Professions Code (BPC). The one difference is the proposed language does not specify that the sexual orientation change effort must be by a mental health provider.

Intent

The author’s office stated that conversion therapy is a set of dangerous and discredited practices that falsely claim to be able to change a person’s sexual orientation from homosexual to heterosexual, change their gender identity or expression, or lessen their same-sex sexual attraction.

The author’s office also notes that since the passage of California’s SB 1172, which banned conversion therapy for minors, in 2012, nine other states, the District of Columbia, and 32 local municipalities have also banned the therapy for minors.

Board Action for Unprofessional Conduct

This bill bans sexual orientation change efforts with patients of all ages via the Civil Code. It is unclear how this would affect a licensing board’s ability to take disciplinary action for unprofessional conduct, as the bill does not add provisions making it unprofessional conduct into the BPC.

If this bill passes and sexual orientation efforts becomes an unlawful practice via the Civil Code, the Board may be able to take disciplinary action for unprofessional conduct via one of its more general unprofessional conduct provisions:

- Conviction of a crime substantially related to the qualifications functions or duties of a licensee or registrant;
- Gross negligence; or
- Intentionally or recklessly causing physical or emotional harm to any client.

***Dr. Christine Wietlisbach moved to recommend to the Board to support AB 2943. Deborah Brown seconded. The Committee voted to pass the motion.***

Vote:

Deborah Brown – yes

Christina Wong – yes  
Dr. Christine Wietlisbach – yes

**XIX. Discussion and Possible Recommendation Regarding Assembly Bill 2968 (Levine) Therapist Sexual Behavior and Sexual Contact**

AB 2968 makes changes to sections of the BPC relating to the requirement that the DCA create a brochure to educate the public about the prohibition of sexual contact in therapy.

AB 2968 does the following:

1. Updates the definition of “psychotherapist” to include licensed educational psychologists, and updates the terminology used for other Board license types.
2. Adds a definition of “sexual behavior” to include with “sexual contact.” “Sexual behavior” is defined as inappropriate contact or communication of a sexual nature. It does not include the provision of appropriate therapeutic interventions relating to sexual issues.

Intent

This is an effort being led by the Board of Psychology (BOP) to modernize the statutory language regarding the requirements for the “Professional Therapy Never Includes Sex” brochure.

Specific areas of concern being addressed in this bill include outdated terminology that does not include sexual behaviors that have arisen with advances in technology, concern about the requirement to define civil and professional association’s complaint procedures, and references to outdated license classifications.

Previous Board Consideration and Suggested Amendment

The Board considered a draft version of this bill’s language at its February 2018 meeting. The Board had two suggestions which were relayed to the BOP and the author’s office:

- a. Correct some minor errors in the references to Board license types under the definition of a “psychotherapist.”
- b. Make a change to a reference in 728(a). Currently, the language requires a therapist who becomes aware that a client had alleged sexual contact or behavior with a previous therapist must provide a brochure that “...*delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists.*”

The Board suggested the following change to that language: “...*delineates the rights of, and remedies for, clients who have been ~~involved sexually with the~~ victim of sexual behavior or sexual contact with their psychotherapists.*”

The Board’s suggested corrections to license type references in (a) above were amended into the bill. The suggestion in (b) was not amended into the bill.

***Christina Wong moved to recommend to the Board to support AB 2968. Deborah Brown seconded. The Committee voted to pass the motion.***

Vote:

Deborah Brown – yes  
Christina Wong – yes  
Dr. Christine Wietlisbach – yes

**XX. Discussion and Possible Recommendation Regarding Senate Bill 906 (Beall)  
MediCal: Mental Health Service: Peer, Parent, Transition-Age and Family Support  
Specialist Certification**

SB 906 requires the State Department of Health Care Services (DHCS) to establish a peer, parent, transition-age, and family support specialist certification program. It also allows DHCS to amend the state's Medicaid plan to include these providers as a provider type within the Medi-Cal program.

SB 906 does the following:

1. By July 1, 2019, requires the DHCS to establish a certification program for adult, parent, transition-age youth, and family peer support specialists.
2. Requires DHCS to define responsibilities and practice guidelines for each type of peer support specialist using best practice materials, and to determine specified curriculum and core competencies.
3. Requires DHCS to specify training requirements and continuing education requirements for certification.
4. Requires DHCS to determine clinical supervision requirements for certificate-holders, requiring at a minimum, certificate holders be under the direction of a mental health rehabilitation specialist as defined in the California Code of Regulations.
5. States that this Act does not imply that a certification-holder is qualified or authorized to diagnose an illness, prescribe medication, or provide clinical services.
6. Allows DHCS to establish certification fees.

Intent

The goals of SB 906 are:

- To require DHCS to establish a peer support specialist certification program; and
- To authorize DHCS to add peer support providers as a provider type within the Medi-Cal program.

The author notes that peer support programs have emerged as an evidence-based practice across the nation, with the U.S. Department of Veterans Affairs and approximately 40 states having a certification process. However, California does not have a certification program or any established scope of practice.

Requirements in Other States

Several states recognize certified peer counselors. Staff surveyed Washington, Tennessee and New Mexico to determine their requirements. The findings were presented to the Committee.

#### History and Previous Legislation

The Board considered a bill very similar to this one in 2015-2016. SB 614 proposed essentially the same program, although some modifications have been made. The Board took a “support if amended” position on SB 614, asking for a clear exclusion of psychotherapy services, a better-defined scope of services, and the inclusion of LPCCs as acceptable supervisors. SB 614 was ultimately gut-and-amended to address a different topic.

#### Scope of Practice and Scope or Practice Exclusions

One area of concern is §14045.19, which excludes “providing clinical services” from work that peer support specialists are qualified or authorized to do. Staff requested and provided more extensive language.

#### Inclusion of LPCCs as Supervisors

WIC §14045.14(g) of the bill permits licensed mental health professionals, as defined in 9 CCR §782.26, to supervise peer support specialists. The definition of a “licensed mental health professional” in that regulation section, which has not been updated since 1997, does not include LPCCs.

#### Fingerprinting Not Required for Certification

This bill does not specify fingerprinting as a requirement to obtain certification.

#### Requirements Not Established in Legislation

Assuming this bill was to pass, it would become effective January 1, 2019, and the certification program must be established by July 1, 2019. Regulations must be established by July 1, 2021. However, the bill leaves discretion to DHCS to implement the program via various instructions until regulations are adopted.

***Christina Wong moved to recommend to the Board to support SB 906 if amended to include LPCCs as supervisors and to include the language included in item 4 of the analysis regarding Scope of Practice. Dr. Christine Wietlisbach seconded. The Committee voted to pass the motion.***

Vote:

- Deborah Brown – yes
- Christina Wong – yes
- Dr. Christine Wietlisbach – yes

*The Committee took a break at 3:26 p.m. and reconvened at 3:39 p.m.*

### **XXI. Discussion and Possible Recommendation Regarding Senate Bill 968 (Pan) Postsecondary Education: Mental Health Counselors**

SB 968 would require specified higher educational entities in California to hire one full-time equivalent mental health counselor per 1,000 students enrolled at each of their campuses.

#### SB 968 does the following:

1. Requires the following educational entities to have one full-time equivalent mental health counselor per 1,000 students enrolled at each respective campus, to the fullest extent consistent with state and federal law:

- The Trustees of the California State University;
  - The governing board of each community college district.
2. Requests the Regents of the University of California also follow this standard.
  3. Defines a “mental health counselor” as someone who meets both of the following:
    - Provides individual and group counseling, crisis intervention, emergency services, or a combination of these; and
    - Is licensed in California by the applicable licensing entity.
  4. Requires educational institutions subject to this requirement to report to the legislature every three years on how funding was spent and on the number of mental health counselors employed on each of its campuses.

#### Intent

The authors office states that the International Association of Counseling Services recommends one full-time equivalent mental health counselor for every 1,000 to 1,500 students, and that exceeding this ratio could lead to longer wait lists for services, and decreased support for academic success. They note that while the UC system reports that their ratio falls within this recommended range, it is estimated to be significantly higher for the CSU system. However, it is difficult to know exact ratios because of a lack of reporting and data.

#### Definition of a “Mental Health Counselor”

Is the definition of “mental health counselor” appropriate? Would it be preferable to specifically state which licensing boards are considered applicable licensing entities?

#### Consistency with Previous Board Recommendation

In 2014, the Board considered AB 2198. That bill proposed requiring licensees of this Board and the BOP to complete a six-hour training course in suicide assessment, treatment, and management. It would also have required new applicants who began graduate study after January 1, 2016 to take a 15-hour course in this subject area.

While the Board noted that it shared the author’s concerns regarding the prevalence of suicide, it did not believe AB 2198 would accomplish its objective. Therefore, the Board took an “oppose unless amended” position on the bill and proposed the formation of a task force to discuss the best course of action.

Mr. Jensen stated that CAMFT is working with the authors on SB 968 to include its associates.

Ms. Porter stated that they would like to include the LPCC associates as well.

Mr. Wong, NASW-CA, stated that even though the associates do not need to be written in legislation, NASW-CA would also like to include their associates if the MFT associates and LPCC associates are included.

***Deborah Brown moved to recommend to the Board to support SB 968 and provide technical assistance to the author's office. Christina Wong seconded. The Committee voted to pass the motion.***

Vote:

Deborah Brown – yes  
Christina Wong – yes  
Dr. Christine Wietlisbach – yes

**XXII. Discussion and Possible Recommendation Regarding Assembly Bill 1116 (Grayson) Peer Support and Crisis Referral Services Act**

AB 1116 establishes that a communication between an emergency service personnel worker and a peer support team member, crisis hotline staffer, or a crisis referral service staffer is privileged for a noncriminal proceeding.

AB 1116 does the following:

Specifies that a communication made by emergency service personnel to a peer support team member is privileged for purposes of a noncriminal proceeding to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist.

Intent

The author states it is critical to provide first responders and law enforcement officials with an opportunity to address critical incidents of stress through peer support and other means to ensure they receive the help they need. Often, these emergency personnel do not discuss the post-traumatic incidents they experience, due to concern it may result in adverse job action.

The goal of this bill is to increase the availability of peer support by developing peer support training courses, and to allow peer support communication to be kept confidential.

Previous Board Position

AB 1116 is a two-year bill, and the Board considered it last year. A previous version of this bill added staffers of a crisis hotline or crisis referral service for emergency service personnel to the definition of “psychotherapists” and granted them the psychotherapist-patient privilege under the Evidence Code for purposes of a noncriminal proceeding. This caused concern about unintended consequences of adding unlicensed individuals to the definition of a “psychotherapist.”

The bill was amended and no longer adds crisis hotline or crisis referral service staffers to the definition of a “psychotherapist” under Evidence Code Section 1010. Instead, it protects communication between an individual employed as emergency service personnel and a peer support team member, or a person or volunteer staffing a crisis hotline or crisis referral service for emergency service personnel as privileged for purposes of a noncriminal proceeding. The communication is protected to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist. However, it does not include them in the definition of a psychotherapist. Due to this amendment, at its May 2017 meeting, the Board took a “support” position on the bill.



Mr. Wong, NASW-CA, expressed a concern with AB 1116. He pointed out that this bill could prohibit the psychotherapist from reporting to the employer if the first responder is not fit to perform his or her job.

Ms. Helms offered to speak to the author about Mr. Wong's concern.

The Committee directed staff to monitor AB 1116.

**XXIII. Discussion and Possible Recommendation Regarding Senate Bill 399 (Portantino) Health Care Coverage: PDD or Autism**

SB 399 seeks to close some of the loopholes that insurance companies use to deny treatment for behavioral health treatment. It also revises the definitions of a "qualified autism service professional" and a "qualified autism service paraprofessional."

Intent

The author's office states that currently, patients with pervasive development disorder or autism (PDD/A) are being denied treatment coverage for prescribed behavioral health treatment, due to loopholes in the law. Some of these loopholes include the requirement for parental participation, location requirements, vendorization requirements, and only offering coverage for one form of behavioral health treatment. This bill seeks to remove these loopholes, and to increase the requirements to qualify as an autism service paraprofessional.

Effect on Board Licensees

This bill would broaden the requirements to qualify as an autism service professional. Currently, one must meet the same education and experience requirements as a behavioral service provider approved by a regional center to provide services. This bill would leave that as one option to qualify but would also allow an individual with a registration as an AMFT, ASW, or APCC to qualify. Under the proposed language, a Board registrant would need to obtain at least 500 hours of experience designing and implementing behavioral health treatment before he or she could supervise a qualified autism service paraprofessional.

Previous Position

At its April 2017 meeting, the Committee recommended the Board consider watching SB 399 and not take a position. The bill was a two-year bill at the time of the Board's May 2017 meeting.; therefore, the bill was not considered.

The Committee did not take a position.

**XXIV. Discussion and Possible Recommendation Regarding California Code of Regulations Section 1815.5: Telehealth Regulations**

Background

Prior to 2016, the Board's law offered very little guidance about telehealth, other than providing a definition and some basic requirements for patient consent and confidentiality in the BPC.

The lack of guidance was causing increasing confusion among licensees and registrants as telehealth became more prevalent. To address this, the Board proposed its first telehealth regulations. These regulations became effective on July 1, 2016.

The practice of psychotherapy via telehealth continues to evolve, and the Board has received feedback that one particular area of its telehealth regulations is causing confusion.

Discussion of Regulation §1815.5(f) and (e)

Regulation §1815.5(e) states that a California licensee or registrant may only provide telehealth to a client in another jurisdiction if he or she meets the requirements to lawfully provide services in that jurisdiction, and if telehealth is allowed by that jurisdiction.

This subsection was added because many Board licensees and registrants are unaware that it is common for jurisdictions to require a license to practice with a patient located there. To avoid opening himself or herself up to liability, therapists need to check to make sure they are following that jurisdiction's laws before practicing there. Otherwise, that jurisdiction could decide to take disciplinary action if there were a violation. If the jurisdiction decided to take such an action for a violation of their law, it would be within their authority to do so.

Regulation §1815.5(f) states that failure to comply with any provisions of the Board's telehealth regulations is unprofessional conduct.

CAMFT and other stakeholder have concerns that making it unprofessional conduct if a therapist fails to check to make sure he or she is following the laws of the jurisdiction where the client is located is too rigid and could lead to unintended consequences. For example, it does not necessarily account for a patient who is travelling, a patient who is transitioning to a new therapist, or a patient in crisis. They suggest that the language in 1815.5(e) should follow the language in 1815.5(f) so that it functions as guidance, rather than a requirement that one must follow to avoid discipline.

Whether another jurisdiction decides to take disciplinary action based on a complaint they receive when a therapist is practicing with a patient in their jurisdiction who is travelling, transitioning, or in crisis is at their discretion, and outside of the authority of this Board.

Mr. Jensen stated that this is a very complex issue, and licensing boards are not following case law that looks at issues of jurisdiction. There are many cases that carve out an exception for "follow-up communication." The leading case is a California case that was decided in 1996, which specifically holds that "follow-up communication between an out-of-state physician and a resident in the state was not enough to create personal jurisdiction to warrant the doctor for being sued in California."

Mr. Jensen added that every state has its licensing laws that are very restrictive in nature, which ultimately creates a "bubble where nobody can have any interaction with anybody else."

Mr. Jensen pointed out that patients will cross state lines to seek the best treatment possible. The out-of-state physician will have to follow-up with the patient in their home state. The intent was never to prohibit follow-up communication. The way that the language reads in (e) and (f), anything that crosses state lines could be punishable in California as unprofessional conduct, and that does not ring true with case law. It's

very clear in case law that the services do not follow the patient because it would be improper to defend a physician in every state where the patient travels.

Mr. Jensen stated that in the 1996 case, it is clear that a patient's ability to choose a provider actually supersedes the consumer protection agencies, and it is very clear that specialty care always entails follow-up care.

Mr. Jensen further expressed that the laws are overbroad. Crisis must always take precedence. The 1996 case law has allowed professionals to engage in follow-up communication with their patients across state lines.

Mr. Jensen expressed the need to create safe harbor provisions that other states can emulate in order to address the issue regarding patients who are temporarily out-of-state.

Mr. Wong, NASW-CA, commented that the professional is responsible for knowing the state laws and regulation; it is in the code of ethics. He also stated that the Tenth Amendment of the U.S. Constitution states that the federal government shall not regulate what states are responsible for regulating. This creates jurisdiction; however, it does not fit today's technology and mobility.

Mr. Wong shared some ideas:

- National associations - standardizing definitions of residency; what is temporary and not temporary; and attempt to get more states to adopt the same definitions.
- Getting treatment in exempt settings. Federal agencies' have a general exemption.
- Establish compacts between states.

The Committee agreed to table this discussion until the May Board meeting, when a committee will be established to address telehealth.

## **XXV. Status on Board-Sponsored Legislation**

### AB 93

This bill proposal represents the work of the Board's Supervision Committee. Its amendments focus on strengthening the qualifications of supervisors, supervisor responsibilities, types of supervision that may be provided, and acceptable work settings for supervisees. The bill also strives to make the Board's supervision requirements more consistent across its licensed professions.

AB 93 is in the Senate Appropriations Committee.

### AB 2117

The Board is proposing a bill to make some amendments to its licensing process. The bill will make amendments to specify how an expired registration may be renewed, and to supervised experience hours required for long-term, out-of-state license holders. It also makes some corrections to LCSW law regarding the California law and ethics exam and law and ethics coursework.

AB 2117 is on its 3<sup>rd</sup> reading in the Assembly.

## SB 1491

This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

SB 1491 is awaiting its 1<sup>st</sup> hearing in the Senate Business & Professions Committee.

## **XXVI. Status of Board Rulemaking Proposals**

### Application Processing Times and Registrant Advertising

This proposal would amend the Board's advertising regulations in line with SB 1478, which changes the term "intern" to "associate" effective January 1, 2018, and makes several technical changes. This proposal would also amend the regulation that sets forth minimum and maximum application processing time frames.

This proposal received final approval on March 14, 2108 and took effect immediately.

### Enforcement Process

This proposal would result in updates to the Board's disciplinary process. It would also make updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines," which are incorporated by reference into the Board's regulations.

DCA's initial review process began in September 2017. The proposal is still under DCA's initial review.

### Contact Information; Application Requirements; Incapacitated Supervisors

This proposal would:

- Require all registrants and licensees to provide and maintain a current, confidential telephone number and email address with the Board.
- Codify the Board's current practice of requiring applicants for registration or licensure to provide the Board with a public mailing address, and ask applicants for a confidential telephone number and email address.
- Codify the Board's current practice of requiring applicants to provide documentation that demonstrates compliance with legal mandates, such as official transcripts; to submit a current photograph; and for examination candidates to sign a security agreement.
- Require certain applications and forms to be signed under penalty of perjury.
- Provide standard procedures for cases where a registrant's supervisor dies or is incapacitated before the completed hours of experience have been signed off.

DCA's initial review process began in August 2017. The proposal is still under DCA's initial review.

Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

This proposal would amend the Board's examination rescoring provisions to clarify that rescoring pertains only to exams taken via paper and pencil, since all other taken electronically are automatically rescored. This proposal would also make clarifying, non-substantive changes to the Board's application abandonment criteria, and clarify the fee required for subsequent Associate Professional Clinical Counselor registrations.

The proposal was approved by the Board at its meeting in November 2017 and began the DCA initial review process in April 2018. Upon completion of the DCA review, the proposal will be submitted to OAL for publishing to initiate the 45-day public comment period.

**XXVII. Public Comment for Items not on the Agenda**

Mr. Jensen commented on suicide prevention training, stating that it is not a bad idea; however, it should be required on the clinical side of training, not through law and ethics.

Mr. Wong, NASW-CA, commented that Mayor Darrell Steinberg and the Sacramento City Council, in response to the Stephon Clark incident, is discussing how to provide mental health services on a community basis.

**XXVIII. Suggestions for Future Agenda Items**

No suggestions were presented.

**XXIX. Adjournment**

The Committee adjourned at 4:48 p.m.