



Board of Behavioral Sciences



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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

BOARD MEETING MINUTES

Open sessions of this Board Meeting were webcasted. Records of the webcasts are available at the following links:

March 5 (part 1): https://www.youtube.com/watch?v=VX_7PsiGGNs

March 5 (part 2): <https://www.youtube.com/watch?v=S0Kyikig5lo>

March 6: <https://www.youtube.com/watch?v=LbCmdmdnAsg>

DATE March 5, 2020

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

TIME 8:30 a.m.

ATTENDEES

Members Present: Betty Connolly, Chair, LEP Member
Max Disposti, Vice Chair, Public Member
Dr. Leah Brew, LPCC Member
Deborah Brown, Public Member
Ross Erlich, Public Member
Jonathan Maddox, LMFT Member
John Sovec, LMFT Member
Wendy Strack, Public Member
Christina Wong, LCSW Member

Members Absent: Crystal Anthony, LCSW Member

Staff Present: Kim Madsen, Executive Officer
Steve Sodergren, Assistant Executive Officer
Jonathan Burke, Enforcement Manager
Sabina Knight, Legal Counsel
Christina Kitamura, Administrative Analyst

Other Attendees: Sean Gavin, Administrative Law Judge

OPEN SESSION

I. Call to Order and Establishment of Quorum

Betty Connolly, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 8:38 a.m. Roll was called, and a quorum was established. Board members introduced themselves.

II. Public Comment for Items Not on the Agenda

No comments.

III. Suggestions for Future Agenda Items

No suggestions.

Administrative Law Judge Sean Gavin presided over the following petition hearings. Deputy Attorney General Patricia Heim presented the facts of each case on behalf of the People of the State of California.

IV. Petition for Modification of Probation for Hosson Hooper, LMFT 79118

The hearing was opened at 8:45 a.m. Hosson Hooper was present and represented himself. Mr. Hooper stated that he is petitioning for early termination of probation. Mr. Heim presented the background of Mr. Hooper's probation, and referred to the exhibit showing that Mr. Hooper's petition is to modify probation.

Mr. Hooper was sworn in. He presented his request for modification of probation/early termination of probation and information to support the request and was cross-examined by Ms. Heim and Board members. The record was closed at 10:11 a.m.

V. Petition for Early Termination of Probation for Chevelle Bourdon, ASW 76998

The hearing was opened at 10:22 a.m. Chevelle Bourdon was present and represented herself. Ms. Heim presented the background of Ms. Bourdon's probation.

Ms. Bourdon was sworn in. She presented her request for early termination of probation and information to support the request and was cross-examined by Ms. Heim and Board members. The record was closed at 11:02 a.m.

VI. Petition for Early Termination of Probation for Jacqueline Gall, AMFT 102973

The hearing was opened at 11:08 p.m. Jacqueline Gall was present and represented herself. Ms. Heim presented the background of Ms. Gall's probation.

Ms. Gall was sworn in. She presented her request for early termination of probation and information to support the request and was cross-examined by Ms. Heim and Board members. The record was closed at 11:58 a.m.

VII. Petition for Early Termination of Probation for Andrew Warren, ASW 79887

The hearing was opened at 1:08 p.m. Andrew Warren was present and represented himself. Ms. Heim presented the background of Mr. Warren's probation.

Mr. Warren was sworn in. He presented his request for early termination of probation and information to support the request and was cross-examined by Ms. Heim and Board members. The record was closed at 2:09 p.m.

VIII. Petition for Early Termination of Probation for Katya Webber Mills, AMFT 102522

The hearing was opened at 2:22 p.m. Katya Webber Mills was present and represented herself. Ms. Heim presented the background of Ms. Mill's probation.

Ms. Miller was sworn in. She presented her request for early termination of probation and information to support the request and was cross-examined by Ms. Heim and Board members. The record was closed at 3:21 p.m.

CLOSED SESSION

IX. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and to Take Action on Disciplinary Matters, Including the Above Petitions. The Board Will Also, Pursuant to Section 11126(a)(1) of the Government Code, Meet in Closed Session to Evaluate the Performance of the Executive Officer and to Discuss Possible Salary Level Change.

The Board met in closed session at 3:32 p.m.

OPEN SESSION

X. Recess Until 8:30 a.m. on Friday, March 6, 2020

The Board reconvened in open session and recessed at 5:24 p.m.

DATE March 6, 2020

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

TIME 8:30 a.m.

ATTENDEES

Members Present: Betty Connolly, Chair, LEP Member
Max Disposti, Vice Chair, Public Member
Dr. Leah Brew, LPCC Member
Deborah Brown, Public Member
Ross Erlich, Public Member
Jonathan Maddox, LMFT Member
John Sovec, LMFT Member
Wendy Strack, Public Member
Christina Wong, LCSW Member

Members Absent: Crystal Anthony, LCSW Member

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

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

OPEN SESSION

XI. Call to Order, Establishment of Quorum, and Introductions

Meeting called to order at 8:35 a.m. Roll was called, and a quorum was established. Board staff and meeting attendees introduced themselves.

XII. Consent Calendar

- a. Approval of the May 9-10, 2019 Board Meeting Minutes**
- b. Approval of November 20-22, 2019 Board Meeting Minutes**

Wong: Noted a correction on May 2019 meeting minutes.

MOTION: Approve the May 9-10, 2019 Board meeting minutes as amended and the November 20-22, 2019 Board meeting minutes.

Wong moved. Brew seconded. The motion carried; 8 yea, 0 nay, 1 abstention.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack			x		
Christina Wong	x				

XIII. Budget Presentation by Department of Consumer Affairs Budget Manager Brian Skewis and Budget Analyst J.P. Fletes

Brian Skewis, Department of Consumer Affairs (DCA) Budget Manager presented an overview of the budget update.

Fund Condition

The fund condition is a “savings account” from which each year’s budget is allocated or drawn. The Board is required to adhere to its annual budget as approved by the governor and legislature.

- Fiscal year (FY) 19/20 began with approximately \$6.4 million in the fund.
- Anticipates collecting approximately \$9.5 million in revenue.
- Budget authority of \$13,562,00 of which \$965,000 is directly drawn and \$12.6 is appropriated to the Board directly.
- Gap of \$4.1 million causing the fund balance to decline.

The Board is spending more than it is collecting. The Board is in the process of pursuing a fee increase. If the proposal is successful, the revenue will be increasing starting mid-year implementation of FY 20/21 and fully actualized in FY 21/22. With these structural changes, the Board’s fund will be in healthy condition with slight growth.

The Budget Office recently completed building the FY 2021 budget. There are several adjustments that affect the Board’s current year and budget year expenditure authorization. These adjustments are primarily associated with changes in the cost of staffing, benefits and an increase in the rate and

utilization of the Attorney General's Office. The Board further submitted a budget change proposal to fund and authorize a permanent intermittent staff member starting next fiscal year.

Budget Report

The budget report provides information regarding prior year information, which is compared to the budget and year-to-date information. This information is used to create projections. The unencumbered balance is the difference between the amount that the Board is budgeted and the amount that the Board is projected to spend. This year, the Board is within its spending authority of its budget, reverting about 4.7%. Typically, 3-4% is where the budget office is comfortable moving forward with room for unanticipated charges.

XIV. Board Chair Report

a. Introduction to New Board Members

Ms. Connolly introduced new Board Members, Ross Erlich, John Sovec, and Wendy Strack.

b. Board Member Activities

No activities to report.

c. Recognition of Board Staff for Years of Service

Rosanne Helms was recognized for 10 years of service to BBS:

XV. Executive Officer Report

a. Budget Report

2019/2020 Budget

The Board's budget for fiscal year (FY) 2019/2020 is \$12,597,000. As of February 19, 2020, the Board has spent \$6,966,946 (55%) of its budget.

Current projections indicate that the Board will end the year with nearly \$600,000 in unexpended funds. The projections include additional expenses for a \$175,000 contract to convert all documents on the Board's website into documents that are compliant with the American Disabilities Act as required by AB 434.

Fund Condition

The Board's Fund Condition for FY 2019/2020 reflects a 2.1-month reserve. This figure assumes the implementation of the Board's request to increase fees.

Fi\$Cal Update

The DCA Budget Office reports that it is continuing its work to closeout FY 2018/2019. FY 2017/2018 was recently reconciled with the State Controller's Office. Additionally, the Budget Office is collaborating with the Office of Information Services to generate financial reports to provide boards and bureaus with a level of detail that will reflect expenditures on a monthly basis. These reports are in the final review process.

b. Operations Report

Quarterly performance statistics for the 2nd quarter of FY 2019/2020 were provided.

Licensing Program Applications

- Overall licensing application volumes decreased 39%
- Increased in application processing times due to recent staff vacancies

Licensing Population

- 1,348 initial licenses were issued
- 119,906 licensees and registrants as of February 1, 2020

Renewal Activity

Overall renewal activity decreased by 24%.

Administrative Applications

Overall administrative application volumes decreased by 16%.

Examination Program

- 4,387 examinations were administered
- 12 examination development workshops were conducted.

The Office of Professional Examination Services (OPES) are in the process of completing the Licensed Marriage and Family Therapist (LMFT) Occupational Analysis. The report will be presented at the May Board meeting.

Enforcement Program

- 533 consumer complaints received
- 245 criminal conviction notifications received
- 732 cases closed
- 43 cases referred to the Attorney General's (AG) office for formal discipline
- 134 cases pending as of December 31, 2019
- 24 Accusations and 5 Statement of Issues filed
- 60 final disciplinary orders
- 35 decisions adopted

- 461 average number of days to complete Formal Discipline. Performance measure is 540 days.
- 357 average number of days a case is with the AG's Office
- 49 average number of days to complete all Board investigations

Continuing Education Audits for 2019

- 738 audits conducted
- 71% of the licensees passed the audit

Outreach Activity

Board staff engaged in the LMFT consortium meetings and the conferences for the California Association of Marriage and Family Therapists (CAMFT) and the National Association of Social Workers (NASW). Staff was also engaged in the CAMFT Job Fair and the Association of Social Work Boards (ASWB) Annual Delegate Meeting.

New Exam Vendor

Pearson Vue is currently administering the California Law & Ethics Exam, LMFT Clinical Exam, and the Licensed Educational Psychologist (LEP) Standard Written Exam.

Board staff is manually entering all exam scores. Board staff, DCA's IT staff, and Pearson VUE's IT staff are working to get the scores to transmit via the interface. This process should be fully implemented by early March.

c. Personnel Report

New Employees/Promotions

There were 4 promotions within the Board and 4 new hires.

Vacancies

There are 6 vacancies. Recruitment efforts are currently underway. The Board will also begin recruitment for a Staff Services Manager in the Licensing Unit.

d. Strategic Plan Update

The Strategic Plan was provided in the meeting materials for review.

XVI. Update on 2019-2020 Sunset Review

The Board submitted its final Sunset Review Report in December 2019 to the Assembly and Senate Business, Professions, and Economic Committees. The report provides a comprehensive review of the Board's programs and operations since the last review in 2016.

Board management and staff from the Assembly and Senate Business, Professions, and Economic Committees have met to discuss the report in preparation for the upcoming hearings. The Board's hearing date is set for March 24, 2020. Steve Sodergren and Betty Connolly will attend the hearing.

XVII. Update on Office of Professional Examination Services Licensed Professional Clinical Counselor Occupational Analysis and Review of the National Clinical Mental Health Counseling Examination

The Board's contract with the National Board of Certified Counselors (NBCC) to use the National Clinical Mental Health Counseling Examination (NCMHCE) for licensure in California for Licensed Professional Clinical Counselors (LPCCs) allows for periodic reviews of the examination. The purpose of the review is to ensure the examination remains relevant for use in California.

The Office of Professional Examination Services (OPES) provided results of the review of the NCMHCE. The results indicate that "the procedures used to establish and support the validity and defensibility of the test program components of the NCMHCE appear to meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* (2104) and California Business and Professions Code (B&P) section 139." The results also indicate that "the NCMHCE assesses general knowledge required for entry-level LPCC practice in California."

XVIII. Discussion and Possible Action Regarding the Policy and Advocacy Committee Recommendations

a. Recommendation #1: Support. Notice to Clients About Filing a Complaint: Business and Professions Code Sections 4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22, and 4999.71

Background

Last year, the Board sponsored AB 630. The bill amended the law to require that unlicensed or unregistered individuals providing psychotherapy services in exempt settings provide their clients with a notice about where to file a complaint about the therapist. AB 630 also requires Board licensed or registered therapists in any setting provide their clients with a similar notice stating that a complaint may be filed with the Board. These notices must be provided prior to initiating psychotherapy services.

The Board was asked to consider two clarifying amendments to the provisions of AB 630.

Amendment #1: Additional Information to Clients of Unlicensed or Unregistered Therapists (Amend BPC §§4980.01, 4996.14, and 4999.22)

In its review of AB 630 last summer, the Senate Committee on Business, Professions, and Economic Development (Committee) suggested the following additional language be included in the notice provided to clients of unlicensed or unregistered practitioners:

[The Board of Behavioral Sciences receives and responds to complaints regarding services provided by individuals licensed and registered by the Board. If you have a complaint and are unsure if your practitioner is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance or utilize the Board's online license verification feature by visiting \[www.bbs.ca.gov\]\(http://www.bbs.ca.gov\).](#)

Adding this language would provide a consumer with an additional resource so that they can check if their therapist is licensed or registered.

At the time, it was too late in the legislative session to take this suggestion back to the Board for consideration without AB 630 becoming a two-year bill. The Committee let the bill proceed, and staff agreed to take the amendment to the next Board meeting for consideration.

The Board discussed the amendment at its November 2019 meeting and suggested some minor changes. However, during the discussion, stakeholders suggested that an additional clarification to the language in AB 630 might be helpful. Therefore, the Board directed staff to consider the new suggestion and bring proposed language back at a later date.

Amendment #2: Timing of Providing the Notice to Clients (Amend BPC §§4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22 and 4999.71)

As written in AB 630, the law requires the practitioner to provide the notice to clients about where to file a complaint prior to initiating psychotherapy services.

In most cases when the practitioner is beginning session-based therapy, this requirement would not be difficult to fulfill. However, in crisis situations, it may not be feasible or appropriate to stop the delivery of immediate services to provide and/or discuss the required notice.

Staff recommended that the Board consider clarifying the notice requirement. The proposed amendment states that the notice must be provided prior to initiating psychotherapy services or as soon as practically possible thereafter.

Staff suggested that the Board discuss whether or not it would be helpful to include language stating that the delivery of the notice shall be documented.

Brew: Agreed that language should be included regarding delivery of notice documentation.

MOTION: Direct staff to make any discussed changes, and any non-substantive changes, and pursue as a legislative proposal.

Brew moved; Wong seconded. The motion carried; 9 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack	x				
Christina Wong	x				

b. Recommendation #2: No Action Recommended. Supervisor Work Setting Requirements (AB 2363)

At its November 2019 meeting, the Board approved language for a bill proposal (later introduced as AB 2363) that provides definitions of the types of settings where its licensees and pre-licensees work.

The goal of the proposal is to reduce the confusion that often arises of where pre-licensees may or may not work based on how a business is structured. While the Board approved the bill's language and directed staff to pursue a legislative proposal, it determined one aspect should be brought back to Policy and Advocacy Committee (Committee) for further discussion.

The Committee discussed the bill proposal at its February 2020 meeting. The bill proposal requires that in a private practice or a professional corporation, the supervisor of an associate must be employed or contracted by the associate's employer or be an owner of the practice; and they must also provide psychotherapeutic services to clients at the same site.

The question discussed was whether it would be appropriate to extend this requirement to supervisors of associates and trainees in all non-exempt settings.

Due to the uncertainty of how extending this limitation to all non-exempt settings would affect the supply of supervisors available to associates and trainees, staff suggested leaving the proposal as written. If concerns arose in the future, this topic could be reconsidered.

The Committee agreed with this assessment and found that no further action was needed.

No Board action was taken.

XIX. Discussion and Possible Action Regarding Revisions to the Proposed Rulemaking to Implement AB 2138

This agenda item was heard after item XXIV.

Background

AB 2138 becomes effective on July 1, 2020. The Board approved regulations to implement AB 2138 at its March 2019 meeting. The Board noticed the regulation proposal on August 16, 2019, and the 45-day public comment period ended September 30, 2019.

One letter was received commenting on the regulatory proposal. The Board approved staff's proposed responses to the letter on November 22, 2019 and directed staff to complete the regulatory process.

Because the AB 2138 regulations must be completed by each board and bureau under DCA, DCA Legal prepared a basic template of the required amendments for all boards and bureaus to use. DCA Legal recommended boards and bureaus use the template and make modifications as needed to meet each practice act's unique needs.

The Veterinary Medical Board's (VMB) AB 2138 regulation package was the first to be submitted to the Office of Administrative Law (OAL) for final review. However, upon review of the VMB's package, OAL advised VMB that it would require several text changes for the package to go through. OAL advised that while several of the required changes are likely non-substantive, some changes may be considered substantive (which would require VMB to get their board's approval and hold a 15-day public comment period).

Because this Board used the original template to write its regulations, DCA Legal has advised staff to consider incorporating the same changes into the Board's AB 2138 regulations moving forward.

Modifications to the AB 2138 Regulatory Text

1. Section 1812(a)

- a. References to Sections 4982, 4989.54, 4990.31, 4992.3, and 4999.90 of the BPC were added. These sections authorize the Board to deny, suspend, or revoke a license or registration for acts that the Board’s licensing law considers unprofessional conduct.
 - b. A definition of “license” has been added to clarify that “license” means a license or registration. This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration.
2. Section 1812(b)
- a. Insert “all of” before “the following criteria” to reflect the statutory requirement in BPC §481(b).
 - b. Make a technical revision to use the appropriate term “subsection” instead of “subdivision”.
 - c. Make a technical correction to replace the semicolon at the end of (b)(1) and (2) with a period.
3. Section 1812(c)
- a. Make a technical revision to use the appropriate term “subsection” instead of “subdivision”.
 - b. Make technical revisions to use singular nouns throughout the subsection.
4. Section 1812 Authority and Reference
- a. Make minor revision to delete inapplicable authority sections and add to the reference section statutes that relate to the substantial relationship criteria.
5. Section 1813(a)
- a. A definition of “license” has been added to clarify that “license” means a license or registration. This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration.

6. Section 1813(b)
 - a. Renumber to conform to the addition of subsection (a).
 - b. Make a grammatical correction: change “was” to “has been.”
 - c. Strike “and is presently eligible for a license,” to resolve OAL’s concern that this phrase could be misinterpreted.

7. Section 1813(c)
 - a. Renumber to conform to the addition of subsection (a).

 - b. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to applicants who have not completed a criminal sentence without a violation, the applicant with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (b), the denial is based on professional misconduct (as that term is used under the new BPC §480), or the denial is based on one or more of the grounds specified in the Board’s practice acts applicable to denials, suspensions, or revocations of a license issued by the Board. This clarifying amendment is necessary to inform the public, applicants, and Board staff that rehabilitation criteria will be considered for all application denials, regardless of whether the grounds for denial stem from BPC §480. The clarifications promote equity and fairness to all applicants in keeping with the legislative intent of AB 2138.

 - c. Subparagraph (1): Replace the term “severity” with the term “gravity” to better align with the language used in the new version of BPC §481(b)(1).

 - d. Subparagraphs (1), (2), and (3): Add “professional misconduct” in order to include the conduct described under the new BPC §480 as grounds for denial.

 - e. Subparagraph (2): Delete “under Section 480 of the Business and Professions Code”, as this subparagraph is applicable to all statutory grounds for denial, as specified, not just grounds under BPC §480.

 - f. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead.

 - g. Subparagraph (5): Delete incorrect reference to “subdivision” (b) (1) through (5) and make the correct reference to “subsection” instead.

8. Section 1813 Authority and Reference
 - a. Make minor revision to delete one inapplicable authority section and add to the reference section statutes that relate to rehabilitation criteria.

9. Section 1814(a)
 - a. A definition of “license” has been added to clarify that “license” means a licensee or registrant. This provision conforms to BPC §23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a license or an associate registration.

 - b. A definition of “licensee” has been added to clarify that “licensee” means a licensee or registrant. This provision conforms to BPC §23.8, which defines “licensee” to mean “any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated by the Board, this can mean a licensee or an associate registrant.

10. Section 1814(b)
 - a. Renumber to conform to the addition of subsection (a).

 - b. Clarify that the conditions for applying rehabilitation criteria for suspension or revocation of a license for criminal convictions are pursuant to BPC §490.

11. Section 1814(c)
 - a. Renumber to conform to the addition of subsection (a).

 - b. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to licensees who have not completed a criminal sentence without a violation, the licensee with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (b), the suspension or revocation is based on a disciplinary action as defined in BPC section 141, or the suspension or revocation is based on one or more of the grounds specified in the Board’s practice acts applicable to denials, suspensions, or revocations of a license issued by the Board. This clarifying amendment is necessary to inform the public, licensees, and Board staff that rehabilitation criteria will be considered for all license suspensions and revocations, regardless of whether the grounds for discipline stem from BPC §490. The clarifications promote equity and

fairness to all licensees in keeping with the legislative intent of AB 2138.

- c. Subparagraph (1): Replace the term “severity” with the term “gravity” to better align with the language used in the new version of BPC §481(b)(1).
 - d. Subparagraph (2): Delete “under Section 490 of the Code”, as this subparagraph is applicable to all statutory grounds for suspension and revocation, as specified, not just grounds under BPC §490.
 - e. Subparagraphs (1), (2), and (3): Add “disciplinary action(s)” in order to include the conduct described under BPC §141 as grounds for suspension or revocation.
 - f. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead.
 - g. Subparagraph (4): Replace the term “such person” with the term “the licensee” for clarity.
 - h. Subparagraph (5): Delete incorrect reference and numbering for “subdivision (a) (1) through (5)” and instead make the correct reference to “subsection (b) (1)-(5)”.
12. Section 1814(d)
- a. Renumber to conform to the addition of subsection (a).
 - b. Correct the reference to reinstatement petition evaluations. Currently, Section 11522 of the Government Code (GC) is cited. The last sentence of GC 11522 states that it does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement/reduction of penalty. For the Board’s practice acts, BPC §4990.30 states different provisions, and therefore would override. Therefore, BPC §4990.30 is the correct reference to use.
13. Section 1813 Authority and Reference:
- a. Make minor revision to delete one inapplicable authority section and add to the reference section statutes that relate to rehabilitation criteria.

OAL Pre-Review of Regulations

After these revisions were made, DCA Legal requested that OAL look at the Board’s regulations. After a quick review, OAL stated that it may have a concern with subsection c; however, OAL did not indicate the specific concern.

Board staff believes the concern may be regarding the code articles that are cited, rather than citing individual code sections of those articles. To avoid bringing this back to the Board, staff is requesting to include non-substantive changes in the Board’s motion.

MOTION: Approve the proposed text for a 15-day public comment period. Delegate to the Executive Officer the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, following established procedures and processes in doing so; and to delegate to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. And in addition, to delegate authority to the Executive Officer to make, if requested by OAL, any of the article references in sections 1813(c) and 1814(c) to change them to the subsections within those articles as non-substantive changes.

Wong moved; Maddox seconded. Motion carried; 9 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack	x				
Christina Wong	x				

XX. Discussion and Possible Action Regarding Assembly Bill 1145 (Garcia): Child Abuse: Reportable Conduct

AB 1145 would specify that voluntary acts of sodomy, oral copulation, and sexual penetration are not considered acts of sexual assault that must be reported by a mandated reporter as child abuse if there are no indicators of abuse, unless it is between a person age 21 or older and a minor under age 16.

Existing Law:

1. Establishes the Child Abuse and Neglect Reporting Act (CANRA) which requires a mandated reporter to make a report in instances in which he or she knows or reasonably suspects that a child has been the victim of child abuse or neglect.

2. Defines “sexual abuse” for the purposes of CANRA as sexual assault or exploitation. It further defines “sexual assault” as consisting of any of the following: rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd or lascivious acts upon a child, sexual penetration, or child molestation.
3. Except under certain specified circumstances, declares any person who participates in an act of sodomy or oral copulation with a person under age 18 shall be punished by up to one year in state prison or county jail.

The law goes on to outline age ranges that are reportable for various sexual acts.

This Bill:

Specifies that voluntary acts of sodomy, oral copulation, or sexual penetration are not considered to be mandated reports of sexual assault under CANRA if there are no indicators of abuse, unless the conduct is between a person age 21 or older and a minor under age 16.

Intent. To clarify the law due to concerns and feedback that requirements for mandated reporters of child abuse are confusing, inconsistent, and discriminatory.

Some mandated reporters interpret the law to read that consensual sodomy and oral copulation is illegal with anyone under age 18 and that it requires a mandated report as sexual assault under CANRA. They argue that the same reporting standards do not apply to consensual heterosexual intercourse.

There are also contradictory opinions that the law does not read this way and that sodomy and oral copulation are not treated differently from other acts in the code. However, lack of a clear answer leads to confusion about what is/is not reportable.

Background. The Board examined this issue in 2013 when stakeholders expressed concern. Staff obtained a legal opinion from the DCA legal office.

DCA Legal Opinion. DCA found that CANRA does not require a mandated reporter to report incidents of consensual sex between minors of a similar age for any actions described in PC Section 11165.1, unless there is reasonable suspicion of force, exploitation, or other abuse. DCA found past court cases to support its opinion.

Board of Psychology Action. The Board of Psychology sought an opinion from the Attorney General’s (AG’s) Office. However, a related case was under review by the California Supreme Court. The Supreme Court heard the case

and referred it to a lower court. The AG’s office suspended the opinion until the litigation is concluded.

Previous Board Action. At its April 2019 meeting, the Policy and Advocacy Committee (Committee) discussed the bill and recommended that the Board consider taking a “support” position. In addition, the Committee directed staff to reach out to the author’s office to discuss the possibility of also clarifying the reportability of filming, “sexting”, or similar use of technology between minors, as it noted there is also a lack of clarity in law regarding those activities.

Staff discussed this concern with the author’s office, and they expressed a willingness to consider including it. They indicated that they would discuss the idea with other members and stakeholders. However, they also noted that the bill, as written, was encountering some challenges in the committee process at the legislature. Therefore, it may be better to address this concern separately.

At its May 2019 meeting, the Board took an official position of “support” on AB 1145.

AB 1145 is a two-year bill. The Board’s 2019 “support” position technically still stands because the bill has not been amended. Since it has been nearly a year since the position was taken, staff recommends that the Board consider reaffirming its ‘support” position.

MOTION: Support AB 1145.

Brew moved; Disposti seconded. Motion carried; 9 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack	x				
Christina Wong	x				

**XXI. Discussion and Possible Action Regarding Assembly Bill 1616 (Low):
Department of Consumer Affairs: Boards: Expunged Convictions**

AB 1616 would require DCA boards, upon a licensee's or former licensee's request and provision of a certified copy of expungement, to update their websites with notification of the expungement order (if the person is relicensed or reapplies for licensure) or to remove the posting of revocation from the website (if the person's license was revoked, they are no longer licensed, and have not reapplied).

Existing Law:

1. Permits a defendant who has fulfilled the conditions of their probation, been discharged prior to the termination of their probation, or for whom a court determines in its discretion that such relief should be granted, and who is not serving a sentence or probation for any offense, or charged with commission of any offense, to withdraw their plea of guilty or nolo contendere and instead enter a plea of not guilty. If the defendant has been convicted after a plea of not guilty, the court shall set aside the guilty verdict. For either type of case, the court must dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense. Certain convictions are not eligible for this, mainly certain Vehicle Code violations and certain convictions involving sex offenses with minors.
2. Requires specified state entities, including the Board of Behavioral Sciences, to provide information on the internet regarding the status of every license issued.
3. Requires the public information on licensees that must be provided on the Board's website to include information on suspensions and revocations of licensees and other related enforcement action.
4. Requires the Medical Board of California to post information on its website about the current status of the license for all current and former licensees. This includes:
 - Whether or not the licensee is presently in good standing;
 - Active temporary restraining orders or interim suspension orders against the licensee;
 - Current accusations filed by the Attorney General;
 - Any final revocations and suspensions taken or the surrender of a license by the licensee in relation to a disciplinary action or investigation;
 - Any felony convictions;

- Any misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed.
5. Requires the Medical Board of California, for any required website postings of a felony or misdemeanor conviction, to post notification of an expungement order and its corresponding date, within six months upon receipt from the licensee of a certified copy of an expungement order.

This Bill:

1. Requires that a DCA board must update their required website posting for a person whose license was revoked because they were convicted of a crime, upon receiving from them a certified copy of an expungement order:
 - a. If the person reapplies for licensure or has been relicensed, the board must post notification of the expungement order and its date on the website.
 - b. If the person is not currently licensed and does not reapply for licensure, the board must remove the initial posting on its website that the person's license was revoked.
2. The website posting must be updated within six months of receiving the expungement order.
3. Requires the person with the expunged conviction to pay the board a fee to cover the costs associated with the above website update.

Comment:

1. **Intent.** To reduce employment barriers for people with previous criminal records who have been rehabilitated and who conviction has been dismissed or expunged.
2. **Medical Board of California.** The Medical Board of California (MBC) already has a provision in its statutes that is similar to this proposal. MBC indicates that one staff person handles this workload and that it is a small portion of that person's duties. Therefore, the fiscal impact of the requirement on their board is minor and absorbable.

MOTION: Support AB 1616 if amended and direct staff to work with author's office to request that the license history, including revocation, remain on the board's website in perpetuity.

Wong moved; Maddox seconded. Motion carried; 9 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack	x				
Christina Wong	x				

XXII. Discussion and Possible Action Regarding Assembly Bill 2028 (Aguiar-Curry): State Agencies: Meetings

Current law establishes the Bagley-Keene Open Meeting Act (Bagley-Keene Act) that state bodies, including the Board of Behavioral Sciences are subject to. AB 2028 proposes two changes to the Bagley-Keene Act:

- A change to require state bodies to post all meeting materials online at least 10 days in advance of a public meeting.
- A change to allow the public to comment on any agenda item of a state body’s meeting, regardless of whether the item had already been considered and public comment allowed, at a committee meeting of the state body.

Existing Law:

Requires a state body to provide a meeting notice to anyone who requests it in writing, and also to post the notice on the internet at least 10 days in advance of a meeting.

1. Provides that agendas of public meetings and other writings distributed to the majority of members of a state body in connection with a matter discussed at its public meeting are disclosable public records, unless otherwise exempt by law from public disclosure.
2. Provides that writings that are public records that are distributed to members of the state body pertaining to an agenda item prior to or during a meeting must be made available for public inspection at the meeting (if prepared by the state body or one of its members), or after the meeting (if prepared by some other person).

3. Under certain circumstances, permits a state body to take action on items of business not on the posted agenda, including if the state body determines by a two-thirds vote that there is a need to take immediate action and that the need for action came to the state body's attention after the agenda being posted. Notice must be made to all national press wire services.
4. Permits a state body to call a special meeting in certain defined circumstances when compliance with the 10-day notice would impose a substantial hardship on the state body or when immediate action is required to protect the public interest. Allowable circumstances include, but are not limited to, to consider pending litigation, to consider proposed legislation, to consider a legal opinion, and to consider license examinations and applications. Notice must be made to all national press wire services. At the commencement of the meeting the body must establish by a 2/3 vote that the delay caused by providing a 10-day notice would have caused a substantial hardship or that immediate action is required to protect the public interest.

This Bill:

1. Requires that, except for closed session meetings, the required meeting notice posted 10 days in advance.
2. Permits the state body to distribute or discuss writings or materials related to agenda items only if it has complied with this requirement.
3. Deletes the subdivision of statute permitting a state body to disallow the public to comment on an agenda item if the agenda item has already been considered by a committee composed only of members of the state body at a public meeting where the public could address the committee on the item.

Comment:

1. **Intent.** To close loopholes in the Bagley-Keene Act. The author's office notes that although agendas must be posted publicly 10 days in advance of a meeting, there is not a similar requirement for supporting documents.
2. **Impact on Board Operations.**
 - a. Meeting Material Provision

Most of the Board's meeting materials can be prepared and posted 10 days in advance of a meeting. However, this bill could have a chilling effect on the Board's ability to take positions on legislation.

In a typical year, the Board's staff analyzes between 15 and 20 bills that are identified as affecting Board operations, public protection, and/or its licensees and registrants. These analyses are presented to the Board,

which then discusses these bills and determines if there is a need to weigh in, either by taking an official position or by providing technical assistance to the author.

The legislative process moves fast, particularly in the months of March through June, when the Legislature's policy committees are in full swing, and bills are continuously being amended to reflect stakeholder feedback and meet policy committee deadlines. During this time, it is very common for several bills which are on the Board's agenda to be amended during the 10-day timeframe between the posting of the agenda and the scheduled Board meeting date. When this happens, staff must update the bill analysis and the bill version that is included in the meeting materials for the discussion to remain relevant. If meeting materials can no longer be updated when bills are amended, then the Board cannot discuss and consider the most recent available information, and its voice in the legislative process is silenced.

As cited in Items 3 and 4 above of the "Existing Law", the Bagley-Keene Act provides state bodies with a process to take action on items not on the posted agenda, for a special meeting if compliance with the 10-day requirement would impose a "substantial hardship" or when "immediate action" is required to protect the public interest. However, there is a high threshold to meet these requirements, including a 2/3 vote and notification of the press on a national level. When coupled with the high costs of calling a special board meeting, calling a special meeting would not be feasible.

b. Public Comment Provision

This bill also removes a provision from statute that allows a state body to disallow public comment if the same item has already been considered by a committee of the Board and public comment on the item was allowed. The deletion of this provision would not affect Board operations. The Board always allows public comment on all agenda items regardless of those items being discussed and publicly commented on at a previous committee meeting.

3. **Suggested Amendment.** An amendment allowing an exception to the 10-day posting requirements for legislative amendments and corresponding bill analyses would allow the Board to continue to have a voice in matters that affect its operations and public protection.

MOTION: Oppose AB 2028 unless amended to support the idea to post materials within 10-days prior to the meeting but allow for revisions to the meeting materials so that stakeholders and the Board have access to the most up-to-date information for discussion.

Wong moved; Brew seconded. Motion carried; 9 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Crystal Anthony				x	
Dr. Leah Brew	x				
Deborah Brown	x				
Betty Connolly	x				
Max Disposti	x				
Ross Erlich	x				
Jonathan Maddox	x				
John Sovec	x				
Wendy Strack	x				
Christina Wong	x				

XXIII. Update on Board-Sponsored and Board-Monitored Legislation

Board staff is currently pursuing the following legislative proposals:

1. AB 2363 (Arambula) Practice Setting Definitions

This bill is moving forward. Staff is working on minor technical amendments

2. AB 2142 (Medina): Board of Behavioral Sciences: Licensees: Licensing and Examination Fees

This bill has been introduced. AB 2142 would increase the licensing, registration, and examination fees charged by the Board.

3. Omnibus Proposal (Senate Business, Professions, and Economic Development Committee)

This has not been introduced yet.

There were some 2-year bills that may or may not move. A full report on 2-year bills on which the Board took positions will be presented at the May Board meeting.

XXIV. Status of Board Rulemaking Proposals

1. Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

Status: DCA Final Review Process

This proposal would result in changes necessary in order to meet the requirements of AB 2138. This proposal includes modifying the Board's substantial relationship criteria, which helps to evaluate whether a crime or act was substantially related to the profession, as well as criteria to evaluate the rehabilitation of an individual when considering denying, suspending or revoking a license.

2. Enforcement Process

Status: On Hold

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 (Revised October 2015)."

This regulation package was placed on hold due to the passage of AB 2138 and remains on hold pending passage of the AB 2138 regulations.

3. Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

Status: Submitted to OAL for Final Approval

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.

4. Supervision-Related Requirements

Status: Noticed to the Public on February 7, 2020; Public Hearing on March 23, 2020

This proposal would do all of the following:

- Revise the qualifications to become supervisor.
- Require supervisors to perform a self-assessment of qualifications and submit the self-assessment to the Board.
- Strengthen supervisor responsibilities, including provisions pertaining to monitoring and evaluating supervisees.
- Strengthen requirements pertaining to documentation of supervision.

- Make supervision requirements consistent across the three licensed professions.

The proposal was approved by the Board at its meeting in November 2016 and was held aside while awaiting passage of AB 93, the Board's supervision legislation.

5. Continuing Education and Additional Training Requirements

Status: Preparation for Initial Review Process

This proposal would do the following:

- Update content requirements for human sexuality, child abuse assessment and reporting, and alcoholism and other chemical substance dependency courses and create consistency in the required qualifications for course providers.
- Strike the 18-hour CE exception for initial renewal periods.
- Recast CE "exceptions" as "temporary waivers" and modify CE waiver criteria.
- Require licensees who are granted a waiver to complete six hours of CE in law and ethics.
- Update CE waiver forms incorporated by reference for consistency with the proposed updated requirements and for clarity.
- Clarify that a course on law and ethics designed specifically to meet supervisor training requirements cannot be accepted toward meeting the 6-hour law and ethics course required of all licensees each renewal period.
- Specify that a maximum of 18 hours of CE may be met by teaching courses each renewal period, and that the course taught must be for a Board-accepted provider to count.
- Allow a licensee who completes a Board occupational analysis survey to be credited with six hours of CE.
- Repeal outdated regulations pertaining to the Board's former CE program.
- Clarify that professional associations are the only type of organization that may be recognized by the Board as a CE provider.

This proposal was approved by the Board at its meeting in November 2019.

6. Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees

Status: Preparation for Initial Review Process

This proposal would update examination waiting periods for consistency with current practice, add LPCCs to code sections pertaining to ownership, transfer of shares and naming of professional corporations, delete outdated text pertaining to equivalent accrediting agencies for marriage and family therapist applicants, and specify the accrediting agencies that are acceptable for licensed educational psychologist applicant degree programs.

XXV. Public Comment for Items Not on the Agenda

Maddox: COVID-19 and convening upcoming meetings in April and May.

Madsen: Staff has not received any direction regarding meetings/gatherings.

Curt Widhalm: Concerns regarding the continuing supervisor education through consultation; consultation does not “necessarily hold the same teeth and status of getting continuing education through CE’s.” He stated that consultation groups can often end up being discussions of personal issues and complaints around supervisees rather than furthering supervision skills. He suggested removing the option of consultation from continuing supervisor development and to have stronger regulated requirements.

XXVI. Suggestions for Future Agenda Items

Brown: Consider a subcommittee to begin working with the DAG as outlined in Strategic Plan 3.3.

Brew: Discussion of supervision and possibility of consultation.

Brew: Bilingual individuals sitting in therapy sessions as interpreters; however, they’re not professional interpreters and do not have interpreter training. There are risks involved.

Wong: Requesting an overview/presentation on legislation, regulation, and board policy.

XXVII. Adjournment

The Board adjourned at 12:15 p.m.