



BOARD OF BEHAVIORAL SCIENCES
1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



MEETING NOTICE

Policy and Advocacy Committee April 19, 2006

Department of Consumer Affairs
1625 N. Market Boulevard, Second Floor
El Dorado Conference Room
Sacramento, CA 95834

10:30 a.m. – 2:00 p.m.

- I. Introductions
- II. Strategic Plan Goal #4 – Report on Progress
 - A. Objective 4.1 -- Participate in 15 public policy forums throughout the State addressing access to mental health services by June 30, 2010.
 - B. Objective 4.2 -- Develop 4 proposals related to behavioral science licensing law that address delivery of services to consumers in light of demographic changes in both the general and licensee populations by December 31, 2007.
 - C. Objective 4.3 -- Advocate for 5 laws that expand access to mental health services by June 30, 2010.
- III. Update and Possible Action Regarding Loan Repayment/Scholarship Program Implementation
- IV. Review and Possible Action on Pending Legislation and Update on Rulemaking Activity.
- V. Review of Comments Submitted on Proposed Changes to Title 16, Section 1803.
- VI. Review and Possible Action Regarding Statutes and Regulations for Out-of-State Applicants for Clinical Social Work Licensure.
- VII. Review and Possible Action on Public Disclosure and Complaint Disclosure Policies.
- VIII. Review and Possible Action Regarding Regulations Governing Pre-License Supervision Requirements.
- IX. Review and Possible Action Regarding Amendments to Sections 1833.1 and 1870 Regarding Supervisor Qualifications.
- X. Review and Possible Action Regarding Recognition of Specialization in Dual Diagnoses by BBS Licensees and Certified Drug Abuse Counselors.

XI. Suggestions for Future Agenda Items.

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Paul Riches at the Board of Behavioral Sciences, 1625 N. Market Boulevard, Suite S-200, Sacramento, CA 95834, or by phone at 916-574-7840, no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 574-7830.

Item II

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**State of California
Board of Behavioral Sciences**

Memorandum

To: Policy and Advocacy Committee

Date: April 11, 2006

**From: Paul Riches
Executive Officer**

Telephone: (916) 574-7840

Subject: Strategic Plan Update

Background

The board formally adopted the new strategic plan at its November 2005 meeting. As part of the implementation of the strategic plan, each committee will receive a progress update on the strategic objectives under its jurisdiction. This regular exchange of information provided will provide mutual accountability between staff and board members in accomplishing our shared objectives.

Update on Objectives

Objective 4.1 -- Participate in 15 public policy forums throughout the State addressing access to mental health services by June 30, 2010.

On March 23-24, 2006 Mr. Riches attended the meeting of the Mental Health Services Oversight and Accountability Commission in Sacramento (commission). The commission is responsible for oversight of the Mental Health Services Act (Proposition 63). The meeting included organizational matters for the commission and presentations on prevention and early intervention in mental illness which is a major focus of Proposition 63.

Objective 4.2 -- Develop 4 proposals related to behavioral science licensing law that address delivery of services to consumers in light of demographic changes in both the general and licensee populations by December 31, 2007.

A board sponsored conference on diversity issues in professional licensing will be held on Friday, April 28 in Sacramento. The conference will feature state and national experts in demography and cultural competence in mental health care as well as working sessions designed to provide feedback and suggestions for the board's consideration. A report on the conference will be provided at the May 18-19, 2006 board meeting.

Objective 4.3 -- Advocate for 5 laws that expand access to mental health services by June 30, 2010.

No action to report. The committee is considering legislation introduced in the 2006 legislative session at this meeting.

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Item III

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**State of California
Board of Behavioral Sciences**

Memorandum

To: Policy and Advocacy Committee

Date: April 11, 2006

**From: Paul Riches
Executive Officer**

Telephone: (916) 574-7840

Subject: Licensed Mental Health Services Provider Education Program

Background

The Licensed Mental Health Service Provider Education Program is a scholarship and loan program operated by the Health Professions Education Foundation (Foundation), a nonprofit public benefit corporation established by the Office of Statewide Health Planning and Development. The mission of the Foundation is to increase the supply of health care providers who are willing to practice in underserved areas of California. The Foundation accomplishes its mission by awarding scholarships and educational loan repayment grants to health professional students and recent graduates who are committed to practicing in rural and urban underserved areas.

The Board of Behavioral Sciences [as mandated by Assembly Bill 938 (Yee)] collects an additional \$10.00 from Licensed Clinical Social Workers and Marriage and Family Therapists upon the renewal of these licensees. These funds are transferred to the Mental Health Practitioner Education Fund for purposes of funding this Program. Approximately \$550,000 is in the fund at this time and approximately \$20,000 has been billed to fund to cover the administrative costs associated with the fund.

Prior Board Action

At its February 2006 meeting, the board directed staff to draft a letter to the Foundation urging speedy implementation of the program. On February 17, 2006, Robin Boyer was appointed as the executive director of the Foundation (a position that had been vacant for an extended period). Based on a series of conversations I had with Ms. Boyer and consultation with the Chair, no letter was sent as specified in the board meeting. Ms. Boyer shares the board's commitment to implementing this program as soon as possible and such a letter would not have served its purpose of stimulating action.

Currently, the board staff is working actively with the Foundation and the Board of Psychology to prepare regulations for public notice. These regulations are required to implement the program. Publication of the regulations is anticipated in late April or early May 2006. The Foundation expects to have regulations in effect by late September or early October 2006. Ms. Boyer will be attending the April 19, 2006 meeting of this committee.

Legislative Issues

Two issues with the statute have been identified during the board's discussions on draft regulations.

Exclusion of marriage and family therapist interns and associate clinical social workers.

The statute defines “licensed mental health service provider” as a licensed clinical social worker, marriage and family therapist, or psychologist. Accordingly, individuals will not be eligible for financial support until they complete the licensure process which is generally 4-5 years after graduation. However, students must begin repaying loans shortly after graduation (generally 6 months).

The purpose of the program is to reduce the financial burden of graduate school, yet the current statutory definitions require eligible graduates to shoulder these burdens for 4-5 years before receiving any support.

Staff recommends that the board sponsor legislation to amend the definition of “licensed mental health service provider” to include marriage and family therapist interns and associate clinical social workers.

Statutory Organization Problem

AB 938 (Stats. 2004), which established the Mental Health Practitioner Loan Repayment Program, added Article 4 to Chapter 5 of Part 3 of Division 104 of the California Health and Safety Code. The statute consists of sections 128454 through 128458. However, Article 4 of Chapter 5 was a duplicate article number, already in existence for the Vocational Nurse Education Program. Because of the duplicate article number, sections 128454 through 128458 do not appear within the Health and Safety Code as listed on the Legislative Counsel's website, the main online resource for people researching California law.

Staff recommends that the board sponsor legislation to renumber the article for the Licensed Mental Health Services Provider Education Program to resolve this problem.

Attachment

AB 938

Assembly Bill No. 938

CHAPTER 437

An act to add Sections 2987.2, 4984.75, and 4996.65 to the Business and Professions Code, and to add Article 4 (commencing with Section 128454) to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, relating to health professions.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 938, Yee. Mental health professions: educational loan reimbursement: funding.

Existing law requires the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation known as the Health Professions Education Foundation to perform various duties with respect to implementing health professions scholarship and loan programs.

Existing law provides for the Registered Nurse Education Program within the foundation under which persons who agree in writing prior to graduation to serve in an eligible county health facility, an eligible state-operated health facility, or a health manpower shortage area are eligible for scholarship and loan repayment. Existing law establishes in the State Treasury the Registered Nurse Education Fund and provides for the appropriation of money in the fund annually in the Budget Act for purposes of the Registered Nurse Education Program.

This bill would similarly establish the Licensed Mental Health Service Provider Education Program. The bill would require the foundation to develop the program, as prescribed, to provide grants to licensed mental health service providers, as defined, who provide direct patient care in a publicly funded facility or a mental health professional shortage area, as defined.

Existing law provides for the licensure and regulation of psychologists by the Board of Psychology and marriage and family therapists and licensed clinical social workers by the Board of Behavioral Sciences. Existing law requires these regulatory boards to charge license renewal fees.

This bill would require these boards to charge these licensees, at the time of license renewal, an additional specified assessment fee. It would require the boards to transfer the fee amounts to the Controller for deposit in the Mental Health Practitioner Education Fund established



under the bill. Moneys in the fund would be available, upon appropriation by the Legislature, for expenditure by the office for the purposes of the Licensed Mental Health Provider Education Program.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) An adequate supply of licensed mental health service providers is critical to ensuring the health and well-being of the citizens of California, particularly those who live in multicultural, linguistically diverse, and medically underserved areas.

(b) The California Mental Health Planning Council has identified the shortage of human resources at all levels as one of the most urgent issues facing the mental health system. The shortage is most acute for child psychiatrists, licensed clinical social workers, and especially for multilingual and multicultural staff in all mental health occupations.

(c) In an effort to address the crisis facing the mental health system, the California Mental Health Planning Council developed the Human Resources Project that is directed by its Human Resources Committee. Beginning in 2001, the project convened focus groups targeting social workers from three of the most prevalent ethnic communities: Latino, Asian/Pacific Islander, and African-American. The focus groups were conducted in collaboration with the California Institute for Mental Health and funded by the State Department of Mental Health and the Zellerbach Family Fund.

(d) The Human Resources Project's September 2002 report entitled "Human Resources Pilot Ethnic Focus Group Project: Summary of Recommendations" found that financial barriers to practice was the primary reason cited by the participants. All participant groups indicated that they had encountered serious difficulty in meeting the expenses of graduate school while struggling with living and child care expenses. All groups advocated for additional forms of financial assistance, like the loan forgiveness programs currently available to doctors and nurses.

SEC. 2. Section 2987.2 is added to the Business and Professions Code, to read:

2987.2. In addition to the fees charged pursuant to Section 2987 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars (\$10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 3. Section 4984.75 is added to the Business and Professions Code, to read:



4984.75. In addition to the fees charged pursuant to Section 4984.7 for the biennial renewal of a license pursuant to Section 4984, the board shall collect an additional fee of ten dollars (\$10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 4. Section 4996.65 is added to the Business and Professions Code, to read:

4996.65. In addition to the fees charged pursuant to Section 4996.6 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars (\$10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 5. Article 4 (commencing with Section 128454) is added to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, to read:

Article 4. Licensed Mental Health Service Provider Education Program

128454. (a) There is hereby created the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation.

(b) For purposes of this article, the following definitions shall apply:

(1) "Licensed mental health service provider" means a psychologist, marriage and family therapist, and licensed clinical social worker.

(2) "Mental health professional shortage area" means an area designated as such by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

(c) Commencing January 1, 2005, any licensed mental health service provider who provides direct patient care in a publicly funded facility or a mental health professional shortage area may apply for grants under the program to reimburse his or her educational loans related to a career as a licensed mental health service provider.

(d) The Health Professions Education Foundation shall make recommendations to the director of the office concerning all of the following:

(1) A standard contractual agreement to be signed by the director and any licensed mental health service provider who is serving in a publicly funded facility or a mental health professional shortage area that would require the licensed mental health service provider who receives a grant under the program to work in the publicly funded facility or a mental health professional shortage area for at least one year.



(2) The maximum allowable total grant amount per individual licensed mental health service provider.

(3) The maximum allowable annual grant amount per individual licensed mental health service provider.

(e) The Health Professions Education Foundation shall develop the program, which shall comply with all of the following requirements:

(1) The total amount of grants under the program per individual licensed mental health service provider shall not exceed the amount of educational loans related to a career as a licensed mental health service provider incurred by that provider.

(2) The program shall keep the fees from the different licensed providers separate to ensure that all grants are funded by those fees collected from the corresponding licensed provider groups.

(3) A loan forgiveness grant may be provided in installments proportionate to the amount of the service obligation that has been completed.

(4) The number of persons who may be considered for the program shall be limited by the funds made available pursuant to Section 128458.

128456. In developing the program established pursuant to this article, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Behavioral Science Examiners, the Board of Psychology, the State Department of Mental Health, the California Mental Health Directors Association, the California Mental Health Planning Council, professional mental health care organizations, the California Healthcare Association, the Chancellor of the California Community Colleges, and the Chancellor of the California State University. The foundation shall solicit the advice of representatives who reflect the demographic, cultural, and linguistic diversity of the state.

128458. There is hereby established in the State Treasury the Mental Health Practitioner Education Fund. The moneys in the fund, upon appropriation by the Legislature, shall be available for expenditure by the Office of Statewide Health Planning and Development for purposes of this article.



Item IV

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State of California

Memorandum

To: Policy and Advocacy Committee
From: Christy Berger
Legislation Analyst
Date: April 11, 2006
Telephone: (916) 574-7847
Subject: **Review and Possible Action on Pending Legislation and Update on Rulemaking Activity**

Legislation Update

Board-Sponsored Legislation

Reorganization of BBS Statutes

The Assembly Committee on Business and Professions is working to introduce the Board's proposed reorganization of its statutes. We expect this proposal will be included in the committee's annual bill.

Fictitious Business Names for LCSWs

At its January meeting, the Consumer Protection Committee voted to recommend to the Board to sponsor legislation regarding the use of fictitious business names for Licensed Clinical Social Workers. The proposed legislation would mirror the MFT statute, which prohibits the use of a fictitious business name which is false, misleading or deceptive, and requires disclosure to patients of the name and license type of the owner or owners of the practice.

The full Board will consider this proposal at its May 2006 meeting.

Regulation Update

Title 16, CCR Section 1886.40, Citations and Fines

These regulations would provide the board with the authority to issue a fine between \$2,501 and \$5,000 for specified violations. This regulation proposal is pending the approval of the Director of DCA before being sent to the Office of Administrative Law (OAL) for approval.

Title 16, CCR Section 1886, Citation and Fine of Continuing Education Providers

These regulations would provide the board with the authority to issue a citation and fine to a continuing education provider. This regulation proposal is currently on hold due to staff workload considerations.

Title 16, CCR Section 1803, Delegation of Authority to the Executive Officer

These regulations would allow the executive officer to sign orders to compel a psychiatric evaluation of a Board licensee or registrant as part of an investigation of a complaint. This regulation proposal is pending a review of public comments and a regulation hearing scheduled for the May 2006 board meeting.

Title 16, CCR Sections 1833.1 and 1870, Supervisor Requirements

These regulations would allow supervisors, who are currently required to have practiced psychotherapy for two out of the five years preceding any supervision, to additionally count time spent directly supervising persons who perform psychotherapy. This regulation proposal is awaiting approval of the Committee.

Review of 2006 Legislation

Bill analyses are provided in a separate packet for review by the committee.

Item V

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Policy and Advocacy Committee

Date: April 11, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Public Comments on Proposed Regulation – Section 1803, Delegation of Functions to the Executive Officer

Background

The executive officer is employed by the board and performs those duties and functions delegated by the board and specified by statute. Board regulations include Title 16, Section 1803 which explicitly delegates a number of functions related to the enforcement processes to the executive officer including:

- File accusations
- Issue notices of hearing
- Issue statements of issues
- Receive and file notices of defense
- Issue subpoenas and subpoenas duces tecum;
- Set and calendar cases for hearing.

A recent case called into question the means by which the an order to compel a psychiatric evaluation can be issued. Past practice at the BBS and other licensing boards was to have the order signed by the board chair. It was determined that such an order is an investigatory function and should not be performed by board members who serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function should be separate and performed by different parties.

Subsequent to this determination, the board chair signed a general delegation to the executive officer to sign orders to compel a psychiatric evaluation but that delegation should be formalized and included in Section 1803.

History

At its November 2005 meeting, the board directed staff to pursue a regulation change to amend Section 1803 and delegate this function to the executive officer. Additional time for public comment was provided at the January 2006 meeting of this committee. The comment period for the proposed regulation closed on March 27, 2005 and copies of those comments are included for your review. A regulation hearing is scheduled for the May 2006 board meeting on this proposal. Counsel is preparing a response to the issues raised in CAMFT's letter that will follow under a separate cover.

Attachments:

Rulemaking notice
Initial Statement of Reasons
Proposed Text
Business and Professions Code Section 820 et seq.
Comments from California Association of Marriage and Family Therapists

**BOARD OF BEHAVIORAL SCIENCES
PROPOSED LANGUAGE**

Amend Section 1803 of Division 18 of Title 16 as follows:

§1803. Delegation of Certain Functions

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling psychiatric examination in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note:

Authority cited: Sections 4980.60 and 4990.14, Business and Professions Code.

Reference: Sections 820, 4980.07, 4990.8 and 4990.13, Business and Professions Code; and Section 11500-11528, Government Code.

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**TITLE 16 BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments must be received by the Board at its office including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this notice not later than 5:00 p.m. on March 27, 2006. Any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.60 and 4990.14, Business and Professions Code, and to implement, interpret, or make specific Sections 820, 4980.07, 4990.8 and 4990.13 of the Business and Professions Code and Sections 11500-11528 of the Government Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board proposes to adopt amendments to Section 1803 in Title 16 of the California Code of Regulations (CCR). This section pertains to the delegation of certain enforcement-related functions to the Board's executive officer.

Business and Professions (B&P) Code Section 820 permits the Board to order a licentiate who is unable to practice his or her profession safely due to mental illness to be evaluated by one or more psychiatrists or psychologists. B&P Code Section 4990.8 permits the Board's executive officer to exercise powers and perform duties as delegated by the Board.

Title 16, CCR Section 1803 currently permits the Board's executive officer to file accusations, issue notices of hearing, issue statements of issues, receive and file notices of defense, issue subpoenas and subpoenas duces tecum, and set and calendar cases for hearing for Marriage and Family Therapists (MFT), Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), MFT Interns, or Associate Clinical Social Workers.

The proposal would amend Section 1803 to allow the executive officer to additionally sign orders to compel a psychiatric evaluation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None
Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561
Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:
None.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulatory action would not affect small businesses. This proposal only makes a technical change in how psychiatric evaluations are ordered.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments in writing relevant to the above determinations to the address listed under Contact Person.

CONTACT PERSON

General or substantive inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christy Berger
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

OR

Name: Mona Maggio
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7830
Fax: 916-574-8625
Email: mona_maggio@bbs.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection from the Contact Person listed above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named above or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

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**BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: N/A

SUBJECT MATTER OF PROPOSED REGULATIONS: DELEGATION OF AUTHORITY TO COMPEL PSYCHIATRIC EVALUATIONS

SECTIONS AFFECTED: Section 1803 of Division 18 of Title 16 of the California Code of Regulations

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

Section 1803 delegates a number of functions related to the Board's enforcement processes to the Board's executive officer.

The proposal would amend Section 1803 to additionally allow the executive officer to sign orders to compel a psychiatric evaluation of a Board licensee or registrant as part of an investigation of a complaint.

Past practice at the Board and other licensing boards was to have the order signed by the Board chair. However, it was determined that such an order is an investigatory function and should not be performed by Board members who also serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function be separate and performed by different parties.

FACTUAL BASIS/NECESSITY

This proposal is reasonably necessary in order to provide the Board's executive officer with the authority to sign orders to compel a psychiatric evaluation, as the executive officer does not currently have that authority.

UNDERLYING DATA / MATERIALS RELIED UPON:

None.

BUSINESS IMPACT

The proposed regulations will not have a significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

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BUSINESS AND PROFESSIONS CODE

SECTION 820-828

820. Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

821. The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

823. Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

- (a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.
- (b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.
- (c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic

examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

824. The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

826. The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

827. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

828. If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiate's fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

February 14, 2006

Members of the Board
Christy Berger
Mona Maggio
Board of Behavioral Sciences
1625 North Market Blvd., Suite S-200
Sacramento CA 95834
Christy_berger@dca.ca.gov
Mona_maggio@bbs.ca.gov

RE: Proposed Regulatory Change to Section 1803, Division 18 of Title 16 of the California Code of Regulations, Regarding Delegation of Certain Functions to the Executive Office—i.e., Delegating Authority to Compel Psychiatric Evaluations

Dear Members of the Board, Ms. Berger and Ms. Maggio:

We wish to go on record in opposition to the proposal to modify the regulation giving authority to the Executive Officer of the BBS to “issue orders compelling psychiatric examinations in accordance with Section 820 of the Business and Professions Code.” Our opposition is both technical and substantive. **We hereby request a public hearing on this proposed regulation.**

NECESSITY – Board’s determination re: due process is contradicted by the law.

The Board states in its *Initial Statement of Reasons* that a) it was determined that an order under Section 820 of the Business and Professions Code is an investigatory function and *should not be performed by board members who also serve as judges in the administrative adjudication process*, and b) *due process requires* that the investigatory function and the adjudication function be separate and performed by different parties.

The Legislature (the law) disagrees with both notions. Section 825 of the Business and Professions Code provides:

“The licensing agency may proceed against a licensee under either section 820, or 822, **or under both sections** (emphasis ours).”

Section 822 allows the board to revoke or suspend if they determine that the licentiate's ability to practice safely is impaired by mental illness or physical illness affecting competency. **Thus, the Legislature addressed this issue and gave the power to the Board (the licensing agency) to order the examination (Section 820) and then to make a determination (Section 822)** based upon the outcome of the exam and other evidence. The *Legislature expressly authorizes* the same agency to proceed under 820 and 822 – *investigatory and adjudicatory*.

If one is to take the Board at its word, then the process used (for the last decade or more) has been in violation of the due process rights of licentiates. Is this actually the position of the Board? Who made this determination and when? Is there a written legal opinion regarding this matter?

REFERENCE/AUTHORITY

Section 4980.07, cited as reference for the regulation, says that: "The board shall administer the provisions of this chapter." It says nothing about a delegation of power. However, a delegation of power is mentioned in Section 4990.8, also cited as reference, but that section does not apply to MFTs (Chapter 13). It applies only to Chapter 14 – the LCSW licensing law. Section 4990.13, also cited as reference, is also found in Chapter 14 – applicable to LCSWs. These two sections (4990.8 and 4990.13) have no application to the provisions of Chapter 13. The fact that only the Board is mentioned in Section 4980.07 is noteworthy. It doesn't say "or its delegatee."

Section 4980.07 would need to be amended by the Legislature in order to allow for a delegation to the executive officer of such an awesome power as the power to order an examination for suspected mental illness, for example. To vest this power in one person, without any built-in safeguards, seems unnecessary and somewhat dangerous. If such a delegation is sought, it ought to be through the legislative process. In fact, the Board should seek legislation similar to Section 825 of the Code, where a panel is authorized by the law to act in place of the "licensing agency" (applicable to physicians).

CLARITY

The Board's proposed regulation seeks to add the phrase "psychiatric examination." The law (Section 820) refers to an examination by one or more physicians and surgeons or psychologists re: impairment of the ability to practice due to mental illness or physical illness affecting competency. The proposed regulation, were it to move forward, should describe the examination as it is described in the statute and not by use of the words "psychiatric examination." Use of those words is actually more limiting – it seemingly prevents orders for physical (non-psychiatric) examinations where physical illness may affect competency.

QUESTION TO PONDER

If the Board has the authority to delegate to the Executive Officer the power to act on their behalf under Section 820, why doesn't it follow that they have the authority to delegate to the Executive Officer under 822 as well? Such a result would be absurd.

These orders are typically issued from the Board after a factual showing that a licensee is impaired due to mental illness. The licensee has an opportunity to respond. While the process may still require such a showing and a response, it appears to give a much greater opportunity for abuse when such authority is granted to a single person. One individual given the responsibility to make such a significant decision versus the members of the Board, where a majority of a quorum would be needed, seems to be delegating too much authority to one person, and creating too great an opportunity for this authority to be abused. Even the Medical Board utilizes the decision of a panel of the Board to make such a significant decision.

We respectfully request that this proposed regulation be withdrawn. Thank you for the opportunity to be heard on this important matter.

Sincerely,

Mary Riemersma
Executive Director

Cc: Paul Riches, Executive Officer

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Item VI

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State of California

Memorandum

To: Policy and Advocacy Committee
From: Christy Berger
Legislation Analyst
Date: April 19, 2006
Telephone: (916) 574-7847
Subject: **Review and Possible Action Regarding Statutes and Regulations for Out-of State Applicants for Clinical Social Work Licensure**

Background

A number of groups and individuals have asked the Board to reconsider the requirements for licensure of applicants licensed out-of-state as a clinical social worker. All 50 states and the District of Columbia license or certify clinical social workers for independent practice, and the Board does not have reciprocity with any other state. When an individual who is licensed as a clinical social worker in another state wishes to become licensed in California, he or she must meet the following qualifications, regardless of how long he or she has been licensed:

- Education must be substantially equivalent
- Supervised experience must be substantially equivalent:
 - Must be completed within the six years prior to application
 - Must be verified by the licensing board or past supervisors
- Pass both the standard written and clinical vignette examinations
- Complete the following coursework:
 - 7 hours child abuse assessment and reporting
 - 10 hours human sexuality
 - 15 hours alcoholism and substance dependency
 - 15 hours spousal or partner abuse assessment, detection, and intervention

These requirements can create quite a delay for obtaining licensure in California. This is especially true for the applicant whose supervised experience is more than six years old, or who has not earned 3200 hours (most states require 3000 hours). In such cases, the applicant has to earn additional hours of supervised experience. This has had a large impact on schools, which are having difficulty finding qualified educators.

Board staff conducted a national review of clinical social work licensure, and found that the requirements for licensure in other states are comparable to California's education and experience requirements and in some cases are more stringent. Therefore, should the Board decide to go forward with this proposal, it would not impact consumer protection.

Draft for Consideration

Staff has prepared some initial draft language for the Committee's review and consideration that would permit those licensed for a minimum of four years in another state, whose license is valid and without disciplinary action, to become licensed in California upon completion of the currently required coursework and passing both board-administered examinations. This would take into account the experience gained as a licensee and allow time for other state boards to complete investigation of any pending complaints. A person who has been licensed in another state for less than four years would additionally be required to possess supervised experience that is

substantially equivalent. However, if the applicant's hours of experience are deficient, he or she may count time actively licensed toward the experience requirement.

Attachments

Proposed language, section 4996.17

Letter from out of state applicant

BOARD OF BEHAVIORAL SCIENCES
Proposed Language

Amend Business and Professions Code § 4996.17 as follows:

§ 4996.17 EXPERIENCE GAINED OUTSIDE CALIFORNIA; USE TOWARDS LICENSING REQUIREMENTS

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

~~(b) The board may issue a license to any person who, at the time of application, has held a valid, active clinical license, issued by a board of clinical social work examiners or corresponding authority of any state, for two years if the education and supervised experience requirements are substantially the equivalent of this chapter and if the person successfully completes passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon the person's completion of the following coursework and training all of the following:~~

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter.

(A) If the applicant has less than 3200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1200 hours.

(2) Completion of the following coursework or training in or out of state:

~~(1) (A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.~~

~~(2) (B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.~~

~~(3) (C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.~~

~~(4) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.~~

~~(B) (D) On and after January 1, 2004, a A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.~~

~~(5) With respect to paragraphs (2), (3), and (4), the board may accept training or coursework acquired out of state.~~

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant's license is not the subject of a pending complaint in any state.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action and complaints pending.

(6) The applicant is not subject to denial of licensure under sections 480, 4992.3, 4992.35, or 4992.36.

~~(b) A person who qualifies for licensure based on experience gained outside California may apply for and receive an associate registration to practice clinical social work.~~

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant's license is not the subject of a pending complaint in any state.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action and complaints pending.

(6) The applicant is not subject to denial of licensure under sections 480, 4992.3, 4992.35, or 4992.36.

Dear Mr. Riches, Ms. Maggio, Mr. Manoleas, Ms. DiGiorgio, Mr. Gerst, Ms. Johnson, Mr. Law, Ms. Pines, Dr. Russ, Mr. Stein, Ms. Walmsley

March 16, 2006

My name is Marcy Cole and I moved to Marina del Rey, California in the Fall of 2004 from Chicago. I graduated from Northwestern University in 1984, received a Masters in Clinical Social Work from Loyola University in Chicago in 1991, and a Ph.D from The Institute of Clinical Social Work (a fully accredited doctoral program in Chicago) in 1999. I have worked in an in-patient hospital setting, a community mental health clinic working with the chronically mentally ill for 5 years, followed by a private practice working with Adults, Couples and Families for the past decade.

As you are aware, out of State medical professionals must simply send in the required paper work for their credentials, professional identity, and financial livelihood to transfer. Similarly, those who have a Ph.D in Psychology, licensed in another state, must merely take a test on California "Law and Ethics", which I certainly deem appropriate. Yet, due to the lack of reciprocity in this State, **I am writing to you all to share what is it is like to be in the shoes of a degreed and experienced professional in my field to move to the State of California.**

It seems fair and reasonable to require the necessary paper work and references that verify the legitimacy of one's education and breadth of professional experience, taking any necessary classes about what is specific to California Law, and paying the usual and customary licensing fees. However, the additional and overwhelming hoops that we must leap through, required by the current legislation on this matter, as well as the Board of Behavioral Science's Rules and Regulations, truly makes it feel as though professionals from out state are not welcome and, in fact, discouraged from joining forces in this State to provide consistent and reliable care in Mental Health. Despite my advanced degrees and years of professional experience, under present California law, I have felt treated like a new graduate. There are certainly other states that do not grant full reciprocity to licensed health professionals, but to treat highly qualified therapists like novices is not only demeaning, but patently unjust.

In the field of Social Work, the enormous hurdles clinicians must face who have an L.C.S.W. (Licensed Clinical Social Work) and/or a Ph.D, are more akin to moving to another country rather than another State. The process is fraught with months of bureaucratic paperwork, arduous waiting periods, and attendant fees. Last year I had to be supervised for 5 months before I could take 4 classes, in order to be eligible to sit for, not one, but two separate exams. As you know, the first was the "Clinical Written Exam" - a 4-hour test with 200 questions. Currently, The Board of Behavioral Sciences does not offer any study materials to aid persons to prepare for these exams. One is forced to spend hundreds of dollars with individuals or companies who claim to know what materials will adequately prepare you. My experience was that they do not in fact know what these exams are really like.

I passed the first exam and considered myself fortunate, since so many questions were pointedly obtuse. I took the second exam, "The Clinical Vignette Exam" in December of 2005, feeling well prepared given the study materials I'd purchased and the months of study. Nevertheless, I did not pass. I had never failed an exam in my entire academic career, and this one is supposed to be designed for novice clinicians! I would feel better and more hopeful about the future if I had not been prepared. But I was.....just not adequately trained for the confusing nature of this type of exam. I understand that it replaced the oral exam a couple of years ago. I can't help but also share my wondering as to why anything had to serve as a replacement in the first place? It seems a waste of time and moneys for everyone involved. Why isn't one comprehensive exam enough? What does the field of Social Work in this State need to prove? Why are are hoops required blatantly higher than others?

Furthermore, what I can report to you, which is borne out by the over 50% of aspirants who consistently fail these exams, is that they are worded in ambiguous ways that trick the versus test for true knowledge. This issue, combined with a system that does not provide the examinees proper and relevant study materials, creates an atmosphere designed to set people up for failure rather than to create tools which define and discern for legitimate competence. In addition, when statistics show that over half are failing these tests, the Board of Behavioral Science's policy of a 6 month waiting period before you can re-take the exam only prolongs the process and agony for everyone, which has major implications for the livelihood of many experienced mental health professionals.

The policy regarding transfer of supervisory hours is also unbelievably disruptive. If professionals who move here got their supervisory training over 6 years before applying for California licenser, then they must repeat part or full time 3200 hours of supervisory time. So in essence, seasoned clinicians from out of State are stripped of their professional credentials and identity and reduced to the position of an intern right out of graduate school! I have done what is expected to garner an ASW license to at least continue practicing in this State. But I must be a W2 employee of an institution or licensed professional, get weekly supervision from that individual, not accept any fees directly from clients (they must write all checks to my "supervisor"), and I can no longer accept insurance from clients. In addition, I of course have resumed responsibility for paying my employer's taxes as well as my own. Thus, my practice and income is half of what it was in Illinois, with no end in sight....given the last 62% failing rate statistic for 2nd time Vignette test takers.

To add insult to injury, this State and the Board of Behavioral Sciences does not even recognize my doctorate!! In the State of California, there is currently no protocol, special attention and recognition for those professionals in the field of Clinical Social Work who have completed 6 more years of academic work and training to achieve a Ph.D in this field. According to the current requirements, we must qualify under the same "rules and regulations" as Social Workers with a Masters Degree from another State. Why are our licensing requirements not identical to the those levied on an experienced therapist with a PhD in Psychology? There are not many in my predicamenta PhD in the field of Clinical Social Work can only be achieved from a handful of accredited schools in the country. I am merely asking to be heard and for the legitimacy of this complaint to compel those of you in positions of licensing authority to take notice of, and action on behalf of my case and this issue at hand.

I've spoken to so many people in the community about the impressions and sentiments expressed in this letter. They all shake their heads and say "Yes, everyone seems to feel that way but that's just the way it is". After months of frustration with current protocol, I have chosen not to remain silent. Beneficial change only occurs when reasonable and dedicated persons are willing and persistent enough to challenge the current system and implement better, more just, and more efficient and effective policies.

Thank you very much for your time, consideration, and support on this matter. I look forward to hearing from you.

Sincerely,

Marcy Cole, Ph.D