



BOARD OF BEHAVIORAL SCIENCES
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Website Address: <http://www.bbs.ca.gov>



MEETING NOTICE

May 18-19, 2006

Legislative Office Building
1020 N Street, Room 100
Sacramento, CA 95814

Thursday, May 18
9:00 a.m.

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

I. Chairperson's Report

- A. Report on April 28, 2006 Conference on Diversity and Licensure
- B. Appointment of Continuing Education Appeals Committee
- C. Appointment of Committee on Marriage and Family Therapist Education

II. Executive Officer's Report

- A. Personnel Update
- B. Designation of Executive Officer to Hear CE Provider Appeals
- C. Miscellaneous Matters
- D. Introduction of and Comments by Warren Hayes, MFT, Chief of MHSA Workforce and Education Training
- E. Miscellaneous Matters

III. Approval of February 16, 2006 Board Meeting Minutes

IV. Approval of January 27, 2006 Board Meeting Minutes

V. Report of the Consumer Protection Committee

- A. Enforcement Statistics
- B. Recommendation to Sponsor Legislation to Add Violations of Health and Safety Code Section 123110 to the Definition of Unprofessional Conduct
- C. Report on the April 17, 2006 Committee Meeting

VI. Report of the Budget and Efficiency Committee

- A. Budget Update
- B. Licensing Statistics
- C. Recommendation to Initiate Rulemaking for a Temporary Reduction in Fees
- D. Recommendation to Sponsor Legislation for a Temporary Increase in the License Renewal Surcharge for the Mental Health Service Providers Education Fund
- E. Report on the April 17, 2006 Committee Meeting

VII. Report of the Communications Committee

- A. Recommendation to Add Objective 1.7 to the Strategic Plan Regarding Board Outreach
- B. Report on the March 29, 2006 Committee Meeting

VIII. Regulation Hearing for Proposed Changes to 16CCR1803 Regarding Delegation to the Executive Officer

IX. Report of the Policy and Advocacy Committee

- A. Recommendation to Amend and Adopt the Board's Proposed Rulemaking Related to 16CCR1803
- B. Review of Pending Legislation with Committee Recommendations
- C. Recommendation to Sponsor Clean-up Legislation Regarding the Mental Health Services Provider Education Program
- D. Recommendation to Revise BBS Public Disclosure Policy E-04-2
- E. Recommendation to Amend 16CCR1833.1 and 16CCR1870 Regarding the Qualifications of Supervisors
- F. Recommendation to Sponsor Legislation Regarding Qualifications of Out-of-State Applicants for Clinical Social Work Licensure
- G. Report on the April 19, 2006 Committee Meeting

X. Public Comment for Items Not on the Agenda

Friday, May 19
9:00 a.m.

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

- XI. Petition for Reinstatement
 - A. Daniel Richard Kinder MFC 9337 & LEP 0785

FULL BOARD CLOSED SESSION

- XII. Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

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 Christina Kitamura at the Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834, or by phone at (916) 574-7835, no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 574-7830.

**California's Diverse Mental Health Consumers:
Implications for Licensure -- A Working Conference
April 28, 2006
Sacramento, CA**

PARTICIPANT SUGGESTIONS

General Ideas for the Board of Behavioral Sciences (Board)

- Eliminate the Board's isolation – talk with other agencies
- Determine ways for the Board to collaborate with the public system, especially around cultural competency.
- Reach out to other communities.
- Reduce the political stakes
- Recommend legislation, regulations, sponsor programs

Schools and Students

- Expand the Board's outreach program to include mentoring of undergraduate and graduate students to send the message of support and the steps to get through the process.
- Advocate for changes to educational requirements for social work licensure to the Council on Social Work Education.
- Curriculum realignment is central. Schools must comply with the Board and accrediting agencies. New licensing requirements are needed to drive curriculum change.
- Work with schools and deans to integrate cultural competence into the curriculum.
- Require cultural competence early in the process.
- Students have difficulty finding jobs. Find ways to assist students in finding jobs in underserved areas.
- Provide financial incentives to students, such as loan forgiveness, especially for minority students of low socioeconomic status.
- Need a system of mentoring and help through the academic system.
- Create circular communication with the schools and the Board especially as schools begin to focus on competencies required by the Mental Health Services Act (MHSA).
- Create an accelerated degree program for trained persons coming from another country.
- Provide intercultural exchanges for students and professors to study and practice in the field of mental health in Latin American/Asian countries and for students and professors from Latin American etc. countries to study and practice here.
- Increase the number of Latino students in mental health degree programs.
- Increase the number of Fulbright scholars targeting mental health.
- Provide bilingual practice classes in social work and Marriage and Family Therapist (MFT) programs, similar to San Jose State's offerings.

- Determine how to create a more user friendly system towards licensure, less hoops and a faster track for new professionals, while ensuring high quality of care through providing a culture of mentoring and peer support for new non-traditional professionals.
 - Utilize the California Social Work Education Center to initiate programs along these lines.
 - Develop a legislative agenda along these lines.

Requirements to Become Licensed

- Introduce legislation to modify licensure requirements
- Add a category such as client-centered advocacy to the practicum hours required for MFT licensure.
- Expand the definition of what can count toward supervised experience for licensure.
- Extend the 6-year limit on accumulation of hours.
- Interns sometimes have to pay for supervision. Find funding sources for supervision costs.
- Streamline the process for those who have their license in other states and countries, especially for those who have cultural and linguistic skills and competencies from their home countries. Include a brief course in US/California professional practice.
- Determine the best ways to open pathways to licensure where they may be closed or unduly restricted.
- Consider a lower level of licensure besides the master's level. There are many agencies that employ counselors with limited skills.
- Set up a specific license where you can only deal with certain problems, similar to the CAADAC certification (substance abuse counselors).
- Recruit in underserved communities by creating mental health paraprofessionals with scholarships and a career ladder built in towards licensure. (Hire beauticians and bartenders in these communities and use them in media campaign!)

Board Examinations

- Make human diversity a separate category again in the Licensed Clinical Social Worker (LCSW) exam
- Diversity questions for the exam are difficult to write – what can be done about this?
- Broaden the pool of people who write the exams (subject matter experts).
- Provide more guidance to candidates and content in the candidate handbook.
- Provide more sample items in the candidate handbook. This would be especially helpful for ESL candidates.
- Many people don't want to take the licensing exams due to language issues. Offer the exams in other languages.
- Allow those who immigrated more than 10 years ago extra time on the exams.
- Work to make the language of the exam questions more straightforward.
- Identify the skills and competencies that are effective with underserved communities. County mental health departments can help with identifying these competencies.

- Carefully scrutinize the exams to see if they are measuring the skills needed to serve underserved communities.
- Mandate that cultural competence be tested in the exams.

Requirements for Current Board Licensees

- Determine what to do with the Board's current base of professionals.
- Mandate cultural competency courses in continuing education
- Use a validated instrument to assess licensees' cultural competency skills.
- Find a way to encourage licensees to acquire language skills.

Research

- Do some research on those who don't pass the exams and obtain information about this population's background from the schools.
- Collect information on Board licensees.
- Look at the research regarding the increase in mental health problems as immigrants are here longer. What works in other countries?
- Require insurance companies to collect and report demographic data about their membership to highlight who uses HMO insurance, and track utilization. Same as to their provider lists, language and cultural capabilities.
- Collect data on linguistic and cultural malpractice.
- Support a research agenda on best practices with linguistic and cultural "minorities" or emerging majorities.
- Determine who is not being admitted to graduate schools.

Board Professions

- The MHSA is community-based; the MFT and LCSW licenses are based on a private practice model. This needs to change in order to address access and quality issues.
- Increase preventive work as our mental health system is not accessible, is stigmatizing, and can be punitive. For example, certain cultural child rearing practices can be seen as abusive.
- Get more involved in advocacy, especially with children.
- The professions need to be a part of the partnership.
- Need supervisors who can impart cultural competency skills.
- Use retired mental health professionals as mentors.

Workforce

- Find ways to increase ethnic diversity in the mental health professions.
- Start in high schools, advocate to enter the field; serve as role models. Recruit minorities to enter the field in this way.

- Create incentives for mid-career people to enter the field.
- Address the absence of paraprofessionals with official recognition. Determine the type of model to use and what they would allowed to do - ladder of skill levels.
 - Sacramento county has “mental health workers” – look at what they can do.
- More bilingual waivers in salaries and other incentives to recruit professionals in underserved areas.
- Engage the MHSA process in strategic workforce issues.
- Dialogue with other agencies/institutions with similar dilemmas--nursing homes, criminal justice system, nursing, and public education because they're so well organized.

Other/Resources

- Get public health agencies to promote mental health issues.
- Need a media campaign in underserved communities to build demand for services; Spanish and other radio, television and newspapers.
- More entities and others need to be involved as stakeholders in the MHSA process.
- Address resistance to services and stigma in the public mental health system.
- Review the American Psychological Association's cultural competency standards and training, and any literature as it relates to curriculum.
- Department of Mental Health's pilot program regarding cultural competency as a resource.

**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 3, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7847

Subject: Appointment of Continuing Education Appeals Committee

Background

When the Board denies or revokes approval of a continuing education (CE) provider, the route of appeal is different than for denials of revocations relating to the Board's other licensees. Board regulations (16CCR1887.8) require an informal appeal with the board's designee. If that appeal does not satisfy the appellant, then the an appeal to a committee of the board is provided for. The regulation specifies a three member committee with one public member and two professional members. The committee meetings are required to be held in conjunction with regularly scheduled board meetings.

The Board has recently denied applications for approval as a CE provider which necessitated the appointment of this previously dormant committee. There are no appeals that have progressed sufficiently to be heard by the committee at this time.

Peter Manoleas appointed Robert Gerst, Joan Walmsley and Ian Russ as members of the committee.

Attachment

16CCR1887.8

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7847

Subject: Appointment of Marriage and Family Therapist Education Committee

There has been a considerable amount of activity regarding the training and education of marriage and family therapists in recent years. However, the laws governing the curricular requirements for licensure as a marriage and family therapist have not been subject to a thorough review in many years.

Peter Manoleas is forming a committee to conduct a review of these requirements and return with recommendations for changes in the statutes if any are found to be necessary.

**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7847

Subject: Personnel Update

Departures

Sal Reyes, the board's Business Services Analyst, left the board after 13 years of service. He is now working for the Board of Barbering and Cosmetology. We are currently recruiting his replacement.

Janene Mayberry, a clinical social work evaluator, left the board after 6 years of service. She is now working for the Board of Barbering and Cosmetology. We are currently recruiting her replacement.

New Hires

Dominique (Nikki) Cotto was hired as a Student Assistant on February 23, 2006. Ms. Cotto is currently attending school at California State University Sacramento and her major is Business Administration. Ms. Cotto has a strong customer service background and is an excellent addition to the BBS staff.

On May 2, 2006, Kari O'Connor, a student assistant with BBS, was promoted to the position of Office Technician in the cashiering unit. Ms. O'Connor has been with BBS since June 2005 with a focus on providing assistance with the BBS move. Ms. O'Connor has proven herself to be an asset to the BBS staff and we are excited to have her as a full time employee.

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Designation of Executive Officer to Hear CE Provider Appeals

Background

Section 1887.8 of the board's regulations specifies the procedures for appealing the denial or revocation of a continuing education provider approval. The first route of appeal is for a hearing before the board's "designee." The board has not, to date, designated an individual to conduct these appeals.

The board has recently issued a number of denials of applications for continuing education provider approvals and for this route of appeal to be routinely available the board needs to make a formal designation. The process is analogous to the information citation review conferences that are the first route of appeal for citations and fines. The executive officer hears those appeals routinely.

Staff Recommendation

Staff recommends that the board formally designate the executive officer to hear appeals for denial or revocation of continuing education provider approvals.

§1887.8. REVOCATION AND DENIAL OF BOARD-APPROVED PROVIDER STATUS

(a) The board may revoke its approval of a provider or deny a provider application for good cause. Good cause includes, but is not limited to, the following:

(1) a provider is convicted of a felony or misdemeanor offense substantially related to the activities of a board-approved provider;

(2) a provider, who is a licensee of the board, fails to comply with any provisions of Chapters 13 and 14 of the Business and Professions Code or Title 16, Division 18 of the California Code of Regulations; or

(3) a provider makes a material misrepresentation of fact in information submitted to the board.

(b) After a thorough case review, should the board decide to revoke or deny its approval of a provider, it shall give the provider written notice setting forth its reasons for revocation or denial. The provider may appeal the revocation or denial in writing, within

fifteen (15) days after receipt of the revocation or denial notice, and request a hearing with the board's designee. The revocation is stayed at this point.

Should the board's designee decide to uphold the revocation or denial, the provider may appeal the decision of the board's designee in writing, within seven (7) days after receipt of the decision of the board's designee, and request a hearing with a continuing education appeals committee appointed by the board chairperson. The hearing will take place at the next regularly scheduled board meeting, provided the appeal is received before the meeting is noticed to the public. It is at the discretion of the board's designee whether to stay the revocation further.

The continuing education appeals committee shall contain three board members, one public member and two members representing two of the three license types regulated by the board. The decision of the continuing education appeals committee is final.

Note: Authority Cited: Sections 4980.60 and 4990.14, Business and Professions Code. Reference: Sections 4980.54 and 4996.22, Business and Professions Code.



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**BOARD OF BEHAVIORAL SCIENCES
FULL BOARD**

**DRAFT
BOARD MEETING MINUTES**

FEBRUARY 16, 2006

**AYRES HOTEL & SUITES
325 BRISTOL STREET
COSTA MESA, CA 92626**

MEMBERS PRESENT

Gordonna DiGiorgio, Public Member
Robert Gerst, Vice Chair, Public Member
Judy Johnson, LEP Member
Victor Law, Public Member
Peter Manoleas, Chair, LCSW Member
Karen Pines, MFT Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
George Ritter, Legal Counsel
Sal Reyes, Administrative Analyst

GUEST LIST ON FILE

CALL TO ORDER AND ESTABLISHMENT OF QUORUM

The meeting was called to order at 9:35 a.m.

Mr. Reyes called the roll and a quorum was established.

I. CHAIRPERSON'S REPORT

A. Introduction of New Board Members

Mr. Manoleas introduced introduced George Ritter, the Board's new legal counsel. Mr. Ritter gave us a brief background on his experience in state service. He has been with the Department of Consumer Affairs (DCA) since 1998.

Mr. Manoleas reported on his and Mr. Riches' meeting with the California Association of Deans and Directors of Schools of Social Work.

II. EXECUTIVE OFFICER'S REPORT

A. Licensing Statistics

Mr. Riches reported that the Board has improved on the processing time for licensing applications. This was achieved even with the recent office move, and missing one Marriage and Family Therapist (MFT) evaluator to jury duty. Mr. Riches explained how deficiencies severely impact the processing of applications. Staff are analyzing issues and are reviewing the Board's forms and instructions to applicants to determine what can be done to reduce the deficiency rate. This will help improve processing time.

Mr. Manoleas asked for examples of a deficiency. Mr. Riches stated that it typically is a deficiency in hours of experience, and sometimes in coursework. Staff is working to make the standards clearer to the applicants so that they don't submit their applications until they meet all of the qualifications. The school visits will help provide future applicants with a better understanding of what is required.

B. Enforcement Statistics

Mr. Riches reported a steady increase in the number of complaints received. There was slight increase in some enforcement activity, such as citation and fines. This is largely a result of continuing education audits, which make up the overwhelming majority of cite and fine activity. Dr. Russ asked about the process of a citation, whether it is decided in the Board's office, and whether that is the lowest level of action. Mr. Riches explained that the lowest level of action is a cease and desist letter for minor deviations. The next step up is a citation and fine, and the next level is actual disciplinary action. The investigative process happens in our office and at the Division of Investigation (DOI), and when that is complete, and we believe there are grounds for discipline, the case is forwarded to the Attorney General's (AG) office for prosecution. Dr. Russ asked whether the AG's office could say whether the evidence is enough. Mr. Riches replied that they can advise us, but ultimately the Board makes the decision. We do listen very carefully if the AG has questions about the sufficiency of our evidence.

Dr. Russ asked about the statistics regarding custody complaints, whether they are brought up in the context of a custody evaluation. Mr. Riches replied that it varies, sometimes it is the result of an evaluation, but sometimes the therapist is involved not as an evaluator but is seeing an involved family member and oversteps a line.

Ms. Walmsley asked who is filing complaints about supervision. Mr. Riches explained that when a supervisor has refused to sign off on hours, or supervised when they didn't have a current license, these come from the supervisee. Dr. Russ asked whether conviction of a crime is reported to the Board. Mr. Riches stated that when our applicants are fingerprinted, they are placed in a database that provides us with reports of arrest from the Department of Justice. Also, when a person renews a license, they must report any convictions. If the conviction is substantially related, we pursue disciplinary action.

Mr. Gerst asked whether probation recovery has been effective because we do not seem to be recouping the costs. Mr. Riches stated that the program is working, it just takes time to recover the costs. He explained that there is a large gap between the total recovery due the Board and the amount of payments received because probationers do not pay a lump

sum, they make monthly payments. Ms. Johnson asked for a clarification between the incompetent/negligence category vs. unprofessional conduct. Mr. Riches stated that there are ways to be incompetent that are not negligent, and unprofessional conduct is not related to competence. Most of our discipline is not related to competence.

Mr. Manoleas noticed that the number of complaints received versus the number of investigations opened is increasing over the last few cycles. Mr. Riches explained that this is due to a combination of factors. One is that we have had a steady increase in the number of complaints, and inevitably a certain percentage of those complaints are going to be referred to investigation. Some of it is staff is doing better at sorting out the complaints. There are other ways to process a complaint without referring it to investigation.

Dr. Russ asked if a complaint had been received against a licensee for sexual misconduct, would they still be able to practice for a year before charges are filed. Mr. Riches said yes, probably longer than that due to all of the processes involved. Dr. Russ asked whether we should look at establishing a priority list for emergency situations. Mr. Riches said we do have a prioritization scheme with DOI, but they have other clients who may also have high priority. Mr. Gerst asked if we have any emergency options when the allegations are very serious. Mr. Riches explained that when a licensee is brought up on criminal charges, we can seek a suspension of the license depending on the outcome of that proceeding.

C. Budget Update

Mr. Riches reported that the Board's finances are sound. One thing that could change this is that the new exam contract will likely increase exam costs significantly. The current contract is approximately \$400,000 a year, so a reasonable percentage increase would be significant. Mr. Manoleas asked about the Office of Examination Resource's (OER) \$194,000 budget expense, and whether it was unexpected. Mr. Riches explained that it was not unexpected, and we have been working with the Department to realign our internal costs so that we have a dedicated line item for this OER cost in 06/07.

D. Legislative Update

Mr. Riches reported that staff is reviewing bills that have been introduced, and there is nothing pressing at this time. At the next Policy and Advocacy Committee meeting we will have the pertinent bills and analyses to make recommendations for the next Board meeting. As far as sponsored legislation, we have submitted the reorganization proposal to the Business and Professions Committee and that includes the Licensed Educational Psychologist (LEP) revisions. The committee bills work on a different timeline than other bills, so we probably won't see this bill introduced until March. We have some regulations that have been noticed, and the citation and fine regulations that would increase the maximum fine to \$5,000 in certain circumstances has been filed with the Department.

E. Personnel Update

Mr. Riches reported that two new employees were hired, Victoria Gaines as the Licensed Clinical Social Worker (LCSW) evaluator and Tricia Soares as a Marriage and Family Therapist evaluator. Both are new to state service and are taking to their jobs quickly.

F. Initial Results of Supervision Survey

Mr. Riches stated that we have received enough responses from MFT Interns, and we are continuing to send the surveys to Associate Clinical Social Workers (ASW) until we receive at least 300 back. We have been entering the data and have some very preliminary results. We have been able to look at the data response by response, but haven't had a chance to look at the range of responses.

Mr. Riches reported that the response rate has been very strong. People seem to be happy with their supervision experience, as the average rating is a 4 out of 5, and this assessment of their experience is encouraging. There were a number of places in the survey that have unstructured responses, which we have not yet analyzed. More analysis needs to be done to look at relationships between some of the questions.

G. Miscellaneous Matters

Mr. Riches reported on the Board's diversity conference, scheduled for April 28th in Sacramento. Joe Hayes, a demographer from the Public Policy Institute of California will report on demographic change in California, and Rachel Guerrero, Chief of Multicultural Services at the Department of Mental Health who oversees efforts in the area of culturally competent practice and services, will speak. There will be breakout sessions in the afternoon to focus on the board's position regarding initial training and practice, and where the Board fits in. Staff will bring this information back to the Board.

Mr. Riches spoke with Jose Luis-Flores of the Southern California Consortium. They talked about ideas for the MFT educator's meeting on June 9th at Phillips Graduate Institute. All Board members are invited to attend. They are still looking at dates for the Northern California Consortium. Ms. Pines stated that she has frequent contact with Orange County schools that informed her about their consortium. She recommended that the Board communicate with them.

III. ELECTION OF OFFICERS

Mr. Manoleas stated that officers need to be elected for the positions of Board Chair and Vice Chair before March 1, 2006, to comply with the law. Mr. Manoleas asked for nominations. Mr. Stein nominated Judy Johnson as Board Chair. Ms. Johnson declined her nomination until she has more experience and has more time to dedicate to the position. Ms. Pines nominated Joan Walmsley as Board Chair. Ms. Walmsley also declined her nomination, as she wants to get more experience on the Board. Ms. Johnson nominated Dr. Ian Russ as Board Chair. Dr. Russ declined this nomination, stating he would prefer to serve as Vice Chair.

Ms. Pines stated that in the past we have had a public member and a professional member as Chair and Vice Chair, which she believes is a good thing. Mr. Gerst stated that it is okay for two professionals to be Chair and Vice Chair, he feels comfortable with that.

Mr. Law stated that it would be helpful for Mr. Manoleas and Mr. Gerst to remain in their positions as a number of Board members are new and have a lot to learn, and it would provide stability. Mr. Gerst stated it would be good to have someone who is going to be on the Board for some time to come to be Vice Chair.

Mr. Gerst nominated Peter Manoleas as Chair, and Ms. Walmsley nominated Dr. Ian Russ as Vice Chair.

ROBERT GERST MOVED, KAREN PINES SECONDED AND THE BOARD CONCURRED TO NOMINATE PETER MANOLEAS AS BOARD CHAIR.

Mr. Manoleas accepted the Board Chair position.

PETER MANOLEAS MOVED, DONNA DIGIORGIO SECONDED AND THE BOARD CONCURRED TO NOMINATE DR. IAN RUSS AS VICE CHAIR.

Dr. Russ accepted the Vice Chair position.

IV. APPROVAL OF NOVEMBER 17-18, 2005 BOARD MEETING MINUTES

Mr. Manoleas inquired whether all Board members have reviewed the November 17-18, 2005 Board meeting minutes and if they approve. Mr. Gerst asked who prepared the minutes and that they should be commended on a job well done.

KAREN PINES MOVED, HOWARD STEIN SECONDED AND THE BOARD CONCURRED TO APPROVE THE NOVEMBER 17-18, 2005 BOARD MEETING MINUTES. (Mr. Law abstained)

V. PRESENTATION ON AND DISCUSSION OF BOARD'S LICENSING EXAMINATION PROGRAM LINDA HOOPER, PH.D., ACTING CHIEF OF THE OFFICE OF EXAMINATION RESOURCES

Mr. Manoleas introduced Linda Hooper, Acting Chief of the Office of Examination Resources (OER). She will be presenting information regarding the Board's examination programs and their development. Ms. Hooper explained that the LEP, LCSW, and MFT programs are handled by different staff members within OER. Ms. Hooper has worked directly with the MFT examination program. She noted that OER is much like an internal consulting firm, providing exam-related services that range from general consulting to full examination development for approximately 30 of the Boards and Bureaus within Department of Consumer Affairs (DCA).

Ms. Hooper explained that OER's work is guided by legal, professional and technical standards. These standards are not unique to DCA or California; many are national testing standards that are applied by courts when deciding case law. The first standard is California Business and Professions Code Section 139. This statute requires all Boards and Bureaus to submit exam related information to OER to allow preparation of an annual report regarding the methods used to ensure quality examinations. This law was designed to reinforce national testing standards, helps to ensure adherence to legal and professional standards, and establishes a schedule for conducting exam validation and occupational analyses.

Ms. Hooper explained that Section 12944 of the California Fair Employment & Housing Act requires all licensing programs to establish the job-relatedness of their examinations. The *Standards for Educational and Psychological Testing* say basically the same thing, that exams must be related to the profession. To ensure job-relatedness, OER uses a content-related strategy. OER also follows the Federal Civil Rights Act of 1991, and the Federal Uniform Guidelines for Employee Selection Procedures.

Ms. Hooper explained that all licensure exams must be based on an occupational analysis. The results of an occupational analysis determine the examination outline. An occupational analysis begins with interviews of licensees who help to create a list of tasks or duties that are performed by licensees in the profession, and the knowledge required to perform those tasks. Several focus groups with subject matter experts (SME) helps to refine that information. A survey is then created based on the interviews and focus groups. The survey is sent to licensees throughout the state. Those who are newly licensed are oversampled since the exam is based on minimum competency. The end result is the exam outline, which represents the questions to be asked in each content area. The occupational analysis and exam outline is completed every five years for each profession.

Ms. Hooper stated that the MFT occupational analysis was last done in 2002, and is due to be initiated soon so that it is complete by 2007. The LEP was completed in June of 2003, and is due by 2008. The LCSW was just completed in January 2005, so it is not due to be updated until 2010. She explained that examination development is always a work in progress, and includes developing new test questions and revising questions that aren't performing like they should. Different groups of SMEs are involved at each step. OER is constantly monitoring the performance of the exams.

OER would like to begin pretesting six clinical vignette items for each profession, beginning in June 2006 for the LCSW, and in July 2006 for the MFT. The test time will be increased from 90 minutes to two hours. Candidates will not be informed which items are being pre-tested, and such items are not scoreable. Because this exam can be confusing at times, OER is looking at a variety of issues, such as test-taker fatigue. OER hopes that adding more time and allowing some pretesting will help establish better statistics.

Final proposals for a new contract for computer based testing are due from vendors by March 21, 2006, though this date is subject to change. DCA is on track to implement and award the contract to a vendor to begin services November 1, 2006. Thomson Prometric is one of the bidders.

Mary Riemersma of the California Association of Marriage and Family Therapists (CAMFT) asked what could be done about the pass rate fluctuation for the MFT written clinical vignette exam. Ms. Hooper stated that there was a learning curve upon implementation of the exam, so that may have impacted the pass rate of the first cycle. Ms. Riemersma asked what could be done to make sure the exams are scored correctly. She is concerned whether the test is accurately distinguishing minimum competency, and also has concerns about the validity and reliability of the items, which are reportedly convoluted and confusing.

Mr. Manoleas asked whether is it possible that there is some variability in the candidate pool. Ms. Riemersma stated that this is a possibility. Mr. Riches stated that the sample size, or number of candidates that take the examination during a cycle could impact the pass rate. A smaller sample results in greater volatility in statistics.

Ms. Riemersma stated that she is also concerned about the high pass rate of second-time takers, which may indicate that there are people who should have passed the first time. Dr. Russ noted that on retake exams applicants usually do less well and less well; there is going to be a higher fail rate on retake exams. Ms. Riemersma stated that the pass rate of second-time takers was higher than it should be. Mr. Riches mentioned that a learning curve still exists during the second cycle of administration.

Dr. Russ asked Ms. Hooper for a brief overview of how questions are formulated. Ms. Hooper explained that an exam outline is created based on the results of an occupational analysis. The SMEs involved are from a variety of locations and specialty areas, and are often supervisors. Each test question is written by a SME, is related to a specific task and knowledge within a content area of the exam outline, and is also based on reference texts. The new items are reviewed by a different group of SMEs as well as OER's editor. The best items for a new version of the exam are selected by another group of SMEs, and yet another group reviews the questions and determines the passing score by determining the difficulty of each item. Every 10 working days, OER looks at item statistics. If an item is questionable, the item is brought to SMEs for review.

Ms. Johnson stated that as an LEP, the reliability and validity of the examinations are excellent. Every single item that is developed has a reliability and validity coefficient that is related to the internal reliability of that question and to construct validity as far as content. She explained that looking at the statistics is a very scientific process.

Mr. Manoleas stated that the exam is doing its job because the pass rates declined for second, third and subsequent takers. Mr. Riches stated that a lot of the variation in pass rate lies in the first two administrations. Being a new exam, it is going to have volatility. Over time, the stability is increasing, which is what you would expect to see.

Ms. Riemersma stated that at a previous Board meeting, Tracy Montez of OER made the comment that she and her staff lie awake at night thinking about what caused that variability. If Ms. Montez is concerned about that Ms. Riemersma is also going to be concerned. Ms. Hooper commented that OER staff takes their jobs very seriously. They constantly investigate and review the items to make the exam better. Mr. Riches states that Ms. Montez's comments should be taken not an expression of a lack of confidence, but a statement of their commitment to always make these exams better.

Dr. Russ encouraged the school coalitions to determine whether there are schools whose students consistently perform well, year by year. He asked whether there are agencies that seem to have better pass rates and lower pass rates. There are many different variables that need to be looked at. Mr. Gerst asked whether exam preparation courses hurt or help the applicants. There are things outside the control of OER that affect the exam outcome. Ms. Walmsley stated that candidates are provided with a tremendous amount of information about the exam in the candidate handbook.

Gerry Grossman of Gerry Grossman Seminars expressed concerns about the language used in the exam. He believes it can be difficult, especially for people from diverse backgrounds. Ms. Walmsley responded that a minimally competent applicant who has 3200 postgraduate hours with effective supervision and with appropriate exam preparation should be able to pass this exam. She does not believe the language impedes the exam process. Ms. Hooper explained that the exam is edited four or five times throughout its development. Part of the process involves ensuring that the SMEs understand the questions and the language used in the questions.

Ms. Riemersma stated that Mr. Riches once commented about the removal of language indicative of a particular theoretical orientation, making the language generic so as not to guide the examinee to answer the question a certain way. She believes that by removing the reference to a specific theoretical orientation, it tends to make the wording a little more complex. It would be good to inform the applicants of that process. Mr. Riches explained that every profession has its own jargon, which is great in terms of providing verbal shorthand, but jargon should not be part of a professional licensing exam. What is important is to test the understanding of the concepts, and more words have to be used without that verbal shorthand.

Ms. Johnson explained that in terms of test construction, the questions are not simple recall, they are based on analysis and synthesis and problem-solving. Regardless of verbiage used, a question asks a candidate to problem-solve a situation.

Dr. Russ asked Mr. Grossman to clarify his question. Mr. Grossman responded that the questions regarding treatment are distracting and hard to understand. Mr. Manoleas stated that the concerns have been noted.

VI. REPORT OF THE CONSUMER PROTECTION COMMITTEE

Mr. Stein reported that the Consumer Protection Committee met on January 17, 2006 in Los Angeles. Mona Maggio, the Board's Assistant Executive Officer, reported on the items the Committee is working on.

1. Staff is reviewing review continuing education (CE) laws to determine a way to identify quality standards and measures of CE.
2. Staff is working on training sessions to assist DOI. The Deputy Attorney General's (DAG) office is investigating and prosecuting our enforcement cases. The Board's cases are being held up for a different reasons, one being that DOI is lacking investigators due to vacancies. Training is scheduled for late November.
3. The Committee discussed the feasibility of tiered, multiple or specialty social work licensure as practiced in other states. Four areas were considered including child welfare, macro level social work, aging, and alcohol and drug counselors. The Committee directed staff to perform further research on child welfare and elder care social work.

Mr. Manoleas stated that at the Deans and Directors of Schools of Social Work meeting he and Mr. Riches attended, the topic of multi level social work licensure came up. There was discussion with Dean Flynn of USC and years ago there had been a Board-sponsored work group. He encouraged a look back at previous Board minutes to find out the outcome and what was done. Mr. Manoleas stated that he and Mr. Riches met with Kathy Jett with Alcohol and Drug Programs regarding alcohol and drug counselors to see if there was a possibility of coordinating our efforts. Mr. Riches is in the process of scheduling another meeting with Ms. Jett.

4. The Committee discussed allowing MFT supervision to take place via videoconferencing. This was brought forward by CAMFT, who received a letter from a member who is aware that there are areas where interns and trainees are having difficulty finding supervision. The Committee directed staff to investigate this proposal for use in remote locations and specialty areas, for both ASWs and MFT interns.
5. The Committee discussed whether the Board should sponsor legislation regarding fictitious business names for LCSWs, in line with the MFT statute. This issue arose when staff had difficulty identifying the social worker named in a complaint because the individual works under a fictitious name. The Committee recommended to the Board to pursue such legislation. This proposal will be forwarded to the Policy and Advocacy Committee to approve the language before it goes before the Board.

PETER MANOLEAS MOVED, DR. IAN RUSS SECONDED, AND THE BOARD CONCURRED TO SPONSOR LEGISLATION FOR A LCSW STATUTE THAT PARALLELS THE MFT STATUTE FOR FICTITIOUS BUSINESS NAMES.

VII. REPORT OF THE COMMUNICATIONS COMMITTEE

Ms. Pines reported on the development of the Board's new outreach program, which will give the Board greater visibility. Sean O'Connor is heading this program, it is a new position, and will allow the Board to have more visibility and to be involved in more professional activities.

Ms. Pines explained that staff plans to provide information at outreach events about the Board's budget, including how the budget is formed and what goes in it. Other outreach opportunities will include ethnic-focused professional groups. Ms. Walmsley stated this will be an opportunity to recruit subject matter experts which will increase the diversity of the exam.

We have received feedback that students and educators would like outlines of the exams and of the licensing requirements. Staff is revising the candidate handbook, due to be in June, and will speak to legal counsel about what can be included in the handbook about managing test anxiety and supervision recommendations. Ms. Maggio stated that staff will likely be developing two separate documents, one for students and one for those ready to take the examinations.

Ms. Pines stated she feels that Board members should attend some outreach events when possible. She reported that the Board is working to hire a public relations firm to develop publications and PowerPoint presentations for outreach events. Mr. Riches stated that the Board is working on the contracting process for the PR firm.

The Committee is working with DCA to be a part of the upcoming Senior Summit. The Committee also plans to work with Board of Psychology and the Department of Mental Health on outreach. The Board will be participating in the upcoming CAMFT and National Association of Social Worker (NASW) conferences. Ms. Pines stated that the upcoming MFT regional consortia meetings will be good venues for discussion and questions about diversity issues, proposition 63 workforce development and curriculum issues.

Heather Halperin of the USC School of Social Work thanked the Board for the outreach event Sean O'Connor held at their campus. Ms. Halperin said it was very well received.

Marci Siegel of the San Diego State School of Social Work commended the Board on their communication with consumers and practitioners. It is very helpful for their students.

Ms. Pines asked the public to let the Board know when there is an event we should attend, as we have not been in the loop in the past.

Jose Luis-Flores representing Phillips Graduate Institute and also representing the Southern California consortium thanked the Board for their attendance at the consortium. When the schools and representatives know of the Board's attendance, they are more likely to attend the meetings. He mentioned that Orange County schools do attend their meetings.

Irene Mellick from the Ventura County Mental Health board, offered to provide information on what is happening with the counties and proposition 63.

Ms. Siegel of San Diego State stated that the Board might want to consider meeting with field directors and field faculty for the different schools, as they would be connecting with thousands of professionals that way.

VIII. REPORT OF THE POLICY AND ADVOCACY COMMITTEE

A. Advocate for Implementation of AB 938 Loan Repayment/Scholarship Program Implementation

Mr. Gerst reported that this program was initiated in 2004, funds have been accumulating, but nothing has been done to implement the program. The Committee recommends to the Board that staff draft a letter to the appropriate authority asking for implementation of the law at the earliest possible date. Mr. Riches stated that he also plans to contact the office of Assemblyman Yee, the sponsor of the initial legislation.

Dr. Russ stated that the Board has a surplus of money, and continues to take in more than it is using. He asked whether a portion of this surplus could go to this fund. Mr. Riches stated that staff is looking at our overall fiscal situation to be brought to the budget committee. We will be addressing the reserve and exploring options about how to do that.

Mr. Manoleas asked who the letters would be sent to. Mr. Riches responded that the letter would be addressed to the head of the Office of Statewide Health Planning and Development (OSHDP), the entity that administers this program. The Health Professions Education Foundation will also be involved in this communication, as well as Assemblyman Yee's office.

DR. RUSS MOVED AND MS. PINES SECONDED AND THE BOARD CONCURRED TO HAVE STAFF DRAFT A LETTER TO OSHPD ASKING FOR THE EARLIEST POSSIBLE IMPLEMENTATION OF THE LOAN REPAYMENT PROGRAM STATUTE.

B. Possible Action to Conduct a Demographic Survey of Board Licensees

Mr. Gerst reported that the Committee discussed the survey, which would be strictly voluntary and not individually identifiable. Counsel has written an opinion, the Committee had a very intense discussion about it, and the decision was that conducting this survey is legal and appropriate. The Committee recommends that Board direct staff to develop and conduct the survey. It would be submitted to the appropriate committee to work with staff before it is finalized. Mr. Riches explained that we want to gather data in a way that is comparable to other significant data sets, such as the U.S. Census, so that we can make comparisons on the results.

DR. RUSS MOVED, MS. PINES SECONDED, AND THE BOARD CONCURRED TO HAVE STAFF DEVELOP AND CONDUCT A VOLUNTARY AND ANONYMOUS DEMOGRAPHIC SURVEY OF BOARD LICENSEES.

Mr. Gerst reported that the Committee also looked at three proposed regulations. The first was regarding delegation of authority to the Executive Officer to order a psychiatric evaluation of a licensee during an investigation. The Committee agreed to go forward with this regulation. The Committee also took input regarding the citation and fine of CE providers. This issue was discussed extensively, and Committee agreed to go forward with this regulation. The third was regarding the qualifications of supervisors. The Board chair asked to hold off on this proposal until the results of the supervision survey were available.

Mr. Gerst reported that they also discussed taking a look at the statutory definition of unprofessional conduct, as some areas are not covered. Staff will be reviewing and determining whether other items should be included in the definition.

IX. REPORT OF THE BUDGET AND EFFICIENCY COMMITTEE

Mr. Law reported that the Committee discussed future technology, such as accepting digital signatures, online payments and online applications for the licensees. Such technology would help to reduce application processing time. Additionally, DCA is looking for new vendors for the iLicensing project. Ms. DiGiorgio stated that we are trying to make the licensing process more user-friendly to the applicant as far as providing the ability to check where they are in the process and trying to expedite the process.

X. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

There was no comment from the public.

The meeting adjourned at approximately 2:30 p.m.



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**BOARD OF BEHAVIORAL SCIENCES
 FULL BOARD**

**DRAFT
 BOARD MEETING MINUTES**

**January 27, 2006
 California Department of Education
 1430 N Street, Room 2102
 Sacramento, CA 95814**

MEMBERS PRESENT

Gordonna DiGiorgio, Public Member
 Robert Gerst, Vice Chair, Public Member
 Judy Johnson, LEP Member
 Victor Law, Public Member
 Peter Manoleas, Chair, LCSW Member
 Dr. Ian Russ, MFT Member
 Joan Walmsley, LCSW Member

MEMBERS ABSENT

STAFF PRESENT

Paul Riches, Executive Officer
 Mona Maggio, Assistant Executive Officer
 Kim Madsen, Program Manager
 Elina Taylor, Examination Analyst
 Julie McAuliffe, Examination Analyst
 Sal Reyes, Administrative Analyst

GUEST LIST ON FILE

CALL TO ORDER AND ESTABLISHMENT OF QUORUM

The meeting was called to order at 10:15 a.m.

Mr. Reyes called the roll and a quorum was established.

I. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

There was no comment from the public.

II. CLOSED SESSION

The Board met in closed session to discuss examination issues.

The meeting adjourned at approximately 2:30 p.m.

**State of California
Board of Behavioral Sciences**

Memorandum

To: Board Members

Date: May 3, 2006

From: Consumer Protection Committee

Telephone: (916) 574-7841

Subject: Committee Report

Action Items

The Committee made the following recommendations to the full board:

1. *To sponsor legislation to add violations of Health and Safety Code Section 123110, which requires healthcare providers to provide patient records upon request, to the definition of unprofessional conduct Business and Professions Code sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW). [Attachment A]*

Other Committee Activity

The Consumer Protection Committee met on Monday, April 17, 2006 in Los Angeles.

In addition to the action item above, the committee:

- Conducted a review of progress on achieving the strategic objectives under Goal #3. [Attachment B]
- Discussed the definition of what constitutes online continuing education
- Received an update on Supervision Survey for Marriage and Family Therapists (MFT) Interns and Associate Clinical Social Workers (ACSW)
- Discussed allowing supervision via video conferencing for MFT Interns and ASW registrants.
- Reviewed the scope of unprofessional conduct statutes and regulations.
- Reviewed the Board of Behavioral Sciences Enforcement Program.
- Reviewed the enforcement authority available to the Board for urgent/emergent cases.

For more detailed information on these items see the attached draft minutes from the committee meeting. [Attachment C]

The next meeting of the committee is scheduled for June 21, 2006.

Attachment A 1

§4982. UNPROFESSIONAL CONDUCT

The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

[\(w\) Any violation of Health and Safety Code Section 123110.](#)

Attachment A 2

§4992.3. UNPROFESSIONAL CONDUCT; EFFECT ON LICENSEE OR REGISTRANT

The board may refuse to issue a registration or a license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(l) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which

depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

[\(t\) Any violation of Health and Safety Code Section 123110.](#)

Attachment A 3

§4986.70. REFUSAL TO ISSUE, OR SUSPENSION OR REVOCATION OF LICENSE; UNPROFESSIONAL CONDUCT

The board may refuse to issue a license or may suspend or revoke the license of any licensee if he or she has been guilty of unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist, the record of conviction being conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) Using any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any hypnotic drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public and to an extent that the action impairs his or her ability to perform his or her work as a licensed educational psychologist with safety to the public.

(d) Improper advertising.

(e) Violating or conspiring to violate the terms of this article.

(f) Committing a dishonest or fraudulent act as a licensed educational psychologist resulting in substantial injury to another.

(g) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(h) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(i) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(j) Gross negligence or incompetence in the performance of licensed educational psychology.

[\(k\) Any violation of Health and Safety Code Section 123110.](#)

Attachment B

State of California
Board of Behavioral Sciences

Memorandum

To: Board Members

Date: May 5, 2006

From: Consumer Protection Committee
Mona C. Maggio, Assistant Executive Officer

Telephone: (916) 574-7841

Subject: **Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes – Report on Progress**

Goal #3 – Promote higher professional standards through rigorous enforcement and public policy changes.

Objective 3.1 -- Complete Draft Revisions for Continuing Education Laws by December 31, 2006.

Background

The Board's strategic plan identifies the need to "Complete Revisions for Continuing Education Laws by December 31, 2006."

Update

The Board approved regulations that would allow the issuance of citations and fines to continuing education providers.

Staff is waiting to proceed with this regulation until the proposed regulation to increase maximum fine to \$5,000 for specified violations is complete.

At the April 17, 2006 meeting, Robert Gerst questioned if the target date for this strategic plan objective was achievable. Paul Riches responded that the objective was for Board completion not enactment.

Board staff will continue to monitor changes regarding the continuing education law and will bring any issues to the attention of the Policy and Advocacy Committee.

Objective 3.2 -- Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.

Background

The Board's strategic plan identifies the need to ensure high professional standards for Marriage and Family Therapists (MFT) and Licensed Clinical Social Workers (LCSW). In an effort to meet this objective, the board must develop a way to measure the quality of continuing education (CE) courses and thereby establish a minimum

standard that all CE courses must meet to be or continue to be approved as a Board of Behavioral Sciences (BBS) approved provider.

Update

Staff has identified the basic tasks to begin researching this objective. Staff is completing the analysis of the data collection from other six identified entities (BAR Association, California Association of Marriage and Family Therapists (CAMFT), California Society for Clinical Social Work (CSCSW), National Association of Social Workers (NASW), UC Davis Continuing Medical Education, American Association of State Social Work Boards (AASWB) and DCA boards and bureaus). Team members will meet to determine methodologies to measure to the quality of CE courses and minimum uniform standards.

Objective 3.3 --

Complete 12 Substantive Changes in Laws and Regulations by January 1, 2008.

Background

The Board's strategic plan identifies the need to "Complete 12 substantive changes in laws and regulations by January 1, 2008."

Update

The Board has recently approved a number of substantive changes to the Licensed Educational Psychologist law, including:

- Continuing education
- Scope of practice
- Licensing requirements
- Unprofessional conduct

An author has been found to introduce these changes in legislation. We expect the bill to be introduced in early 2006 and if passed, to take effect January 1, 2007.

The Board has also approved several substantive regulatory changes, currently in process and expected to be complete by mid-2006:

- Citation and fine – Increase maximum fine to \$5,000 for specified violations *
- Citation and fine of continuing education providers
- Delegation to Executive Officer ability to compel psychiatric evaluation *

* Currently awaiting Department of Consumer Affairs (DCA) approval

Objective 3.4 --

Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010.

Background

The Board's strategic plan identifies the need to "Advocate for five laws that protects the privacy of client/therapist relationships by December 2010."

Update

Assembly Bill 3013 was introduced on February 24, 2006, Author Nunez, Sponsor CAMFT – Subject Medical Information: Disclosures.

Refer to the Policy and Advocacy Committee Report for an update on this bill.

Board staff will monitor legislation and identify any that has the potential to protect the privacy of client/therapist relationships beginning with the 2006 legislative season. Any such legislation will be analyzed and brought before the Policy and Advocacy Committee who will make a recommendation to the Board whether to support the bill and when needed, suggest amendments.

Objective 3.5 --

Provide Four Educational Opportunities for Division of Investigation (DOI) and The Office of the Attorney General (AG) Regarding the Board of Behavioral Sciences (BBS) and It's Licensees by June 30, 2008.

Background

Team members identified the educational opportunities as training for DOI investigators and the Deputy Attorneys General regarding the Board's scope of authority, licensee scope of practice and the necessary requirements to conduct investigations and prosecute cases. The training will be conducted by the Executive Officer, representatives from the Department of Justice and the Board's Enforcement Unit.

Current Status:

Team members have received training material samples from other boards to assist in developing the training program for DOI investigators and the Deputy Attorneys General.

Objective 3.6 --

Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.

Background

Cases sent to DOI for formal investigation take an average of 9 months to one year for completion. The Administrative Hearing process averages another year for a proposed decision to be rendered and come before the Board. It is the goal of this objective to shorten the processing time for investigation and prosecution of cases to meet the Board's mandate to protect the public health, safety and welfare.

Status

At the April 17, 2006 meeting, Mr. Stein queried the progress of the Division of Investigation's (DOI) recruitment of investigators. Mona Maggio reported that she met with Bill Holland, Deputy Chief of DOI in early April to discuss investigator caseload and processing times. Mr. Holland reported that four new investigators would be on board by mid April 2006; however, four investigators are leaving due to retirement. Mr. Holland suggested the Board consider utilizing subject matter experts (SMEs) to assist staff in the complaint handling process. Many health care boards use staff to obtain documents to support the

complaint and SMEs for the report writing. These boards use DOI for criminal cases; when documents must be retrieved via subpoena; and for interviewing witnesses. As part of case processing the Board's Enforcement staff does request and obtain documents and statements in writing from complainants and subjects. SMEs are used to review cases and write reports for cases that will be referred to the Office of the Attorney. The SMEs also testify at administrative hearings.

Judy Johnson asked what the requirements are to serve as a SME for the Board. Mr. Riches provided a synopsis of the criteria used for selecting SMEs. He added that staff is currently working on a training program for SMEs to be held in the Fall 2006. The Board's Enforcement Unit, a Deputy Attorney General and an investigator with DOI will conduct the training. Ms. Johnson asked that the SME selection criteria be included for review at a future meeting.

Staff will continue to monitor the processing times of both agencies.

Objective 3.7 --

Complete Annual Review of Examination Program and report the Results at a Public Meeting.

Background/Status

- Staff met with the Office of Examination Resources (OER) on January 10, 2006 to discuss the Board's current examination program, pass rates, examination development workshops and the examination vendor Thompson/Prometric.
- On January 27, 2006, Tracy Montez PhD, Chief of OER and Linda Hooper, PhD, Personnel Selection Specialist at OER facilitated a discussion and overview of the Board's licensing examinations for MFTs, LCSWs and LEPs during a Closed Session Board Meeting.
- On February 16, 2006 Ms. Hooper facilitated a presentation on and discussion of Board's Licensing Examination Program for the public.

Staff has identified this objective as being met.

Enforcement Statistics

BOARD OF BEHAVIORAL SCIENCES
BREAKDOWN OF ENFORCEMENT COMPLAINT ACTIVITY BY LICENSEE POPULATION
2005 - 2006
FISCAL YEAR ⁽¹⁾

	OPENED	COMPLAINTS CLOSED	PENDING	Licenses In Effect (2)	% of Licenses to Pending Complaints
UNLICENSED	88	82	22	n/a	n/a
APPLICANTS	232	240	28	n/a	n/a
CE PROVIDERS	6	6	1	2216	0.05
DUAL LICENSEES (3)	11	10	1	n/a	n/a
DUAL W/BOP (3)	14	12	4	n/a	n/a
ASW	48	41	21	6463	0.32
LCSW	133	114	47	16297	0.29
IMF	89	79	47	9628	0.49
MFT	304	269	111	27624	0.40
LEP	9	7	2	1713	0.12
TOTAL	934	860	284	63941	0.44

- Note:
- (1) Activity is from July 1, 2005 through March 31, 2006. Pending as of March 31, 2006.
 - (2) Licenses in effect as of March 1, 2006. Does not include cancelled, revoked, or voluntary surrender of licenses.
 - (3) Dual licensees are those that hold dual licenses with BBSE. Dual w/BOP are licensed with BBSE and the Board of Psychology.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

**State of California
Board of Behavioral Sciences**

Memorandum

To: Board Members **Date:** May 4, 2006
From: Budget and Efficiency Committee **Telephone:** (916) 574-7840
Subject: Committee Report

Action Items

The committee recommends that the board direct staff to develop a rulemaking proposal to temporarily reduce fees to address the growing reserve in the Behavioral Sciences Fund. The fee reduction should occur in tandem with board sponsored legislation to temporarily increase the license renewal surcharge to redirect 50% of the fee reduction revenue to the Mental Health Services Provider Education Program.

Other Committee Activity

The Budget and Efficiency Committee met on Monday, April 17, 2006 in Los Angeles.

The committee received an update on the Board's budget. [Attachment A]

The committee received a report on current licensing statistics. [Attachment B]

The committee conducted a review of progress on achieving the strategic objectives under Goals 2, 5, and 6. [Attachment C]

The committee was informed that board staff will be submitting a budget change proposal for the 2007-08 Fiscal Year to add two enforcement analysts.

The committee will discuss a proposal to grant continuing education credits for attendance at board meetings at its next meeting.

For more detailed information on these items see the attached draft minutes from the committee meeting. [Attachment D]

The next meeting of the committee is scheduled for June 21, 2006.

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Attachment A

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State of California

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches

Telephone: (916) 574-7840
Extension:

Subject: Budget Update

Current Year Budget Update

Attached to this memo are expenditure and revenue reports for the 2006-06 Fiscal Year. The board continues to be operating well within its budget and can expect to revert a significant amount of revenue from this year to the Behavioral Sciences Fund.

Budget Change Proposals

The state budget process is beginning again for the 2007-2008 Fiscal Year and the board must submit preliminary budget change proposals (BCPs) to the Department of Consumer Affairs for any changes in that budget. Staff has identified two areas that will require budget change proposals.

First, is the addition of two enforcement analysts. The board's enforcement analysts are currently maintaining a caseload of over 100 cases each. This is far too heavy a caseload to be sustained over the long term. Two additional analysts would reduce caseloads to approximately 50 cases per analyst. That is a high but manageable caseload

Second, the board will need to begin conducting an occupational analysis for the Licensed Educational Psychology exam in 2008.

BOARD OF BEHAVIORAL SCIENCES
EXPENDITURE REPORT FY 2005/2006

OBJECT DESCRIPTION	FY 2004/2005	FY 2005/2006			
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT YEAR AS OF 2/28/06	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	1,005,615	1,190,617	692,539	1,135,000	55,617
Salary & Wages (Stat Exempt)	82,863	81,420	55,636	86,166	(4,746)
Temp Help (907)(Seasonals)	27,338	14,105	18,787	30,000	(15,895)
Temp Help (915)(Proctors)	0	19,444	0	0	19,444
Board Memb (Per Diem)	9,800	12,900	5,300	10,000	2,900
Overtime	1,399	7,533	4,100	7,533	0
Totals Staff Benefits	490,027	507,933	312,978	510,000	(2,067)
Salary Savings	0	(54,514)			(54,514)
TOTALS, PERSONAL SERVICES	1,617,042	1,779,438	1,089,340	1,778,699	739
OPERATING EXP & EQUIP					
Fingerprint Reports	4,766	162,954	2,178	5,000	157,954
General Expense	40,542	52,416	30,777	50,000	2,416
Printing	45,078	85,377	40,335	60,000	25,377
Communication	9,232	24,460	5,241	10,000	14,460
Postage	71,831	97,944	64,638	90,000	7,944
Travel, In State	50,908	54,082	39,066	54,082	0
Travel, Out-of-State	0	0	0	0	0
Training	12,652	15,288	14,644	15,000	288
Facilities Operations	190,379	207,867	100,348	200,000	7,867
C&P Services - Interdept.	2,059	25,833	0	2,000	23,833
C&P Services-Ext (Hatton)	16,595	9,119	3,025	16,000	(6,881)
DEPARTMENTAL PRORATA					
DP Billing	284,922	252,057	168,038	252,057	0
Indirect Distribution Costs	291,069	279,388	186,258	279,388	0
Communication/Educ. Division	14,700	16,091	10,727	16,091	0
D of I Prorata	8,177	7,854	5,237	7,854	0
Interagency Services (OER IACs)	194,926	0	1,200	194,000	(194,000)
Consolidated Data Services	4,499	20,250	1,704	6,000	14,250
Data Processing (Maint,Supplies,Contract)	10,655	4,383	9,888	13,000	(8,617)
Central Admin. Svcs - Pro Rata	159,995	146,345	109,758	146,345	0
EXAM EXPENSES					
Exam Site Rental	80,028	192,079	41,544	100,000	92,079
Exam Contract (Thomson) (404.00)	332,191	277,744	196,866	375,000	(97,256)
Expert Examiners (404.03)	290,841	448,223	209,374	315,000	133,223
ENFORCEMENT					
Attorney General	257,656	517,625	172,019	400,000	117,625
Office of Admin. Hearing	45,395	149,421	15,510	80,000	69,421
Court Reporters	7,968	0	1,526	10,000	(10,000)
Evidence/Witness Fees	17,194	59,247	27,457	45,000	14,247
Division of Investigation	66,333	42,788	21,439	42,788	0
Minor Equipment (226)	82,704	37,100	11,618	37,000	100
Major Equipment	31,034	10,000	0	5,000	5,000
TOTAL, OE&E	2,621,479	3,195,935	1,490,412	2,826,605	369,330
TOTAL EXPENDITURES	\$4,238,521	\$4,975,373	\$2,579,752	\$4,605,304	\$370,069
Fingerprints	(4,512)	(150,000)	2,688	(5,000)	(147,312)
Other Reimbursement	(22,772)	(26,000)	9,100	(26,000)	(16,900)
Unscheduled Reimbursements	(27,826)	0	11,708	(30,000)	11,708
Total Reimbursements	(55,110)	(176,000)	23,496	(61,000)	(152,504)
NET APPROPRIATION	\$4,183,411	\$4,799,373	\$2,603,248	\$4,544,304	\$217,565

Attachment B

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QUARTERLY LICENSING STATISTICS

(1/1/2006- 3/31/2006)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	298	548	231	372	13	1,462
Applications Approved	298	525	167	367	15	1,372
Avg. Processing Time	36.6 days	37.9 days	36.2 days	45.4 days	68.7 days	45 days
Avg. Processing Time subtracting time for deficiencies	9.5 days	12.6 days	13.5 days	19 days	12.3 days	13.4 days

QUARTERLY LICENSING STATISTICS

(10/1/2005- 12/31/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	334	537	248	284	20	1,423
Applications Approved	339	621	194	298	14	1,466
Avg. Processing Time	39 days	34.4 days	26 days	64.1 days	50.6 days	42.8 days
Avg. Processing Time subtracting time for deficiencies	10.7 days	12.5 days	12.7 days	41.8 days	8.3 days	17.2 days

QUARTERLY LICENSING STATISTICS

(7/1/2005 - 9/30/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	561	1,062	270	390	28	2,311
Applications Approved	547	957	252	325	20	2,101
Avg. Processing Time	28.1 days	33.3 days	35.6 days	60.3 days	41.3 days	39.7 days
Avg. Processing Time subtracting time for deficiencies	9.4 days	13.8 days	18.4 days	44.9 days	8.8 days	19.1 days

QUARTERLY LICENSING STATISTICS

(4/1/2005-6/30/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	377	599	263	338	37	1,614
Applications Processed	346	460	301	298	33	1,438
Avg. Processing Time	47.5 days	42.1 days	51.1 days	63.8 days	64.8 days	53.9 days
Avg. Processing Time subtracting time for deficiencies	11.1 days	12.6 days	37 days	49.9 days	6.4 days	23.4 days

Attachment C

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State of California

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840
Extension:

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.

Goal 2: Build an excellent organization through effective leadership and professional staff.

Objective 2.1 -- Meet 80% of training goals identified in IDPs by June 30, 2006.

Methodology

Staff reviewed Individual Development Plans completed in the 2005/2006 fiscal year and found that the plans indicated 23 separate training courses be completed.

Target

Staff would need to complete 18 courses to satisfy the objective.

Current Performance

The backlog of Individual Development Plans (IDPs) has been eliminated, and the board is now current. Of those IDPs given in the current fiscal year, 8 staff members identified 23 classes they desired to attend. To date 21 classes have been completed. This is an 88% completion rate.

This objective has been satisfied for the current quarter. Staff will return with recommendations regarding either the revision or elimination of this objective at a future committee meeting.

Objective 2.2 -- Reduce average application processing time by 33% by December 30, 2006.

Applicants place a priority on the timely resolution of their application, and this objective was established to improve the board's responsiveness to its applicants.

Methodology

Application processing time is defined as follows:

of days from receipt of application - # of days elapsed awaiting resolution of deficiencies

Results for Baseline Period

Baseline processing time was established in the period from April – June 2005 as 23.4 days.

In the most recent quarter, the average processing time across all programs was 13.4 days.

Target Processing Times

An average processing time of 15.7 days would satisfy this strategic objective. The processing time for the January – March 2006 quarter was 13.4 days which is a 43% reduction in processing time.

Future Focus

This has been satisfied for this quarter and staff anticipates not only maintaining this performance but that additional improvement in application processing times is possible. Staff is evaluating further processing time reductions as an objective.

Additionally, the licensing statistics clearly indicate the significant delays caused by deficient applications. The same statistics indicate wide divergence of deficiency rates among the four principal licensing programs

- 37% of MFT applications are deficient
- 29% of LCSW applications are deficient
- 13% of IMF applications are deficient
- 6% of ASW applications are deficient

Staff is developing a proposal to modify this objective targeting a reduction in overall processing times including deficiencies.

Objective 2.3 -- Increase staff training hours by 15% by June 30, 2010.

Methodology

Staff reviewed training records for the prior two fiscal years to establish an average number of training hours to utilize as a baseline.

In the fiscal year 2003/2004, staff completed 150 hours of formal training. In the fiscal year 2004/2005, staff completed 813 hours of formal training. This data yields an average of 481 hours of staff training over the two year period. Given the significant divergence between those two numbers, staff will use the 2004/2005 fiscal year as the baseline for this objective.

Target

Staff would need to complete 934 hours per year to satisfy the objective.

Current Performance

In the fiscal year 2005/2006, to date, staff completed 720 hours of formal training. This is 86% of the prior year training hours. An additional 214 hours would need to be completed in the balance of this year to satisfy the objective this year. However, the objective sets a compliance date of June 30, 2010.

Objective 2.4 -- Joint participation by executive staff and board members in 20 external events (non-board meeting) by June 30, 2010.

This objective was included to develop closer working relationships between board members and board staff outside the context of formal board and committee meetings. The following list includes both past and currently scheduled events.

1. *October 2005* MSW educators meeting at USC [Peter Manoleas, Paul Riches]
2. *January 2006* MSW student meeting at UC Berkeley [Peter Manoleas, Paul Riches, Janene Mayberry]
3. *March 2006* National Association of School Psychologists meeting in Anaheim [Judy Johnson, Paul Riches]
4. *April 2006* MFT Student outreach meeting at Pepperdine University [Karen Pines, Sean O'Connor]
5. *May 2006* CAMFT annual meeting in Palm Springs [Joan Walmsley, Kim Madsen, Sean O'Connor]
6. *June 2006* MFT students and educators meeting at Phillips Graduate Institute [Ian Russ, Paul Riches, Kari Frank, Mona Maggio]

Goal 5: Utilize technology to improve and expand services.

The status update for this goal is addressed in a separate attached memo.

Objective 5.1 -- Provide the ability to accept electronic payments by June 30, 2008.

Objective 5.2 -- Process 70% of all renewal applications on-line by June 30, 2009.

Objective 5.3 -- Process 33% of all new applications on-line by June 30, 2010

Objective 5.4 -- Provide the ability to check the status of all applications online by June 30, 2010.

Goal 6: Maximize the efficiency and effectiveness of the Board's resources.

The productivity targets in each of these objectives were established by projecting future workload based on an evaluation of the trends established in the past five years. These productivity increases are required if the new workload is to be absorbed without either an increase in staffing or reduction in service levels.

Objective 6.1 -- Increase licensing staff productivity 13% by June 30, 2010

With the close of the January – March 2006 quarter, we now have one full year of data available as a baseline measure of productivity. It is important to measure licensing productivity on an annual basis because of the substantial seasonality to the workload.

Methodology

Productivity is defined as the total number of completed applications divided by the total time. The licensing unit has 4.5 personnel years allocated to evaluate applications for registration and licensure. There are 246 working days in a personnel year (52 weeks x 5 days – 14 paid state holidays). Based on 8 hour workdays that allows 1107 total working days for our license evaluators. This figure does not account for vacancies, training time, sick leave, or vacation so the resulting number is expected to understate the actual productivity, but including these confounding variables would make valid year to year comparisons unworkable.

Results for Baseline Period

In the period of April 1, 2005 to March 31, 2006 the license evaluators completed 6377 applications. Based on that performance the license evaluators completed 0.7 applications per work hour.

Productivity Target

To meet the 13% productivity increase target the license evaluators will have to complete .81 applications per work hour.

Objective 6.2 -- Increase enforcement staff productivity in processing consumer complaints 29% by June 30, 2010.

Staff is developing a method to calculate enforcement productivity and expects to have a baseline productivity level available at the next committee meeting.

Objective 6.3 -- Increase examination staff productivity 15% by June 30, 2010.

Staff is developing a method to calculate exam unit productivity and expects to have a baseline productivity level available at the next committee meeting.

Recommendation #1

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State of California

M e m o r a n d u m

To: Board Members

Date: May 4, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840
Extension:

Subject: Fee Reduction Proposal

Background

The board is financed by fees charged to its applicants and licensees. The board is not supported by any general tax revenue. In the 2004-05 Fiscal Year the board collected revenues of approximately \$5 million and had expenditures of approximately \$4.1 million. The board is projected to have a reserve of approximately \$4.4 million at the end of the 2005-06 Fiscal Year which would fund board operations for slightly less than 12 months based on projected expenditures. In addition, the board's fund made a \$6 million loan to the state General Fund in the 2002-03 Fiscal Year which represents an additional 15 months of operating reserves.

Business and Professions Code 128.5 (attached) requires boards to reduce fees when the reserve exceeds 2 years of expenditures. At present the board's reserve would have to exceed \$9.5 million to trigger this requirement. The General Fund loan is not accounted for in the fund condition analysis and accordingly the board is still well below the 24 month level specified in this statute. However, if current trends continue the board will reach the 24 month threshold in approximately four years.

Fees

Board fees are set by one of two mechanisms:

- Established at a particular level in statute [example: examination fees]
- Established in board regulations within a range set in statute [example: license renewal fees]

The board only has direct control over those fees which establish a range in statute. The most notable of these is the license renewal fee. Renewal fee ranges are established as follows:

License Type	Minimum	Maximum	Current
Marriage and Family Therapist	\$0	\$180	\$130
Licensed Clinical Social Worker	\$0	\$155	\$100
Licensed Educational Psychologist	\$0	\$150	\$80

Approximately 70% of the board's revenue is derived from renewal fees.

Proposal

In order to address the increasing fund balance, staff has developed some preliminary estimates regarding the magnitude and duration of a fee reduction program that would reduce the fund balance to an acceptable range (3-6 months operating reserve) without triggering repayment of the general fund loan.

A two year reduction in application and renewal fees as follows would accomplish the objective:

	<u>Current Fee</u>	<u>Initial License</u>	<u>Renewal</u>	<u>Inactive Renewal</u>
MFT	\$130	\$40	\$40	\$20
LCSW	\$100	\$30	\$30	\$15
LEP	\$80	\$20	\$20	\$10
PCE	\$200	\$50	\$50	n/a

These reductions would reduce revenue over a two year period by approximately \$3.6 million. Any such reductions would have to be made in regulation by the board. Staff would suggest that fee reductions be limited to a two-year period and would revert to current levels at the end of that two year period.

Given the timeframes required for passing a regulation (which is necessary to make the fee changes) and the administrative efforts required to implement a fee reduction, staff does not anticipate a fee reduction could occur until July 1, 2007 at the earliest.

Mental Health Professionals Scholarship Program

Staff suggests that during this period of fee reduction the surcharge assessed to license renewals be increased to entirely or partially offset the reduced licensing fees. This would provide significantly greater revenue to the program and enable it to support more future professionals. This would require a legislative change as the surcharge provision is in statute, not board regulations.

Recommendations

The committee recommends that the board to direct staff to prepare a draft fee reduction regulation.

The committee recommends that the board to sponsor legislation that would direct 50% of the total revenue lost to the fee reduction to the Licensed Mental Health Services Provider Education Program through an increase in the license renewal surcharge.

Attachments

Text of AB 938

Text of Business and Professions Code Sections and Board Regulations Relating to Fees

Current and Projected Fund Condition Analyses

Proposed Fee Revenue Analysis

Attachment A

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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.



Attachment B

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Statutes and Regulations Relating to BBS Fees

Business and Professions Code

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Science Examiners, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Board of Architectural Examiners' Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) State Funeral Directors and Embalmers Fund.
- (9) Guide Dogs for the Blind Fund.
- (10) Bureau of Home Furnishings and Thermal Insulation Fund.
- (11) California Board of Architectural Examiners-Landscape Architects Fund.
- (12) Contingent Fund of the Medical Board of California.
- (13) Optometry Fund.
- (14) Pharmacy Board Contingent Fund.
- (15) Physical Therapy Fund.
- (16) Private Investigator Fund.
- (17) Professional Engineers' and Land Surveyors' Fund.
- (18) Consumer Affairs Fund.
- (19) Behavioral Sciences Fund.**
- (20) Licensed Midwifery Fund.
- (21) Court Reporters' Fund.
- (22) Structural Pest Control Fund.
- (23) Veterinary Medical Board Contingent Fund.
- (24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (25) State Dental Auxiliary Fund.
- (26) Electronic and Appliance Repair Fund.
- (27) Geology and Geophysics Fund.
- (28) Dispensing Opticians Fund.
- (29) Acupuncture Fund.
- (30) Hearing Aid Dispensers Fund.
- (31) Physician Assistant Fund.

- (32) Board of Podiatric Medicine Fund.
- (33) Psychology Fund.
- (34) Respiratory Care Fund.
- (35) Speech-Language Pathology and Audiology Fund.
- (36) Board of Registered Nursing Fund.
- (37) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (38) Animal Health Technician Examining Committee Fund.
- (39) Structural Pest Control Education and Enforcement Fund.
- (40) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

Title 16, California Code of Regulations

§1816. RENEWAL FEES

(a) The biennial renewal fee for a marriage and family therapist is one hundred fifty dollars (\$150.00). For those persons whose license expires on or after July 1, 1998, the biennial renewal fee shall be one hundred thirty dollars (\$130.00) except for the period of time in subsection (h).

(b) The biennial renewal fee for a licensed clinical social worker is one hundred fifty dollars (\$150.00). For those persons whose license expires on or after July 1, 1998, the biennial renewal fee shall be one hundred dollars (\$100.00) except for the period of time in subsection (i).

(c) The biennial renewal fee for a licensed educational psychologist is eighty dollars (\$80.00) for each person whose license expires on or after July 1, 1998 except for the period of time in subsection (j).

(d) The biennial renewal fee for a board-approved continuing education provider is two hundred dollars (\$200.00).

(e) The annual renewal fee for intern registration is seventy-five dollars (\$75.00).

(f) The annual renewal fee for associate clinical social worker registration is seventy-five dollars (\$75.00).

(g) The fee for associate clinical social worker extension is fifty dollars (\$50.00).

(h) For the period of January 1, 2001 through December 31, 2002, the biennial renewal fee for a marriage and family therapist is twenty-five dollars (\$25.00).

(i) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed clinical social worker is twenty-five dollars (\$25.00).

(j) For the period of January 1, 2001 through December 31, 2002, The biennial renewal fee for a licensed educational psychologist is twenty-five dollars (\$25.00).

§1816.1. INITIAL LICENSE AND REGISTRATION FEES

(a) On or after July 1, 1998, the fee for issuance of the initial marriage and family therapist license shall be one hundred thirty dollars (\$130.00).

(b) On or after July 1, 1998, the fee for issuance of the initial clinical social worker license shall be one hundred dollars (\$100.00).

(c) On or after July 1, 1998, the fee for issuance of the initial educational psychologist license shall be eighty dollars (\$80.00).

(d) The fee for issuance of the initial intern registration shall be seventy-five dollars (\$75.00).

(e) The fee for issuance of the initial associate clinical social worker registration shall be seventy-five dollars (\$75.00).

§1816.2. WRITTEN EXAMINATION AND RE-EXAMINATION FEES

(a) The examination and re-examination fee for the standard written examination of the licensed clinical social worker shall be one hundred dollars (\$100.00).

(b) The examination and re-examination fee for the written clinical vignette examination of the licensed clinical social worker shall be one hundred dollars (\$100.00).

(c) The examination and re-examination fee for the standard written examination of the marriage and family therapist shall be one hundred dollars (\$100.00).

(d) The examination and re-examination fee for the written clinical vignette examination of the marriage and family therapist shall be one hundred dollars (\$100.00).

(e) The examination and re-examination fee for the written examination of the licensed educational psychologist shall be one hundred dollars (\$100.00).

§1816.3. EXAMINATION RESCORING FEES

The fee for rescoring any marriage and family therapist, licensed clinical social worker, or licensed educational psychologist written examination shall be twenty dollars (\$20.00).

§1816.4. EXAMINATION APPLICATION FEES

(a) The examination application fee for the marriage and family therapist shall be one hundred dollars (\$100.00).

(b) The examination application fee for the licensed clinical social worker shall be one hundred dollars (\$100.00).

(c) The examination application fee for the licensed educational psychologist shall be one hundred dollars (\$100.00).

§1816.5. REPLACEMENT AND CERTIFICATION FEES

(a) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars (\$20.00).

(b) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25.00).

§1816.6. INACTIVE LICENSE FEES

(a) The fee for issuance of the inactive marriage and family therapist license shall be sixty-five dollars (\$65.00) except for the period of time in subsection (d).

(b) The fee for issuance of the inactive licensed clinical social worker license shall be fifty dollars (\$50.00) except for the period of time in subsection (e).

(c) The fee for issuance of the inactive licensed educational psychologist license shall be forty dollars (\$40.00) except for the period of time in subsection (f).

(d) For the period of January 1, 2001 through December 31, 2002, the fee for issuance of the inactive marriage and family therapist license shall be twelve dollars and fifty cents (\$12.50).

(e) For the period of January 1, 2001 through December 31, 2002, the fee for issuance of the inactive licensed clinical social worker license shall be twelve dollars and fifty cents (\$12.50).

(f) For the period of January 1, 2001 through December 31, 2002, the fee for issuance of the inactive licensed educational psychologist license shall be twelve dollars and fifty cents (\$12.50).

§1816.7. DELINQUENT LICENSE FEES

(a) The delinquency fee for the marriage and family therapist license shall be sixty-five dollars (\$65.00) except for the period of time in subsection (d).

(b) The delinquency fee for the licensed clinical social worker license shall be fifty dollars (\$50.00) except for the period of time in subsection (e).

(c) The delinquency fee for the licensed educational psychologist license shall be forty dollars (\$40.00) except for the period of time in subsection (f).

(d) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the marriage and family therapist license shall be twenty-five dollars (\$25.00).

(e) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the licensed clinical social worker license shall be twenty-five dollars (\$25.00).

(f) For the period of January 1, 2001 through December 31, 2002, the delinquency fee for the licensed educational psychologist license shall be twenty-five dollars (\$25.00).

§1819.1. CONTINUING EDUCATION PROVIDER FEES

The application fee for board approval as a continuing education provider is two hundred dollars (\$200.00). This fee also covers the issuance of the initial two-year continuing education provider approval.

Attachment C

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BOARD OF BEHAVIORAL SCIENCE
ANALYSIS OF FUND CONDITION
at CURRENT FEE LEVELS

(Dollars in Thousands)

	Actual					
	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
BEGIN. RESERVE, JULY 1	3,008	4,090	4,506	4,833	5,066	5,202
PRIOR YEAR ADJUSTMENTS	177					
TOTAL ADJUSTED RESERVES	3,185	4,090	4,506	4,833	5,066	5,202
REVENUE						
Fees	4,990	5,143	5,142	5,168	5,194	5,220
Interest	92	82	90	97	102	105
Transfers-In (TEALE)	6					
TOTAL REV. AND TRANSFERS	5,088	5,225	5,232	5,264	5,295	5,325
TOTAL RESOURCES	8,273	9,315	9,738	10,097	10,361	10,527
EXPENDITURES						
Program Expenditures	4,183	4,809	4,905	5,003	5,103	5,205
Equity Claims (State Operations)	0	0	0	0	0	0
TOTAL EXPENDITURES	4,183	4,809	4,905	5,003	5,103	5,205
RESERVE, JUNE 30	4,090	4,506	4,833	5,094	5,258	5,322
MONTHS IN RESERVE	10.2	11.0	11.6	12.0	12.2	12.3

NOTES:

- A. WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED (.5%)
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING 06/07

BOARD OF BEHAVIORAL SCIENCE

ANALYSIS OF FUND CONDITION

(Dollars in Thousands)

	Actual 2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
BEGIN. RESERVE, JULY 1	3,008	4,090	4,506	4,833	3,281	1,616
PRIOR YEAR ADJUSTMENTS	184					
TOTAL ADJUSTED RESERVES	3,192	4,090	4,506	4,833	3,281	1,616
REVENUE						
Fees	4,984	5,143	5,142	5,168	5,194	5,220
Proposed Fee Reduction				(1,813)	(1,822)	
Interest	92	82	90	97	66	32
Transfers-In (TEALE)	6					
TOTAL REV. AND TRANSFERS	5,082	5,225	5,232	3,451	3,437	5,252
TOTAL RESOURCES	8,274	9,315	9,738	8,284	6,719	6,867
EXPENDITURES						
Program Expenditures	4,184	4,809	4,905	5,003	5,103	5,205
Equity Claims (State Operations)	0	0	0	0	0	0
TOTAL EXPENDITURES	4,184	4,809	4,905	5,003	5,103	5,205
RESERVE, JUNE 30	4,090	4,506	4,833	3,281	1,616	1,662
MONTHS IN RESERVE	10.2	11.0	11.6	7.7	3.6	3.8

NOTES:

A. WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED (.5%)

B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING 06/07

Attachment D

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**BOARD OF BEHAVIORAL SCIENCES
ANALYSIS OF PROPOSED FEE DECREASE**

at CURRENT fees								
REVENUE CATEGORIES	FEES	Actual	Estimated Workload				Estimated Revenue	
		2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2007/2008	2008/2009
<u>MFT</u>								
Initial License - MFT	\$130.00	1,015	1,050	1,075	1,080	1,086	\$140,449	\$141,151
Biennial Renewal	\$130.00	10,158	10,150	10,145	10,196	10,247	\$1,325,444	\$1,332,071
Inactive Renewal	\$65.00	2,129	2,150	2,175	2,186	2,197	\$142,082	\$142,792
<u>LCSW</u>								
Initial License - LCS	\$100.00	494	500	505	508	510	\$50,753	\$51,006
Biennial Renewal	\$100.00	5,802	5,800	5,800	5,829	5,858	\$582,900	\$585,815
Inactive Renewal	\$50.00	1,092	1,100	1,125	1,131	1,136	\$56,531	\$56,814
<u>LEP</u>								
Initial License - LEP	\$80.00	54	55	57	57	58	\$4,583	\$4,606
Biennial Renewal	\$80.00	650	625	615	618	621	\$49,446	\$49,693
Inactive Renewal	\$40.00	124	128	130	131	131	\$5,226	\$5,252
<u>PCE</u>								
Application - PCE	\$200.00	278	275	285	286	288	\$57,285	\$57,571
Renewal - Provider CE	\$200.00	865	850	855	859	864	\$171,855	\$172,714
RENEWAL REVENUE							\$2,586,553	\$2,599,486

Note: Assumes a .5% increase in Workload.

at PROPOSED fee level

REVENUE CATEGORIES	FEES	Actual	Estimated Workload				Estimated Revenue	
		2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2007/2008	2008/09
<u>MFT</u>								
Initial License - MFT	\$40.00	1,015	1,050	1,075	1,080	1,086	\$43,215	\$43,431
Biennial Renewal	\$40.00	10,158	10,150	10,145	10,196	10,247	\$407,829	\$409,868
Inactive Renewal	\$20.00	2,129	2,150	2,175	2,186	2,197	\$43,718	\$43,936
<u>LCSW</u>								
Initial License - LCS	\$30.00	494	500	505	508	510	\$15,226	\$15,302
Biennial Renewal	\$30.00	5,802	5,800	5,800	5,829	5,858	\$174,870	\$175,744
Inactive Renewal	\$15.00	1,092	1,100	1,125	1,131	1,136	\$16,959	\$17,044
<u>LEP</u>								
Initial License - LEP	\$20.00	54	55	57	57	58	\$1,146	\$1,151
Biennial Renewal	\$20.00	650	625	615	618	621	\$12,362	\$12,423
Inactive Renewal	\$10.00	124	128	130	131	131	\$1,307	\$1,313
<u>PCE</u>								
Application - PCE	\$50.00	278	275	285	286	288	\$14,321	\$14,393
Renewal - Provider CE	\$50.00	865	850	855	859	864	\$42,964	\$43,179
RENEWAL REVENUE							\$773,915	\$777,785

Note: Assumes a .5% increase in Workload.

ESTIMATED	2007/08	2008/09
Annual Revenue Decrease	\$1,812,638	\$1,821,701

**State of California
Board of Behavioral Sciences**

Memorandum

To: Board Members

Date: May 3, 2006

From: Communications Committee

Telephone: (916) 574-7841

Subject: Committee Report

Action Items

The Committee made the following recommendation to the full board:

1. *The Board adopt a new Strategic Plan Objective 1.7- Student Outreach [Attachment A]*

Objective defined: Conduct 25 Student Outreach events per fiscal year at qualifying degree-granting colleges and universities by June 30, 2010.

Measure: Number of student outreach visits completed in a 12-month period.

Team Members: Sean O'Connor, Kim Madsen

Other Committee Activity

The Communications Committee met on Wednesday, March 29, 2006 in Costa Mesa.

In addition to the action item above, the committee:

- Conducted a review of the progress on achieving the strategic objectives under Goal #1. [Attachment B]
- Reviewed and provided suggestions regarding the Board of Behavioral Sciences' (BBS) Customer Satisfaction Survey. [Attachment C]
- Reviewed and provided suggestions regarding a draft brochure on examination information for candidates. [Attachment D]
- Received an update on the BBS Outreach Program.
- Discussed participation of the Board and staff at the June 9, 2006 Marriage and Family Therapist Consortium Meeting.

For more detailed information on these items see the attached draft minutes from the committee meeting. [Attachment E]

The next meeting of the committee is scheduled for June 28, 2006.

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Attachment A

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Memorandum

To: Board Members

Date: May 4, 2006

From: Communications Committee
Mona Maggio, Assistant Executive Officer
Behavioral Sciences

Telephone (916) 574-7841
Extension

Subject: Propose New Strategic Plan Objective Under Goal 1: Communicate Effectively with the Public and Mental Health Professionals, Objective 1.7 Student Outreach

Outreach Coordinator

In November of 2005, Sean O'Connor received appointment as the first Outreach Coordinator at the Board of Behavioral Sciences (BBS). Among other duties, the Outreach Coordinator visits qualifying degree-granting colleges or universities and presents information to students and faculty on the licensure process. Students and faculty in attendance at student outreach presentations express a strong desire for such outreach efforts to continue.

The success of Board student outreach since the appointment of the Outreach Coordinator warrants consideration for the adoption of a new student outreach objective to the Strategic Plan.

Prospective Goals for Student Outreach

Twenty-five student outreach events a year is an ambitious yet attainable goal. This is feasible from a staff resources standpoint. The Board has approximately 82 qualifying degree-granting institutions, so in a three-year period nearly all could be reached. Some schools have larger student populations; thus, these schools may require more than one visit in a three-year period. For the six student events conducted thus far, the combined total attendance is approximately 305 students. This total will easily double before the end of the Spring 2006 semester.

The Spring 2006 academic semester is the first full semester in which the Board has an operational outreach program. From January 19 to May 11, the Outreach Coordinator scheduled eleven student outreach events. Most student outreach events will occur in the Fall or Spring academic semesters. Some schools have summer programs, so presentations during the summer months will be possible but likely less frequent.

Creating a Strategic Plan objective for student outreach will ensure the Board remains committed to serving its student constituent base—the future mental health professionals of California.

Requested Action

Adopt new Strategic Plan Objective 1.7 - Student Outreach.

Objective defined: Conduct 25 Student Outreach events per fiscal year at qualifying degree-granting colleges and universities by June 30, 2010.

Measure: Number of student outreach visits completed in a 12-month period.

Team Members: Sean O'Connor, Kim Madsen

Attachment B

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 3, 2006

From: Communications Committee
Mona C. Maggio, Assistant Executive Officer

Telephone: (916) 574-7841

Subject: Strategic Plan Goal #1 - Report on Progress

Goal #1 - Communicate Effectively With the Public and Mental Health Professionals.

Objective 1.1 -- Provide Six Educational Opportunities for Stakeholders and Staff on BBS Budget by July 30, 2006.

Background

In an effort to demystify the state budget process, staff will present updates as part of its educational opportunities to its stakeholders.

Update

At the November 2005 Board Meeting, Budget Analyst Paula Gershon presented a budget overview to the Board. Ms. Gershon prepared an article entitled *Understanding the Board's Budget* for publication in the Spring 2006 newsletter.

Additionally, a presentation tailored to the public is included during outreach presentations such as student and educator forums.

Status

Staff has identified this objective as being met.

Objective 1.2 -- Distribute a Handbook Outlining Licensing Requirements by December 31, 2006 to 100% of California Schools Offering Qualifying Degrees.

Background

The Board identified a need to provide students and educators with an outline of examination and licensing requirements to assist students in their education and career development.

Update

Staff is currently reviewing the formerly used list of “Frequently Asked Questions” which will serve as a basis for the student handbook.

To meet the immediate needs of examination candidates, staff drafted an informational brochure that answers the most commonly asked questions from candidates. At the March 29, 2006 Committee Meeting, the brochure was reviewed for content and suggestions for improvement were made. Staff has made the recommended edits and the brochure will be reviewed at the June 28, 2006 Committee Meeting for approval for dissemination to examination candidates.

Objective 1.3 -- Distribute Consumer Publication Regarding Professions Licensed by the Board by June 30, 2007.

Background

The Board identified a need to provide information to its stakeholders regarding various services, i.e., complaint process, licensing process, examinations, how to select a therapist, etc.

Update

As part of the continuing development of the Outreach Program, the Board has begun the steps to contract with a public relations firm to assist in the development of brochures, handouts, PowerPoint presentations as well as identify the Board’s primary constituency groups and their needs. Staff finalized the Public Relations Statement of Work and Project Deliverables for the Public Relations (PR) contract bidding process, five firms were contacted and two proposals were received. Administrative staff will meet with representatives from each firm to determine the firm that best suits the Board’s needs and vision. Once the selection is made, a contract request package will be prepared and submitted – this is a 60-day process. Staff anticipates a PR firm will be secured by mid-summer.

Objective 1.4 - Achieve 60% On Customer Service Satisfaction Surveys by June 30, 2008.

Background

This objective requires the creation of a Customer Service Satisfaction survey to aid in the Board’s goal of improving customer satisfaction levels. Five surveys were created in an effort to gather data from different Board stakeholders. The *general survey* will be available by request over the phone and at the front counter at the Board’s office; the *licensing survey* will be enclosed with registration and initial licensure packets; the *enforcement survey* will be mailed out when a complaint reaches conclusion, and the *outreach survey* will be available at school and consumer outreach events. The *website survey* will ask the user to identify with a particular profile

(licensee, applicant, consumer) prior to completing the survey. Results from the website survey can be exported into a database where staff can analyze the data collected. Hard copy surveys will require manual input by staff.

Status

At the March 29, 2006 meeting the Committee reviewed each survey and provided suggested edits. The edits have been made and staff is researching the costs associated with printing the surveys and postage.

Objective 1.5 -- Participate Four Times Each year in Mental Health Public Outreach Events Through June 30, 2010.

Background

In an effort to expand its outreach and provide effective communication to the public and mental health professionals, the Board determined that it should participate in mental health public outreach events four or more times per year.

Status

On April 21-22 Mr. Riches, Board Members and staff attended the National Association of Social Workers (NASW) Conference in Los Angeles. On May 4-7, 2006 Board Members and staff will attend the California Association of Marriage and Family Therapists (CAMFT) Annual Conference in Palm Springs.

Objective 1.6 -- Review and Revise Website Content Four Times Per Year.

Background

One of the goals of the 2005 Strategic Plan is to communicate effectively with the public and mental health professionals. The BBS Website provides valuable information regarding various Board services, regulatory functions, examinations, enforcement, licensing, licensee status, etc. Staff has identified this as an ongoing objective.

Status

Since the quarterly schedule for this objective was implemented and the first quarter's review completed in December, staff found that the unit leads and various staff responsible for various content areas of the website have been forwarding necessary updates to the webmaster on a regular basis rather than waiting till the quarterly time frame to have revisions made to the website.

Staff recommended the "review and revise website content" be completed every six months rather four times per year. This will be completed so that it coincides with effective dates on legislation that may impacts board operations, procedures, contents, processes, forms, etc.

Since the last update was completed in December, the next "bi-annual" review of the overall website will be performed in June.

In addition to identifying the appropriate materials to reach our audience base, the PR contract scope of work will include a review the Board's current Website and suggestions as to a more "user friendly" layout, site map, and appropriate placement of information to assist our stakeholders in locating the pertinent information they need.

Attachment C

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Memorandum

To: Board Members

Date: May 4, 2006

From: Communications Committee
Sean O'Connor, Outreach Coordinator
Board of Behavioral Sciences

Telephone: (916) 574-7863
Extension:

Subject: Review and Discuss Board of Behavioral Sciences Customer Satisfaction Survey

Objective 1.4 of the Board's Strategic Plan requires the creation of a Customer Service Satisfaction survey. This survey will aid in the Board's goal of improving customer satisfaction levels. The attached Customer Service Satisfaction Surveys were revised based on the Committee's suggested edits at the March 29, 2006 meeting.

General, Licensing, Enforcement and Outreach Surveys

The General Survey will be available for request over the phone and at the front counter. Evaluators will mail out the Licensing Surveys with registration packets and initial licensure packets. Enforcement Analysts will mail out the Enforcement Survey when a complaint reaches a conclusion. The Outreach Survey will be available at school and consumer outreach events.

Team members feel pre-paid postage on the versions of the mailed surveys will encourage a large response.

Employees of the Board will manually enter the results of the hard copy versions of the survey into a database.

Website Survey

The website version of the survey will ask the user to identify with a particular profile (Licensee, Applicant, Consumer) prior to completing the survey. Results from the website survey can be exported into a database where staff at the Board can analyze the data collected.

Update:

The Committee reviewed the draft surveys and provided feedback for finalization. Staff initially planned on mailing surveys with detachable postcard and return postage paid; however, after consultation with several vendors it was determined a postcard was not large enough to contain all the survey questions. Surveys that are mailed will be printed on an 8 1/2 x 11 size paper and a postage paid envelope will be enclosed. The Board will be charged postage for only the envelopes that are processed by the US Postal Service.

Attachments:

- General Survey
- Licensing Survey
- Enforcement Survey
- Outreach Survey
- Website Survey

Licensing Survey

The Board of Behavioral Sciences strives to provide you with the best possible service. Please help us by taking a few minutes to complete our brief customer service satisfaction survey.

Please Indicate which best describes you:

MFT Intern____ ACSW____ MFT____ LCSW____ LEP____

1) During the past 12 months how often have you contacted the Board?

6 or more times 1-5 times

2) Please rate the quality of service you received. (Please check appropriate box)

Rating	Excellent	Good	Fair	Unacceptable
Courtesy				
Responsiveness				
Knowledge				
Accessibility				
Overall Satisfaction Level				

If you indicated "Unacceptable," please explain in the comment section.

3) Did you receive the service/answer you needed as a result of your contact?

Yes No N/A

4) Do you find the Board's website to be helpful and informative?

Yes No N/A

5) Do you receive the Board's newsletter?

Yes No

6) Do you find the Board's newsletter to be helpful and informative?

Yes No N/A

Please note any comments or suggestions on how we can improve our services.

Outreach Survey

The Board of Behavioral Sciences strives to provide you with the best possible service. Please help us by taking a few minutes to complete our brief customer service satisfaction survey.

Name of School: _____

1. What type of license do you wish to earn?

MFT

LCSW

LEP

2. Please rate the quality of the service you received:

Rating	Excellent	Good	Fair	Unacceptable
Courtesy				
Knowledge				
Accessibility				

If you indicated "Unacceptable," please explain in the comment section

3. Do you feel the information presented increased your understanding of the BBS licensure process?

Yes

No

4. Would you recommend this presentation to someone interested in obtaining an MFT/LCSW/LEP license?

Yes

No

5. Please note any comments or suggestions on how we can improve our service, including additional topics:

Website Survey (Page 1)

The Board of Behavioral Sciences strives to provide you with the best possible service. Please help us by taking a few minutes to complete our brief customer satisfaction survey. To begin, please click on the link below which best describes you.

[Licensee](#)

[Applicant](#)

[Consumer](#)

Website Survey (Page 2)

Your participation in this survey is greatly appreciated. Information collected from this survey will solely be used for the purpose of improving customer service.

- 1) During the past 12 months, how often have you contacted the Board?

6 or more times	▼
1- 5 times	

- 2) Which of the Board's units assisted you during your contact?

Continuing Education	▼
Enforcement	
Exam	
General Information	
Licensing	
Renewal/Cashing	

- 3) Please rate the quality of service you received.

Courtesy	Excellent	▼
Responsiveness	Excellent	▼
Knowledge	Excellent	▼
Accessibility	Excellent	▼
Your Overall Satisfaction Level	Excellent	▼

(good, fair, unacceptable)

If you indicated "Unacceptable," please explain in the comment section

- 4) Do you find the Board's website to be helpful and informative?

Yes No N/A

- 5) Do you receive the Board's newsletter?

Yes No

- 6) Do you find the Board's newsletter to be helpful and informative?

Yes No N/A

Please note any comments or suggestions on how we can improve our services.

--

General Survey

The Board of Behavioral Sciences strives to provide you with the best possible service. Please help us by taking a few minutes to complete our brief customer service satisfaction survey.

Please place indicate which best describes you:

Licensee _____ Applicant _____ Consumer _____

1) During the past 12 months, how often have you contacted the Board?

6 or more times 1-5 times

2) Which of the Board's units assisted you during your contact?

Continuing Education Enforcement Exam

Licensing Renewal/Cashiering

3) Please rate the quality of service you received. (Please check appropriate box.)

Rating	Excellent	Good	Fair	Unacceptable
Courtesy				
Responsiveness				
Knowledge				
Accessibility				
Overall Satisfaction Level				

If you indicated "Unacceptable," please explain in the comment section

4) Do you find the Board's website to be helpful and informative?

Yes No N/A

5) Do you receive the Board's newsletter?

Yes No

6) Do you find the Board's newsletter to be helpful and informative?

Yes No N/A

Please note any comments or suggestions on how we can improve our services.

Attachment D

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Memorandum

To: Board Members **Date:** May 4, 2006

From: Communications Committee **Telephone** (916) 574-7863
Sean O'Connor, Outreach Coordinator
Board of Behavioral Sciences **Extension**

Subject: MFT, LCSW, and LEP Examination Information Brochure

Examination Process Questions

Employees at the Board of Behavioral Sciences receive frequent questions about certain aspects of the Board's examination process for MFTs, LCSWs, and LEPs. Employees in the Licensing and Examination Unit spend a significant amount of their day answering candidates questions about different aspects of the examination process, and most of these questions are similar in nature, including questions about timelines, preparation courses, and testing accommodations. To assist examination candidates in understanding and preparing for the examination process staff created an Examination Information Brochure to answer the most common questions posed to staff. The brochure will be sent to examination candidates as an enclosure with the Notice of Examination Eligibility.

Development of the Examination Information Brochure

The new informative brochure answers some of the examination candidate's most frequently asked questions and offers helpful tips for alleviating anxiety on the day of examination. The origin of most of the information in this brochure is the Examination Handbooks found on the Board website. Restructuring this information in the format of a brochure benefits the candidate because valuable information can be found quickly without having to search through a lengthy handbook.

The brochure acts as a supplement to the Examination Handbooks, not an alternative. Employees at the Board expect the distribution of this brochure will result in a more informed population of examination candidates.

The examination brochure will be available on the Board website on the "Forms and Publications" page. Also, when the Board approves a candidate for examination, the candidate will receive a letter indicating said approval with a copy of the brochure.

Update

At the March 29, 2006 meeting, the Committee reviewed the draft brochure and made suggested edits. The attachment reflects the Committee's recommendations. The Committee will give a final review of the brochure at the June 28, 2006 meeting.

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Congratulations

You completed all of the pre-licensure requirements, and you are now ready to take your licensing examination(s). The road to licensure for you is nearly complete. Stay informed and think one step ahead.

Examination Cycle Timelines

In order to remain in the testing cycle and keep your hours “locked in,” you must take an examination at least once a year until you pass all required examinations. Once the Board approves you for entry in to the examination process, you **MUST TAKE** the test within one year of the stated eligibility date. If you take and fail an examination, you must re-take it no later than one year from the date of failure. Also, after failing an examination, you must wait a minimum of 160 days from the date of failure before the Board can approve you again to take the examination. You must submit an application for re-examination with the required fee in order to retake a test. The processing time for a re-examination application is 60 days. You can find the re-examination application in the “Forms and Publications” section of the website.

Example: Steve passes his LCSW Standard Written Examination on 2/14/2005. He must take the Clinical Vignette Examination no later than 2/14/2006.

Example: Wendy failed her MFT Standard Written Examination on 1/31/2005. She must retake her Standard Written Examination no later than 1/31/2006.

Example: Chandra received her notice of eligibility to take the LEP Written Examination. Her eligibility notice stated an eligibility date of 4/27/2005. She must take her exam no later than 4/27/2006.

Facts and Strategies to Help You Through the Testing Experience

Examinations test your knowledge and professional skills as well as your ability to make judgments about appropriate techniques and methods as applicable to the MFT/LCSW/LEP Scope of Practice.

Studying for the Examination

The examination plans contained within the examination handbooks are official study guides for the material tested on the examination. All candidate handbooks can be downloaded from the “Forms and Publications” section of the Board website. Trust in your clinical education and experience when responding to the examination items.

A Word About Examination Prep Courses

Some entities offer examination preparation courses. These preparation courses do not guarantee a passing score and are no substitute for education and experience. Some candidates find the courses valuable in alleviating test anxiety. Each individual is unique in how he or she prepares for an examination.

Before selecting an examination preparation course, educate yourself about the different course providers and consider the harm of taking a preparation course that offers inaccurate information.

The Board does not recommend or endorse any examination preparation courses.

Helpful Strategies for a Smooth Examination Day

Research the location of your testing center before the day of your test. Map out a route and travel the route prior to the test date if time permits. Be sure to leave early. You should plan on arriving at the testing center AT LEAST 15 minutes prior to your examination. Remember, you cannot be penalized for arriving too early.

You must bring valid photo identification with you to the test site center.

Proper forms of identification include:

- Driver’s license
- State issued identification
- Military identification

Also, the form of identification must contain your signature, photo, and the name must match the name used to register for the examination, including designations such as “Jr.” or “III.” The Thomson Prometric test site center will not accept expired identification. **Per the Board’s contract with Thomson Prometric, employees at the test site center will disregard the middle name on any form of identification.**

Examination Results

You will receive the results of the examination at the test site center once the examination is complete. Please refer to the Testing Accommodations section of this brochure for information on paper and pencil examination results.

In the event you fail an examination, you will receive a re-examination application at the test site center. Applications for re-examination are also available on the “Forms

and Publications” section of the Board website.

When you pass the LCSW or MFT Standard Written Examination, you will need to obtain an application to apply for the LCSW or MFT Clinical Vignette Examination. The appropriate form is the Examination/Re-Examination Form available at the test site center and on the website.

When you pass the LCSW or MFT Clinical Vignette Examination or the LEP Written Examination, you will receive an application for initial licensure.

Save Your Candidate Handbooks

The initial license fee chart is in the Clinical Vignette Handbook. LEP candidates will find the initial license fee chart on the back of the initial license application.

Testing Accommodations

In recognition of the Federal Americans with Disabilities Act and the California Fair Employment and Housing Act, the Board and Thomson Prometric provide fair and reasonable test accommodations to candidates who substantiate a need due to physical or mental disability or qualified medical condition. Candidates whose primary language is not English can also request accommodations.

Candidates seeking accommodations should apply early and allow the Board sixty days for processing of a request.

Request for Accommodations forms are available in the “Forms and Publications” section of the Board website under “Examination Materials.”

Candidates who receive testing accommodations to take a paper and pencil examination will receive the results of the examination 14 business days from the completion of the examination.

For Questions...

While in the examination process, you can call your evaluator for any questions you might have regarding eligibility or other concerns. For questions regarding examination accommodations, you should call the Board’s Testing Accommodations Coordinator.

LCSW Evaluator	(916) 574-7851
LCSW Evaluator	(916) 574-7852
MFT Evaluator (A-K)	(916) 574-7854
MFT Evaluator (L-Z)	(916) 574-7853
LEP Evaluator	(916) 574-7850

Testing Accom	(916) 574-7860
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Scheduling an Examination

To schedule an examination, you must call Thomson Prometric. You should call approximately thirty days prior to your preferred testing date.

Thomson Prometric: (800) 897-2046

This brochure is supplemental and is not intended to replace your examination handbook. Please thoroughly read your examination handbook.

MFT, LCSW, and LEP

Examination Information



California Board of Behavioral Sciences

1625 N Market Blvd, Suite S-200
Sacramento, CA 95834
(916) 574-7830
website: <http://www.bbs.ca.gov>

**State of California
Board of Behavioral Sciences**

Memorandum

To: Board Members **Date:** May 1, 2006
From: Policy and Advocacy Committee **Telephone:** (916) 574-7840
Subject: Committee Report

Action Items

The Committee made the following recommendations to the full board:

1. *That the Board amend and adopt changes to 16CCR1803 regarding delegation to the executive officer.*
2. *That the Board take the following positions on pending legislation:*

Support

*Assembly Bill 525
Assembly Bill 2283
Assembly Bill 3013*

Oppose

*Assembly Bill 2428
Senate Bill 1228*

3. *That the board sponsor legislation to allow associate clinical social workers and marriage and family therapist interns to participate in the AB 938 scholarship/loan forgiveness program and to correct technical errors in the statute.*
4. *That the Board amend its Public Disclosure Policy (E-04-02) consistent with the California Public Records Act.*
5. *That the Board direct staff to begin the rulemaking process to amend 16CCR1833.1 and 1870 regarding supervisor qualifications.*
6. *That the board sponsor legislation to credit out-of-state applicants for licensure as a clinical social worker for prior practice experience.*

Other Committee Activity

The Policy and Advocacy Committee met on Wednesday, April 19, 2006 in Sacramento.

In addition to the six action items above, the committee:

- Conducted a review of progress on achieving the strategic objectives under Goal #4. *[Attachment A]*
- Reviewed and took additional public comment on pending regulation proposals related to psychiatric evaluations, citation and fine for continuing education providers, and qualifications of supervisors.
- Received an update on current legislative activity.
- Recommended the formation of a new board committee to review statutory curricular requirements for marriage and family therapist licensure.
- Discussed the concept of developing title protection for dual diagnosis for the board's licensees and certified drug abuse counselors.

The next meeting of the committee is scheduled for June 28, 2006.

Recommendation #1

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 3, 2006

From: Christy Berger
Legislation Analyst

Telephone: (916) 574-7847

Subject: Recommendation to Amend and Adopt Proposed Rulemaking Related to 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. California Code of Regulations Title 16, Section 1803 explicitly delegates a number of functions related to enforcement processes to the executive officer including the ability to:

- 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 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 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. However, 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 the Policy and Advocacy Committee. The comment period for the proposed regulation closed on March 27, 2005 and copies of those comments are included for your review.

The California Association of Marriage and Family Therapists (CAMFT) provided written comment expressing concern that this proposal would delegate too much authority to

one person. Counsel has prepared a response to the issues raised in CAMFT's letter. Both are included as attachments to this memo.

At its April 2006 meeting, the Policy and Advocacy Committee recommended that the Board adopt slightly modified language that is in line with Section 820 of the Business and Professions Code. A regulation hearing is scheduled for today on this proposal.

Attachments:

Modified Text

Rulemaking notice

Initial Statement of Reasons

Business and Professions Code Section 820 et seq.

Comments from CAMFT

Response to CAMFT from Counsel

Attachment A

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**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 an evaluation of a licensee's physical or mental condition 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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Attachment B

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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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Attachment C

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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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Attachment D

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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.

Attachment E

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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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Attachment F

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Memorandum

**To: Members of the Board
of Behavioral Sciences**

Date: April 13, 2006

Telephone: (916) 574-8220

FAX: (916) 574-8623

**From: George P. Ritter
Senior Staff Counsel**

**Subject: Response to Comments Concerning Delegation of Authority for
Ordering Psychiatric Examinations to the Executive Officer**

I. BACKGROUND

Business and Professions Code Section 820 permits the Board to order a psychiatric examination of a licensee when it appears that his or her ability to practice is impaired due to mental illness. The Board now proposes through a regulation change to delegate the function of ordering these examinations to its Executive Officer. The California Association of Marriage and Family Therapists (CAMFT) has submitted comments in opposition to this proposed change. These comments are addressed below.

II. CONSISTENCY

Business and Professions Code Section 820 provides in part that:

Whenever it appears that any person holding a license . . . may be unable to practice his or her profession safely because of [mental or physical impairment], 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.

Section 822, in turn, provides that:

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 [appropriate administrative] action [that would revoke, suspend or limit the licentiate's right to practice].

CAMFT correctly observes that the Legislature expressly authorized the Board to conduct both functions. Section 824 provides that: "The licensing agency may proceed against a licentiate under either section 820, or 822, or under both sections." Because the Legislature has delegated to the Board the authority to perform both functions, CAMFT apparently presumes no further delegation of either is legally possible.

This presumption is contrary to the basic law of delegation of administrative authority. For example, Government Code § 11500(a) provides that:

'Agency' includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word 'agency' alone is used *the power to act may be delegated by the agency*, and wherever the words 'agency itself' are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

Likewise, Government Code § 11182 provides that:

The head of a department may delegate the powers conferred upon him . . . to any officer of the department he authorizes to conduct the investigation or hearing.

Thus, the fact that a function has been delegated by the Legislature does not per se mean no further delegation can occur. Rather, the particulars of the delegation have to be analyzed in order to determine its legality.

III. NECESSITY

The stated reason for the regulatory change is to avoid the problem of having Board members who may later hear a disciplinary matter involved in its investigation. CAMFT apparently takes the position that because the Legislature authorized “the same agency” to perform both investigatory and adjudicatory functions, there is no need to alter this arrangement.

While it is true that administrative agencies perform both investigatory and adjudicatory functions, this in no way implies that the same *individuals* within the agency can do both. If that occurs, there is a high probability that the licensee’s Due Process rights will be violated. (See *Nightlife Partners, Ltd. v. City of Beverley Hills*, 108 Cal. App. 4th 81, 133 Cal. Rptr. 234 (2003) (Due process rights of nightclub were violated when City Attorney who represented the City in litigation against the nightclub also advised City officials hearing nightclub’s appeal of the denial of its license.)

Second, CAMFT postulates that if one accepts this proposition, then the Board has “for the last decade or more . . . has been in violation of the due process rights of licentiates.” Even assuming this were the case, CAMFT can hardly take the position that the Board should permit such violations to *continue* and take no action to correct the problem.

IV. AUTHORITY

Chapter 13 of the Board’s enabling legislation regulates Marriage and Family Therapists (MFTs). CAMFT correctly points out that there is no provision in this Chapter that permits delegation of any authority to the Executive Officer. Section 4980.07 merely states that: “The Board shall administer the provisions of [Chapter 13].” CAMFT notes that the other provisions permitting delegation are found in Chapter 14. But that Chapter only applies to Licensed Clinical Social Workers. (See B. & P. Code §§ 4990.8 & 4990.13.) CAMFT thus concludes that the Board has no power to delegate any of its authority with respect to MFTs to the Executive Officer under Chapter 13.

There are two reasons why CAMFT’s position is not legally sound. First, the Board does have the express statutory authority to delegate its investigatory functions. Second, the Board also has the implied authority to do so.

A. Express Delegation of Investigatory Authority

Even though the Board is a part of the Department of Consumer Affairs:

[It] exists as a separate unit, and has the functions of setting standards, holding meetings, . . . preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws *under its jurisdiction* . . . in so far as those powers are given by statute to each respective board. (B. & P. Code § 108.)

Likewise:

The boards, bureaus, and commissions in the department * * * * provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public (B. & P. Code § 101.6.)

In addition, Government Code Section 11180 provides in part that:

The head of each department may make investigation and prosecute actions concerning:

(a) All matters relating to the business activities and subjects under the jurisdiction of the department. . . .

This investigatory power includes the ability to issue administrative subpoenas. (Govt. Code § 11181.)

Boards within the Department of Consumer Affairs have consistently been recognized as possessing the investigatory powers conferred by Government Code Sections 11180 and 11181. In *Board of Medical Quality Assurance v. Hazel Hawkins Memorial Hospital*, 135 Cal. App. 3d 561, 565, 185, Cal. Rptr. 405 (1982), the validity of administrative subpoenas issued by the Medical Board was at issue. The Court noted that:

There is no question, but that the inquiry by [the Medical Board] is one that it is authorized to make. (See [B. & P. Code] §§ 101.6, 108; *Gov. Code*, §§ *11180 et seq.*)

In *Arnett v. Dal Cielo*, 14 Cal. 4th 4, 7 - 8, 56 Cal. Rptr. 2d 706 (1996), the California Supreme Court observed that:

We deal here, however, with a tool that the Board has possessed at least since 1921; the investigative subpoena. (. . . . Stats. 1945, ch. 111, § 3, p. 439 [recodifying former Pol.Code, § 353, as Gov. Code, § 11181].)

* * * *

Because the statute authorizes the Board to issue a subpoena ‘in any inquiry [or] investigation’ (Gov. Code § 11181, subd. (e)), the Board may do so for purely investigative purposes (See also *Division of Medical Quality v. Gherardini*, 93 Cal. App. 3d 669, 673, 156 Cal. Rptr. 55 (1979) (Court acknowledged that Board’s investigatory power stemmed in part from Government Code Sections 11180 and 11181). 9 Ops. A.G. 35, 37 (1947) (Power of DCA boards to investigate under Section 11180 recognized by the Attorney General).)

The Legislature has expressly provided that the investigative power under Sections 11180 and 11181 may be delegated. Section 11182 provides that:

The head of a department may delegate the powers conferred upon him by this article to any officer of the department he authorizes to conduct the investigation or hearing.

The Medical Board’s authority to delegate these powers has also been recognized by the California Supreme Court.

[T]he Board’s investigators are authorized to exercise delegated powers . . . to ‘Inspect books and records’ and to ‘Issue subpoenas . . . in any inquiry [or] investigation’ (*Arnett v. Dal Cielo*, 14 Cal. 4th at 8, citing § 11182.)

B. Implied Delegation of Investigatory Authority

The Board also has the inherent or implied legal power to delegate investigatory functions to its Executive Officer even in the absence of any express statutory authority from the Legislature. The general rule is that:

[A] delegated power, when made subject to the [agency's] judgment or discretion, is purely personal and may not be further delegated in the absence of express statutory authorization. . . . [However,] [m]erely administrative and ministerial functions may be delegated to assistants whose employment is authorized [B]ut there is no authority to delegates acts discretionary or quasi-judicial in nature. An administrative board cannot legally confer upon its employees authority that under the law may be exercised only by the board. (*Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391, 65 Cal. Rptr. 739, 742 (1968).)

The scope of the authority which could be delegated was clarified by the California Supreme Court in *California School Employees Ass'n. v. Personnel Cmm'n.*, 3 Cal. 3d 139, 144, 89 Cal. Rptr. 620 (1970). It noted that:

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. [Citations.]

On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. [Emphasis added.]

The same rule was applied in *Levesahl v. Byington*, 1 Cal. App. 2d 671, 37 P.2d 179 (1934). The issue was whether the Civil Service Commission of San Francisco could delegate its investigatory powers to the Chief of Police. The Court noted the City Charter expressly gave the Commission this power. But it went on to hold that:

Even in [the] absence of such express authority, the commission would have implied power to employ him. . . . Section 7 of [an article in the Charter], however, imposed the duty of determining respondent's moral character . . . upon the commission. The performance of this duty it could not delegate. . . . ***But the wording of the proviso shows no illegal delegation of power but merely the lawful employment of the chief of police to gather information for the use of the commission in discharging its duty.*** (1 Cal. App. 2d at 676 [Emphasis added].)

This is precisely the type of investigatory and adjudicatory procedures envisioned under Sections 820 and 822 of the Business and Professions Code. Section 820 concerns the investigation of a licensee. No action is taken by the Board under this Section. The investigation of a licensee's mental or physical condition is only a preliminary step. The results of the examination can then be used in any adjudicatory "proceedings conducted pursuant to Section 822." Any action the Board then takes under that Section cannot be delegated. By contrast, the investigatory phase involving fact-gathering and conducting examinations can be.

V. SCOPE OF DELEGATION

CAMFT notes a disparity between the scope of examinations referred to in Section 820 and those the Executive Officer is delegated to order in the proposed regulation. Section 820 provides for examinations because of suspected mental or physical impairment. Yet only psychiatric examinations are referred to in the regulations.

As an administrative agency, the Board can make the terms of its regulation more specific than those in the statute. (See Govt. Code § 11342.600 - A "Regulation" "makes specific" statutory law.) Likewise, the Board is under no obligation to delegate everything even though it may be legally permissible to do so. At the same time, if the Board chooses to delegate, it seems to make little sense to delegate only with respect to one type of examination but not the other.

VI. CONCLUSION

The distinction concerning administrative versus discretionary functions is critical. Once it is grasped, then the answer to the question raised by CAMFT in its last comment should be apparent. The Board has the power to delegate administrative or investigatory functions conducted under Section 820. It cannot, however, delegate its authority to hear and rule on adjudicatory cases brought under Section 822.

cc:

Paul Riches

Christy Berger

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Recommendation #2

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2257 **VERSION:** AMENDED MARCH 27, 2006

AUTHOR: B&P COMMITTEE **SPONSOR:** CALIFORNIA PSYCHOLOGICAL ASSN

RECOMMENDED POSITION: NONE

SUBJECT: PSYCHOLOGISTS: RECORDS RETENTION

Existing Law:

- 1) Requires any entity that compiles or maintains medical information to provide the patient at no charge, upon the patient's request, with a copy of his or her medical profile, summary, or other information maintained by the entity. (Civil Code § 56.07(a))
- 2) Requires providers of health care who create, maintain, store, abandon, destroy, or dispose of medical records to do so in a manner that preserves the confidentiality of the record. (Civil Code § 56.101)
- 3) Defines "patient records" as records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. (HSC § 123105(d))
- 4) Permits any adult patient of a health care provider, any minor patient authorized to consent to treatment, and any patient representative to inspect the patient's record upon written request and payment of reasonable clerical costs. Requires a health care provider to permit this inspection within five working days. (HSC § 123110(a))
- 5) Permits a health care provider to prepare a summary of a patient's record for inspection and copying by a patient rather than the entire record. The provider must present the summary to the patient within 10 working days of the patient's request, or within 30 days if more time is needed under extenuating circumstances. (HSC § 123130(a))
- 6) Requires licensed health facilities, clinics, home health agencies, and adult day health care centers, which have ceased operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors must be kept at least one year after the minor has reached the age of 18 years, and not less than seven years total. (HSC § 123145(a))
- 7) Requires a health care provider who transmits any health information in electronic form (aka a "covered entity") to retain health care records for six years. (45 CFR Part 164 (j))
- 8) Defines "the failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered," as unprofessional conduct for MFTs, LEPs, and LCSWs. (B&P § § 4982(v), 4986.70(i), 4992.3(s)).

This Bill:

- 1) Requires a licensed psychologist to retain patient records for a minimum of seven (7) years from the patient's discharge date.

Comment:

- 1) **Author's Intent.** According to the sponsor, this bill is proactive and not in response to a particular problem. However, the sponsor often receives calls from psychologists in private practice asking for guidelines regarding record retention. A record retention schedule exists for other types of therapists, and such guidelines were used when determining the appropriate number of years to retain records.
- 2) **BBS.** This bill does not currently include BBS licensees. However, in 1999, the BBS proposed language that specified the type of information required to be included in client records. The BBS then held a recordkeeping workshop where the proposed language was considered. Some stakeholders, including the California Association of Marriage and Family Therapists (CAMFT) and the National Association of Social Workers (NASW), expressed opposition to language that would have specified certain requirements, and preferred more general language, resulting in "Existing Law" number 8 in this analysis. Additionally, most BBS licensees are considered a "covered entity" under HIPAA and are therefore required to maintain records for six years.
- 3) **Professional Associations.** CAMFT recommends a minimum 7-year retention period for Marriage and Family Therapists. NASW's Code of Ethics section 3.04(d) states, "Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts." The National Association of School Psychologists has not published any recommendations pertaining to a time frame for records retention.
- 4) **Support and Opposition.**
None known at this time.
- 5) **History**
2006
Apr. 27 In Senate. Read first time. To Com. on RLS. for assignment.
Apr. 27 Read third time, passed, and to Senate.
Apr. 20 Read second time. To Consent Calendar.
Apr. 19 From committee: Do pass. To Consent Calendar. (April 19).
Apr. 5 From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 10. Noes 0.) (April 4).
Mar. 28 Re-referred to Com. on B. & P.
Mar. 27 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
Mar. 2 Referred to Com. on B. & P.
Feb. 23 From printer. May be heard in committee March 25.
Feb. 22 Read first time. To print.

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2257

Introduced by Committee on Business and Professions (Negrete McLeod (Chair), Shirley Horton (Vice Chair), Bass, Frommer, Koretz, Maze, Nation, Tran, Vargas, and Yee)

February 22, 2006

An act to add Section 2919 to the Business and Professions Code, relating to psychologists.

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, as amended, Committee on Business and Professions. Psychologists: records retention.

Existing law, the Psychology Licensing Law, provides for the licensure and regulation of the practice of psychology. A violation of that law is a crime.

This bill would require a licensed psychologist to retain a patient's *health service* records for a minimum of 7 years from the patient's discharge date, *and would also require a minor patient's health service records to be retained for a minimum of 7 years from the date the patient reaches 18 years of age.* Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 2919 is added to the Business and
2 Professions Code, to read:

3 2919. A licensed psychologist shall retain a patient’s *health*
4 *service* records for a minimum of seven years from the patient’s
5 discharge date. *If the patient is a minor, the patient’s health*
6 *service records shall be retained for a minimum of seven years*
7 *from the date the patient reaches 18 years of age.*

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2283

VERSION: AMENDED APRIL 18, 2006

AUTHOR: OROPEZA

SPONSOR: LATINO COALITION FOR A HEALTHY CALIFORNIA

RECOMMENDED POSITION: SUPPORT

SUBJECT: PHYSICIANS AND SURGEONS: ETHNICITY AND LANGUAGE PROFICIENCY

Existing Law:

- 1) Prohibits including any question on any application or form required by a state agency pertaining to the applicant's race, sex, marital status or religion. (GC § 8310)
- 2) Prohibits a licensing board from printing or circulating any publication, or to make any non-job-related inquiry that expresses any limitation, specification, or discrimination as to race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation unless that board is acting in accordance with federal equal employment opportunity guidelines or regulations. (GC § 12944 (c))
- 3) Permits a licensed physician to report, at license renewal, information regarding his or her cultural background and foreign language proficiency. Requires the Medical Board of California (MBC) to collect such reported information, and permits this information to be placed on the MBC's web site. (B&P § 2425.3 (c),(d))

This Bill:

- 1) Requires physician ethnic background and language proficiency data collected by the MBC to be aggregated annually into both statewide totals and zip code of primary practice location totals.
- 2) Requires the aggregated information to be compiled annually and reported on the MBC's web site by July 1 each year.

Comment:

- 1) **Author's Intent.** According to the author, a law was enacted in 2002 which asked physicians to provide ethnicity and language proficiency information upon renewal. This data now exists, but nothing has been done with it. If a person is trying to find a doctor who speaks another language, they can submit a request to the MBC, but it takes a long time to obtain a response. This bill would lead to an accessible Internet database for patients and data for researchers.

According to the sponsor, it has been difficult to determine the number of Spanish-speaking Californians as well as the number of Spanish-speaking physicians. They would like to be able to measure trends over time, a component that is currently not available. They would also like to aggregate data based on zip code. The sponsor sees the next 10 years as a

crucial time in which to formulate public policy due to the rapidly increasing number of Latinos in California. Latinos are prone to Type 2 Diabetes and obesity, so prevention efforts are critical. There are disparities in treatments and outcomes, and many feel more comfortable if the doctor speaks their language.

- 2) **AB 1586.** This bill, signed into law in 2001, requires licensed physicians to report any specialty board certification and practice status information to the MBC at license renewal. It also permits a physician to report his or her cultural background and foreign language proficiency at renewal. The MBC is required to collect this information, and is permitted to place it on their web site. This bill was required to be implemented by July 1, 2003. The MBC estimated \$50,000 in one-time costs and \$75,000 in ongoing costs for implementation of this bill. The MBC's interpretation of the bill has led them to additionally ask whether the physician wants such information to be made public.
- 3) **MBC.** The MBC has not yet placed physician cultural background, foreign language proficiency, specialty board certification or practice status information on their web site. The only way for the public to access this information is to request it in writing. However, the MBC has added fields for this information to the Consumer Affairs System (CAS). Specified CAS fields are linked to the Internet for license verifications. The MBC has not yet provided a fiscal estimate for implementation of this bill.
- 4) **BBS.** The Board does not currently collect racial or ethnic data of its licensees, registrants, or applicants, but an anonymous survey is being developed to collect this information.

5) Support and Opposition.

Support:

Latino Coalition for a Healthy California (sponsor)
American Civil Liberties Union
California Medical Association
California Pan-Ethnic Health Network
Greenlining Institute
Hispanas Organized for Political Equality
Mexican American Legal Defense and Educational Fund
Services, Immigrant Rights and Education Network

Opposition:

None at this time.

6) History

2006

May 1	Read second time. To Consent Calendar.
Apr. 27	From committee: Do pass. To Consent Calendar. (April 26).
Apr. 19	Re-referred to Com. on APPR.
Apr. 18	Read second time and amended.
Apr. 17	From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 4).
Mar. 2	Referred to Com. on B. & P.
Feb. 23	From printer. May be heard in committee March 25.
Feb. 22	Read first time. To print.

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2283

Introduced by Assembly Member Oropeza

February 22, 2006

An act to amend Section 2425.3 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 2283, as amended, Oropeza. Physicians and surgeons: cultural background and foreign language proficiency.

The Medical Practice Act provides for the licensure by the Medical Board of California of physicians and surgeons as well as other healing arts practitioners. The act requires each licensed physician to complete a questionnaire sent to him or her at the time of license renewal that seeks specified information. Existing law authorizes a physician to report to the board, and requires the board to collect, information regarding his or her cultural background and foreign language proficiency. Existing law permits this information to be placed on the board's Internet Web site.

This bill would require the information regarding cultural background and foreign language proficiency to be aggregated on an annual basis based on categories utilized by the board in the collection of the data, and to be aggregated *by into* both statewide totals and ZIP Code of primary practice location *totals*. The bill would also require this information to be compiled and reported on the board's Internet Web site on or before October 1 of each year.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. (a) It is the intent of the Legislature to
2 determine the number of physicians with cultural and linguistic
3 competency who are practicing medicine in California.

4 (b) Data on physicians serving any given area allows for the
5 consistent determination of which areas of California are
6 underserved by physicians with cultural or linguistic
7 competency.

8 SEC. 2. Section 2425.3 of the Business and Professions Code
9 is amended to read:

10 2425.3. (a) The Medical Board of California shall request
11 that a licensed physician report to the ~~board~~ *board*, at the time of
12 license ~~renewal~~ *renewal*, any specialty board certification he or
13 she holds *that is* issued by a member board of the American
14 Board of Medical Specialties or approved by the Medical Board
15 of California.

16 (b) A licensed physician shall also report to the ~~board~~ *board*,
17 at the time of license renewal, his or her practice status,
18 designated as one of the following:

- 19 (1) Full-time practice in California.
- 20 (2) Full-time practice outside of California.
- 21 (3) Part-time practice in California.
- 22 (4) Medical administrative employment that does not include
23 direct patient care.
- 24 (5) Retired.
- 25 (6) Other practice status, as may be further defined by the
26 Division of Licensing.

27 (c) (1) A licensed physician may report to the ~~board~~ *board*, at
28 the time of license renewal, and the board shall collect,
29 information regarding his or her cultural background and foreign
30 language proficiency.

31 (2) Information collected pursuant to this subdivision shall be
32 aggregated on an annual basis based on categories utilized by the
33 board in the collection of the data, and shall be aggregated ~~by~~
34 *into* both statewide totals and ZIP Code of primary practice
35 location *totals*.

1 (3) Aggregated information under this subdivision shall be
2 compiled annually and reported on the board's Internet Web site
3 on or before October 1 of each year.

4 (d) The information collected pursuant to subdivisions (a) and
5 ~~(b) of this section~~ may also be placed on the board's Internet
6 Web site.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2357

VERSION: AMENDED APRIL 17, 2006

AUTHOR: KARNETTE AND YEE

SPONSOR: CALIFORNIA PSYCHIATRIC ASSN

RECOMMENDED POSITION: NONE

SUBJECT: OUTPATIENT MENTAL HEALTH TREATMENT

Existing Law:

- 1) Establishes Welfare and Institutions Code (WIC) Sections 5345 through 5349.1 as "Laura's Law." (WIC § 5345 (a))
- 2) Repeals "Laura's Law" effective January 1, 2008. (WIC § 5349.5)
- 3) Defines "assisted outpatient treatment" as community-based, mobile, multidisciplinary, highly trained mental health teams that use high staff-to-client ratios, provided by a county and which have been court-ordered. (WIC § § 5345(b), 5348(a))
- 4) Prohibits counties from implementing assisted outpatient treatment if its implementation would reduce any voluntary adult mental health program or children's mental health program. (WIC § 5349)
- 5) Requires counties that implement this program to develop a training program for those involved in making treatment and involuntary commitment decisions in order to improve the delivery of services to those who are, or who are at risk of being, involuntarily committed. (WIC § 5349.1)
- 6) Permits a court, in a county where such services are available, to order a person age 18 years or older to obtain assisted outpatient treatment for a maximum of six months if the court finds all of the following: (WIC § 5346(a))
 - The person is suffering from a mental illness.
 - There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.
 - The person has a history of lack of compliance with treatment.
 - The person has been offered an opportunity to participate in treatment and the person continues to fail to engage in treatment.
 - The person's condition is substantially deteriorating.
 - Participation in the program would be the least restrictive placement necessary to ensure recovery and stability.
 - The person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would likely result in grave disability or serious harm to self or others.
 - The person would likely benefit from assisted outpatient treatment.
- 7) A request for court-ordered assisted outpatient treatment may be made by any of the following persons: (WIC § 5346(b))

- The county mental health director
 - Any person 18 years of age or older who lives with the person who is the subject of the petition.
 - The subject's parent, spouse, or sibling or adult child.
 - The director of any agency, treatment facility, charitable organization, or licensed residential care facility in whose institution the subject resides.
 - The director of a hospital in which the subject is hospitalized.
 - A licensed mental health treatment provider who is either supervising the treatment of, or treating the subject for a mental illness.
 - A peace officer, parole officer, or probation officer assigned to supervise the subject.
- 8) Provides a number of rights to the subject, including the right to counsel, notice of the hearings, a copy of the mental health evaluation, to be present at the hearing, to present evidence, to call and cross-examine witnesses, and to appeal decisions. A person may choose to voluntarily enter into an agreement for services by waiving the right to hearing in order to obtain treatment under a settlement agreement. (WIC § 5346 (d))
- 9) Permits a person to voluntarily enter into an agreement for services by waiving the right to hearing in order to obtain treatment under a settlement agreement. (WIC § 5347)

This Bill:

- 1) Extends the sunset of "Laura's Law" to January 1, 2013. (WIC § 5349.5(a))
- 2) Requires the Department of Mental Health to submit a report and evaluation of all counties implementing any component of Laura's Law to the Governor and the Legislature by July 31, 2011 that includes, at minimum, all of the following pertaining to persons in the program: (WIC § § 5348, 5349.5(b))
- An evaluation of the effectiveness of the strategies employed to reduce homelessness, hospitalization and involvement with local law enforcement.
 - Any other measures identified by the Department of Mental Health
 - The number of persons served
 - The number of persons able to maintain housing
 - The number of persons who maintain contact with the treatment system.
 - The number of persons who have had contacts with local law enforcement
 - The extent to which local and state incarceration has been reduced or avoided.
 - The number of persons participating in employment services programs.
 - The days of hospitalization that have been reduced or avoided.
 - Adherence to prescribed treatment.
 - Other indicators of successful engagement.
 - Incidents of victimization, violent behavior, and substance abuse.
 - Type, intensity, and frequency of treatment.
 - Extent to which enforcement mechanisms are used by the program
 - Social functioning and skills in independent living.
 - Satisfaction with program services both by those receiving them and by their families.

Comment:

- 1) **Author's Intent.** According to the sponsor, this bill would prevent the sunset of a law that permits counties to use court-ordered assisted outpatient treatment. This type of treatment is appropriate for mentally ill repeat offenders, violent offenders, and those who have been

repeatedly hospitalized. Such intensive and structured services are the most effective for those who are seriously mentally ill, and helps people comply with treatment.

The sponsor explained that when a county elects to use this program, it must come up with a funding source that will not detract from other mental health programs. They believe it is important to address the sunset because some counties now want to implement the program due to funds available through the Mental Health Services Act (MHSA). The sponsor is aware of at least one county, (Los Angeles) that currently administers such a program, and two (Sacramento and Nevada) that are working toward implementation. The sponsor wants to remove any barriers that might prevent implementation or continuity of such services.

- 2) About Laura's Law.** AB 1421, otherwise known as Laura's Law, was signed in 2002. It provides a structured option to counties for treatment of seriously mentally ill persons. This law was named for Laura Wilcox who was killed at a public mental health clinic by a mentally ill man. It is based on New York's "Kendra's Law," where studies have shown effectiveness in treatment, a large decrease in homelessness, and large decreases in arrest, incarceration and repeat psychiatric hospitalization for service recipients.

Under California law, it is difficult to require a mentally ill person to undergo outpatient treatment. A person must present a serious danger to self or others, and often the only option is arrest or hospitalization. As of 2004, only Los Angeles County has implemented this law, and in a limited manner. It has been difficult for counties to implement due to funding issues, as they cannot use funds already set aside for outpatient treatment of the mentally ill.

AB 1421 was supported by groups such as the California Treatment Advocacy Coalition, Police Chief's Association, and the National Alliance on Mental Illness. AB 1421 was viewed by supporters in a humanitarian light, believing that some mentally ill people are too sick to recognize their own symptoms or accept treatment. The bill was opposed by the California Network of Mental Health Clients, MindFreedom International, and the Church of Scientology. Opponents generally felt that the legislation was regressive and an extreme method of enforcing drug treatment regimens.

- 3) MHSA (Proposition 63).** Proposition 63 did not make any restrictions regarding involuntary services. However, the Department of Mental Health (DMH) states that they received "considerable feedback from Stakeholders regarding MHSA and involuntary services." They believe there was a "consensus that DMH should retain the goal of reducing involuntary services." The DMH has therefore taken the following positions regarding MHSA funding:
- "Programs funded under the [MHSA] must be voluntary in nature.
 - Individuals accessing services funded by the MHSA may have voluntary or involuntary legal status which shall not affect their ability to access the expanded services under this Act.
 - Services provided in jails and juvenile hall must be for the purpose of facilitating discharge."

4) Support and Opposition.

Support:

California Psychiatric Association (sponsor)
California Treatment Advocacy Coalition (co-sponsor)
California Medical Association
NAMI California
One individual

Opposition:

Alameda County Network of Mental Health Clients
California Association of Social Rehabilitation Agencies
California Network of Mental Health Clients
California Psychological Association
Protection and Advocacy, Inc

5) History

2006

Apr. 18 Re-referred to Com. on JUD. From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 7. Noes 2.)

Apr. 17 Read second time and amended. Joint Rule 62(a), file notice waived.

Apr. 6 From committee: Amend, do pass as amended, and re-refer to Com. on JUD. (Ayes 13. Noes 1.) (April 4).

Mar. 13 Referred to Coms. on HEALTH and JUD.

Feb. 24 From printer. May be heard in committee March 26.

Feb. 23 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2357

**Introduced by Assembly Members Karnette and Yee
(Coauthors: Assembly Members Canciamilla, *Richman*, and
Wolk)**

February 23, 2006

~~An act to amend the heading of Article 9 (commencing with Section 5345) of Chapter 2 of Part 1 of Division 5 of, and to repeal *An act to amend* Section 5349.5 of, the Welfare and Institutions Code, relating to mental health.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2357, as amended, Karnette. Assisted outpatient mental health treatment.

Existing law, Laura's Law, establishes a demonstration project in which a county may elect to participate in an assisted outpatient mental health treatment program. Under Laura's Law a court may order an adult to obtain assisted outpatient treatment if prescribed criteria are met, including, but not limited to, that the person suffers from mental illness, that there has been a clinical determination that the person is unlikely to survive safely in the community without supervision, and that the person has a history of not complying with treatment. Existing law repeals these provisions on January 1, 2008.

This bill would ~~delete~~ *extend* the repeal date, ~~and to January 1, 2013.~~

The bill would thereby extend the program indefinitely also require the State Department of Mental Health to submit a report and evaluation to the Governor and the Legislature by July 31, 2011.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 5349.5 of the Welfare and Institutions
2 Code is amended to read:

3 5349.5. (a) This article shall remain in effect only until
4 January 1, ~~2008~~ 2013, and as of that date is repealed, unless a
5 later enacted statute that is enacted on or before January 1, ~~2008~~
6 2013, deletes or extends that date.

7 (b) The State Department of Mental Health shall submit a
8 report and evaluation of all counties implementing any
9 component of this article to the Governor and Legislature by July
10 31, 2011. The evaluation shall include data described in
11 subdivision (d) of Section 5348.

12 ~~SECTION 1. The heading of Article 9 (commencing with~~
13 ~~Section 5345) of Chapter 2 of Part 1 of Division 5 of the Welfare~~
14 ~~and Institutions Code is amended to read:~~

15
16 ~~Article 9. The Assisted Outpatient Treatment Program of~~
17 ~~2002~~

18
19 ~~SEC. 2. Section 5349.5 of the Welfare and Institutions Code~~
20 ~~is repealed.~~

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2404 **VERSION:** AMENDED MAY 1, 2006

AUTHOR: KLEHS **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: STATE REPORTS: DECLARATIONS

Existing Law:

- 1) Defines "written report" as a document required by statute to be prepared and submitted to the Legislature, the Governor, or any state legislative or executive body. (GC 7550.5(a)(2))
- 2) Requires a public agency to prepare or submit a written report to the Legislature, the Governor, or any state legislative or executive body only when: (GC 7550.5(b))
 - The report is required by a court order, federal law, or federal regulation.
 - The report is required by state law.
 - The report is required by or for the annual Budget Act or in any supplemental budget report prepared by the Legislative Analyst.
 - The Legislature expressly requires a written report to be prepared and submitted.

This Bill:

- 1) Requires a state agency, board or commission that is required to submit a written report to the Legislature to have one of the following persons sign the report, declaring that the contents of the report are true, accurate, and complete to the best of his or her knowledge: (GC § 7550.7(a))
 - The agency head
 - The board or commission chair
 - The executive officer or executive director when a board or commission has an executive officer or executive director
- 2) Exempts elected officials or officials whose duties are prescribed by the California Constitution. (GC § 7550.7(b))
- 3) Requires certain specified local agency reports required to be submitted to the Controller to include a signed statement by the officer of the local agency, declaring under penalty of perjury that the contents of the report are true, accurate, and complete to the best of his or her knowledge. (GC § 7550.7(c))
- 4) Establishes the penalty for reporting material as true that the signer knows to be false as a misdemeanor, punishable by a fine of up to five thousand dollars (\$5,000), imprisonment in county jail for up to six months, or by both fine and imprisonment. (GC § 7550.7(d))

Comment:

- 1) **Author's Intent.** The author states that the purpose of the bill is to ensure that the Legislature and other agencies receive accurate and trustworthy information, so that they can be effective in making decisions. In response to financial scandals of the past few years, Congress passed the Sarbanes-Oxley Act of 2002. This federal law requires CEOs to sign reports to company shareholders under penalty of perjury. Similarly, this bill is in response to a series of hearings in which CalTrans was found to have provided inaccurate information to the State Legislature and withheld information concerning the retrofit of the eastern span of the Bay Bridge. During the Joint Legislative Audit Committee hearing to review the audit on the Bay Bridge project, it was found that CalTrans and other agency heads had withheld information from the Legislature or misrepresented certain facts, such as cost overruns and evidence of project mismanagement. The author believes this bill would ensure that agency officials are held accountable when giving testimony to the State Legislature.
- 2) **BBS Impact.** This bill would require the Board of Behavioral Sciences' (BBS) Executive Officer to sign all written reports to the Legislature, declaring that the contents of the report are true, accurate, and complete to the best of his knowledge. This bill also establishes the penalty for reporting material as true that the signer knows to be false as a misdemeanor, punishable by a fine of up to five thousand dollars (\$5,000), imprisonment in county jail for up to six months, or by both fine and imprisonment.
- 3) **Prior Legislation.** AB 1625, introduced by Klehs last year, was very similar legislation, which the governor vetoed. The veto message was as follows:

"I absolutely believe that the Legislature, indeed all elected officials, must base their decisions on information that is true, accurate, and complete. This bill, requiring legislative reports be submitted under penalty of perjury, only applies to individuals appointed by the Governor and confirmed by the Senate, and to the executive officer of the Franchise Tax Board and the executive director of the Board of Equalization.

The law already protects against falsified reports to the Legislature. Department heads must take oaths of office, and various Government and Penal Code provisions set forth duties, obligations, and penalties for the accurate and truthful execution of the operation of state government. Further, the Legislature may already require individuals appearing before it to testify under oath, and false testimony is a felony.

I will consider similar legislation that applies to all written materials used in the course of legislative deliberations that applies to any official of the State, elected or appointed by the Governor, the Legislature or any other constitutional officer."

4) **Support and Opposition.**

None known at this time.

5) **History**

2006

May 1	Read second time and amended. Ordered returned to second reading.
Apr. 27	From committee: Amend, and do pass as amended. (Ayes 13. Noes 5.) (April 26).
Apr. 5	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 7. Noes 1.) (April 4).

Mar. 14 Referred to Com. on B. & P.
Feb. 24 From printer. May be heard in committee March 26.
Feb. 23 Read first time. To print.

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AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2404

Introduced by Assembly Member Klehs
(Coauthor: Assembly Member Evans)

February 23, 2006

An act to add Section 7550.7 to the Government Code, relating to state reports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2404, as amended, Klehs. State government: reports: declarations.

(1) Existing law generally sets out the requirements for the submission of written reports by public agencies to the Legislature, the Governor, the Controller, and state legislative and other executive entities.

This bill would additionally require any of these written reports required to be submitted by any state agency, board, or commission and specified reports required to be submitted to the Controller by any city, county, city and county, or transit district, to include a signed statement by the head of the agency, the chair of the board or commission, or the officer of the local agency, except as specified, declaring under penalty of perjury, that the contents of the report are true, accurate, and complete to the best of his or her knowledge. By expanding the scope of the existing crime of perjury, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 7550.7 is added to the Government
2 Code, to read:

3 7550.7. (a) (1) Notwithstanding any other provision of law,
4 every written report, as defined in paragraph (2) of subdivision
5 (a) of Section 7550.5, required to be submitted to the Legislature
6 by any state agency, board, or commission, shall include a signed
7 statement by the head of that agency, or chair of the board or
8 commission, as described in subdivision (b), declaring under
9 penalty of perjury that the contents of the report are true,
10 accurate, and complete to the best of his or her knowledge.

11 (2) In the case of a board or commission whose chair is subject
12 to paragraph (1), as described in subdivision (b), if the board or
13 commission has an executive officer or executive director, the
14 signed statement described in paragraph (1) shall be made by the
15 executive officer or executive director.

16 (3) With respect to the Franchise Tax Board, the signed
17 statement described in paragraph (1) shall be made by the
18 executive officer of that board, and with respect to the State
19 Board of Equalization, the statement shall be made by the
20 executive director of that board.

21 (b) Paragraph (1) of subdivision (a) shall ~~only apply~~ *apply*
22 *only* to those individuals appointed by the Governor and
23 confirmed by the Senate. It shall not be construed to apply to any
24 elected official of the state, or any official whose duties are
25 prescribed by the California Constitution.

26 (c) Notwithstanding any other provision of law, every written
27 report required to be submitted to the Controller pursuant to the
28 following provisions shall include a signed statement by the
29 officer of the local agency, declaring under penalty of perjury,
30 that the contents of the report are true, accurate, and complete to
31 the best of his or her knowledge:

1 (1) Reports submitted by a city, county, city and county, or
2 transit district pursuant to Section 53891.

3 (2) Reports submitted by a city, county, or city and county
4 pursuant to Section 2151 of the Streets and Highways Code.

5 (3) Reports submitted by a transit district pursuant to Sections
6 99243 and 99406 of the Public Utilities Code.

7 (d) Any person who declares as true any material matter
8 pursuant to this section that he or she knows to be false is guilty
9 of a misdemeanor, punishable by a fine not exceeding five
10 thousand dollars (\$5,000), by imprisonment in a county jail not
11 exceeding six months, or by both that fine and imprisonment.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution for
14 certain costs that may be incurred by a local agency or school
15 district because, in that regard, this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the
17 penalty for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition of a
19 crime within the meaning of Section 6 of Article XIII B of the
20 California Constitution.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2420

VERSION: AMENDED APRIL 17, 2006

AUTHOR: LIEU

SPONSOR: ASIAN AMERICANS FOR CIVIL RIGHTS AND EQUALITY

RECOMMENDED POSITION: NONE

SUBJECT: STATE GOVERNMENT: COLLECTION OF DEMOGRAPHIC DATA

Existing Law:

- 1) Requires state agencies which directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians to use separate collection categories and tabulations for each major Asian and Pacific Islander group, including, but not limited to: (GC § 8310.5)
 - Asian Indian
 - Cambodian
 - Chinese
 - Filipino
 - Guamanian
 - Hawaiian
 - Japanese
 - Korean
 - Laotian
 - Samoan
 - Vietnamese
- 2) Prohibits including any question on any application or form required by a state agency pertaining to the applicant's race, sex, marital status or religion. (GC § 8310)
- 3) Requires all state agencies to categorize Filipinos separately in any statistical tabulation of minority groups. (GC § 11092)
- 4) Requires all state agencies to categorize Pacific Islanders separately in any statistical tabulation of minority groups. (GC § 11092.5)
- 5) Requires the Department of Finance (DOF) to report Asian-Pacific Islanders as a distinct category and not combine Asian-Pacific Islanders into any other category. (GC § 13073.1)
- 6) Prohibits a licensing board from printing or circulating any publication, or making any non-job-related inquiry that expresses any limitation, specification, or discrimination as to race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation unless that board is acting in accordance with federal equal employment opportunity guidelines or regulations. (GC § 12944 (c))

This Bill:

- 1) Requires a state agency, community college, and California State University, that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians, to collect, tabulate and report data for each major Asian and Pacific Islander group, including, but not limited to: (GC § 8310.5)
 - Asian Indian
 - Bangladeshi
 - Indonesian
 - Japanese
 - Sri Lankan
 - Taiwanese

- Cambodian
- Chinese
- Fijian
- Filipino
- Guamanian
- Hmong
- Korean
- Laotian
- Malaysian
- Native Hawaiian
- Pakistani
- Samoan
- Thai
- Tongan
- Vietnamese
- Other Asian
- Other Pacific Islander

- 2) Requires such data, when collected by a state agency, community college, and California State University, to be made available to the public. (GC § 8310.5(b))
- 3) Encourages the University of California to do the same. (GC § 8310.5)

Comment:

- 1) **Author’s Intent.** According to the author, the Asian American and Pacific Islander communities are very diverse and have different histories and needs. They are commonly seen as a homogeneous group, though that is not the case. This bill is constructed by how the U.S. Census reports their data. According to the sponsor, current statutes recognize the diversity of the Asian American community, but many communities are not captured. The U.S. Census is a model that allows ethnicity to be written in if a category is not provided. This has provided a lot of information on how specific communities are faring. There are new and emerging communities and we need to know about their experiences in California. Data for Asian Americans can sometimes mask the needs of specific groups. This bill is a way of gathering better information to help target specific needs.
- 2) **Technical Issues.** This proposal is concerning due to several technical issues. The bill proposes collecting information regarding 23 different Asian and Pacific Islander subgroups. The ability to compare data with other data is important, and the number of subcategories could present problems in this area. The U.S. Census only collects data in the major groups of “Asian” and “Native Hawaiian or other Pacific Islander.” U.S. Census data is frequently used in California, and state agencies are currently required to collect information regarding 11 Asian and Pacific Islander subgroups.

Although the subgroup information could be collapsed into the major categories, it is preferable to collect data in a manner that would not interfere with response rates. Longer surveys are known to produce smaller response rates, and this bill would add 11 more check boxes. Additionally, state surveys are often sent to a maximum of 1,000 persons. This would result in tiny response for some subgroups. When information is needed about a particular group, it would be better to identify and survey persons from that group directly.

- 3) **Self-ID vs. Ancestry.** Any collection of data pertaining to ethnic origin is complicated by the issue of self-identification of ethnicity versus ancestry. A person’s ethnic affiliation may not be at all related to his or her ethnic ancestry. For example, a Chinese child adopted by an Italian family may self-identify as Italian even though her ethnic ancestry is Chinese.

This issue also impacts many people of mixed heritage, for whom it can be difficult to accurately identify ethnicity when limited to specific categories such as “African American.” Additionally, ethnic groups tend to evolve, and even the name of the ethnic group can change. Over time, an individual’s ethnic identity can evolve. There is not a simple answer for these issues.

4) **BBS.** The Board does not currently collect racial or ethnic data of its licensees, registrants, or applicants, but an anonymous survey is being developed.

5) **Support and Opposition.**

Support:

Asian Americans for Civil Rights and Equality (sponsor)
Asian and Pacific Islander American Health Forum
Asian Community Mental Health Services
Asian Law Caucus
Asian Pacific American Legal Center
California Immigrant Welfare Collaborative
Center for Asian American Advocacy
Community Overcoming Relationship Abuse
East Bay Asian Local Development Corporation
Formosan Associations for Public Affairs
Lambda Letters Project
National Asian Pacific American Families Against Substance Abuse
National Asian Pacific American Women's Forum
National Council on Crime and Delinquency
North American Taiwanese Medical Association
Pacific Islander Health Partnership
Pacific Islander Kie Association
Southeast Asia Resource Action Center
Numerous Individuals

Opposition:

None on file.

6) **History**

2006

Apr. 25 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 10. Noes 0.) (April 25).

Apr. 18 Re-referred to Com. on B. & P.

Apr. 17 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.

Mar. 30 Referred to Com. on B. & P.

Feb. 24 From printer. May be heard in committee March 26.

Feb. 23 Read first time. To print.

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AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2420

Introduced by Assembly Member Lieu
(Coauthors: Assembly Members Chan, Chu, Liu, Coto, Jones, Liu,
Pavley, Torrico, and Yee)
(Coauthor: Senator Bowen)

February 23, 2006

An act to amend Section 8310.5 of the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2420, as amended, Lieu. State government: ~~state agencies, boards, and commissions~~: collection of demographic data.

Existing law requires any state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians to use separate collection categories and tabulations for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian.

This bill would also require ~~a separate collection category~~ *categories and tabulation tabulations* for Bangladeshi, Fijian, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, Thai, Tongan, other Asian, and other Pacific Islander, *and would require any state agency, board, commission, or community college, or the California State University to collect, tabulate, report, and make available to the public the data collected on each major group. This*

bill would encourage the University of California to implement this policy.

By requiring community colleges to collect this data and provide it to the public, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

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

3 (a) More than one-third of the nation’s Asians and Pacific
4 Islanders live in California, making the state home to more
5 Asians and Pacific Islanders than any other state in the country.

6 (b) Asians and Pacific Islanders represent 14 percent of the
7 state’s population, and grew by 52 percent from 1990 to 2000.

8 (c) Asians and Pacific Islanders are an incredibly diverse
9 group. The United States Census reports data for more than 20
10 different ethnicities within this group.

11 (d) While Asians and Pacific Islanders are often
12 misrepresented as a homogeneous group, they actually represent
13 dozens of different cultures, languages, and ethnic groups and
14 have a wide range of economic, educational, and social needs.

15 (e) Given the diversity of languages and cultures, data
16 separated by ethnic group is critical for enhancing our state’s
17 understanding of the needs and experiences of different
18 communities.

19 ~~SECTION 1.~~

20 SEC. 2. Section 8310.5 of the Government Code is amended
21 to read:

22 8310.5. (a) Any state agency, board, ~~or commission~~
23 ~~commission~~, community college, or California State University

1 that directly or by contract collects demographic data as to the
2 ancestry or ethnic origin of Californians shall ~~use separate~~
3 ~~collection categories and tabulations~~ *collect and tabulate data* for
4 each major Asian and Pacific Islander group, including, but not
5 limited to, Asian Indian, Bangladeshi, Cambodian, Chinese,
6 Fijian, Filipino, Guamanian *or Chamorro*, Hmong, Indonesian,
7 Japanese, Korean, Laotian, Malaysian, Native Hawaiian,
8 Pakistani, Samoan, Sri Lankan, Taiwanese, Thai, Tongan,
9 Vietnamese, other Asian, and other Pacific Islander. *The*
10 *University of California shall be encouraged to implement this*
11 *policy.*

12 *(b) The data collected by any state agency, board,*
13 *commission, or community college, or the California State*
14 *University, pursuant to subdivision (a), shall be reported*
15 *according to each Asian and Pacific Islander group specified in*
16 *subdivision (a) and made available to the public. The University*
17 *of California shall be encouraged to implement this policy.*

18 *SEC. 3. If the Commission on State Mandates determines that*
19 *this act contains costs mandated by the state, reimbursement to*
20 *local agencies and school districts for those costs shall be made*
21 *pursuant to Part 7 (commencing with Section 17500) of Division*
22 *4 of Title 2 of the Government Code.*

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2428 **VERSION:** INTRODUCED FEBRUARY 23, 2006

AUTHOR: CANCIAMILLA **SPONSOR:** AUTHOR

RECOMMENDED POSITION: OPPOSE

SUBJECT: PUBLIC MEETINGS

Existing Law:

- 1) Defines "state body" as: (GC § 11121)
 - A state board, or commission, or similar multimember body
 - An advisory board or commission, committee, subcommittee, or similar multimember advisory body of a state body that consists of three or more persons.
- 2) Defines "meeting" as a congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body. (GC § 11122.5(a))
- 3) Requires all meetings of a state body to be open and public and permits all persons to attend any meeting of a state body except in certain circumstances. (GC § 11123(a))
- 4) Prohibits requiring any person to register his or her name, to provide other information, to complete a questionnaire, or to otherwise fulfill any condition before attendance at a meeting of a state body. (GC § 11124)
- 5) Permits use of a voluntary attendance list, questionnaire, or other similar document which clearly states that the signing or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs or completes the document. (GC § 11124)
- 6) Requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item, unless the public has been provided the opportunity to comment on substantially the same item at a prior committee meeting. (GC § 11125.7(a))
- 7) Requires any statute, court rule, or other authority that limits the right of access to a public meeting to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (CA Constitution, Article 1, Section 3(a)(2))

This Bill:

- 1) Requires any person appearing before the Legislature or a legislative committee, who claims to represent a group, to disclose the following information: (GC § 9030.5)
 - The number of persons in the group
 - The group's top three sources of funding

- The location of the group's headquarters or where the group is based.
- 2) Permits a state agency or legislative body of a local agency to require any person who claims to represent a group and is appearing before such an entity at a public meeting to disclose the following information: (GC § § 11125.7, 54954.3)
- The number of persons in the group
 - The group's top three sources of funding
 - The location of the group's headquarters or where the group is based.

Comment:

1) **Author's Intent.** According to the author, this legislation is part of a package of bills designed to create fundamental change in the way the state does business. This bill is about disclosure. Legislators are required to make certain disclosures; the author is asking those on the other side of the table to do the same thing.

2) **Public Meeting Laws.** The BBS is governed by the requirements set forth by the Bagley-Keene Open Meeting Act, which prohibits requiring anyone to provide information, complete a questionnaire, or to otherwise fulfill any condition before attendance at a meeting of a state body. The California Constitution requires any statute that limits the right of access to a public meeting to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. This bill may be in conflict with these laws.

3) **BBS Public Meetings.** This bill would not require, but would provide the Board with the option to require persons who appear at public meetings and claim to represent a group to disclose certain information about the group. Such a requirement is coercive and could have a chilling effect on the public's willingness to speak freely before the Board. The purpose of public meetings is to have the citizens participate in discussion and decision-making. This proposal would stifle the free flow of information to the Board from the public. It would directly interfere with one of the principal strengths of the system of Boards and open meetings, which is to allow citizens to directly communicate with their government and its representatives.

4) **Support and Opposition.**
None known at this time.

5) **History**
2006

Feb. 24	From printer. May be heard in committee March 26.
Feb. 23	Read first time. To print.

ASSEMBLY BILL

No. 2428

**Introduced by Assembly Member Canciamilla
(Coauthor: Assembly Member Richman)**

February 23, 2006

An act to amend Sections 11125.7 and 54954.3 of, and to add Section 9030.5 to, the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2428, as introduced, Canciamilla. Public meetings.

Existing law, the Bagley-Keene Open Meeting Act, generally requires that the meetings of state bodies be open and public and all persons be permitted to attend. The existing Ralph M. Brown Act generally requires that the meetings of local bodies be open and public and all persons be permitted to attend. Both acts require that the agenda for meetings provide an opportunity for members of the public to directly address the body on any item of interest to the public that is within the subject matter jurisdiction of the body. Other provisions of existing law require that all meetings of a house of the Legislature or a committee thereof be open and public and all persons be permitted to attend.

This bill would authorize a state body subject to the Bagley-Keene Open Meeting Act and a local body subject to the Ralph M. Brown Act to require that a speaker addressing the body who claims to represent a group disclose the number of members in the group, the top 3 sources of funding for the group, and the location of the group's headquarters or where the group is based. It would require any person who appears before a house of the Legislature or any committee thereof who claims to represent a group to make the same disclosures.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 9030.5 is added to the Government
2 Code, to read:

3 9030.5. When any person who appears before a house of the
4 Legislature or any committee thereof claims to represent a group,
5 the person shall be required to disclose all of the following:

- 6 (a) The number of persons in the group.
- 7 (b) The group’s top three sources of funding.
- 8 (c) The location of the group’s headquarters or where the
9 group is based.

10 SEC. 2. Section 11125.7 of the Government Code is amended
11 to read:

12 11125.7. (a) Except as otherwise provided in this section, the
13 state body shall provide an opportunity for members of the public
14 to directly address the state body on each agenda item before or
15 during the state body’s discussion or consideration of the item.
16 This section is not applicable if the agenda item has already been
17 considered by a committee composed exclusively of members of
18 the state body at a public meeting where interested members of
19 the public were afforded the opportunity to address the
20 committee on the item, before or during the committee’s
21 consideration of the item, unless the item has been substantially
22 changed since the committee heard the item, as determined by
23 the state body. Every notice for a special meeting at which action
24 is proposed to be taken on an item shall provide an opportunity
25 for members of the public to directly address the state body
26 concerning that item prior to action on the item. In addition, the
27 notice requirement of Section 11125 shall not preclude the
28 acceptance of testimony at meetings, other than emergency
29 meetings, from members of the public, provided, however, that
30 no action is taken by the state body at the same meeting on
31 matters brought before the body by members of the public.

32 (b) The state body may adopt reasonable regulations to ensure
33 that the intent of subdivision (a) is carried out, including, but not
34 limited to, regulations limiting the total amount of time allocated
35 for public comment on particular issues and for each individual

1 speaker. *The body may require a speaker who claims to represent*
2 *a group to disclose all of the following:*

3 (1) *The number of persons in the group.*

4 (2) *The group's top three sources of funding.*

5 (3) *The location of the group's headquarters or where the*
6 *group is based.*

7 (c) The state body shall not prohibit public criticism of the
8 policies, programs, or services of the state body, or of the acts or
9 omissions of the state body. Nothing in this subdivision shall
10 confer any privilege or protection for expression beyond that
11 otherwise provided by law.

12 (d) This section is not applicable to closed sessions held
13 pursuant to Section 11126.

14 (e) This section is not applicable to decisions regarding
15 proceedings held pursuant to Chapter 5 (commencing with
16 Section 11500), relating to administrative adjudication, or to the
17 conduct of those proceedings.

18 (f) This section is not applicable to hearings conducted by the
19 State Board of Control pursuant to Sections 13963 and 13963.1.

20 (g) This section is not applicable to agenda items that involve
21 decisions of the Public Utilities Commission regarding
22 adjudicatory hearings held pursuant to Chapter 9 (commencing
23 with Section 1701) of Part 1 of Division 1 of the Public Utilities
24 Code. For all other agenda items, the commission shall provide
25 members of the public, other than those who have already
26 participated in the proceedings underlying the agenda item, an
27 opportunity to directly address the commission before or during
28 the commission's consideration of the item.

29 SEC. 3. Section 54954.3 of the Government Code is amended
30 to read:

31 54954.3. (a) Every agenda for regular meetings shall provide
32 an opportunity for members of the public to directly address the
33 legislative body on any item of interest to the public, before or
34 during the legislative body's consideration of the item, that is
35 within the subject matter jurisdiction of the legislative body,
36 provided that no action shall be taken on any item not appearing
37 on the agenda unless the action is otherwise authorized by
38 subdivision (b) of Section 54954.2. However, the agenda need
39 not provide an opportunity for members of the public to address
40 the legislative body on any item that has already been considered

1 by a committee, composed exclusively of members of the
2 legislative body, at a public meeting wherein all interested
3 members of the public were afforded the opportunity to address
4 the committee on the item, before or during the committee's
5 consideration of the item, unless the item has been substantially
6 changed since the committee heard the item, as determined by
7 the legislative body. Every notice for a special meeting shall
8 provide an opportunity for members of the public to directly
9 address the legislative body concerning any item that has been
10 described in the notice for the meeting before or during
11 consideration of that item.

12 (b) The legislative body of a local agency may adopt
13 reasonable regulations to ensure that the intent of subdivision (a)
14 is carried out, including, but not limited to, regulations limiting
15 the total amount of time allocated for public testimony on
16 particular issues and for each individual speaker. *The body may*
17 *require a speaker who claims to represent a group to disclose all*
18 *of the following:*

19 (1) *The number of members in the group.*

20 (2) *The group's top three sources of funding.*

21 (3) *The location of the group's headquarters or where the*
22 *group is based.*

23 (c) The legislative body of a local agency shall not prohibit
24 public criticism of the policies, procedures, programs, or services
25 of the agency, or of the acts or omissions of the legislative body.
26 Nothing in this subdivision shall confer any privilege or
27 protection for expression beyond that otherwise provided by law.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 3013 **VERSION:** AMENDED APRIL 6, 2006

AUTHOR: KORETZ **SPONSOR:** CAMFT

RECOMMENDED POSITION: SUPPORT

SUBJECT: MEDICAL INFORMATION: DISCLOSURES

Existing Law:

- 1) Defines "provider of health care" as any person licensed or certified to provide health care; any clinic, health dispensary, or licensed health facility. (Civil Code § 56.05 (j))
- 2) Defines "medical information" as any individually identifiable information, in electronic or physical form, derived from a provider of health care regarding a patient's medical history, mental or physical condition, or treatment. (Civil Code § 56.05 (g))
- 3) Permits a provider of health care to release at its discretion, the following information regarding a specific patient upon an inquiry, unless there is a specific written request by the patient to the contrary: (Civil Code § 56.16)
 - The patient's name and address
 - The patient's age and sex
 - A general description of the reason for treatment (whether an injury, a burn, poisoning or some unrelated condition)
 - The general nature of the injury, burn, poisoning or other condition
 - The general condition of the patient
 - Any information that is not medical information
- 4) Prohibits a provider of health care from disclosing medical information regarding a patient without first obtaining an authorization, except in certain circumstances. (Civil Code § 56.10)
- 5) Prohibits a provider of health care from releasing information specifically related to outpatient treatment with a psychotherapist to a person or entity authorized to receive medical information, unless the person or entity requesting that information submits a written request to the patient and health care provider, signed by the person requesting the information. (Civil Code § 56.104(a))
- 6) Federal law (HIPAA) permits a health care provider to maintain a directory of individuals in its facility and to disclose the following protected health information for directory purposes to those who ask for the individual by name, unless an objection is expressed by the patient: (45 CFR § 160.202(a))
 - The individual's name
 - The individual's location in the covered health care provider's facility
 - The individual's condition described in general terms that does not communicate specific medical information about the individual

- The individual's religious affiliation (only to members of the clergy)
- 7) Federal law (HIPAA) requires a health care provider to inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures; or in an emergency, as soon as it becomes practicable to do so. (45 CFR § 160.202(a))
 - 8) Federal law (HIPAA) permits a covered health care provider to use or disclose some or all of the protected health information for the facility's directory if the opportunity to object to uses or disclosures cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, if such disclosure is: (45 CFR § 160.202(a)(3))
 - Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and
 - In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

This Bill:

- 1) Permits a provider of health care, a health care service plan, or a contractor (health care provider) to do any of the following: (Civil Code § 56.1005(a))
 - Use the following “medical information” to maintain a directory of patients in its facility:
 - The patient’s name
 - The patient’s location in the facility
 - The patient’s condition described in general terms that does not communicate specific medical information about the patient
 - The patient’s religious affiliation
 - Disclose for directory purposes that information to either of the following:
 - A member of the clergy
 - Except for religious information, any other person who asks for the patient by name.
- 2) Requires a health care provider to do all of the following: (Civil Code § 56.1005(b))
 - Inform a patient of the medical information that it may include in a directory
 - Inform a patient of the persons to whom it may disclose that information
 - Provide the patient with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted.
- 3) Permits a health care provider, when the opportunity for the patient to object to uses or disclosures cannot practicably be provided because of the patient’s incapacity or emergency treatment, the ability to use or disclose some or all of the medical information for the facility’s directory if that disclosure is all of the following: (Civil Code § 56.1005(c))
 - Consistent with a prior expressed preference of the patient, if any, that is known to the health care provider.
 - In the patient’s best interest as determined by the health care provider, in his or her professional judgment.
- 4) Requires a health care provider to inform the patient and provide an opportunity to object to uses or disclosures of medical information for directory purposes when it becomes practicable to do so. (Civil Code § 56.1005(d))

- 5) Permits a health care provider to disclose to the following persons the medical information directly relevant to that person's involvement with the patient's care or payment related to the patient's health care: (Civil Code § 56.1007(a))
 - A family member or other relative
 - Domestic partner
 - Close personal friend of the patient
 - Any other person identified by the patient
- 6) Permits a health care provider to use or disclose medical information to notify or assist in the notification of a patient's location, general condition, or death, a family member, a personal representative of the patient, a domestic partner, or another person responsible for the care of the patient. (Civil Code § 56.1007(b))
- 7) Permits the health care provider to use or disclose medical information if the patient is present for, or is available prior to a permitted use or disclosure and has the capacity to make health care decisions, if it does any of the following: (Civil Code § 56.1007(c))
 - Obtains the patient's agreement.
 - Provides the patient with the opportunity to object to the disclosure, and the patient does not express an objection.
 - Reasonably infers from the circumstance, based on professional judgment, that the patient does not object to the disclosure.
- 8) Permits a health care provider to use professional judgment to determine whether disclosure is in the best interests of the patient when a patient is not present, or when the opportunity to object to the use or disclosure cannot be provided because of the patient's incapacity or emergency. Permits, in this situation, disclosure of only the medical information directly relevant to the person's involvement with the patient's health care. (Civil Code § 56.1007(d),(e))
- 9) Permits a health care provider to use professional judgment and experience with common practice to make reasonable inferences of the patient's best interest in allowing a person to act on behalf of the patient to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of medical information. (Civil Code § 56.1007(d), (e))
- 10) Permits a health care provider to use or disclose medical information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating the permitted uses or disclosures with those entities. (Civil Code § 56.1007(e))
- 11) Provides certain exceptions when the health care provider determines that requirements interfere with the ability to respond to emergency circumstances. (Civil Code § 56.1007(e))

Comment:

- 1) **Author's Intent.** According to the author, this bill was prompted by a lawsuit against a doctor who disclosed medical information to an employer. The purpose of this bill is to prevent disclosure of mental health information. The office is still considering different approaches to this legislation. According to the sponsor, they are appalled that a mental health professional may lawfully share what is believed to be confidential information about a patient pursuant to the California Civil Code. It is the sponsor's desire to not permit such disclosures by mental health professionals and to limit such disclosures to be made by physical health care providers.

- 2) **Garrett v. Young [109 Cal.App.4th 1413]**. In the case referred to by the author, the complainant (Garrett) had sought medical treatment from her doctor (Young, the respondent) for symptoms she felt were being caused by the conditions at her job. She had been diagnosed with, among other things, anxiety and depression. Dr. Young revealed to Ms. Garrett's employer that she was experiencing "stress." Ms. Garrett accused Dr. Young of disclosing personal and confidential medical information to her supervisor, who then used this information to support his termination of her employment and disclosed the information to other parties.

The court ruled that the Ms. Garrett had "no reasonable expectation of privacy in the information conveyed to her employer" and that "the disclosures could not be seen as substantial violations of her right to privacy" because she had discussed some of her symptoms with her supervisor, asked his advice about where to go for medical treatment, had provided him with doctor's notes excusing her absences from work. The court additionally ruled that Ms. Garrett's "continuous and open discussion" with her co-workers regarding her feelings that she had been treated unfairly and abused, "undermined her claim that [Dr. Young] seriously interfered with her privacy rights."

- 3) **HIPAA**. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) preempts contrary state privacy laws except for cases where state law is more stringent than the HIPAA privacy requirement. Even though HIPAA preempts state law, there is no state-level enforcement of HIPAA. The federal Department of Health and Human Services Office for Civil Rights does accept health information privacy complaints from consumers. The state is able, however, to enforce the Confidentiality of Medical Information Act (§56 et. seq.) by private right of action. This bill would bring California law more in line with certain HIPAA privacy requirements.
- 4) **BBS Strategic Plan**. This bill would strengthen confidentiality requirements for clients whose therapists who do not fall under HIPAA. It would also help to clarify confidentiality laws for those who do fall under HIPAA, thus helping to ensure such laws are implemented correctly by providers. But most importantly, it would increase consumer protection by strengthening state law. Therefore, should the Board decide to support this bill, it could help to fulfill Strategic Plan Objective 3.4, "Advocate for five laws that protect the privacy of client/therapist relationships by December 31, 2010."

5) **Support and Opposition.**

Support:

California Association of Marriage and Family Therapists (sponsor)

Opposition:

Trust and Estates Section of the California State Bar (to bill as originally drafted)

6) **History**

2006

Apr. 27	Re-referred to Com. on APPR.
Apr. 26	Read second time and amended.
Apr. 25	From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 25).
Apr. 19	From committee: Do pass, and re-refer to Com. on JUD. Re-referred. (Ayes 10. Noes 2.) (April 18).
Apr. 17	Re-referred to Com. on HEALTH.
Apr. 6	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.

Mar. 20 Set for Hearing Apr. 18
Mar. 20 Referred to Com. on HEALTH.
Feb. 27 Read first time.
Feb. 25 From printer. May be heard in committee March 27.
Feb. 24 Introduced. To print.

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AMENDED IN ASSEMBLY APRIL 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 3013

Introduced by Assembly Member Koretz

February 24, 2006

An act to ~~amend Section 56.16 of~~ *add Sections 56.1005 and 56.1007 to, and to repeal Section 56.16 of,* the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 3013, as amended, Koretz. Medical information: disclosures.

The *state Confidentiality of Medical Information Act* ~~allows a provider of health care, upon an inquiry concerning a specific patient, to release at its discretion a patient's name, address, age, and sex; a general description of the reason for treatment; the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information, as defined, unless there is a specific written request by the patient to prohibit that release. Notwithstanding that provision, the act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law.~~

Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in

economic loss or personal injury to a patient, it is punishable as a misdemeanor.

The federal Health Insurance Portability and Accountability Act (HIPAA) prohibits a covered entity that uses electronic means to perform HIPAA-covered transactions, from using or disclosing personal health information except pursuant to a written authorization signed by the patient or for treatment, payment, or health care operations. Notwithstanding those provisions, HIPAA allows a covered entity to maintain a directory of patients in its facility for specified purposes, and disclose the protected health information of a patient to family members, relatives, or other persons identified by the patient, if certain conditions are met. HIPAA further provides that if its provisions conflict with a provision of state law, the provision that is most protective of patient privacy prevails.

The state Confidentiality of Medical Information Act allows a provider of health care, upon an inquiry concerning a specific patient, to release at its discretion a patient's name, address, age, and sex; a general description of the reason for treatment; the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information, as defined, unless there is a specific written request by the patient to prohibit that release.

~~This bill would prohibit a provider of health care from making discretionary releases that are unrelated to a physical injury suffered by a patient, and would limit certain disclosures about a patient's condition to his or her physical condition~~ *delete that latter provision and instead would add to the state Confidentiality of Medical Information Act, the HIPAA provisions related to patient directories and medical information disclosures to family members, relatives, or other persons identified by a patient, thereby requiring a provider of health care, health care service plan, or contractor to comply with those provisions.*

By expanding the definition of a crime under the Confidentiality of Medical Information Act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 *SECTION 1. Section 56.1005 is added to the Civil Code, to*
2 *read:*

3 *56.1005. (a) Except when an objection is expressed in*
4 *accordance with subdivision (b) or (c), a provider of health care,*
5 *health care service plan, or contractor may do any of the*
6 *following:*

7 *(1) Use the following medical information to maintain a*
8 *directory of patients in its facility:*

9 *(A) The patient's name.*

10 *(B) The patient's location in the facility.*

11 *(C) The patient's condition described in general terms that*
12 *does not communicate specific medical information about the*
13 *patient.*

14 *(D) The patient's religious affiliation.*

15 *(2) Disclose for directory purposes that information to either*
16 *of the following:*

17 *(A) A member of the clergy.*

18 *(B) Except for religious affiliation, any other person who asks*
19 *for the patient by name.*

20 *(b) A provider of health care, health care service plan, or*
21 *contractor shall inform a patient of the medical information that*
22 *it may include in a directory and the persons to whom it may*
23 *disclose that information, including disclosures to clergy of*
24 *information regarding religious affiliation, and provide the*
25 *patient with the opportunity to restrict or prohibit some or all of*
26 *the uses or disclosures permitted by subdivision (a).*

27 *(c) If the opportunity to object to uses or disclosures required*
28 *by subdivision (b) cannot practicably be provided because of the*
29 *patient's incapacity or an emergency treatment circumstance, a*
30 *provider of health care, health care service plan, or contractor*
31 *may use or disclose some or all of the medical information*
32 *permitted by subdivision (a) for the facility's directory, if that*
33 *disclosure is all of the following:*

1 (1) Consistent with a prior expressed preference of the patient,
 2 if any, that is known to the provider of health care, health care
 3 service plan, or contractor.

4 (2) In the patient’s best interest as determined by the provider
 5 of health care, health care service plan, or contractor, in the
 6 exercise of professional judgment.

7 (d) The provider of health care, health care service plan, or
 8 contractor shall inform the patient and provide an opportunity to
 9 object to uses or disclosures for directory purposes as required
 10 by subdivision (b) when it becomes practicable to do so.

11 SEC. 2. Section 56.1007 is added to the Civil Code, to read:

12 56.1007. (a) A provider of health care, health care service
 13 plan, or contractor may, in accordance with subdivision (c) or
 14 (d), disclose to a family member, other relative, domestic
 15 partner, or a close personal friend of the patient, or any other
 16 person identified by the patient, the medical information directly
 17 relevant to that person’s involvement with the patient’s care or
 18 payment related to the patient’s health care.

19 (b) A provider of health care, health care service plan, or
 20 contractor may use or disclose medical information to notify, or
 21 assist in the notification of, including identifying or locating, a
 22 family member, a personal representative of the patient, a
 23 domestic partner, or another person responsible for the care of
 24 the patient of the patient’s location, general condition, or death.
 25 Any use or disclosure of medical information for those
 26 notification purposes shall be in accordance with the provisions
 27 of subdivision (c), (d), or (e), as applicable.

28 (c) If the patient is present for, or otherwise available prior to,
 29 a use or disclosure permitted by subdivision (a) or (b) and has
 30 the capacity to make health care decisions, the provider of health
 31 care, health care service plan, or contractor may use or disclose
 32 the medical information if it does any of the following:

- 33 (1) Obtains the patient’s agreement.
- 34 (2) Provides the patient with the opportunity to object to the
 35 disclosure, and the patient does not express an objection.
- 36 (3) Reasonably infers from the circumstances, based on the
 37 exercise of professional judgment, that the patient does not
 38 object to the disclosure.

39 (d) If the patient is not present, or the opportunity to agree or
 40 object to the use or disclosure cannot practicably be provided

1 *because of the patient's incapacity or an emergency*
2 *circumstance, the provider of health care, health care service*
3 *plan, or contractor may, in the exercise of professional judgment,*
4 *determine whether the disclosure is in the best interests of the*
5 *patient and, if so, disclose only the medical information that is*
6 *directly relevant to the person's involvement with the patient's*
7 *health care. A provider of health care, health care service plan,*
8 *or contractor may use professional judgment and its experience*
9 *with common practice to make reasonable inferences of the*
10 *patient's best interest in allowing a person to act on behalf of the*
11 *patient to pick up filled prescriptions, medical supplies, X-rays,*
12 *or other similar forms of medical information.*

13 *(e) A provider of health care, health care service plan, or*
14 *contractor may use or disclose medical information to a public*
15 *or private entity authorized by law or by its charter to assist in*
16 *disaster relief efforts, for the purpose of coordinating with those*
17 *entities the uses or disclosures permitted by subdivision (b). The*
18 *requirements in subdivisions (c) and (d) apply to those uses and*
19 *disclosures to the extent that the provider of health care, health*
20 *care service plan, or contractor, in the exercise of professional*
21 *judgment, determines that the requirements do not interfere with*
22 *the ability to respond to the emergency circumstances.*

23 *SEC. 3. Section 56.16 of the Civil Code is repealed.*

24 ~~56.16.—Unless there is a specific written request by the patient~~
25 ~~to the contrary, nothing in this part shall be construed to prevent~~
26 ~~a provider, upon an inquiry concerning a specific patient, from~~
27 ~~releasing at its discretion any of the following information: the~~
28 ~~patient's name, address, age, and sex; a general description of the~~
29 ~~reason for treatment (whether an injury, a burn, poisoning, or~~
30 ~~some unrelated condition); the general nature of the injury, burn,~~
31 ~~poisoning, or other condition; the general condition of the~~
32 ~~patient; and any information that is not medical information as~~
33 ~~defined in subdivision (e) of Section 56.05.~~

34 ~~SECTION 1. Section 56.16 of the Civil Code is amended to~~
35 ~~read:~~

36 ~~56.16.—Unless there is a specific written request by the patient~~
37 ~~to the contrary, nothing in this part shall be construed to prevent~~
38 ~~a provider, upon an inquiry concerning a specific patient, from~~
39 ~~releasing at its discretion any of the following information, when~~
40 ~~related solely to a physical injury suffered by that patient: the~~

1 patient's name, address, age, and sex; a general description of the
2 reason for treatment (whether an injury, a burn, poisoning, or
3 some unrelated physical condition); the general nature of the
4 injury, burn, poisoning, or other physical condition; the general
5 condition of the patient; and any information that is not medical
6 information as defined in subdivision (e) of Section 56.05.

7 ~~SEC. 2.~~

8 *SEC. 4.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1615

VERSION: AMENDED MAY 2, 2006

AUTHOR: SIMITIAN

SPONSOR: AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: STATE AGENCIES: COLLECTION OF DATA: ANCESTRY OR ETHNIC ORIGIN

Existing Law:

- 1) Prohibits persons in California from being denied full and equal access to the benefits of, or being subjected to discrimination under any program that is administered by the state or funded by the state on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability. (GC § 11135(a))
- 2) Prohibits a licensing board from printing or circulating any publication, or to make any non-job-related inquiry that expresses any limitation, specification, or discrimination as to race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation unless that board is acting in accordance with federal equal employment opportunity guidelines or regulations. (GC § 12944 (c))
- 3) Prohibits including any question on any application or form required by a state agency pertaining to the applicant's race, sex, marital status or religion. (GC § 8310)
- 4) Requires state agencies which directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians to use separate collection categories and tabulations for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian. (GC § 8310.5)
- 5) Requires all state agencies to categorize Filipinos separately in any statistical tabulation of minority groups. (GC § 11092)
- 6) Requires all state agencies to categorize Pacific Islanders separately in any statistical tabulation of minority groups. (GC § 11092.5)
- 7) Requires the Department of Finance (DOF) to report Asian-Pacific Islanders as a distinct category and not combine Asian-Pacific Islanders into any other category. (GC § 13073.1)

This Bill:

- 1) Establishes the Heritage Respect and Recognition Act. (GC § 8310.6(a))

- 2) Requires any state entity that directly or by contract collects demographic data on the ancestry, ethnic origin, ethnicity, or race of Californians to do all of the following: (GC § 8310.6(c))
 - Provide forms that offer respondents the option of selecting one or more ethnic or racial designations pursuant to the federal Office of Management and Budget's "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity."
 - Prohibits the use of a single designation for multiracial respondents.
 - Include all of the following when reporting data on respondents' ancestry, ethnic origin, ethnicity, or race to another state entity to be tabulated or reported:
 - The number or percentage of respondents who identify with each ethnic or racial designation alone and not in combination with any other ethnic or racial designation.
 - The number or percentage of respondents who identify with each ethnic or racial designation, whether alone or in combination with other ethnic or racial designations.
 - The number or percentage of respondents who identify with multiple ethnic or racial designations.
- 3) Requires such data to be tabulated or reported in a manner that complies with the rules for multiple race response allocation issued by the federal Office of Management and Budget, for the purposes of civil rights monitoring and enforcement, in cases of state or federally mandated actions related to an ethnic or a racial community, or related to assessing disparate impact or discriminatory patterns, when reported to any other state entity. (GC § 8310.6(c)(2)(D))
- 4) Requires all state entities to comply as early as reasonably possible when updating forms, software, hardware, or information collection procedures, and in no event later than January 1, 2014. (GC § 8310.6(d))

Comment:

- 1) **Author's Intent.** According to the author, as the population of multiracial Californians grows, the methods for collecting data have not kept up. There has been a lot of discussion since the early 1990's on this topic, but there still seems to be a disconnect at the state level. The federal government has an interagency commission on racial classification. The formation of this commission led to the Office of Management and Budgets (OMB) developing a directive which set standards on the collection and use of racial and ethnic data. This directive, last revised in 1997, was implemented in the 2000 United States Census. All federal agencies are required to comply with this directive.
- 2) **DOF.** The Department of Finance's Demographic Research Unit provides demographic research and analysis, produces publications of current population estimates and future projections of population, and disseminates census data. The DOF generally does not collect data, it analyzes and reports on data that is already available. The DOF typically follows Federal standards where they apply.
- 3) **Self-ID vs. Ancestry.** Any collection of data pertaining to ethnic origin is complicated by the issue of self-identification of ethnicity versus ancestry. A person's ethnic affiliation may not be at all related to his or her ethnic ancestry. For example, a Chinese child adopted by an Italian family may self-identify as Italian even though her ethnic ancestry is Chinese.

This issue also impacts many people of mixed heritage, for whom it can be difficult to accurately identify ethnicity when limited to specific categories such as "African American." Additionally, ethnic groups tend to evolve, and even the name of the ethnic group can change. Over time, an individual's ethnic identity can evolve. There is not a simple answer

for these issues, though this bill does help to address reporting for persons of mixed heritage.

- 4) **BBS.** The Board does not currently collect racial or ethnic data of its licensees, registrants, or applicants, but an anonymous survey is being developed. Even if this bill does not pass, the federal standards would be helpful to the Board in how to best formulate its survey and use the resulting data.

5) **Support and Opposition.**

Support:

American Counseling Association
American Federation of Television and Radio Artists
American Multiethnic Association
Asian American for Civil Rights & Equality (AACRE)
Asian Pacific Islander American Public Affairs Association (APAPA)
Bridge Communications, Inc.
California Medical Association
Cancer Resources & Advocacy
Chicano Consortium
Council on American-Islamic Relations (CAIR), Sacramento Valley
Crisis Support Services of Alameda County
Global Family Festival
Holt International
International Child Resource Institute
I (Interracial Family) Pride
Ione Band of Miwok Indians
Japanese American Citizens League (JACL), Berkeley
Japanese American Citizens League (JACL), San Jose
Japanese American Citizens League (JACL), San Mateo
Jewish Multiracial Network
Lambda Letters Project
Level Playing Field Institute
Life Learning Academy
Mixed Heritage Center
Mixed Identity Student Organization, Western Washington University
Mixed Island
Mixed Student Union, UC Berkeley
Mosaic
Multicultural Mental Health Providers Network
Multiethnic Education Program (International Child Resource Institute)
Multiracial Americans of Southern California
New/Demographic
New York University Multiracial Law Students Association
Organization of Chinese Americans (OCA), Sacramento
Organization of Multiracial and Biracial Students, Brown University
Pact, an Adoption Alliance
Swirl
Tomorrow's Family
Topaz Club
University of Southern California Hapa Student Community
Steve Westly, California State Controller
Cruz M. Bustamante, Lieutenant Governor, State of California
(61) individuals

Opposition:

Project RACE (Reclassify All Children Equally)

6) History

2006

May 1 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 3. Noes 1.)

Apr. 17 Hearing postponed by committee. Set for hearing April 25.

Apr. 4 From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Mar. 21 Set for hearing April 18.

Mar. 20 Set, first hearing. Hearing canceled at the request of author.

Mar. 15 Set for hearing March 28.

Mar. 9 To Com. on JUD.

Feb. 27 Read first time.

Feb. 25 From print. May be acted upon on or after March 27.

Feb. 24 Introduced. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MAY 2, 2006
AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1615

Introduced by Senator Simitian
(Coauthor: Senator Bowen)

*(Coauthors: Assembly Members Bass, Coto, Jones, Mullin, and
Torrico)*

February 24, 2006

An act to add Section 8310.6 to the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1615, as amended, Simitian. State agencies: collection of data: ancestry or ethnic origin.

Existing law requires state agencies, boards, or commissions that directly or by contract collect demographic data as to the ancestry or ethnic origin of Californians, and state agencies conducting surveys as to the ancestry or ethnic origin of state civil service employees, to use separate collection categories for each major Asian and Pacific Islander group.

This bill would enact the Ethnic Heritage Respect and Recognition Act to require any state agency, board, or commission that directly or by contract collects demographic data, as soon as reasonably feasible and in no event later than January 1, 2014, to provide forms that offer respondents the option of selecting one more ethnic or racial designation according to specified federal standards.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 8310.6 is added to the Government
2 Code, to read:

3 8310.6. (a) This section shall be known and may be cited as
4 the Ethnic Heritage Respect and Recognition Act.

5 (b) The Legislature hereby finds and declares all of the
6 following:

7 (1) ~~The state~~ *State* of California currently has the largest
8 population of people among the United States who identify with
9 more than one ancestry, ethnicity, or race. This population of
10 Californians who identify as multiracial is rapidly growing.

11 (2) Many state forms that currently require respondents to
12 choose only a single ancestry, ethnicity, or race force multiracial
13 Californians to deny a significant part of their heritage.
14 Information collected in this manner often deprives the state of
15 accurate data with which to meet the needs of its diverse
16 communities.

17 (3) It is in the best interest of ~~the state~~ *State* of California to
18 respect, embrace, and understand the full diversity of its citizens.

19 (4) Respect for individual dignity should guide the processes
20 and methods for collecting and encoding data on ancestry,
21 ethnicity, and race.

22 (5) Since 1997, the federal Office of Management and
23 Budget's "Standards for Maintaining, Collecting, and Presenting
24 Federal Data on Race and Ethnicity" have required federal
25 agencies to ensure that individuals have the option of selecting
26 one or more ethnic or racial designations on federal government
27 forms requesting this information.

28 (c) Any state agency, board, or commission that directly or by
29 contract collects demographic data on the ancestry, ethnic origin,
30 ethnicity, or race of Californians shall do all of the following:

31 (1) Provide forms that offer respondents the option of
32 selecting one or more ethnic or racial designations pursuant to
33 the federal Office of Management and Budget's "Standards for
34 Maintaining, Collecting, and Presenting Federal Data on Race
35 and Ethnicity." Recommended forms for the instruction
36 accompanying a multiple response question are "mark one or
37 more" and "select one or more." *A single designation for*
38 *multiracial respondents does not satisfy this requirement.*

1 (2) Ensure in cases when data on respondents' ancestry, ethnic
2 origin, ethnicity, or race is reported to any other state agency,
3 board, or commission that it is neither tabulated nor reported
4 without all of the following:

5 (A) The number or percentage of respondents who identify
6 with each ethnic or racial designation alone and not in
7 combination with any other ethnic or racial designation.

8 (B) The number or percentage of respondents who identify
9 with each ethnic or racial designation, whether alone or in
10 combination with other ethnic or racial designations.

11 (C) The number or percentage of respondents who identify
12 with multiple ethnic or racial designations.

13 (D) ~~Complying~~ *For civil rights monitoring and enforcement,*
14 *complying with the rules for multiple race response allocation*
15 *issued by the federal Office of Management and Budget Bulletin*
16 *No. 00-02 in cases of state or federally mandated actions related*
17 *to an ethnic or a racial community, or to assessing disparate*
18 *impact or discriminatory patterns. In these cases, the requirement*
19 *of subparagraph (C) shall not be considered satisfied without*
20 *also complying with the requirements of subparagraphs (A), (B),*
21 *and (D).*

22 (d) Each state agency, board, or commission required to
23 comply with subdivision (c) shall comply as early as reasonably
24 feasible when updating forms, software, hardware, or
25 information collection procedures, and in no event later than
26 January 1, 2014.

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Recommendation #3

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State of California

Memorandum

To: Board Members
From: Christy Berger
Legislation Analyst
Date: May 2, 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.

Committee Recommendation

The Policy and Advocacy Committee recommends amending the statute to permit a person who has been licensed for a minimum of four years in another state, whose license is valid, active 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

Letters from out of state applicant

Attachment A

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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.

Attachment B

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Fw: A CALL TO RE-EVALUATE POLICIES REGARDING OUT OF STATE PH.D LEVEL CLINICAL SOCIAL WORKERS.....

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 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,

From: Marcy Cole <marcycole@comcast.net>

Date: April 22, 2006 1:20:44 PM PDT

To: Paul_Riches@dca.ca.gov

Subject: Re. Sponsorship of legislation for out of State Social Workers

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

Thank you so much for the follow up response to my letter. I am grateful to you all for taking the serious consideration that has now led to the sponsoring of legislation on behalf of out-of-state applicants for licensure as a Clinical Social Worker in this State, which will allow for more immediate eligibility to sit for the California licensing exams. I am certain that this will make the transition for other colleagues a more just, smoother and welcoming one. It also confirms my resolve that sharing versus silence is the only way that healthy and constructive change can take place.

With that said, this particular sponsorship of legislation still does not address the inequity between out of State Social Work clinicians moving to this State with a Masters versus those, such as myself, with both a Masters and a Doctorate from an accredited academic institution. I want to make the plea, once again, to please acknowledge and include differentiation in policy requirements regarding this level of experience. As you are well aware, a doctorate level out of State clinician brings years more of academic time and training and should be recognized as such. I urge you to not dismiss this issue, as it has been the central one for me personally, as well as all others who have gone before me and will follow.

Thank you again for your time, consideration and action taken thus far. Please keep me informed as to the request to sponsor new and separate legislation for those Doctoral Level Out of State Social Workers who are applying of licensure in the State of California.

Sincerely,

Marcy Cole, Ph.D

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Recommendation #4

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members

Date: May 2, 2006

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Review of Complaint Disclosure and Public Disclosure Policies

Background

On March 29, 2006 the Governor signed Executive Order S-03-06 which requires all state agencies to take a number of actions related to agency compliance with the California Public Records Act (Gov Code sec. 6250 et seq.). Among the required actions is for each agency to review (and revise as necessary) written guidelines for accessibility of records. This order appears to have been triggered by an audit of agency compliance with the California Public Records Act (Act) by Californians Aware (an advocacy group focused on access to government information). The audit found substantial non-compliance by many state agencies.

The board has two policies relating to the disclosure of public information that require review under the provisions of the Executive Order.

BBS Policy E-03-1 -- Complaint Disclosure Policy

This policy (adopted 2/21/2003) restricts the disclosure of complaint information to the form of an accusation prepared and filed by the Attorney General's office with three exceptions:

1. Upon the issuance of a citation.
2. Upon the filing of an Interim Suspension Order.
3. Upon the filing or appearance of the board at a hearing pursuant to Penal Code Section 23.

BBS Policy E-04-2 -- Public Disclosure Policy

This policy (adopted 11/19/2004) requires:

1. Disclosure of the status of a license
2. The date of issuance of a license
3. Expiration date of a license
4. Prior discipline against a license
5. Prior accusations against a license
6. Temporary restraining orders or interim suspension orders filed
7. Malpractice judgments in excess of \$30,000
8. Citations issued within the prior five years

The policy also requires that license verification information (including discipline and citation information) be disclosed on the board's website.

Business and Professions Code Requirements

Business and Professions Code Section 27 requires the board (along with many other DCA boards and bureaus) to provide license status information on its website in accordance with the California Public Records Act. Status information includes prior enforcement actions.

B&P Section 800 et seq. requires the following:

1. That the board maintain a central file that contains conviction information, settlements and judgments over \$3,000, public complaints, and disciplinary information.
2. That insurers report, to the board, settlements and arbitration awards in excess of \$10,000 for malpractice.
3. That courts report, to the board, malpractice judgments in excess of \$30,000

California Public Records Act

Generally requires the disclosure of any public document upon request by a member of the public. The act does establish specific exceptions to this general rule for a range of documents including investigative materials, examinations, communications with counsel, etc. Attached to this memorandum is a summary of the California Public Records Act prepared by the Attorney General.

Recommendations

The Policy and Advocacy Committee recommends that the board's public disclosure policy (E-04-02) be amended to be consistent with the requirements of the California Public Records Act and Business and Professions Code Section 27. The current policy of not disclosing citations issued after five years is inconsistent with the Act and should be eliminated. Citations are public documents and do not fall into any of the exceptions to full public disclosure in the Act.

The Policy and Advocacy Committee recommends that the board's public disclosure policy (E-04-02) be amended to be consistent with the requirements of Business and Professions Code Sections 800 et seq. The current policy only requires disclosure of malpractice judgments in excess of \$30,000, but there are reporting requirements for reporting settlements and arbitration awards in excess of \$10,000.

Attached is a proposed revision of E-04-03 that reflects the recommendations above.

Attachments:

Executive Order S-03-06

BBS Complaint Disclosure Policy E-03-1

BBS Public Disclosure Policy E-04-2

DCA Guidelines for Access to Public Records LGL 02-01

Californians Aware Audit Results

Business and Professions Code Section 800 et seq.

Business and Professions Code Section 27

Summary of the California Public Records Act 2004, California Attorney General's Office

Letter from Consumer Regarding Disclosure Policy

Attachment A

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Executive Order

EXECUTIVE DEPARTMENT

STATE OF CALIFORNIA



EXECUTIVE ORDER EXECUTIVE ORDER S-03-06
by the
Governor of the State of California

WHEREAS, the access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state; and

WHEREAS, the California Public Records Act (Gov. Code sec. 6250 et seq.) provides that public records are open to inspection at all times during the office hours of the state or local agency; and

WHEREAS, the California Public Records Act requires that most state and local agencies shall establish written guidelines for accessibility of records which shall be posted in a conspicuous public place at the offices of these agencies and a copy of the guidelines shall be available upon request free of charge (Gov. Code sec. 6253.4); and

WHEREAS, at the November 2, 2004 General Election, the people of the State of California approved Proposition 59 to amend the Constitution to provide that statutes and rules furthering public access shall be broadly construed to further the people's right to access government information (Art. I, sec. 3 of the Constitution); and

WHEREAS, I, as Governor, have made a commitment that public information concerning the conduct of the state's business shall be disclosed to the people; and

WHEREAS, state agencies and departments under my authority shall take steps to ensure that they are complying with the language and intent of the California Public Records Act and Article I, Section 3 of the Constitution.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

Within 30 days of the date of this Executive Order, each agency, department, board, commission and office of the executive branch under my supervisory authority shall:

- (1) Establish and/or review its written guidelines for accessibility of records; revise, as appropriate, its written guidelines for accessibility of records; and post the guidelines in a conspicuous public place at all office locations; and
- (2) Identify and designate the members of its staff who shall be primarily responsible for receiving and responding to California Public Records Act requests and train those persons on the requirements of the Act; and
- (3) Submit a written certification to the Legal Affairs Secretary that the designated staff members have been trained on the requirements and responsibilities of the California Public Records Act.

Agency secretaries and heads of independent departments and boards will be responsible for ensuring compliance with the provisions of this Order.

The Legal Affairs Secretary shall provide detailed instructions on the methods of timely compliance with this Order.

This Order is not intended to, and does not create any right or benefit, substantive or procedural, enforceable in law or equity, against the State of California, its departments, agencies or other entities, its officers or employees, or any other person.

I FURTHER DIRECT, that as soon as hereafter possible, this order shall be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this order.



IN WITNESS WHEREOF I have here unto set my hand and caused the Great Seal of the State of California to be affixed this the twenty-ninth day of March 2006.

/s/ Arnold Schwarzenegger

Governor of California

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Attachment B

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**BOARD OF BEHAVIORAL SCIENCES**

400 R STREET, SUITE 3150, SACRAMENTO, CA 95814

TELEPHONE: (916) 445-4933 TDD: (916) 322-1700

WEBSITE ADDRESS: <http://www.bbs.ca.gov>

SUBJECT: Complaint Disclosure Policy	POLICY # E-03-1	DATE ADOPTED: 02/21/03
	SUPERSEDES: E-01-2	PAGE: 1 OF 1
DISTRIBUTE TO: Enforcement Staff / Board Members	APPROVED BY: BOARD OF BEHAVIORAL SCIENCES	

Policy: Upon a request from the public, The Board of Behavioral Sciences (Board) releases complaint information in the form of an accusation once an accusation is prepared and filed by the Attorney General's Office, with certain exceptions. Following are exceptions to this policy, where complaint information is disclosed in lieu of or prior to the filing of an accusation.

1. A citation, fine, and/or order of abatement may be disclosed after the issuance of a citation. (Under Sections 125.9 and 148 of the Business and Professions Code and Section 1886 et. seq. Title 16 of the California Code of Regulations), the Board may issue citations, fines, and orders of abatement in lieu of filing of an accusation.
2. An interim suspension order (ISO) may be disclosed upon filing of the ISO. (Under Section 494 of the Business and Professions Code, an ISO may be sought and issued in a case that is considered very recent, provable, shocking in nature, and posing an immediate threat.
3. An action taken by the Board pursuant to Penal Code Section 23 may be disclosed, upon the Board's appearance or filing. (Under Section 23 of the Penal Code, the Board may intervene in a criminal case to obtain a court order to suspend or restrict practice of marriage and family therapy, licensed educational psychology, or licensed clinical social work in advance of the filing of an accusation.)

Accusations and ISOs are allegations of wrongdoing for which there has not been a final determination. Decisions resulting from these actions are matters of public record and will be disclosed.

Implementation: Immediate

Attachment: None

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Attachment C

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**BOARD OF BEHAVIORAL SCIENCES**

400 R Street, Suite 3150, Sacramento, CA 95814-6240

Telephone (916) 445-4933

TDD (916) 322-1700

Website Address: <http://www.bbs.ca.gov>

SUBJECT: Public Disclosure	POLICY # E-04-2	DATE ADOPTED: 11/19/04
	SUPERSEDES: E-95-1 SUPERSEDES: E-01-1 SUPERSEDES: E-04-1	PAGE: 1 OF 2
DISTRIBUTE TO: All Staff/Board Members	APPROVED BY:	BOARD OF BEHAVIORAL SCIENCES

Policy:

Upon request by a member of the public, the following information, if known, shall be disclosed:

1. Current status of a license, issuance and expiration date of a license, prior discipline, accusation filed, temporary restraining order or interim order of suspension issued or the resulting discipline.
2. Malpractice judgments of more than \$30,000 reported to the Board on or after July 1, 1995.
3. Final determination of a citation for a violation of the law by the Board within the last five years. This is not considered disciplinary action. Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure. (B&P Code Section 125.9(d)).

A request by a member of the public includes access to the Board's Web site.

Implementation:**TO IMPLEMENT THE PUBLIC DISCLOSURE POLICY:**

Effective immediately, the CAS (Consumer Affairs System) mainframe should be used for verifying the status of a license. This information is extracted nightly to the Board's Web site under its "Verify License" feature so that the public may access the information on the Board's Web site.

INFORMATION AVAILABLE BY MAIL AND TELEPHONE

License Status and/or formal action: Staff are to use the CAS 624 License Verification screen to verify the current status of a license.

1. Name
2. Address of Record
3. Issued Date
4. Expiration Date
5. License Number
6. Current status (status codes)
7. School attended and year of graduation.

Do NOT provide the DOB (date of birth), social security number or other information. Should the caller request more information, they will need to submit a request in writing and then we will obtain a release from the licensee. This procedure applies to telephone verification requests and does not apply when the Board is served with a subpoena.

If a Public Disclosure record is present on an individual's license a PF6 key will appear at the bottom of the 624 (License Verification) screen. Select the PF6 key and continue to hit enter until it brings you back to the 624 screen. This will paginate you through each public disclosure screen that is available for that license record. In addition, the Public Disclosure records are extracted from the CAS mainframe nightly and made available on the Board's Web site under the "license verification" feature so the public may access the information. The following disclaimers appear for each public disclosure category:

Administrative Disciplinary Actions Disclaimer:

"The information on Board disciplinary actions only goes as far back as 1980 following the final date of the action, such as the effective date of the discipline (e.g., revocation, probation, etc.) or the last day of probation. Our data does not include actions that were a result of action prior to this date."

* Note: If only status code 50 (Accusation filed) appears, also read the following:

"Although an Accusation has been filed, the subject has not had a hearing or been found guilty of any charges."

Malpractice Judgment Disclaimer:

"A malpractice judgment is an award for damages and does not necessarily reflect that the care provided by the licensee is substandard. All such reported judgments are reviewed by the Board and action taken only when and if it is determined that a violation of the licensing laws and/or regulations has occurred. Judgments are subject to a possible appeal." The information provided includes judgments reported on or after July 1, 1995.

Administrative Citations Issued:

A citation and/or fine has been issued for a violation of the law. This is not considered disciplinary action under California law but is an administrative action. Payment of the fine amount represents satisfactory resolution of the matter.

Implementation Date: Immediate

Attachment: None



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>



SUBJECT: Public Disclosure	POLICY # E-04-2	DATE ADOPTED: 11/19/04
	SUPERSEDES: E-95-1 SUPERSEDES: E-01-1 SUPERSEDES: E-04-1	PAGE: 1 OF 2
DISTRIBUTE TO: All Staff/Board Members	APPROVED BY:	BOARD OF BEHAVIORAL SCIENCES

Policy:

Upon request by a member of the public, the following information, if known, shall be disclosed:

1. Current status of a license, issuance and expiration date of a license, prior discipline, accusation filed, temporary restraining order or interim order of suspension issued or the resulting discipline.
2. Malpractice judgments of more than \$30,000 reported to the Board on or after July 1, 1995.
3. Final determination of a citation for a violation of the law by the Board ~~within the last five years~~. This is not considered disciplinary action. Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure. (B&P Code Section 125.9(d)).
4. Malpractice settlements and arbitration awards in excess of \$10,000 reported to the board.

A request by a member of the public includes access to the Board's Web site.

Implementation:

TO IMPLEMENT THE PUBLIC DISCLOSURE POLICY:

Effective immediately, the CAS (Consumer Affairs System) mainframe should be used for verifying the status of a license. This information is extracted nightly to the Board's Web site under its "Verify License" feature so that the public may access the information on the Board's Web site.

INFORMATION AVAILABLE BY MAIL AND TELEPHONE

License Status and/or formal action: Staff are to use the CAS 624 License Verification screen to verify the current status of a license.

1. Name
2. Address of Record
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5. License Number
6. Current status (status codes)
7. School attended and year of graduation.

Do NOT provide the DOB (date of birth), social security number or other information. Should the caller request more information, they will need to submit a request in writing and then we will obtain a release from the licensee. This procedure applies to telephone verification requests and does not apply when the Board is served with a subpoena.

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Malpractice Judgment Disclaimer:

"A malpractice judgment is an award for damages and does not necessarily reflect that the care provided by the licensee is substandard. All such reported judgments are reviewed by the Board and action taken only when and if it is determined that a violation of the licensing laws and/or regulations has occurred. Judgments are subject to a possible appeal." The information provided includes judgments reported on or after July 1, 1995.

Administrative Citations Issued:

A citation and/or fine has been issued for a violation of the law. This is not considered disciplinary action under California law but is an administrative action. Payment of the fine amount represents satisfactory resolution of the matter.

Implementation Date: Immediate

Attachment: None

Attachment D

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Department of Consumer Affairs

Policy & Procedures

<i>TITLE:</i> GUIDELINES FOR ACCESS TO PUBLIC RECORDS	<i>SUPERSEDES:</i> LGL 02-01	<i>POLICY #</i> LGL 06-01
<i>POLICY OWNER :</i> LEGAL AFFAIRS DIVISION	<i>EFFECTIVE:</i> IMMEDIATELY	<i>PAGE:</i> 1 of 1 <i>ATTACHMENT(S):</i> 1 of 4
<i>DISTRIBUTE TO:</i> ALL DCA EMPLOYEES	<i>ORIGINAL APPROVED BY:</i>	
<i>ISSUE DATE:</i> APRIL 24, 2006	CHARLENE ZETTEL, Director Department of Consumer Affairs	

Policy	Every state agency is required under the Public Records Act (PRA) to establish written guidelines for the public to obtain access to public records. The attached guidelines comply with that requirement and the requirements under the PRA aid the member of the public in making a focused request by assisting in identifying the records and information that may be responsive to the request. A copy of the guidelines shall be posted in a conspicuous public place in your offices and shall be provided to any person, upon request, free of charge.
Applicability	This policy applies to all governmental officials and employees of DCA and any of its divisions, bureaus, boards, and other constituent agencies. Within this policy, the generic acronym "DCA" applies to all of these entities.
Purpose	The purpose of this policy is to establish Guidelines for Access to Public Records.
Authority	Government Code section 6253.4; Business and Professions Code sections 110 and 161
Revision	Determination of the need for revisions to this policy is the responsibility of the Legal Affairs Division of the DCA. Specific questions regarding the status or maintenance of this policy should be directed to the Policy & Publications Development (PPD) Office at (916) 574-7370. Questions about specific issues should be directed to the Legal Affairs Division at (916) 574-8220.
Attachments	Department of Consumer Affairs Public Records Act (PRA) Guidelines

**Department of Consumer Affairs
Public Records Act (PRA) Guidelines
(Government Code Section 6253.4)**

The California Legislature has declared that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. The California Public Records Act, Government Code section 6250 *et seq.*, requires that public records be available to the public upon request. The Department of Consumer Affairs has established the following guidelines to ensure that members of the public fully understand and are afforded the opportunity to exercise their right to inspect and obtain copies of public records.

Public records in the physical custody of the Department of Consumer Affairs or any of its constituent licensing agencies that are not exempt from disclosure will be made available for inspection or copying as follows:

1. Any person may review public records of the department or its constituent agencies (licensing boards) during weekdays and hours that these offices are regularly open for business. Public records will be available for inspection only at the office or location where they are regularly and routinely maintained. The operational functions of the department or its agencies will not be suspended to permit inspection of records during periods in which such records are reasonably required by personnel in the performance of their duties. If the request requires review of numerous records, a mutually agreeable time should be established for the inspection of the records.
2. Requests for inspection or copying of public records:
 - (a) may be made orally or in writing (including email);
 - (b) if made orally, the requestor should be encouraged to place the request in writing or staff should confirm the request in writing through an intake form or by confirming letter;
 - (c) should be addressed to, or directed to, the specific bureau, program or constituent agency within the department (this includes the licensing boards) that the requestor believes has physical custody of the records being sought.
3. Where a request is not specific and focused, unless the department and its constituent agencies make available an index of its records, staff to assist the requestor in making a focused and effective request that reasonably describes an identifiable record or records to the extent it is reasonable under the circumstances:
 - (a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

- (b) Describe the information technology and physical location in which the records exist.
 - (c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
4. The requestor will be notified in ten (10) days whether the agency has disclosable public records. If the agency determines that it has disclosable records, the agency shall provide the requestor with an estimated date and time when the records will be made available. Where unusual circumstances exist as specified in Government Code section 6253(c), the agency may, by written notice to the requestor, extend the time for response not to exceed fourteen (14) additional days.
 5. If a request is made for a record that is stored in an electronic format, the department and its constituent licensing agencies will comply with the request in accordance with Government Code section 6253.9:
 - The department and its constituent agencies shall make the information available in any electronic format in which it holds the information.
 - The department and its constituent agencies shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the department or its constituent agencies to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
 - The requestor shall bear the cost of producing a copy of the record, including the cost to construct a record from existing data, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
 - (a) The department or one of its constituent agencies would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
 - (b) Satisfying the request would require data compilation, extraction, or programming to produce the record.
 6. The department and its constituent agencies may refuse to disclose any records that are exempt from disclosure under the Public Records Act.
 7. Functions of the department or its constituent licensing agencies will not be suspended to permit, and public records will not be made available for, inspection during periods in which such records are reasonably required by department personnel in the performance of their duties. Special arrangements shall be made in advance for the inspection or copying of voluminous records.

8. Public records in the possession of the department and its constituent agencies may be inspected only in the presence of departmental personnel, except in those cases where the director or his or her designee (in the case of departmental records), or the executive officer or his or her designee (in the case of records in the custody of a licensing agency), determines otherwise. Physical inspection of such records will be permitted at places within the departmental offices or offices of the licensing agency as determined by the director or the executive officer, respectively.
9. The department and its constituent agencies will provide copies of any requested public records not exempt from disclosure upon payment of the following fees authorized by Business and Professions Code section 161:
 - Requested public records will be produced at a charge of ten (10) cents per page plus the actual costs of the staff time for retrieving and duplicating the document(s) and postage (if necessary). The cost of staff time will be computed in accordance with the guidelines contained in Section 8740 of the State Administrative Manual. However, these fees may be waived if the costs of retrieval and duplication are less than the cost of processing the payment.
 - Requests by an individual for copies of records pertaining to that individual (e.g., licensee files, personnel files, etc.) will be provided to that individual at a cost of ten (10) cents per page. In these cases, the cost of staff time for retrieving and duplicating the document(s) shall not be charged (Civil Code § 1798.33). However, these fees may be waived if the costs of duplication are less than the cost of processing the payment.
 - Lists of licensees will be provided in electronic, paper, or mailing label form at a charge sufficient to recover the estimated costs of providing the data. Further information and a list of charges may be obtained by contacting the Office of Information Services at (916) 574-8004.
 - As provided in Business and Professions Code section 163, a charge of \$2.00 will be made to certify any document. This fee is in addition to copying costs.
10. A person who inspects records of the department or its licensing agencies shall not destroy, mutilate, deface, alter or remove any such record or records from the location designated for inspection, but shall physically return these in the same condition as when received, upon either the completion of the inspection or upon verbal request of departmental or agency personnel.
11. In the event that any portion of these guidelines may be deemed at any time to conflict with any law or regulation, the law or regulation shall prevail.
12. A copy of these guidelines shall be posted in a conspicuous public place in the offices of the department, and the offices of each of the constituent licensing agencies of the department. A copy of these guidelines shall be made available free of charge to any person requesting them.

13. Constituent licensing agencies of the department may, by written addendum to these guidelines approved by the executive officer or bureau, division or program chief, specify the procedures by which requests for public records shall be processed and the manner, if any, by which a record of such request shall be maintained by the agency.

APPROVED:

CHARLENE ZETTEL, Director
Department of Consumer Affairs

Date

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Attachment E

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**PUBLIC RECORDS ACT
COMPLIANCE AUDIT
OF
CALIFORNIA STATE AGENCIES**

Conducted January 2006

by

Ryan P. McKee

PUBLIC RECORDS ACT COMPLIANCE AUDIT OF CALIFORNIA STATE AGENCIES Conducted January 2006

Introduction: The object of the California Public Records Act ("CPRA;" Government Code Section 6250 *et seq.*), originally enacted in 1968, is to ensure the people's right to know how their state and local governments are functioning. Fashioned after the federal Freedom of Information Act, the CPRA's intent is made clear in its very first section:

"[T]he Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental right of every person in this state." Government Code Section 6250.

In addition, the voters amended California's Constitution in 2004 with the passage of Proposition 59, elevating the public's right to open government to a constitutionally protected right:

"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." California Constitution, Article 1, Section 3(b)(1).

The CPRA defines a "public record" as any recording in any form of communication or representation, relating to the conduct of the public's business, that is prepared, owned, used or retained by any governmental agency in the State, regardless of its form or physical characteristics.

Any person, company, corporation, firm, partnership or association has the right to inspect public records during normal business hours or to receive a copy of a record by paying the cost of duplication, except when the record is exempted from disclosure by state or federal law.

Governmental agencies are not allowed to delay the inspection of public records and, in all circumstances, must respond to a public records request within 10 calendar days. However, for records known to be disclosable, such as those to be requested in this audit, the law says access is to be provided "promptly," and not needlessly delayed for some portion of 10 days. The CPRA emphasizes that nothing "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." Government Code Section 6253(b)-(d).

Additionally, the courts have found that an agency may not require a public records request to be in writing. "The California Public Records Act plainly does not require a written request." *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.

Purpose of this Compliance Audit: In recent years, corruption or abuse of office has been a frequent topic of news stories and criminal prosecutions in state and local government, from the offices of the Secretary of State and the Insurance Commissioner; to the Board of Supervisors in San Bernardino county; to the cities of Carson, South Gate, Compton, Vernon, Inglewood, Colton and San Diego. Unlawful secrecy has also led to civil suits against the Los Angeles County Board of Supervisors, the school districts of Orange, Bonita, and Chino Valley, the Pasadena Area Community College District; the cities of Claremont and Sierra Madre; water agencies like Three Valleys MWD and San Antonio Water Company; quasi-governmental non-profits like the Hollywood Business Improvement District and the Entertainment Industry Development Corporation – and even to a little-noticed network of police agencies formed for mutual assistance in combating drug crimes. Complaints of violations of the open meeting laws in particular have reached such a volume that special divisions in several District Attorneys' Offices have been created solely to investigate them.

As for compliance with the California Public Records Act – often a powerful tool for uncovering governmental or even private sector shortcomings ranging from the questionable to the criminal (see report, “Stories Reported Thanks to Public Records”) – no public officer has been given authority to go to court to compel disclosure, as is the case with the open meeting laws. Two bills passed by the Legislature that would have given the Attorney General the authority to issue non-binding opinions on public agencies’ failure to provide records access were vetoed by Governor Davis. A report several years ago by the legislative joint task force concluded that the California Public Records Act was, for several reasons, toothless for want of penalties for non-compliance or other credible enforcement mechanisms.

Compliance Audits Elsewhere: Over the last decade, in California and elsewhere, various organizations – usually but not always newspapers – have increasingly conducted public records law compliance “audits” of (usually local) government agencies. Most of those have done so by sending people to visit agencies in person and ask to inspect or to obtain copies of specified records that should be available to the public immediately with minimum delay, and with no argument. The agencies’ responses are then compared in terms of promptness, copying costs, and no-questions-asked service. The results are then publicly reported. The effect is to give credit to the agencies who know their obligations to be open to the public and respond accordingly, and to give the rest a sense of where they need to improve. In California audits of this kind have been done in Los Angeles and Orange Counties, in Stockton, Vacaville, and most recently in Fresno, conducted by Californians Aware in the summer of 2005.

This Audit of California’s *state* government agencies, a first of its kind, tested how they respond to very simple requests to view and for copies of obviously disclosable and readily available public documents.

Audit Item 1: Records Access Guidelines

The thirty-two (32) agencies selected for audit were chosen because Section 6253.4 of the CPRA expressly identifies each by name as being required to perform as follows:

The following state agencies "shall establish written guidelines for accessibility of records. A copy of these **guidelines shall be posted in a conspicuous public place at the offices of these bodies**, and **a copy of the guidelines shall be available upon request free of charge** to any person requesting that body's records." Government Code Section 6253.4(a). (Emphasis added.)

The CPRA further states: "Public records are open to inspection at all times during the office hours of the state [agency;]" and, guidelines established for the accessibility of records "shall not operate to limit the hours public records are open to inspection." Government Code Sections 6253(a), 6253.4(b).

Audit Item 2: Form 700 Statements of Economic Interests

This open records requirement also aids the public's ability to insure that their public officials are free from conflicts-of-interest in their decision-making. The Political Reform Act (Government Code Sections 81000-91015) requires most state and local government officials to publicly disclose personal economic interests, and to refrain from decisions where a conflict lies. The Act generally prohibits state and local officials, employees, and candidates from accepting gifts of more than \$320 annually from a single source, or more than \$10 a month from a registered lobbyist.

The Fair Political Practices Commission ("FPPC"), responsible for enforcement of the Act's provisions, provides its Form 700 (Statement of Economic Interests) for use by public officials in their annual reporting. The Act makes all Form 700s available for public inspection during the agency's regular business hours and expressly prohibits the agency from placing any conditions on persons seeking access to the forms, or from requesting any information or identification from those persons:

"Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours ... **No conditions whatsoever shall be imposed** upon persons desiring to inspect or reproduce reports and statements filed under this title, **nor shall any information or identification be required of these persons**. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page." Government Code Section 81008(a). (Emphasis added.)

Part 1 of this audit requested immediate access to view a Form 700 and to receive a copy of the agency's "guidelines for accessibility of records."

Audit Item 3: Employment Contracts

The CPRA makes every employment contract of a public official or employee open to inspection, without regard to the requester's reason for wanting that information:

"**Every employment contract** between a state and local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255." Government Code Section 6254.8. (Emphasis added.)

The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." Government Code Section 6257.5.

Audit Item 4: Litigation Settlements

The courts have concluded that litigation settlement agreements, entered into by California public agencies, are public records open to inspection: "[D]ocuments relating to settlement of a private personal injury claim with public funds constitute 'writings' containing information regarding 'the conduct of the public business,' subject to public inspection and disclosure under the CPRA." *Register Division of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal.App.3d 893, 901 (4th Dist., 1984). "We conclude that assurances of confidentiality by the County regarding the settlement agreement are inadequate to transform what was a public record into a private one." *Id.* at 909.

Part 2 of this audit requested copies of an employment contract or similar document(s) reflecting the total compensation of the state agency's top-ranking employee, and a recent litigation settlement agreement.

Testing Methods: The records requester ("Auditor"), Ryan P. McKee, an 18-year old college student, personally visited the main office of each of the 32 State agencies, as identified by the California Secretary of State's Roster of Constitutional Officers, State Agencies, Departments, Boards, and Commissions, and asked to see the employee responsible for handling public record requests.

Once directed to that individual, the Auditor provided the Part 1 - 3x5" card shown here ----- >

He also asked to be directed to where the agency's "guidelines for accessibility of records" are posted. He recorded the time entering and leaving the office, any response to his requests, and any information that was requested from him.

When Part 1 was complete, he left his Part 2 - 8½ x 5½" signed, written request for copies of public records, shown here - - - - >

He then recorded when the agency notified him the documents were ready to be picked up, or when postmarked if he received the records by mail.

Public Records Request:

- (a) to view the most recent FPPC Form 700 (Statement of Economic Interests) for this public agency's top-ranking employee;
- (b) for a copy of this public agency's written guidelines for accessibility of public records.

Dear Public Records Administrator:

I request true and correct copies of the following public records:

1. the Employment Contract and/or similar document(s) that reflect the total annual compensation of this state agency's top-ranking employee; and
2. the most recent litigation settlement agreement, involving this state agency, which includes a payment of \$100,000 or more to the plaintiff(s).

Please call me (909-239-8493) when these documents are ready for my pick up. I assure this agency that I will pay the costs of duplication when I pick up these copies. In the alternative, the agency can mail the copies to the address below, and I will immediately reimburse the costs of duplication and mailing.

Respectfully,

Ryan McKee P.O. Box 8466, La Verne, CA 91750 (909)239-8493

All the information accumulated was then transferred to a computer file and the results tabulated.

All initial contacts in this 32-agency audit were performed over three days: January 17, 19, & 20, 2006. One agency was eliminated (Department of Youth Authority), because it had been merged with the Department of Corrections.

Agencies that refused to accept the requests for records during the first visit to their main office were sent follow-up written requests, mailed on January 24, 2006.

Data was accumulated and recorded for each agency during the 30-day period following the initial in-person visits to the main offices of all of the agencies. The audit concluded on February 19, 2006.

Results/Responses: Given news reports of several public records audits of *local* agencies, such as the latest done last fall by Californians Aware, one might expect an audit of these 31 *state* agencies to produce similar results, with 50 to 75% failing to properly respond to simple public records requests.

In this auditor's experience, having performed, just 14 months earlier, a similar audit of 52 *local* agencies within eastern Los Angeles and western San Bernardino counties, only 11 (21%) performed precisely as the law required.

Yet quite surprisingly, the present audit of 31 *state* agencies (all identified by name within the CPRA) found *none* complied exactly as the law requires, and many ignored almost entirely their duties as mandated by the CPRA and the Political Reform Act.

GRADES FOR STATE AGENCY PERFORMANCE

Before attempting to evaluate the quality of the responses of these state agencies to the requests for public records, the Auditor created a 100-point grading scale based upon point deductions for each failure to conform as commanded by the CPRA and Political Reform Act, and also for exceeding reasonable times for producing the records requested.

In a previous audit of 52 local agencies, where the verbal request was to view an FPPC Form 700 and the employment contract of the CEO, this auditor found that 48% produced both documents within 20 minutes (33% within only 12 minutes).

Since Part 1 of this present Audit requested to view records even less demanding (a FPPC Form 700 and the agency's written Guidelines for records access), this Auditor concluded that any time over 1 hour necessary to provide these documents was an excessive delay, and deserved a deduction in the score.

Additionally, each failure to provide one of the four documents requested was given a 20-point deduction, with each unlawful request for information made to the Auditor (his identity, affiliation, or a reason for seeking the records), prior to being allowed to view the documents requested in Part 1, was given a 5-point deduction, up to a maximum of 10 points.

Finally, points were deducted for an agency's failure to respond to the Part 2 written request within the CPRA's 10-day limit. And no credit was given for any document provided by an agency after 20 days.

Expectations of this Records Audit:

- 1) Guidelines for Records Access - - - - - posted for public in agency's main office
- 2) FPPC Form 700 provided for viewing & Guidelines for Records Access provided free - within 1 hour (without requesting any additional information from Auditor)
- 3) Salary Document & Settlement provided - - - within 10 days

Grading Scale	Point Deductions	(100 points possible)
100 = A+	Guidelines Not Posted in Agency Office	= -10 points
95 = A	Each free Copy of Guidelines & Form 700 to view	
90 = A-	provided within: 1 hour of request	= -0
85 = B+	1 hour to 1 day of request	= -5
80 = B	2 – 5 days of request	= -10
75 = B-	6 – 10 days of request	= -15
70 = C+	> 10 days or not at all	= -20
65 = C	Information Requested of Auditor - -	
60 = C-	Assessed at -5 for each request for:	
55 = D+	Identity, Affiliation, or	
50 = D	Why Records Being Sought =	-10 (maximum)
45 = D-	- - - - -	
40 = F+	Each Salary Document or Settlement Agreement	
35 = F	Provided - within 10 days	= -0
0-30 = F-	within 11-20 days	= -10

> 20 days or not at all = -20

Notable Findings

Part 1 Results -- Request made in person to view a Form 700 and receive a copy of the Guidelines:

- (a) The most striking discovery was that 90% of the state agencies failed to post, in their main office, a copy of the Guidelines for Accessibility of Public Records (Government Code Section 6253.4(a)). Two-thirds could not provide a copy of those Guidelines when requested by the Auditor during his visit to the agency's main office. Even 10 days after the visit to agency offices, more than half still had failed to provide the Guidelines; and some that did comply, illegally charged the Auditor a fee for the copy of the Guidelines.
- (b) When asked to present the FPPC Form 700 for the agency's top-ranking employee, 74% of the agencies could not produce the Form within one hour. Less than one-third could produce it in one day, and barely half produced the Form within 10 days. (In contrast, the Auditor's previous audit of 52 local agencies found almost half could produce the Form 700 in 20 minutes, 69% produced it within one day, and 88% provided it within 10 days.)
- (c) Employees at 71% of the state agencies wanted to know some information from the Auditor (his name, who he was working for, or why he wanted to view the record) before allowing him to see the Form 700. (This result proved similar to the 52-local agency audit, where 65% asked for some information from the Auditor.)

Part 2 Results - - Request in writing for copies of a Settlement Agreement and a Salary Document:

- (a) When requested to provide a copy of the document showing the total annual compensation of that state agency's top-ranking employee, only 29% could supply that record within 10 days. And after 20 days, only 55% had complied with this written request. (Yet, in the 52-local agency audit, 88% had complied within 10 days, and 96% had furnished the record within 20 days.)
- (b) Similarly, only 29% could supply a copy of that agency's most recent Litigation Settlement Agreement, where more than \$100,000 was paid to plaintiff(s), within 10 days. And just barely half (52%) could provide this document within 20 days. (No comparison can be made with the local agency audit, as this document was not requested there.)

The Best:

Grade: A Of all the State agencies surveyed, **Cal STRS** proved the best. Filing Officer James Musante and Staff Counsel Robert Van Der Volgen gave immediate attention to the requests, providing Guidelines and Form 700 within 46 minutes and the Compensation Document and Settlement Agreement in less than one day. The only thing that kept STRS from a perfect score was the receptionist who, after being shown a card identifying the Part 1 records requested, asked to know who the Auditor worked for before calling Mr. Musante to assist in providing the records.

Grade: A- Two other agencies were very close behind, only failing to have the Guidelines posted in their office. Human Resource Analyst Melanie Wong and Supervising Staff Counsel Christopher Pederson of the **California Coastal Commission** cooperated in providing the Part 1 documents in only 20 minutes and the Part 2 records within 8 days of the written request. And at the **Department of Toxic Substances Control**, Associate Government Program Analyst Mark Abrams and Senior Staff Counsel Joan Markoff cooperated to produce the Part 1 documents in 24 minutes and the Part 2 records within 6 days.

No other agency received better than a grade of C+.

The Worst:

Grade: F- Several agencies performed miserably:

By far, the very worst experience for this Auditor was provided, ironically, by the **Department of Consumer Affairs**. First, a female employee in the Consumer Information Center of the Consumer and Relations Division grilled the Auditor for more than 20 minutes demanding to know who he was, why he wanted the records, and what agency he worked for (a demand repeated three times). Twice asked to identify herself, she refused, saying she would not reveal her name because the Auditor refused to identify the agency he was working for. A male employee, also refusing to identify himself, provided the Auditor with a "Procedure to Subpoena Records" form and said to call the phone number on that form. Both employees refused to accept either of the Auditor's requests for records and refused to date-stamp them for him. The Auditor then mailed both requests to the department, and over the next 24 days received no response of any kind.

Three agencies, the **Department of Motor Vehicles**, the **Department of Social Services**, and the **Department of Justice** (the office responsible for counseling and representing many if not most state agencies on the Public Records Act), would not even let the Auditor enter the building that is their main office; each saying that without a previously made appointment with someone in that office, the public was not allowed to enter. The Auditor then made both the requests by mail. Only Social Services responded (11 days after receiving the mailed requests). However, the more than \$300,000 Settlement provided was filled with redactions, eliminating the Case Number and Plaintiffs' names in probable violation of the law. But, in the case of the other two departments, 24 days after the receipt of those mailed requests, neither had responded in any manner.

At the **Employment Development Department** security escorted the Auditor to the Legal Office, which provided nothing but accepted both requests. Eleven days later the Assistant Chief Counsel David Paulson replied by mail with a generic letter, saying EDD requires an additional 14 days to respond because the request *may* require search, collection, examination of records at separate offices. However, 20 days after his letter, still no records had been supplied.

At the **Department of Health Services**, Filing Officer Karen Moreno said it would take too long to retrieve the Form 700; she would mail it. Reluctantly, she accepted both requests saying they really

weren't acceptable and should be a full-page letter to the legal division. In a response 13 days later, the Form 700 was the only document she provided. After 30 days, no other response was received.

Despite returning a second day to the **Department of Mental Health**, at the urging of Department staff, Gail Schurr, Secretary to Public Records Coordinator Steve Appel, said he still wasn't in and no one could respond to the Auditor's requests. The Auditor left both requests with main office (Room 151) staff, assured they would be forwarded to Mr. Appel. Seventeen days later Mr. Appel called to ask what the Auditor was going to do with the information. During the phone conversation, Mr. Appel gave his assurance that the records would be mailed within the following 2 days. Yet still, 31 days after the Auditor's first appearance at the DMH office to make his requests, Mr. Appel had provided *absolutely nothing* in response. (Mr. Appel is the same records coordinator who asserted earlier this year that the Atascadero State Hospital's "funny papers" – its informal term for special incident reports compiled by hospital employees witnessing assaults against staff and patients at the mental facility – could not be reproduced or quoted directly from by the San Luis Obispo County *Tribune*, contending that the State owns the copyright on the "creative sparks" within those reports.)

After **CalPERS** Receptionist Marty Gelarei refused to accept the records requests, saying the Auditor could not make public records requests at that office and was *required* to submit them on the Internet, the Auditor then made the requests by mail. However, 24 days after CalPERS received the mailed requests, the Auditor had received absolutely no response.

Last, but certainly not the least among the transparency scofflaws, is the **California Public Utilities Commission**. Once in the door, the Auditor was directed to Central Filing on the 2nd floor, where Juan Bautista, *refusing* to look at the card describing the records being requested, *required* the Auditor to fill out the form, "Public Request for Central Files Services," asking the Auditor's name, address, phone number and affiliation. Once Mr. Bautista saw what documents were being requested, he directed the Auditor to Human Resources on the 3rd floor, which in turn directed the Auditor to the 5th floor, where Executive Assistant Karen Amato in the Executive Division provided nothing, but did accept both requests for records. It was 9 days later when Suzy Hong, Legal Division, provided the Form 700 and the Guidelines. But it was 24 days after the initial requests that Ms. Hong finally responded to the requests for the compensation and settlement documents, saying these records amounted to 100 pages and would be forwarded *only* after her receipt of \$52.00, which included a copying charge of 20¢ per page, plus \$32.00 for retrieval/review/clerical, 2 hrs. @ \$16.00/hr. The Auditor notes that the PUC's own "Procedures for Obtaining Information and Records" (General Order No. 66-C) makes no mention of such a charge for retrieval/review/clerical services, only a charge for duplication. Moreover, a charge for such has been recognized as unlawful since 1994, when the Fourth District Court of Appeal, interpreting Government Code Section 6253's authorization to charge a copying fee "covering direct costs of duplication," ruled in *North County Parents v. Dept. of Education*, 23 Cal.App.4th 144, "The direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. **'Direct cost' does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling** of the file from which the copy is extracted." *Id.* at 148. (Emphasis added.)

Educational Follow-up

To help these government agencies understand their responsibilities and to aid them in making whatever adjustments may be necessary, each will receive a copy of this Audit overview and conclusions, the three-page summary of the audit's results and grades, along with a page showing how that particular agency performed.

In the near future, the Auditor will ask each agency what steps it has taken to improve on its CPRA compliance, and to reassure the public of its right of access to that agency's public records.

Public Records Request of State Agency:

Consumer Affairs, Department of
400 "R" Street, Suite 3000
Sacramento, CA 95814-6200

Posted - Consumer Affairs, Department of
Moved to: 1625 North Market Blvd.
Sacramento, CA 95834-1924

=====

- 1) Verbal Request –** (a) to view the most recent FPPC Form 700 (Statement of Economic Interests) for this public agency's top-ranking employee;
- (b) for a copy of this public agency's written guidelines for accessibility of public records.

Request made to: **Employee repeatedly refused to identify herself at Consumer Information Center, Consumer and Community Relations Division**

Guidelines: **Posted? NO** **Provided? NO**

Date: 1-19-06 **Time in: 12:15** **Time out: 12:50** **Elapsed time: 35 minutes**

X Asked Requester's Identity **X** Required Use Of An Agency Form

X Asked Requester's Affiliation **X** Asked Why Records Were Sought

Comments/Information: **Told Agency Had __ Days To Comply**

The female employee I was dealing with in the Consumer Information Center repeatedly refused to identify herself. She asked my affiliation three times. She said one reason for not giving me her name was because I would not tell her what agency I was working for, even though I assured her that I worked for no agency.

A male employee then came up and handed me a "Procedure to Subpoena Records" form (attached) and told me I would need to call the phone number on that form. This male employee also refused to identify himself. Neither the female nor the male employee would accept either of my requests (verbal or written) and refused to date stamp them for me.

*****Made both CPRA requests by mail on 1-24-06.**

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2) Written Request for copies of –

- a) the Employment Contract and/or similar document(s) that reflect the total annual compensation of this state agency's top-ranking employee; and
- b) the most recent litigation settlement agreement involving this state agency, which includes a payment of \$100,000 or more to the plaintiff(s).

Date Records Provided (or Notified Ready): Cost: \$

Comments:
By 2-19-06 had received nothing.

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Attachment F

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BUSINESS AND PROFESSIONS CODE

SECTION 800-809.9

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of

this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), (d), and (e)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars (\$30,000); or arbitration award of any amount; or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal; of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. A settlement over thirty thousand dollars (\$30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600)

shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 60 (commencing with Section 4825) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

801.1. (a) Every state or local governmental agency that self insures a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every state or local governmental agency that self-insures a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. A settlement over thirty thousand dollars (\$30,000) shall also be reported if the settlement is based on the licensee's negligence,

error, or omission in practice or by his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

802. (a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the

written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A settlement over thirty thousand dollars (\$30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. A complete report including the name and license number of the physician and surgeon shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician and surgeon or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

802.3. Every report of a settlement required by Sections 801, 801.1, and 802 shall specify the specialty or subspecialty of the physician and surgeon involved.

803. (a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report including the name and license number of the physician and surgeon to the Medical Board of California or the Osteopathic Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

803.3. Any arbitration under a health care service plan contract for any death or personal injury resulting in an award for an amount in excess of thirty thousand dollars (\$30,000) shall be a judgment for purposes of subdivision (b) of Section 803.

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining

information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the board.

804. (a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under

Section 801, or self-insured governmental agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer or self-insured governmental agency shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.

Attachment G

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Business and Professions Code

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) *The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.*

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery Program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The Funeral Directors and Embalmers Program shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

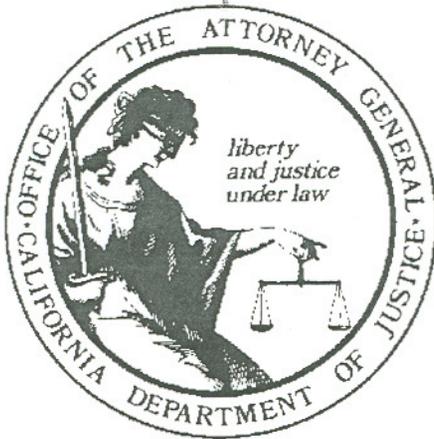
(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

Attachment H

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Summary
of the
California Public Records Act 2004

California Attorney General's Office

SUMMARY
CALIFORNIA PUBLIC RECORDS ACT
GOVERNMENT CODE SECTION¹ 6250 ET SEQ.
August, 2004

I

OVERVIEW

Legislation enacting the California Public Records Act (hereinafter, "CPRA") was signed in 1968, culminating a 15-year-long effort to create a general records law for California. Previously, one was required to look at the law governing the specific type of record in question in order to determine its disclosability. When the CPRA was enacted, an attempt was made to remove a number of these specific laws from the books. However, preexisting privileges such as the attorney-client privilege have been incorporated by reference into the provisions of the CPRA.

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on a recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda).

If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees.

1. All section references are to the Government Code unless otherwise indicated.

II

PUBLIC ACCESS v. RIGHTS OF PRIVACY

A. Right To Monitor Government

In enacting the CPRA, the Legislature stated that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State.¹ Cases interpreting the CPRA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government.² The greater and more unfettered the public official's power, the greater the public's interest in monitoring the governmental action.³

B. The Right Of Privacy

Privacy is a constitutional right and a fundamental interest recognized by the CPRA.⁴ Although there is no general right to privacy articulated in the CPRA, the Legislature recognized the individual right to privacy in crafting a number of its exemptions. Thus, in administering the provisions of the CPRA, agencies must sometimes use the general balancing test to determine whether the right of privacy in a given circumstance outweighs the interests of the public in access to the information. If personal or intimate information is extracted from a person (e.g., a government employee or appointee, or an applicant for government employment/appointments a precondition for the employment or appointment), a privacy interest in such information is likely to be recognized.⁵ However, if information is provided voluntarily in order to acquire a benefit, a privacy right is less likely to be recognized.⁶ Sometimes, the question of disclosure depends upon whether the invasion of an individual's privacy is sufficiently invasive so as to outweigh the public interest in disclosure.

III

SCOPE OF COVERAGE

A. Public Record Defined

1. Identifiable Information

The public may inspect or obtain a copy of identifiable public records.⁷ Writings held by state or local government are public records.⁸ A writing includes all forms of recorded information that currently exist or that may exist in the future.⁹ The essence of the CPRA is to provide access to information, not merely documents and files.¹⁰ However, it is not enough to provide extracted information to the requestor, the document containing the information must be provided. In order to invoke the CPRA, the request for records must be both specific and focused. The requirement of clarity must be tempered by the reality that

a requester, having no access to agency files or their scheme of organization, may be unable to precisely identify the documents sought. Thus, writings may be described by their content.¹¹

To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records.¹² One legislatively-approved method of providing assistance is to make available an index of the agency's records.¹³ A request for records may be made orally or in writing.¹⁴ When an oral request is received, the agency may wish to consider confirming the request in writing in order to eliminate any confusion regarding the request.

2. Computer Information

When a person seeks a record in an electronic format, the agency shall, upon request, make the information available in any electronic format in which it holds the information.¹⁵ Computer software developed by the government is exempt from disclosure.¹⁶

B. Agencies Covered

All state and local government agencies are covered by the CPRA.¹⁷ Non-profit and for-profit entities subject to the Ralph M. Brown Act are covered as well.¹⁸ The CPRA is not applicable to the Legislature, which is instead covered by the Legislative Open Records Act.¹⁹ The judicial branch is not bound by the CPRA, although most court records are disclosable as a matter of public rights of access to courts.²⁰ Federal government agencies are covered by the Federal Freedom of Information Act.²¹

C. Member Of The Public

The CPRA entitles natural persons and business entities as members of the public to inspect public records in the possession of government agencies.²² Persons who have filed claims or litigation against the government, or who are investigating the possibility of so doing, generally retain their identity as members of the public.²³ Representatives of the news media have no greater rights than members of the public.²⁴ Government employees acting in their official capacity are not considered to be members of the public.²⁵ Individuals may have greater access to records about themselves than public records, generally.²⁶

D. Right To Inspect And Copy Public Records

Records may be inspected at an agency during its regular office hours.²⁷ The CPRA contains no provision for a charge to be imposed in connection with the mere inspection of records. Copies of records may be obtained for the direct cost of duplication, unless the Legislature has established a statutory fee.²⁸ The direct cost of duplication includes the pro rata expense of the duplicating equipment utilized in making a copy of a record and, conceivably, the pro rata expense in terms of staff time (salary/benefits) required to produce the copy.²⁹ A staff

person's time in researching, retrieving and mailing the record is not included in the direct cost of duplication. By contrast, when an agency must compile records or extract information from an electronic record or undertake programming to satisfy a request, the requestor must bear the full cost, not merely the direct cost of duplication.³⁰ The right to inspect and copy records does not extend to records that are exempt from disclosure.

IV

REQUEST FOR RECORDS AND AGENCY RESPONSE

A. Procedures

A person need not give notice in order to inspect public records at an agency's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions.

When a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor.³¹ Where necessary, because either the records or the personnel that need to be consulted regarding the records are not readily available, the initial ten-day period to make a determination may be extended for up to fourteen days.³² If possible, records deemed subject to disclosure should be provided at the time the determination is made. If immediate disclosure is not possible, the agency must provide the records within a reasonable period of time, along with an estimate of the date that the records will be available. The Public Records Act does not permit an agency to delay or obstruct the inspection or copying of public records.³³ Finally, when a written request is denied, it must be denied in writing.³⁴

B. Claim Of Exemption

Under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure. When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record.³⁵

C. Segregation Of Exempt From Nonexempt Material

When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure. Rather, the general rule is that the exempt material may be withheld but the remainder of the record must be disclosed.³⁶ The fact that it is time consuming to segregate exempt material does not obviate the requirement to do it, unless the burden is so onerous as to clearly outweigh the public interest in disclosure.³⁷ If the information which would remain after exempt material has been redacted would be of little or no value to the requester, the agency may refuse to disclose the record on the grounds that the segregation process is unduly burdensome.³⁸ The difficulty in segregating exempt from nonexempt information is relevant in determining the amount of time which is reasonable for producing the records in question.

D. Waiver Of Exemption

Exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure.³⁹ Once material has been disclosed to a member of the public, it generally is available upon request to any and all members of the public. Confidential disclosures to another governmental agency in connection with the performance of its official duties, or disclosures in a legal proceeding are not disclosures to members of the public under the CPRA and do not constitute a waiver of exempt material.⁴⁰

V

EXEMPTION FOR PERSONNEL, MEDICAL OR SIMILAR RECORDS
(Gov. Code, § 6254(c))

A. Records Covered

A personnel, medical or similar record generally refers to intimate or personal information which an individual is required to provide to a government agency frequently in connection with employment.⁴¹ The fact that information is in a personnel file does not necessarily make it exempt information.⁴² Information such as an individual's qualifications, training, or employment background, which are generally public in nature, ordinarily are not exempt.⁴³

Information submitted by license applicants is not covered by section 6254(c) but is protected under section 6254(n) and, under special circumstances, may be withheld under the balancing test in section 6255.⁴⁴

B. Disclosure Would Constitute An Unwarranted Invasion Of Privacy

If information is intimate or personal in nature and has not been provided to a government agency as part of an attempt to acquire a benefit, disclosure of the information probably would constitute a violation of the individual's privacy. However, the invasion of an individual's privacy must be balanced against the public's need for the information. Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the agency to withhold the record from disclosure. If this balancing test indicates that the privacy interest outweighs the public interest in disclosure, disclosure of the record by the government would appear to constitute an unwarranted invasion of privacy.

Courts have reached different conclusions regarding whether the investigation or audit of a public employee's performance is disclosable.⁴⁵ The gross salary and benefits of high-level state and local officials are a matter of public record. However, a recent case indicated that absent a showing that the name of a particular civil service employee is important in monitoring government performance, civil service employees have an expectation of privacy in individually identifiable salary information.⁴⁶

VI

EXEMPTION FOR PRELIMINARY NOTES, DRAFTS AND MEMORANDA
(Gov. Code, § 6254(a))

Under this exemption, materials must be (1) notes, drafts or memoranda (2) which are not retained in the ordinary course of business (3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure. This exemption has little or no effect since the deliberative process privilege was clearly established under the balancing test in section 6255 in 1991, but is mentioned here because it is in the Act.⁴⁷

VII

**EXEMPTION FOR INVESTIGATIVE RECORDS
AND INTELLIGENCE INFORMATION**
(Gov. Code, § 6254(f))

A. Investigative Records

Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records.⁴⁸ In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to an enforcement proceeding that has become concrete and definite.⁴⁹

Investigative and security records created for law enforcement, correctional or licensing purposes also are covered by the exemption from disclosure. The term "law enforcement" agency refers to traditional criminal law enforcement agencies.⁵⁰ Records created in connection with administrative investigations unrelated to licensing are not subject to the exemption. The exemption is permanent and does not terminate once the investigation has been completed.⁵¹

Even though investigative records themselves may be withheld, section 6254(f) mandates that law enforcement agencies disclose specified information about investigative activities.⁵² However, the agency's duty to disclose information pursuant to section 6254(f) only applies if the request is made contemporaneously with the creation of the record in which the requested information is contained.⁵³ This framework is fundamentally different from the approach followed by other exemptions in the Public Records Act and in federal law, in which the records themselves are disclosable once confidential information has been redacted.

Specifically, section 6254(f) requires that basic information must be disclosed by law enforcement agencies in connection with calls for assistance or arrests, unless to do so would endanger the safety of an individual or interfere with an investigation.⁵⁴ With respect to public disclosures concerning calls for assistance and the identification of arrestees, the law restricts disclosure of address information to specified persons.⁵⁵ However, section 6254(f) expressly permits agencies to withhold the analysis and conclusions of investigative personnel. Thus, specified facts may be disclosable pursuant to the statutory directive, but the analysis and recommendations of investigative personnel concerning such facts are exempt.

B. Intelligence Information

Records of intelligence information collected by the Attorney General and state and local police agencies are exempt from disclosure. Intelligence information is related to criminal activity but is not focused on a concrete prospect of enforcement.

VIII

EXEMPTIONS FOR LITIGATION AND ATTORNEY RECORDS

(Gov. Code, § 6254 (b), (k))

A. Pending Claims And Litigation

Section 6254(b) permits documents specifically prepared in connection with filed litigation to be withheld from disclosure.⁵⁶ The exemption has been interpreted to apply only to documents created after the commencement of the litigation.⁵⁷ For example, it does not apply to the claim that initiates the administrative or court process. Once litigation is

resolved, this exemption no longer protects records from disclosure, although other exemptions (e.g., attorney-client privilege) may be ongoing.⁵⁸

Nonexempt records pertaining to the litigation are disclosable to requestors, including prospective or actual parties to the litigation.⁵⁹ Generally, a request from actual or prospective litigants can be barred only where an independent statutory prohibition or collateral estoppel applies. If the agency believes that providing the record would violate a discovery order, it should bring the matter to the attention of the court that issued the order.⁶⁰

In discovery during civil litigation unrelated to the Public Records Act, Evidence Code section 1040 (as opposed to the Act's exemptions) governs.⁶¹

B. Attorney-Client Privilege

The attorney-client privilege covers confidential communications between an attorney and his or her client. The privilege applies to litigation and nonlitigation situations.⁶² The privilege appears in section 954 of the Evidence Code and is incorporated into the CPRA through section 6254(k). The privilege lasts forever unless waived. However, the privilege is not waived when a confidential communication is provided to an opposing party where to do so is reasonably necessary to assist the parties in finalizing their negotiations.⁶³

C. Attorney Work Product

The attorney work product rule covers research, analysis, impressions and conclusions of an attorney. This confidentiality rule appears in section 2018 of the Code of Civil Procedure and is incorporated into the CPRA through section 6254(k). Records subject to the rule are confidential forever. The rule applies in litigation and nonlitigation circumstances alike.⁶⁴

IX

OTHER EXEMPTIONS

A. Official Information

Information gathered by a government agency under assurances of confidentiality may be withheld if it is in the public interest to do so. The official information privilege appears in Evidence Code section 1040 and is incorporated into the CPRA through section 6254(k). The analysis and balancing of competing interests in withholding versus disclosure is the same under Evidence Code section 1040 as it is under section 6255.⁶⁵ When an agency is in litigation, it may not resist discovery by asserting exemptions under the CPRA; rather, it must rely on the official information privilege.⁶⁶

B. Trade Secrets

Agencies may withhold confidential trade secret information pursuant to Evidence Code section 1060 which is incorporated into the CPRA through section 6254(k). However, with respect to state contracts, bids and their resulting contracts generally are disclosable after bids have been opened or the contracts awarded.⁶⁷ Although the agency has the obligation to initially determine when records are exempt as trade secrets, a person or entity disclosing trade secret information to an agency may be required to assist in the identification of the information to be protected and may be required to litigate any claim of trade secret which exceeds that which the agency has asserted.

C. Other Express Exemptions

Other express exemptions include records relating to: securities and financial institutions;⁶⁸ utility, market and crop reports;⁶⁹ testing information;⁷⁰ appraisals and feasibility reports;⁷¹ gubernatorial correspondence;⁷² legislative counsel records;⁷³ personal financial data used to establish a license applicant's personal qualifications;⁷⁴ home addresses;⁷⁵ and election petitions.⁷⁶

The exemptions for testing information and personal financial data are of particular interest to licensing boards which must determine the competence and character of applicants in order to protect the public welfare.

X

THE PUBLIC INTEREST EXEMPTION
(Gov. Code, § 6255)

A. The Deliberative Process Privilege

The deliberative process privilege is intended to afford a measure of privacy to decision makers. This doctrine permits decision makers to receive recommendatory information from and engage in general discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made.⁷⁷ Records which reflect a final decision and the reasoning which supports that decision are not covered by the deliberative process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted and the remainder of the record must be disclosed, unless the factual material is inextricably intertwined with the deliberative material. Under section 6255, a balancing test is applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.⁷⁸

B. Other Applications Of The Public Interest Exemption

In order to withhold a record under section 6255, an agency must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. A particular agency's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the agency's that is weighed. This "public interest balancing test" has been the subject of several court decisions.

In a case involving the licensing of concealed weapons, the permits and applications were found to be disclosable in order for the public to properly monitor the government's administration of concealed weapons permits.⁷⁹ The court carved out a narrow exemption where disclosure would render an individual vulnerable to attack at a specific time and place. The court also permitted withholding of psychiatric information on privacy grounds.

In another case, a city sought to maintain the confidentiality of names and addresses of water users who violated the city's water rationing program. The court concluded that the public's interest in disclosure outweighed the public's interest in nondisclosure since disclosure would assist in enforcing the water rationing program.⁸⁰ The court rejected arguments that the water users' interests in privacy and maintaining freedom from intimidation justified nondisclosure.

The names, addresses, and telephone numbers of persons who have filed noise complaints concerning the operation of a city airport are protected from disclosure where under the particular facts involved, the court found that there were less burdensome alternatives available to serve the public interest.⁸¹

In a case involving a request for the names of persons who, as a result of gifts to a public university, had obtained licenses for the use of seats at an athletic arena, and the terms of those licenses, the court found that the university failed to establish its claim of confidentiality by a "clear overbalance." The court found the university's claims that disclosure would chill donations to be unsubstantiated. It further found a substantial public interest in such disclosure to permit public monitoring and avoid favoritism or discrimination in the operation of the arena.⁸²

LITIGATION UNDER THE ACT

A requester, but not a public agency, may bring an action seeking mandamus, injunctive relief or declaratory relief under sections 6258 or 6259.⁸³ To assist the court in making a decision, the documents in question may be inspected at an in-camera hearing (i.e. a private hearing with a judge). An in-camera hearing is held at the court's discretion, and the parties have no right to such a hearing. Prevailing plaintiffs shall be awarded court costs and attorney's fees. A plaintiff need not obtain all of the requested records in order to be the prevailing party in litigation.⁸⁴ A plaintiff is also considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records.⁸⁵ Prevailing defendants may be awarded court costs and attorney fees only if the requestor's claim is clearly frivolous. There is no right of appeal, but the losing party may bring a petition for extraordinary relief to the court of appeal.

If you wish to obtain additional copies of this pamphlet, they may be ordered or downloaded via the Attorney General's Home Page, located on the World Wide Web at <http://caag.state.ca.us>. You may also write to the Attorney General's Office, Public Inquiry Unit, P.O. Box 944255, Sacramento, CA 94244-2550 or call us at (800) 952-5225 (for callers within California), or (916) 322-3360 (for callers outside of California); the TTY/TDD telephone numbers are (800) 952-5548 (for callers within California), or (916) 324-5564 (for callers outside of California).

Deputy Attorney General Ted Prim, Editor
Special thanks to Neil Gould, Senior Staff Counsel, Department of Water Resources, for his assistance.

Attachment I

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February 3, 2006

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
1625 North Market Blvd.
Sacramento, CA 95834
(800) 952-5210 (916) 445-1254

Dear Department of Consumer Affairs:

Kindly forward this request for a Public Information policy change (below) to the appropriate individual(s) and/or board(s) for review and consideration as soon as possible.

I request that the DCA amend the following public information disclosure policy of the California Board of Behavioral Sciences following policy clause:

. " Malpractice judgments of more than \$30,000 reported to the Board on or after July 1, 1995.", and broaden the scope to include "judgements, arbitration awards, and mediation awards".

I recently requested this information from the BBS, and received a reply that there has not been even one qualifying malpractice judgement of more than \$30,000 reported to the BBS since the enactment of this public disclosure policy clause on July 1, 1995 -- 11 years ago. I was told that "judgement" means a monetary award specifically ordered by a court, and therefore the clause does not apply to or include mediation awards and/or arbitration awards.

This policy was enacted in 1995, under the intent to make information available to the public, but the policy is ineffective. It has not resulted in the release of any information to the public since it's enactment 11 years ago.

The public has a right and need to know about mediation awards and arbitration awards. (It can be noted that there is no implied guilt in the cases of arbitration and mediation awards, simply that the therapist has chosen to settle through arbitration or mediation rather than proceeding to trial where a judgement could occur.)

The need for disclosure is particularly important for the following reasons:

- 1) Only an extremely small percentage of psychological malpractice cases ever make it to trial. The overwhelming majority of malpractice claims against MFT's, LCWS's, and Psychologists are settled either through arbitration or mediation.
- 2) Of the thousands of complaints filed to the BBS since 1995, not even one resulted in a qualifying court judgement to be reported. However, many (including mine) resulted in arbitration awards and/or mediation awards of the same or greater dollar amount.
- 3) Additionally, because of the unique nature of privacy in the therapeutic relationship, it precludes the ability to "check references", like one can check references for anyone/anything else important (such as a doctor surgeon, attorney, child care provider, dentist, and so forth). Disclosure of mediation and arbitration awards thus assume an added importance for this reason.
- 4) The Medical Board of California policy publicly discloses information on judgements, *and* arbitration awards, *and* mediation awards. If the Medical Board deems this information important enough for public disclosure, the same rules should apply for disclosure by the Board of Behavioral Science and the Board of Psychology.

Disclosure of this information will inform and help protect the public, by informing the public that a therapist was engaged in a malpractice lawsuit that resulted in one of the following: a completed malpractice lawsuit trial which resulted in a judgement, or in mediation or arbitration award which resulted prior to proceeding to trial for potential judgement.

I sued a former therapist for malpractice. I received a settlement in excess of \$30,000 in 2005, which was reported to the BBS. I also filed a complaint against the therapist after the lawsuit was resolved, and the BBS investigation is underway. Had my former therapist had any record of a judgement or settlement, that might have raised enough concern in me to either never begin seeing her, or certainly to leave what became an extremely damaging relationship with her sooner than I did.

I request the BBS public disclosure policy be amended. Also, I am currently seeking information about the policy within the Board of Psychology, but recommend it also contain the same provisions. I am willing to help, to enlist legal and/or legislative help, or whatever is necessary, to bring about an amendment of this policy, because I know firsthand, the importance of public disclosure of this information. I am available and willing to help. I will also continue researching the public information disclosure policy of other significant organizations at both the state and federal level.

I would appreciate a reply after your review. Thank you very much.

Sincerely,

Barbara J Murphy
28621 Conejo View Drive
Agoura Hills, CA 91301
818-889-1242
bjmurphy@earthlink.net

Recommendation #5

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Memorandum

To: Board Members
From: Christy Berger
Legislation Analyst
Date: May 2, 2006
Telephone: (916) 574-7847
Subject: Review and Possible Action Regarding Amendments to Sections 1833.1 and 1870 Regarding Supervisor Qualifications

Background

At its February 2003 meeting, the Board approved a proposal to amend Title 16, sections 1833.1 and 1870 to modify the requirements for supervisors. However, the rulemaking process was never initiated for these changes. At its January 2006 meeting, the Committee discussed the language proposed in 2003 and the recent revisions to the proposed language.

The 2003 draft eliminated a requirement that supervisors of interns or trainees have a minimum of five hours of patient/client contact per week. There is no parallel requirement for supervisors of associate clinical social workers. The 2006 draft restored this provision for supervisors of interns and imposed the same contact requirement for supervision of associates. The Committee members and audience members at the January 2006 meeting preferred the 2003 version of the proposed regulations. However, the Committee declined to take action on the proposed language until receiving and reviewing the results of the supervision survey.

Recommendation

Staff has updated the proposed changes which:

- Reflect the 2003 version
- Reflect changes in the sections since 2003
- Make minor modifications to increase clarity

The Policy and Advocacy Committee recommends that the board direct staff to initiate a rulemaking to modify these regulations per the attached language.

Attachments:

Proposed Language Section 1833.1
Proposed Language Section 1870

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Attachment A

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BOARD OF BEHAVIORAL SCIENCES
Proposed Language

Amend Section 1833.1 of Division 18 of Title 16 as follows:

1833.1. REQUIREMENTS FOR SUPERVISORS

~~(a) Any person supervising a trainee or an intern or trainee (hereinafter "supervisor") within California shall comply with the requirements set forth below and shall, prior to the commencement of such supervision, sign under penalty of perjury the "Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern" revised 2-05 requiring that: below.~~

(a) Prior to the commencement of supervision, the supervisor shall sign under penalty of perjury the "Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern" revised 12-05 requiring that:

(1) The supervisor possess and maintains a current valid California license as either a marriage and family therapist, licensed clinical social worker, licensed psychologist, or physician who is certified in psychiatry as specified in Section ~~4980.40 (f)~~ 4980.03 (g) of the Code and has been so licensed in California for at least two years prior to commencing any supervision; or

(A) Provides supervision only to trainees at an academic institution that offers a qualifying degree program as specified in Section 4980.40 (a) of the Code; and

(B) Has been licensed in California as specified in Section ~~4980.40 (f)~~ 4980.03 (g) of the Code, and in any other state, for a total of at least two years prior to commencing any supervision.

~~(2) If such supervisor is~~ A supervisor who is not licensed as a marriage and family therapist, ~~he or she~~ shall have sufficient experience, training, and education in marriage and family therapy to competently practice marriage and family therapy in California.

(3) The supervisor keeps himself or herself informed of developments in marriage and family therapy and in California law governing the practice of marriage and family therapy.

(4) The supervisor has and maintains a current license in good standing and will immediately notify the trainee or intern or trainee of any disciplinary action, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure, that affects the supervisor's ability or right to supervise.

(5) The supervisor has practiced psychotherapy or provided direct supervision of trainees, interns, or associate clinical social workers who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding any supervision ~~and has averaged at least five (5) patient/client contact hours per week.~~

(6) The supervisor has had sufficient experience, training, and education in the area of clinical supervision to competently supervise trainees or interns.

(A) ~~Effective January 1, 2000, supervisors~~ Supervisors who are licensed by the board shall complete a minimum of six (6) hours of supervision training or coursework every two (2) years. This training or coursework may apply towards the continuing education requirements set forth in Sections 4980.54 and 4996.22 of the Code.

~~(B) Supervisors who are licensed by the board who have completed a minimum of six (6) hours of supervision training or coursework between January 1, 1997, and December 31, 1999, may apply that training towards the requirement described in subsection (A).~~

~~(C)~~ (B) Supervisors who are licensed by the board who ~~commence supervision on and after January 1, 2000, and~~ have not met requirements of subsection paragraph (A), shall complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of commencement of supervision.

(7) The supervisor knows and understands the laws and regulations pertaining to both the supervision of trainees and interns and the experience required for licensure as a marriage and family therapist.

(8) The supervisor shall ensure that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the trainee or intern ~~or trainee~~.

(9) The supervisor shall monitor and evaluate the extent, kind, and quality of counseling performed by the trainee or intern ~~or trainee~~ by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate by the supervisor.

(10) The supervisor shall address with the trainee or intern ~~or trainee~~ the manner in which emergencies will be handled.

(b) Each supervisor shall provide the trainee or intern ~~or trainee~~ with the original signed "Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee" revised 12-05 prior to the commencement of any counseling or supervision. ~~The intern shall provide the board with his or her signed "Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee" revised 12-05 from each supervisor upon application for licensure. The trainee shall provide the board with his or her signed "Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee" revised 12-05 from each supervisor upon application for internship.~~

(1) Trainees shall provide the board with the signed "Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee" revised 12-05 from each supervisor upon application for internship.

(2) Interns shall provide the board with the signed "Responsibility Statement for Supervisors of a Marriage and Family Therapist Intern or Trainee" revised 12-05 from each supervisor upon application for licensure.

(c) A supervisor shall give at least one (1) week's written notice to ~~an~~ a trainee or intern ~~or trainee~~ of the supervisor's intent not to certify any further hours of experience for such

person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(d) The supervisor shall obtain from ~~any~~ each trainee or intern ~~or trainee~~ for which whom supervision will be provided, the name, address, and telephone number of the trainee's or intern's ~~or trainee's~~ most recent supervisor and employer.

(e) In any setting that is not a private practice, a supervisor shall evaluate the site(s) where ~~an~~ a trainee or intern ~~or trainee~~ will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of marriage and family therapy; and (2) the experience is in compliance with the requirements set forth in this section.

(f) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

~~(g) The supervisor responsibility statement required by this section shall be used for supervisorial relationships commencing on or after 1-1-98.~~

~~(h)~~ (g) The board shall not deny hours of experience gained towards licensure by any supervisee due to failure of his or her supervisor to complete the training or coursework requirements in ~~subsection (a) (6)~~ subparagraph (a)(6)(A).

NOTE: Authority cited: Section 4980.35, 4980.40(f) and 4980.60, Business and Professions Code. Reference: Sections 4980.35, 4980.40(f), 4980.42 through 4980.45, 4980.54 and 4996.22, Business and Professions Code.

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Attachment B

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BOARD OF BEHAVIORAL SCIENCES
Proposed Language

Amend Section 1870 of Division 18 of Title 16 as follows:

1870. REQUIREMENTS FOR ASSOCIATE CLINICAL SOCIAL WORKER SUPERVISORS

~~(a) Any person supervising an associate clinical social worker registered with the board on and after May 10, 1999, (hereinafter called "supervisor") within California shall comply with the requirements set forth below and shall, prior to the commencement of such supervision, sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised 07/05), which requires that: below.~~

(a) Prior to the commencement of supervision, the supervisor shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised 12/05), which requires that:

(1) The supervisor possesses and will maintain a current valid California license as ~~either~~ a licensed clinical social worker or a licensed mental health professional acceptable to the Board as specified in ~~Section 4996.21(a) of the Code and~~ Section 1874 of California Code of Regulations.

(2) The supervisor has and will maintain a current license in good standing and will immediately notify the associate of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or any lapse in licensure, that affects the supervisor's ability or right to supervise.

(3) The supervisor has practiced psychotherapy or provided direct supervision of associates, or marriage and family therapist interns or trainees who perform psychotherapy ~~as part of his/her clinical experience~~ for at least two (2) years within the last five (5) years immediately preceding supervision.

(4) The supervisor has had sufficient experience, training and education in the area of clinical supervision to competently supervise associates. ~~Effective January 1, 2001, supervisors who are licensed by the board shall have:~~

(A) Effective January 1, 2001, supervisors who are licensed by the board shall have ~~A~~ a minimum of fifteen (15) contact hours in supervision training obtained from a state agency or approved continuing education provider. This training may apply towards the approved continuing education requirements set forth in Sections 4980.54 and 4996.22 of the Code. The content of such training shall include, but not be limited to:

~~1. familiarity~~ (i) Familiarity with supervision literature through reading assignments specified by course instructors;

~~2. facilitation~~ (ii) Facilitation of therapist-client and supervisor-therapist relationships;

~~3. evaluation~~ (iii) Evaluation and identification of problems in therapist-client and supervisor-therapist relationships;

~~4. structuring (iv) Structuring~~ to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

~~5. knowledge (v) Knowledge~~ of contextual variables such as culture, gender, ethnicity, and economic issues; and

~~6. the (vi) The~~ practice of clinical social work, including the mandated reporting laws, and knowledge of ethical and legal issues.

(5) The supervisor knows and understands the laws and regulations pertaining to both supervision of associates and the experience required for licensure as a clinical social worker.

~~(6) The supervisor shall ensure that the extent, kind and quality of clinical social work performed is consistent with the training and experience of the person being supervised and shall review client/patient records, monitor and evaluate assessment and treatment decisions of the associate clinical social worker, and monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served, and ensure compliance with all laws and regulations governing the practice of clinical social work.~~

(6) The supervisor shall do all of the following:

(A) Ensure that the extent, kind and quality of clinical social work performed by the associate is consistent with the training and experience of the person being supervised.

(B) Review client/patient records and monitor and evaluate assessment and treatment decisions of the associate clinical social worker.

(C) Monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served.

(D) Ensure compliance with all laws and regulations governing the practice of clinical social work.

~~(7) Effective January 1, 1999, the~~ The supervisor and the associate shall develop the "Supervisory Plan" as described in Section 1870.1 of the California Code of Regulations. This The associate shall submit the original signed plan for each supervisor shall be submitted to the board upon application for licensure.

(8) The supervisor shall provide the ~~board~~ associate with the original, signed "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised 12-05), ~~within 30 days of prior to~~ commencement of any supervision. ~~A copy of this form shall be provided to the associate by the supervisor. The associate shall provide the board with the original signed form for each supervisor upon application for licensure.~~

(9) A supervisor shall give at least one (1) week's written notice to an associate of the supervisor's intent not to certify any further hours of experience for such person. A

supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(10) ~~Effective January 1, 1999, the~~ The supervisor shall complete an assessment of the ongoing strengths and limitations of the associate. The assessments shall be completed at least once a year and at the completion or termination of supervision. A copy of all assessments shall be provided to the associate by the supervisor.

(11) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(b) The board shall not deny hours of experience gained toward licensure by any associate due to the failure of his or her supervisor to complete the training requirements specified in subparagraph (a)(4)(A).

Note: Authority cited: Section 4990.14, Business and Professions Code. Reference: Section Sections 4980.54, 4996.21, 4996.22, and 4996.23, Business and Professions Code.

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Recommendation #6

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State of California

Memorandum

To: Board Members **Date:** May 2, 2006
From: Christy Berger **Telephone:** (916) 574-7847
Legislation Analyst
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.

Committee Recommendation

The Policy and Advocacy Committee recommends amending the statute to permit a person who has been licensed for a minimum of four years in another state, whose license is valid, active 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

Letters from out of state applicant

Attachment A

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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.

Attachment B

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Fw: A CALL TO RE-EVALUATE POLICIES REGARDING OUT OF STATE PH.D LEVEL CLINICAL SOCIAL WORKERS.....

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 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,

From: Marcy Cole <marcycole@comcast.net>

Date: April 22, 2006 1:20:44 PM PDT

To: Paul_Riches@dca.ca.gov

Subject: Re. Sponsorship of legislation for out of State Social Workers

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

Thank you so much for the follow up response to my letter. I am grateful to you all for taking the serious consideration that has now led to the sponsoring of legislation on behalf of out-of-state applicants for licensure as a Clinical Social Worker in this State, which will allow for more immediate eligibility to sit for the California licensing exams. I am certain that this will make the transition for other colleagues a more just, smoother and welcoming one. It also confirms my resolve that sharing versus silence is the only way that healthy and constructive change can take place.

With that said, this particular sponsorship of legislation still does not address the inequity between out of State Social Work clinicians moving to this State with a Masters versus those, such as myself, with both a Masters and a Doctorate from an accredited academic institution. I want to make the plea, once again, to please acknowledge and include differentiation in policy requirements regarding this level of experience. As you are well aware, a doctorate level out of State clinician brings years more of academic time and training and should be recognized as such. I urge you to not dismiss this issue, as it has been the central one for me personally, as well as all others who have gone before me and will follow.

Thank you again for your time, consideration and action taken thus far. Please keep me informed as to the request to sponsor new and separate legislation for those Doctoral Level Out of State Social Workers who are applying of licensure in the State of California.

Sincerely,

Marcy Cole, Ph.D

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**State of California
Board of Behavioral Sciences**

Memorandum

To: Board Members

Date: May 2, 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.
