



## Policy and Advocacy Committee Minutes

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**DATE** October 11, 2019

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

**TIME** 8:30 a.m.

### ATTENDEES

**Members Present:** Christina Wong, Chair, LCSW Member  
Betty Connolly, LEP Member  
Massimiliano “Max” Disposti, Public Member

**Members Absent:** Deborah Brown, 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

**Other Attendees:** *See voluntary sign-in sheet (available upon request)*

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### I. Call to Order, Establishment of Quorum, and Introductions

Christina Wong, Chair of the Policy and Advocacy Committee (Committee), called the meeting to order at 8:36 a.m. Kim Madsen called roll, and a quorum was established.

## II. **Approval of August 2, 2019 Committee Meeting Minutes**

This item was tabled.

## III. **Discussion and Possible Recommendation Regarding Proposed Technical Amendments to Business and Professions Code Sections 4980.01, 4980.43.2, 4980.43.3, 4983, 4987.5, 4989.66, 4990.30, 4996.12, 4996.14, 4996.22, 4996.23.1, 4998, 4999.22, 4999.46.1, 4999.46.2, 4999.86, 4999.123**

Staff recommends several technical changes in the Business and Professions Code (BPC) as proposed legislation for 2020.

### **1. Amend BPC §§ 4987.5, 4998, and §4999.123 – Professional Corporations**

Background: These sections specify that licensed marriage and family therapist (LMFT), licensed clinical social worker (LCSW), and licensed professional clinical counselor (LPCC) corporations are authorized to render professional services as long as the corporation and its shareholders, officers, directors, and employees rendering professional services, who are specified license holders, are in compliance with the Moscone-Knox Professional Corporation act and other relevant statutes and regulations.

The sections list which license types may be officers, directors, or employees rendering professional services. However, this list is outlined in Corporations Code §13401.5. Occasionally, the legislature changes the list in the Corporations Code, but the BPC does not get updated.

Recommendation: Staff recommends striking the list of professions in BPC §§ 4987.5, 4998, and 4999.123, as they are already listed in the Corporations Code and to avoid incorrect language.

### **2. Amend BPC §4980.43.3 - Renumbering**

Background: BPC §4980.43.3 contains a numbering error in subdivision (c). The two criteria listed as (1) and (2) should be labeled as subdivisions (A) and (B).

Recommendation: Renumber the contents of subdivision (c).

### **3. Amend BPC §§ 4980.43.2, 4996.23.1, 4999.46.2 – Definition of “One Hour of Direct Supervisor Contact”**

Background: These sections define “one hour of direct supervisor contact” as a specified amount of face-to-face contact between a supervisor and their supervisees.

The intended definition of “face-to-face” contact is to require that the supervisor and supervisee(s) meet in person for the supervision session. This is implied in subdivisions 4980.43.2(d), 4996.23.1(f), and 4999.46.2(d), which state that notwithstanding the definitions of “one hour of direct supervisor contact”, an associate working in an exempt setting may obtain their required weekly direct supervisor contact via videoconferencing. However, due to questions concerning “face-to-face”, staff believes it would be helpful to clarify that “face-to-face” contact means that the contact must be in-person.

Recommendation: Amend the definition of “one hour of direct supervisor contact” in §§ 4980.43.2, 4996.23.1, and 4999.46.2 requiring in-person face-to-face contact.

#### **4. Amend BPC §§ 4980.01, 4996.14, 4999.22 – Notice to Clients About Filing a Complaint**

Background: Last year via AB 630, the Board amended the law to require that unlicensed or unregistered therapists in exempt settings provide their clients with information about where to file a complaint about the therapist.

In its review of the bill, the Senate Committee on Business, Professions, and Economic Development suggested that the following language also be included in the notice provided to clients of unlicensed or unregistered therapists:

*The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.*

Adding this language would provide a consumer who is unsure about their therapist’s license status with an additional resource to verify a license or registration.

Recommendation: Amend the above statement into the notice required by §§ 4980.01, 4996.14, and 4999.22.

Ms. Wong: Proposal uses two terms: psychotherapist and therapist. Recommends using term “therapist” instead of psychotherapist.

Staff recommended using the term “counselor” in place of “psychotherapist” and “therapist.”

Mr. Disposti: Recommended providing the Board’s website as a resource in addition to the Board’s phone number.

Committee and staff agreed to the recommended changes discussed.

## **5. Amend BPC §4990.30 - Petitions for Reinstatement or Modification of Penalty**

Background: In order to clear up some ambiguities in BPC §4990.30, the Board’s legal counsel recommended clarifying certain provisions regarding the procedure for petitioning to terminate probation early or modify a penalty:

- Subdivision (b) currently specifies timeframes after which a petition can be filed with the Board. Until recently, the Board has operated under the assumption that time during which a probation is tolled also counts toward the specified timeframes. However, in a recent case, an administrative law judge challenged this assumption, stating it is incorrect. Staff wishes to clarify that the timeframes exclude any periods of probation tolling.
- Subdivision (c) states that that a petition may be heard either by the Board or that the Board can assign the petition to an administrative law judge. However, subdivision (d) implies that the petitioner has some say in who hears the case, stating “The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.” While the intent of this is likely to provide that the petitioner may request their case to be heard, it may also inadvertently imply that a petitioner can request the Board to hear a case instead of an administrative law judge.

Recommendation: Amend subdivision (b) to exclude periods of probation tolling from the required timeframes before a petition can be filed. Amend subdivision (d) to clarify that a petitioner can only request a hearing location if the Board is hearing the case.

## **6. Amend BPC §4996.22 – Acceptable LCSW Continuing Education Providers**

Background: Current law states that social workers can only obtain continuing education (CE) from an accredited school if the school is accredited by the Commission on Accreditation of the Council of Social Work Education. It does not permit social workers to gain CE from a school

accredited by the U.S. Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

Staff believes this is unintentional and that social workers should be able to gain CE from a school accredited by USDE or approved by BPPE.

Recommendation: Amend BPC §4996.22 to permit clinical social workers to obtain CE from a school accredited by USDE or approved by BPPE.

#### **7. Amend BPC §4999.46.1 – Delete Duplicative Definition of Supervision**

Background: BPC §§ 4999.12 and 4999.46.1 define “supervision” in the LPCC statute. BPC §4999.12 defines terms used throughout the LPCC licensing statute. It should not be duplicated in §4999.46.1.

Recommendation: Delete the duplicative definition of “supervision” in BPC §4999.46.1.

#### **8. Amend BPC §§ 4983, 4989.66, 4996.12, and 4999.86 – Fines for Licensing Act Violations**

Background: LMFT and LPCC laws have provisions establishing a misdemeanor charge and a fine of \$2,500 and/or six months in county jail for violating the respective licensing acts.

The LCSW law has this clause as well; however, the fine amount is \$1,000.

The Licensed Educational Psychologist (LEP) law states a violation of its chapter is a misdemeanor but does not specify a punishment of jail time or a fine.

Staff believes the stated punishment for a violation of the Board’s licensing acts should be consistent but has been unable to determine the reason for the inconsistency. Both the LMFT section establishing the \$2,500 fine, and the LCSW section establishing the \$1,000 fine were established in the mid-1980’s and have not been amended since. Legislative history explaining the reason for differing fines is not available. The LPCC and LMFT licensing laws are consistent because LPCC law was modeled after the LMFT law.

These fines are court fines. BPC §125.9 grants boards the authority to establish a system for issuance of citations and administrative fines via regulations. The Board has done this in regulation §1886.40, which establishes fines of up to \$2,500 for citable offenses or up to \$5,000 if the offense meets certain specified circumstances.

Recommendation: Amend LCSW and LEP law to specify the misdemeanor punishment for a licensing act violation is a \$2,500 fine and/or six months in jail, making it consistent with current LMFT and LPCC law.

Since there is a lack of historical information, staff recommended removing the dollar amount of the fine from the language and replace it with “as determined by the court.”

**MOTION:** Move to direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal. Wong moved; Connolly seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown				X	
Betty Connolly	X				
Max Disposti	X				
Christina Wong	X				

**IV. Discussion and Possible Recommendation Regarding Proposed Legislative Amendments Needed Due to the Passage of AB 2138: Business and Professions Code Sections 4980.40, 4982, 4989.20, 4989.24, 4989.54, 4992.3, 4996.2, 4996.18, 4999.42, 4999.51, 4999.80, 4999.90**

AB 2138 was signed into law and becomes effective on July 1, 2020. This bill makes amendments to the Department of Consumer Affairs (DCA) boards’ enforcement processes, including placing new limits on when a board can deny a license based on a conviction or prior formal disciplinary action.

AB 2396 prohibited DCA boards from denying a license solely based on the applicant having certain types of convictions that have been expunged.

The passage of both bills require clean-up amendments in the Board’s four practice acts so that related language is consistent throughout the statutes. These amendments fall into the following four categories.

**1. Amend BPC §§ 4980.40, 4989.20, 4996.2, 4999.42, and 4999.51 – Qualifications for Licensure or Registration**

Background: These sections list criteria needed to qualify for a license or registration. One criteria states that the person must not have committed any acts or crimes constituting grounds for denial of licensure under BPC

§480. (BPC §480 outlines reasons a board may deny a license, and it was significantly changed by AB 2138.)

BPC §480 used to allow denial of licensure based on convictions or certain acts involving fraud, dishonesty, or deceit. However, that language has been changed, and now denial is permitted based on certain types of convictions or based on formal discipline due to professional misconduct that occurred within a specific time frame and is substantially related to the profession.

Recommendation: Given the recent changes to BPC §480, staff recommends striking the old language that the applicant must not have committed acts or crimes constituting grounds for denial under §480. Instead, staff recommends an amendment that simply states that the person must not be subject to denial of licensure pursuant to §480.

**2. Amend BPC §§ 4980.40, 4989.24, 4996.2, 4999.42, and 4999.51 – Reference to Penal Code Section 290**

Background: Penal Code (PC) §290 specifies various types of crimes for which registration as a sex offender is required.

PC §290 is being reorganized effective January 1, 2021. Under the new version of that law, the types of sex offenses have been organized into three tiers, depending on the severity of the crime. The higher the tier, the longer the required registration as a sex offender.

AB 2138 amended BPC §480 to specify that only the two higher tier sex offenses in the new PC §290 are subject to license denial regardless of the seven-year age limitation. However, there are several sections in the Board's practice acts that specify denial for any required registration under PC §290. These are now overridden by the changes made in AB 2138.

Recommendation: Amend the listed sections of the BPC to specify that any denials due to PC §290 registration must also be in accordance with the conditions for denial specified in §480.

**3. Amend BPC §§ 4982, 4989.54, 4992.3, and 4999.90– Unprofessional Conduct Provisions.**

Background: These sections contain a definition of a conviction. However, AB 2138 amended the definition of a conviction in BPC §7.5 for the purposes of denying a license pursuant to §480. Therefore, staff recommends referencing that definition here.

These sections also contain language permitting suspension, revocation, or denial of a license regardless of whether a conviction has been dismissed pursuant to PC §1203.4. However, due to amendments made in AB 2396 and AB 2138, denial of licensure is not permitted on the basis of this type of dismissed conviction. Instead of including this specific language, staff recommends an amendment stating actions to suspend, revoke, or deny a license must be in compliance with Division 1.5 of the BPC (this Division contains §480 and contains the statutes governing denial, suspension, and revocation of licenses.)

Recommendation: Amend the unprofessional conduct sections to reference the definition of a conviction referenced in BPC §7.5. Amend the sections to state that suspensions, revocations, or denials of a license or registration must be in accordance with Division 1.5 of the BPC.

**4. Amend BPC §4999.80 – References to Statutes Governing License Denials, Suspensions, or Revocations**

Background: BPC §4999.80 references laws governing license denials, suspensions, or revocations. BPC §490 governs license suspensions and revocations and is not included in the list of referenced sections.

Recommendation: Amend BPC §4999.80 to include BPC §490 in the list of referenced sections that pertain to license denials, suspensions, or revocations.

**MOTION:** Direct staff to bring to the Board for consideration as a legislative proposal. Wong moved; Disposti seconded. The motion carried; 3 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown				X	
Betty Connolly	X				
Max Disposti	X				
Christina Wong	X				

**V. Discussion and Possible Recommendation Regarding Custody of Client Records Due to Licensee Death or Incapacitation**

The Board receives inquiries about what should happen to client records if the therapist dies or becomes incapacitated.

The Board’s statutes and regulations do not address this. Some professional associations address this in their codes of ethics.



American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct:

- APA Ethics Code Section 6.02(c): Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice.
- APA Ethics Code Section 3.12: Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations.

The American Counseling Association's 2014 ACA Code of Ethics:

- ACA Code of Ethics Section B.6.i.: Reasonable Precautions: Counselors take reasonable precautions to protect client confidentiality in the event of the counselor's termination of practice, incapacity, or death and appoint a records custodian when identified as appropriate.

Some other states have taken steps to require that their licensed mental health professionals take certain actions to ensure safekeeping of client records.

- **Texas:** Requires that its licensed professional counselors notify their patients of the following as part of their informed consent before providing services:

*"the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice."* (Texas Administrative Code Title 22, Chapter 681, §681.41(e)(8))

- **Florida:** Requires that if client termination was due to the licensee's death, records must be maintained for at least two years. After that, the executor, administrator, or survivor must publish a notice once a week for 4 consecutive weeks in the highest circulated newspaper in each county of practice. The notice must state that the records will be disposed of or destroyed 4 weeks or later from the notice publication. (Florida Administrative Code §64B4-9.001(4))
- **Oregon:** Requires its licensed marriage and family therapists and professional counselors to arrange for the maintenance of and access to records in the event of the death or incapacity of the licensee. Oregon licensees must file the name of a custodian of record with the board, along with that person's (or organization's) contact information. The custodian of

record must be an Oregon-licensed mental health professional, a licensed medical professional, a health care or mental health organization, and attorney, a school, or a medical records company. (Oregon Administrative Rules Chapter 833, §833-075-0080)

- **Washington:** Requires its licensed mental health counselors, marriage and family therapists, and social workers to make provisions for retaining or transferring records in the event of going out of business, death, or incapacitation. The provisions may be made in the practitioner's will, an office policy, or by ensuring another licensed counselor is available to review records with a client, or other appropriate means. (Washington Administrative Code §246-809-035(5))

#### HIPAA and Client Records

Does establishing a plan to transfer client records to another practitioner upon a therapist's death interact with the federal Health Insurance Portability and Accountability Act (HIPAA)?

The U.S. Department of Health and Human Services (HHS) has an FAQ about HIPAA for professionals on its website. It states that health care providers can use health information for treatment purposes without the patient's authorization, including to consult with other providers or to refer the patient.

#### Discussion

Ms. Connolly: Hesitant to develop regulation that the Board cannot enforce. The Board can make a recommendation to its licensees but cannot enforce the law on a deceased licensee or the executor unless he/she is a licensee.

Ms. Wong: Perhaps the associations could address this in their code of ethics and provide guidance.

An informed consent between therapist and client was discussed.

Ms. Wong: Requested more research regarding an informed consent.

Mr. Sodergren: Does not want to perform audits on informed consent forms. Could this be a best practices suggestion instead of a regulation?

Jaclyn, California Society for Clinical Social Work (CSCSW): An informed consent would be appropriate but needs more discussion.

Kristin Roscoe, California Association of Marriage and Family Therapists (CAMFT): CAMFT receives a lot of questions regarding this issue. CAMFT's Code of Ethics includes a recommendation. Not supportive of anything that places a burden on family members. In favor of an informed consent and providing information to the public.

Kenneth Edwards, California Association for Licensed Professional Clinical Counselors (CALPCC): Suggested using language that would incorporate electronic records, providing direction on how to provide access to records to an executor or clinician. Prefers to not codify this, but instead recommending a plan. Suggests that the association develop a template to recommend a plan on how to pass on the records.

Janlee Wong, National Association of Social Workers, California Division (NASW-CA): Agencies have rules regarding record retention as well as transferring records to other clinicians. Private practice is complicated. Agrees that the Board may not have jurisdiction over a deceased therapist's estate, which gets into probate and trust laws. Consent form – it is important to explain the limits to confidentiality, which is outlined in the consent form, such as how to obtain records in the event the therapist dies. Client has access to content in the records; however, some content belongs to the therapist. Intends to take this matter back to the association for discussion.

Bitá Rivas, CALPCC: There should be discussions regarding what informed consent should look like and what information should clients have access to. HIPAA includes policies and practices in maintaining client records.

Ms. Wong: Suggested that staff research and collect more feedback from the associations.

## **VI. Discussion and Possible Recommendation Regarding Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees: Title 16, California Code of Regulations: Amend Sections 1805.05, 1850.6, 1850.7 and 1854; Repeal Section 1832**

A regulation proposal to consider changes pertaining to examination waiting periods, professional corporations and educational institutions would do all the following:

### Examination Waiting Periods (§1805.05)

- Specify a 180-day waiting period for a retake of the LEP written examination. The waiting period for this exam is currently unspecified, but this time period proposed is consistent with current practice.
- Reduce the waiting period for a board-developed clinical examination to 120 days for consistency with current practice.
- Specify that the examination waiting periods are a minimum of 90 days. This would allow for flexibility in case an event outside of the Board's control impacted the ability to administer examinations.

Professional Corporations (§§ 1850.6 and 1850.7)

- Add LPCCs to the sections pertaining to ownership and transfer of shares, as well as the section on naming a professional corporation, for consistency with the LMFT and LCSW professions.

Accrediting Agencies and Equivalent Degrees (§§ 1832 and 1854)

- Delete the section pertaining to equivalent accrediting agencies for MFT applicants. This section is no longer necessary as it is covered in statute (BPC §§ 4980.36, 4980.37, 4980.78 and 4980.79).
- Specify the accrediting agencies that are acceptable for licensed educational psychologist applicant degree programs for consistency with the LMFT, LCSW and LPCC professions, and update the name of the foreign credentials' evaluation service.

Discussion

Ms. Roscoe, CAMFT: Requested additional language clarifying the minimum waiting period and clarifying/defining an event outside of the Board's control.

Ms. Wong recommended tabling the discussion regarding examination waiting periods (§1805.05).

**MOTION:** Direct staff to research and gather more information regarding §1805.05, and to make any discussed changes, and any non-substantive changes and recommend to the full Board as regulatory proposal. Wong moved; Connolly seconded. The motion carried; 3 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown				X	
Betty Connolly	X				
Max Disposti	X				
Christina Wong	X				

**VII. Update on Board-Sponsored, Board-Supported, and Board-Monitored Legislation**

**Board-Sponsored Legislation**

*SB 679 Healing Arts: Therapists and Counselors: Licensing*

Status: SB 679 was signed by the Governor and becomes effective on January 1, 2020.

*AB 630 Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Educational Psychologists: Professional Clinical Counselors: Required Notice*

Status: AB 630 was signed by the Governor.

SB 786: Healing Arts (Omnibus Bill)

Status: SB 786 was signed by the Governor.

**Board-Supported Legislation**

AB 1651: Licensed Educational Psychologists: Supervision of Associates and Trainees

Status: AB 1651 was signed by the Governor.

SB 163: Health Care Coverage: Pervasive Developmental Disorder or Autism

Status: SB 163 is on the Governor's desk awaiting a decision.

SB 601: State Agencies: Licenses: Fee Waiver

Status: SB 601 is on the Governor's desk awaiting a decision.

**Board-Monitored Legislation**

SB 10 Mental Health Services: Peer, Parent, Transition-Age, and Family Support Specialist Certification

Status: SB 10 is on the Governor's desk awaiting a decision.

SB 425 Health Care Practitioners: Licensee's File: Probationary Physician's and Surgeon's Certificate: Unprofessional Conduct

Status: SB 425 is on the Governor's desk awaiting a decision.

**VIII. Update on Board Rulemaking Proposals**

Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

Status: The regulations were noticed to the public on August 8<sup>th</sup>. The public hearing was held on September 30<sup>th</sup>. Comments were received from a stakeholder, which will be brought to the November 2019 Board meeting for consideration.

Enforcement Process

Status: On hold until passage of AB 2138 regulations.

Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

Status: Submitted to Office of Administrative Law for final approval on July 22<sup>nd</sup>. The submission was subsequently withdrawn after language changes were identified that need to be brought to the Board for consideration at its November 2019 meeting.

### Supervision

Status: DCA Initial Review. Staff identified some changes that will be brought to the Board for consideration at its November 2019 meeting.

## **IX. Public Comment for Items Not on the Agenda**

Mr. Wong, NASW-CA: Office of Statewide Health Planning and Development (OSHDP) Mental Health Services Act Workforce Education and Training (WET) Five-Year Plan for 2020-2025, Innovations for Further Consideration section. WET is recommending to:

*Explore applying a portion of time of supervised clinical field work performed during the final year of graduate school in the public mental health system toward licensure; and*

*Use the Health Workforce Pilot Projects Program to test changes in scope of practice of licensed clinicians.*

Ms. Roscoe, CAMFT: CAMFT will be working towards addressing some issues pertaining to AB 5 next year and is looking to have a potential exemption for its membership. If CAMFT pursues legislation, it hopes to have the support of the Board.

## **X. Suggestions for Future Agenda Items**

Ms. Wong: Penal Code §290 and its three tiers categorizing types of sexual offenses.

## **XI. Adjournment**

The Committee adjourned at 10:37 a.m.