



Board of Behavioral Sciences



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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

POLICY AND ADVOCACY COMMITTEE MINUTES

A recorded webcast of this meeting is available at:
<https://www.youtube.com/watch?v=DgCCYErgEyU>

DATE February 5, 2021

MEETING PLATFORM WebEx Video/Phone Conference

Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

TIME 8:30 a.m.

ATTENDEES

Members Present: Christina Wong, Chair, LCSW Member
Deborah Brown, Public Member
Max Disposti, Public Member
Wendy Strack, Public Member (joined at 8:50 a.m.)

Members Absent: *All members present*

Staff Present: Steve Sodergren, Interim Executive Officer
Rosanne Helms, Legislative Manager
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel

Other Attendees: Public participation via WebEx video conference/phone conference

I. Call to Order and Establishment of Quorum

Christina Wong, Chair of the Policy and Advocacy Committee (Committee) called the meeting to order at 8:40 a.m. Roll was called, and a quorum was established.

II. Introductions

Committee members and Board staff introduced themselves.

III. Discussion and possible recommendation regarding amendments to Practice Setting Definitions bill proposal: Business and Professions Code Sections 4980.01, 4980.43, 4980.43.2, 4980.43.3, 4980.43.4, 4980.46, 4992.10, 4996.13, 4996.14, 4996.15, 4996.23, 4996.23.1, 4996.23.2, 4996.23.3, 4999.22, 4999.46, 4996.46.2, 4996.46.3, 4996.46.4, 4999.72: Add Business and Professions Code Sections 4980.05, 4980.06, and 4996.14.1, 4996.14.2, 4999.25, and 4999.26: Renumber and Amend Business and Professions Code Section 4999.24 (Renumber to 4999.27)

The purpose of this bill is to provide definitions of the specific types of practice settings where Board licensees, applicants, and registrants are employed. The bill provides clarification about where trainees may work, what constitutes a private practice, and opportunities for supervision in private practice settings.

The Board attempted to run this bill in 2020 as AB 2363. The Board is pursuing the proposal again this year, moving forward with the current language. However, after further review of the language and stakeholder discussions, staff requested further discussion regarding the following issues:

1. BPC sections §4980.06(a)(4) for LMFTs, 4996.14.2(a)(4) for LCSWs, and 4999.26(c)(8) for LPCCs. These proposed subsections provide that an “entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting.” Staff believes that as written, this sentence could lead to possible implementation issues. Additionally, a revision to make it more specific may address an ongoing concern that certain stakeholders have raised.
2. Kaiser’s employment of Associates across multiple entities.

Kaiser Employs Associates Across Multiple Entities

Kaiser is split into three employing entities:

- **Kaiser Foundation Health Plan, Inc. (KFHP):** KFHP is a California nonprofit, public benefit corporation that is licensed as a health care service plan under the Knox-Keene Act.

- **Kaiser Foundation Hospitals (KFH):** KFH is a California nonprofit public benefit corporation that owns and operates community hospitals and outpatient facilities.
- **The Permanente Medical Group, Inc. (TPMG):** TPMG is a professional corporation of physicians in KPNC that provides and arranges for professional medical services.

Associate Social Workers (ASW) working for TPMG believe it is unfair that they have limits on their required supervision for gaining experience hours toward Licensed Clinical Social Worker (LCSW) licensure that other ASWs working under the Kaiser nonprofit corporations do not have.

Under current the proposal, the following would apply to supervisors and associates of Kaiser’s professional corporation:

- They would not be able to arrange for contracted supervisors to supervise their associates.
- A supervisor would be required to see clients at the same site as their associate but would no longer be required to be employed full time at the site.
- A supervisor would be limited to six supervisees per supervisor.

Potential Solution 1: Modify Proposed Government Regulatory Agency Exemption

Proposed amendment narrowing the allowance to facilities licensed by only certain government entities:

“A facility licensed by the California Department of Public Health or the Department of Health Care Services shall not be considered a private practice setting.”

If the amendment were accepted, a facility that would normally qualify as a private practice or a professional corporation would instead be considered a non-exempt setting, if it is currently licensed by CDPH or DHCS. As a non-exempt setting, it would be subject to the following requirements:

- Supervisors are limited to six supervisees per supervisor.
- Supervision must be in-person.
- It would not be subject to the requirement for private practices that supervisors must provide services to clients at the same site as their associates.
- Applicants for registration utilizing the 90-day rule could work at the facility while awaiting registration issuance.
- Trainees could work at the facility under the supervision of their school.

Potential Solution 2: Partially Modify Language Requiring Supervisors in Private Practice/Professional Corporations to See Clients at Same Site as Their Associates

This solution proposes to delete the provision stating that an “entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting.” Instead, the Board could focus on the provision in the bill proposal governing supervision in a private practice/professional corporation.

The COVID-19 state of emergency has caused therapy to shift from in-person to telehealth. It is unknown if this will continue after the emergency has passed. Therefore, the locations from which trainees and associates provide services and receive supervision will be examined by the Board’s Telehealth Committee.

Overall, changes related to allowances for supervision via telehealth are possible for the future but need to be vetted by the Board further. In the meantime, staff suggests that the language be amended to require the following of a supervisor in a private practice/professional corporation:

- (1) Is employed by or contracted by the associate’s employer, or is an owner of the private practice or professional corporation, and*
- (2) Provides ~~psychotherapeutic~~ professional services to clients at the same site as the associate for the associate’s employer.*

Potential Solution 3: Health And Safety Code §128735 Model

A solution proposed by Kaiser, suggested that a review of Health and Safety Code (HSC) §128735(e)(2) might provide a model solution for the concerns it has raised. This section pertains to data reporting required of health facilities. Subsection (e) states the following reporting is required:

- (e) (1) A statement reporting the information required in subdivisions (a), (b), (c), and (d) for each separately licensed health facility operated, conducted, or maintained by the reporting organization.*
- (2) Notwithstanding paragraph (1), a health facility that receives a preponderance of its revenue from associated comprehensive group practice prepayment health care service plans and that is operated as a unit of a coordinated group of health facilities under common management may report the information required pursuant to subdivisions (a) and (d) for the group and not for each separately licensed health facility.*

Essentially, for reporting purposes, if a health facility is part of a group practice run as part of a commonly managed unit, it may report as part of the group and not as a separate facility.

Disposti: Concerned about option 3, which is the option that would fit Kaiser's settings. Concerned about other remote settings that have a different way of serving people, that don't reflect an enterprise like Kaiser. Concerned about whether all the variants of option 3 have been considered. Favors options 1 and 2.

Strack: Prefers option 2.

Denise Tugade, government advocate representing SEIU United Health Care Workers: United Health Care Workers and LCSW employees at Kaiser recommend option 3. It's common for LCSWs and ASWs to work back and forth between buildings on the Kaiser campus, so it's difficult to say where they are primarily located. ASWs are completing hours that are not counted. They are employees of Kaiser but of the three different entities. TPMG, although a corporation, has extensive oversight and is regulated in a different manner. The Health and Safety Code (HSC) proposed captures a handful of unique entities: Kaiser Northern California, Kaiser Southern California, and Cedar Sinai.

Sodergren: Prefers option 2. Wants to ensure that the supervisor is supervising appropriately, and that Board staff have the ability to determine if the supervisor works for the same company/corporation as the supervisee and/or if they have a contract. This information can be easily obtained by staff, instead of relying on other regulatory language from other government agencies. Asked Ms. Tugade if option 2 would work.

Tugade: Option 2 would fit their needs but is concerned that it would be too broad.

Josie Baker: Concerned about language regarding the outside contractor having to work for Kaiser and practice psychotherapeutic services with Kaiser (not just providing supervision) is problematic. She advocates for the video conference option.

Disposti: Concerned about overlap with work of the Telehealth Committee regarding telehealth.

Strack: Suggested tailoring the language of option 2 and 3, taking the definition from the HSC but make it part of BBS regulations. Suggested that Kaiser and the United Health Care Workers work with Ms. Helms.

Wong: Suggested that Ms. Helms continue the conversation, research the HSC code, and examine the potential consequences if that language is included.

Helms: Recommended using the definition in the HSC without directly referring to the HSC.

Tugade: Mentioned that the proposed amendment to option 2 brings it back to the same issue of having 3 entities within Kaiser.

Further discussion took place regarding the site requirement and potential amendments.

Wong: Kaiser should also consider changing their practice. The Board must protect the associate and consumers. BBS should not change for the associate's employer or strike the site requirement from the law.

Brown: Agreed with Ms. Wong. The Board cannot legislate for specific entities. Healthcare is evolving and will continue to evolve. The Board needs to focus on its job.

Strack: Recognizes the issues and agrees that clarification is needed. However, the Committee is not going to develop/amend language at this meeting. Suggested to direct Ms. Helms to continue working with stakeholders and bring a proposal to the March Board meeting.

Language: Option 2

The Committee agreed to strike "entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting."

Committee members and staff agree that option 2 is the best option. The Committee directed staff to continue working on amending language for 4980.43.4(b)(2) and corresponding sections of the practice act.

MOTION: Pursue option 2 and strike "entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting" in 4980.06(a)(4) and in corresponding sections; and pursue options to amend 4980.43.4(b)(2) and its corresponding sections in LCSW and LPCC laws.

Wong moved; Brown seconded. Vote: 4 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

IV. Discussion and possible recommendation regarding inclusion of “prognosis” versus “treatment planning” content in required coursework: Business and Professions Code Sections 4980.36, 4980.37, 4980.81, 4999.32, and 4999.33.

The omnibus 2019 bill, SB 786, amended BPC sections that required education and practicum for LMFT and LPCC licensure, required coursework in assessment, diagnosis, and prognosis. The Board proposed an amendment replacing the term “prognosis” with the term “treatment planning,” because it believed treatment planning is a more accurate representation of the course of psychotherapy.

However, stakeholders have alerted Board staff that based on recent discussions, other mental health professions may be interpreting the Board’s law change as meaning LMFTs and LPCCs are not permitted to perform prognosis. Staff does not believe this was Board’s intent when it pursued the law change.

Dr. Ben Caldwell: Recommended adding “prognosis” along with “treatment planning.”

Recommendation

Amend BPC sections 4980.36, 4980.37, 4980.81, 4999.32, and 4999.33 to add the term “prognosis” back where it was previously deleted, which is to be included along with the term “treatment planning.”

MOTION: Direct staff to make the recommended amendments and bring to the Board for consideration as a legislative proposal.

Disposti moved; Strack seconded. Vote: 4 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

V. **Discussion and possible recommendation regarding bill proposal from the California Association of Marriage and Family Therapists (CAMFT) to modernize and clarify the scope of practice of marriage and family therapists (Amends Business and Professions Code Section 4980.02)**

CAMFT is pursuing a bill proposal this year to modernize and clarify the scope of practice for licensed marriage and family therapists (LMFTs). CAMFT used the education and experience requirements for LMFT licensure in current statute to determine duties included as part of the new scope of practice. The proposed language is as follows:

For the purposes of this chapter, the practice of marriage and family therapy shall mean the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to that service performed with individuals, couples, or groups in order to assess, evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors. ~~wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. This practice includes relationship and premarriage counseling.~~

Marriage and family therapy practice may include, but is not limited to:

a. Assessment, evaluation and prognosis;

b. Treatment planning and evaluation;

c. Individual, relationship, family, or group therapeutic interventions;

d. Relational Therapy

e. Psychotherapy;

f. Client Education;

g. Case Management;

h. Consultation;

i. Supervision; and

i. The application of marriage and family therapy principles and methods through includes, but is not limited to, the use of applied psychotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of the coursework and training required by Sections 4980.36, 4980.37, and 4980.41, as applicable.

Nothing in this section shall be construed to expand or constrict the scope of practice of a person licensed pursuant to the chapter.

MOTION: Recommend to the Board to support CAMFT's proposal.

Disposti moved; Brown seconded. Vote: 4 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

VI. Update on Status of Board-Sponsored Legislation

Board staff is currently pursuing the following legislative proposals:

1. **Practice Setting Definitions (No Bill Number Assigned at This Time)**

This bill proposal seeks to eliminate the confusion about where pre-licensees may work by providing specific definitions of private practice, professional corporation, and non-exempt settings. The Board approved this proposal at its November 2020 meeting.

2. **Omnibus Proposal (Senate Business, Professions, and Economic Development Committee) (No Bill Number Assigned at This Time)**

This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law. The Board approved this proposal at its November 2020 meeting.

VII. Update on Board Rulemaking Proposals

Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

Status: Approved by OAL. Effective date: December 14, 2020

Enforcement Process

Status: On Hold

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.

Supervision-Related Requirements

Status: Submitted to OAL for final approval.

Continuing Education and Additional Training Requirements

Status: DCA Initial Review Process

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

Status: Preparation for Initial Review Process

VIII. Suggestions for Future Agenda Items

None

IX. Adjournment

The Committee adjourned at 11:15 a.m.