MEETING NOTICE

Policy and Advocacy Committee
June 28, 2006

Sheraton Gateway LAX
6101 West Century Boulevard
Los Angeles, CA 90045

12:30 p.m. – 3:30 p.m.

I. Introductions

II. Review and Approval of January 20, 2006 Committee Meeting Minutes

III. Review and Approval of April 19, 2006 Committee Meeting Minutes

IV. Strategic Plan Goal #4 – Report on Progress

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

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

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

V. Review and Possible Action on Pending Legislation

VI. Update on Rulemaking Activity.

VII. Discussion and Possible Action on Increasing Transparency of Licensure for Marriage and Family Therapists.

VIII. Review and Possible Action on Draft Regulations Related to Supervisor Qualifications [16CCR1833.3 & 16CCR1870].

IX. Review and Discussion Regarding the Reporting of Malpractice Judgments, Settlements, and Arbitrations

X. Review and Possible Action on Technical Regulation Cleanup Related to LEP and Board Administration Statutory Changes.

XI. Review and Possible Action on Regulations Regarding Abandonment of Application Files (16CCR1806 & 1833.3).
XII. Suggestions for Future Agenda Items.

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

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

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Christina Kitamura at the Board of Behavioral Sciences, 1625 N. Market Boulevard, 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.
Item II
I. Introductions

Meeting called to order at 1:30 p.m., and a quorum was established.

Committee Members Present:

Robert Gerst
Ian Russ
Karen Pines
Peter Manoleas

Staff Present:

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer

II. Strategic Plan Goal #4 – Report on Progress

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

The committee reviewed the objective and inquired regarding the distinctions between events under this objective and other events under Goal #2. Staff responded that events for this objective will be focused on policy making rather than building public and professional awareness of the Board. An example of possible subject matter includes Proposition 63 related meetings.

Dr. Russ requested that staff send a list of examples of events we have identified or might consider attending.

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

Staff reported on a board sponsored conference on the connection of diversity and professional licensing issues. The conference is tentatively scheduled for April 28, 2006 in Sacramento. Staff has commitments from two presenters [Joe Hayes, a demographer with the Public Policy Institute of California, Rachel Guerrero of the Department of Mental Health] and is seeking an academic to address the research supporting a connection between cultural competence and
quality of care. Mr. Manoleas and staff are developing an initial list of invitees and welcome suggestions from board members or the public. Mr. Janlee Wong (representing NASW) informed the Committee of a possible conflict on the target date because of a planned meeting of CALSWEC.

The conference will be a combination of presentations and breakout sessions designed to develop the board’s perspective on cultural competence and professional practice.

The board will notify other mental health agencies, consumer boards, and the BBS interested parties list.

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

III. Review and Possible Action Regarding Loan Repayment/Scholarship Program Implementation

Staff indicated that the board has received no response to inquiries regarding the status of the program. Mary Riemersma (representing CAMFT) stated she served on a committee that developed draft regulations for the loan repayment and is unaware of any other activity to date. The program has not been placed on any future agenda for future meetings of the foundation. Mr. Gerst suggested the EO draft a letter on behalf of the Board as to the status of the regulations.

*Motion:  Recommend that the board direct staff to draft a letter to the appropriate authority requesting implementation of the program at the earliest possible date.*

*Motion Passed:  4-0.*

IV. Informational Hearing on Proposed Changes to Title 16, Section 1803 Regarding the Delegation of Authority to the Executive Officer

Staff indicated that the Board directed staff to move forward with the proposed regulation at its November 2005 meeting. However, staff brought the proposal back for additional comment because a number of parties were unable to participate in that portion of the November meeting.

Dr. Russ stated that there is conflict with a member of the Board giving the authority for a psychiatric evaluation because the board is a quasi-judicial entity. Mary Riemersma (CAMFT) questioned whether the board has the authority to take this action and give broad authority to the executive officer. Mr. Riches reported he discussed this issue with legal counsel who recommends the proposal because a psychiatric evaluation is part of the investigative process. Accordingly, a Board member who signs the petition to compel a psychiatric evaluation would have to recuse himself/herself from the deliberation/decision were the subject to be disciplined.

Staff discussed the circumstances in which the Board typically seeks to compel a psychiatric evaluation. The EO discussed the confidentiality of the investigative process and indicated that individuals who are subject to a psychiatric evaluation that reveals substantial impairment usually surrender their license.
The committee indicated continuing support for the proposed change in regulation.

V. Informational Hearing on Proposed Changes to Title 16, Section 1886 Regarding the Issuance of Citations to Continuing Education Providers

Mr. Gerst provided a brief overview of this issue. The EO stated that at the November 2005 Board meeting, the Board moved for this proposal to move forward; however, it was discussed late in the day and some interested parties did not have the opportunity to provide comment.

Ms. Pines shared her experience with a self-study continuing education (CE) course and is appalled that a provider can give a day’s worth of CE credit based on “skimpy” material. She supports allowing the issuance of citations against CE providers. Mr. Gerst clarified that currently the Board can only revoke a provider’s license. Peter asked if it would be appropriate/legal for a peer review of coursework developed and used by providers. Staff indicated that the Consumer Protection Committee is working on developing a quality standard for CE. Violations involving CE provider compliance with administrative issues (advertising, accounting procedures, recordkeeping, etc.) would not likely be appropriate for a revocation proceeding and would be best addressed by an intermediate sanction such as a citation and fine.

Ms. Riemersma questioned what the Board would do about an entity that is not required to become a provider, such as a school, how would we take enforcement action if the school is in violation?

Ms. Riemersma suggested that mere contact from the Board, such as a letter saying it has come to our attention that your are not keeping accurate records, would be sufficient to bring the entity into compliance.

Mr. Janlee Wong indicated support for the proposed regulation.

The Committee engaged in a discussion of self study CE and the appropriateness of evaluating course content. This discussion raised the issue of how to determine appropriate credit hours for self-study courses.

Ms. Riemersma questioned whether the Board has the authority to issue a citation to a CE provider. CE providers are not “licensed” in the traditional sense. Staff indicated that counsel has determined that the Board’s approval of a provider is a “license” within the meaning in the Business and Professions Code.

Mr. Manoles suggested that for quality improvement, the Board should set criteria for what constitutes a violation under which a citation would be appropriate and criteria for revocation of a license.

Mr. Gerst recommended that the Board solicit issues relating to CE’s from licensees.

The Committee indicated its support for proceeding with the proposed regulation.

VI. Informational Hearing on Proposed Changes to Title 16, Sections 1833.1 and 1870 Regarding Supervisor Qualifications
In February 2003, the Board approved going forward with these regulations. The Governor put a hold on regulations in 2004. Staff identified this matter had not gone forward, and the matter in now back before the Committee for discussion.

The committee discussed the proposed language from 2003 and the revisions to the proposed language prepared in 2006.

The committee discussed that there are good supervisors who have two or three supervisor who do not provide 5 hours of supervision and would not meet the criteria. Mary shared the same concern about educators who provide supervision but do not have time to have a practice. Audience members prefer the 2003 version vs the 2006 version.

Mr. Manoleas requested no action be taken until such time as the Committee has received the results of the supervision survey and had an opportunity to review the results and analysis of its findings. The committee supports going forward with the 2003 version of the proposed regulations, and eliminate 5 hour requirement. This matter will be revisited at the next Committee meeting.

VII. Review and Possible Action on Pending Legislation

Staff provided an update on Assembly Bill 894 (LaSuer). This legislation would license professional counselors in California. The bill was held on the Suspense File by the Assembly Appropriations Committee on February 18, 2006.

Ms. Krista Scholton stated there is a grassroots movement to seek licensure for macro social workers. Staff referred her to the Consumer Protection Committee which is evaluating broader social work licensure.

VIII. Review and Possible Action to Sponsor Legislation to Allow Demographic Survey of Board Licensees

Mr. Gerst summarized the legal opinion provided by Board counsel which indicates that the board may request licensees to provide demographic information and asked the Committee if it supported a survey of Board licensees to obtain such information.

Mr. Wong thanked Mr. Manoleas and staff for supporting this and moving forward with the survey. The social work community has desired this information for a number of years.

Mr. Manoleas asked if we could obtain information from applicants on a voluntary basis, similar to how the state asks this information on employment applications. Staff indicated that the Board could not include such an item on a license application without additional statutory authority.

Motion: Recommend that the Board direct staff to conduct a demographic survey of the Board’s licensees and that the information gathered will be strictly voluntary and not individually identifiable.

Motion Passed: 4-0
IX. Discuss Proposal to Reorganize the Statutes Governing Marriage and Family Therapy

Staff indicated that the proposal has been submitted for inclusion in the Senate Business and Professions Committee’s annual committee bill. As part of the submission, the Board has requested that Legislative Counsel conduct a search of the Codes to provide those sections that need to be amended to conform with the reorganization.

X. Dates for Future Committee Meetings

The Committee established the following dates for future meetings:

April 19, 2006
June 28, 2006
September 27, 2006
January 3, 2007

Meeting Adjourned at 3:35 p.m.
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Item III
Draft Meeting Minutes

Policy and Advocacy Committee
April 19, 2006

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

Committee Members Present
Ian Russ
Peter Manoleas
Karen Pines

Staff Members Present
Paul Riches
Mona Maggio
Christy Berger
Christina Kitamura

I.  Introductions

The meeting was called to order at approximately 10:30 a.m. Christina Kitamura called the roll and a quorum was established.

II.战略目标#4 - 报告进度

Mr. Riches 提供了关于战略目标4.1-4.3进度的更新，如会议材料所列。

A number of questions were raised regarding implementation of stipend support for mental health students and loan forgiveness programs under the Mental Health Services Act (MHSA).

Dr. Russ recommended that Board staff review course requirements for licensure as a marriage and family therapist. Ms. Mary Riemersma, representing the California Association of Marriage and Family Therapists (CAMFT), stated that such a review is timely because curriculum and licensing requirements must change to adjust to changing times.

Ms. Pines recommended that Board staff attend meetings of the Mental Health Services Oversight and Accountability Commission to stay abreast of the implementation of the MHSA.

III. 更新和可能的行动有关贷款偿还/奖学金计划实施

Mr. Riches 提供了关于AB 938贷款还款计划的更新。 Board staff is working with the Health Professions Education Foundation (Foundation) staff on draft regulations required to implement the program.
Mr. Riches introduced Ms. Robyn Boyer who was recently appointed as executive officer at the Foundation. Ms. Boyer provided a brief overview of the Foundation’s purpose and direction in supporting increased access to care in underserved communities. Ms. Boyer indicated that there was a significant delay in implementing the AB 938 program, but that it was a top priority for the Foundation.

Mr. Riches informed the committee that in the process of developing the draft regulations the Foundation’s attorney identified a deficiency in the underlying statute that would prevent associate clinical social workers (associates) and marriage and family therapist interns (interns) from participating in the loan repayment program. Interns and associates are key populations in the effort to steer licensed professionals into public service and underserved communities and their exclusion from the program would not be consistent with its stated purpose. Board staff has developed proposed legislation that would remedy this problem and has agreement from Assemblyman Leland Yee (author of AB 938) to include the required language in legislation this year.

*Mr. Manoleas moved, and Ms. Pines seconded, that the committee recommend that the board sponsor legislation to allow interns and associates to participate in the AB 938 program. The committee approved the motion.*

**IV. Review and Possible Action on Pending Legislation and Update on Rulemaking Activity.**

Ms. Berger updated the committee on the pending reorganization of the statutes approved by the board at the February meeting. The language will be amended into Senate Bill 1475 (Figueroa) and is expected to be heard by the Senate Business and Professions Committee on April 24.

**AB 525: Child Abuse Reporting.**

Ms. Berger provided a summary of the bill. The bill adds child emotional abuse to the definition of “child abuse and neglect”, and the bill also clarifies that reporting of child emotional abuse is not mandatory.

Ms. Riemersma stated that physical abuse, sexual abuse, and unjustifiable mental suffering are subject to mandatory reporting. However, emotional abuse is not well defined in current law and current law permits reporting but does not require it.

Dr. Russ clarified that although current law relating to emotional abuse is permissive, reporters who elect to report suspected emotional abuse are protected in the same manner as individuals making mandated reports of suspected abuse.

Mr. Janlee Wong, representing the National Association of Social Workers - California Chapter (NASW), voiced concerns about the ability of many mandated reporters to recognize potential “emotional abuse.”

*Dr. Russ moved that the Board support AB 525. Ms. Pines seconded and the Committee concurred to support AB 525.*

**AB 2003: Comprehensive Pupil Learning Support Program.**

Ms. Berger provided a summary of the bill. The bill establishes a new program that includes using revenue derived from the MHSA to provide mental health services on school campuses.
Ms. Geri Esposito representing the California Society of Clinical Social Work, Mr. Wong and Ms. Riemersma all indicated their opposition to the bill based on the redirection of MHSA revenue. MHSA funding has specific purposes under the act and those purposes should be the sole use of the funding.

Ms. Pines moved, and Mr. Manoleas seconded, that the Board take no position on Assembly Bill 2003. The committee approved the motion.

AB 2257: Psychologists: Record Retention

Ms. Berger provided a summary of the bill. The bill specifies how long psychologists must retain patient records. Current law does not specify how long records must be retained by psychologists or licensees of the board. Staff recommended that the board not take a position on the bill.

Ms. Riemersma indicated that the retention period for therapy records for minors was impractically long.

Dr. Russ moved, and Mr. Manoleas seconded, that the committee recommend that the board take no position on AB 2257. The committee approved the motion.

AB 2283: Physicians and Surgeons: Ethnicity and Language Proficiency

Ms. Berger provided a summary of the bill. The bill would require the Medical Board of California to disclose specified individual physician demographic information on its website.

Dr. Russ moved, and Mr. Manoleas seconded, that the committee recommend that the board support AB 2283. The committee approved the motion.

AB 2328: Agency Fiscal Reports

Ms. Berger provided a summary of the bill. The bill generally requires reporting specific fiscal and program information to the Legislature on an annual basis.

Mr. Riches explained that the Board already reports extensive oversight data through the sunset review process. The bill will require the expenditure of significant staff time. The bill is very similar to bills that were not successful in previous legislative sessions.

Dr. Russ, and Ms. Pines seconded, that the committee recommend no position to the Board. The committee approved the motion.

AB 2357: Outpatient Mental Health Treatment

Ms. Berger provided a summary of the bill. The bill eliminates the sunset provision in “Laura’s Law” which allows for court ordered outpatient mental health treatment. Staff recommended taking no position on the bill.

Ms. Esposito, representing the California Society for Clinical Social Work, indicated that this law is quite controversial.

Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board take no position on AB 2357. The committee approved the motion.
AB 2404: State Reports: Declarations

Ms. Berger provided a summary of the bill. The bill is a follow-up to 2005 legislation that would have required the reports to the Legislature be signed by the head of an agency under penalty of perjury. That bill was vetoed. This bill requires that reports to the Legislature be signed by the head of the agency including the notation that the report, to the best of his or her knowledge, is accurate and complete. Staff recommended taking no position on the bill.

*Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board take no position on AB 2404. The committee approved the motion.*

AB 2420: Collection on Demographic Data

Ms. Berger provided a summary of the bill. The bill would require state agencies collecting demographic information to include specified categories of ancestry in those surveys.

Mr. Riches indicated that staff is making no recommendation on the bill. It was presented to the committee for informational purposes.

*Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board take no position on AB 2420. The committee approved the motion.*

AB 2428: Public Meetings

Ms. Berger provided a summary of the bill. The bill would permit state agencies to require that members of the public disclose specified information as a condition of participating in public meetings of that agency.

Mr. Riches recommended that the board oppose the bill. A primary function of the board is to provide a public forum for discussion of issues relevant to the board’s jurisdiction and this bill is fundamentally contrary to that purpose.

*Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board oppose AB 2428. The committee approved the motion.*

AB 3013: Medical Information: Disclosures

Ms. Berger provided a summary of the bill. The bill would prevent psychotherapists from disclosing general mental health information regarding a patient.

Ms. Riemersma indicated that the bill was amended in committee to parallel provisions in the Health Insurance Portability and Accountability Act.

*Ms. Pines moved, and Mr. Manoleas seconded, that the committee recommend that the board support AB 3013. The committee approved the motion.*

SB 1228: Covenant Marriage

Ms. Berger provided a summary of the bill. The bill establishes a new type of marriage that requires counseling prior to marriage and prior to a divorce.

Mr. Riches stated that the bill specifies who is permitted to provide the required counseling and that some of the categories were unclear and therefore problematic.
Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board oppose SB 1228. The committee approved the motion.

SB 1615: State Agencies: Collection of Data: Ancestry or Ethnic Origin

Ms. Berger provided a summary of the bill. The bill would require state agencies collecting demographic information to comply with federal standards for collecting that information.

Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board take no position on SB 1615. The committee approved the motion.

V. Review of Comments Submitted on Proposed Changes to Title 16, Section 1803.

Mr. Riches provided a brief overview of the proposed regulation and indicated that a letter from CAMFT articulating objections to the proposed regulation was included in the meeting materials as was a response from the board’s counsel. The proposed regulation would delegate the authority to issue a petition to compel a physical or mental health evaluation of a board licensee to the executive officer. Mr. Riches recommended that the language of the proposed regulation be altered to more closely parallel the language in Section 820 of the Business and Professions Code in response to written comments submitted by CAMFT.

Ms. Riemersma reiterated CAMFT’s objections to the proposed regulation as provided in their written comments.

Ms. Esposito and Mr. Wong stated their objections to the proposed regulation because the judgment should be made by a clinician.

Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board amend and adopt the proposed regulation to parallel Business and Professions Code 820. The committee approved the motion.

VI. Review and Possible Action Regarding Statutes and Regulations for Out-of-State Applicants for Clinical Social Work Licensure.

Mr. Riches described a staff recommended proposal to allow individuals licensed as clinical social workers in other states for at least four years to immediately qualify for the California licensure exams. The proposal would require those candidates to complete the required education courses specified in California law and have a clean disciplinary record in any state in which they have been licensed. The proposal would also allow individuals licensed in other states for less than four years to credit a portion of their professional practice towards the 3200 hours of supervised experience required to qualify for the California licensure exams.

Mr. Riches indicated that the board has received a number of complaints regarding the current requirements for out-of-state licensees to become licensed in California (including a letter from a candidate included in the committee meeting materials). In response to this input, staff reviewed the current requirements and developed this proposal. Staff believed that it was reasonable to allow the substitution of licensed practice experience for supervised experience as an associate clinical social worker in qualifying for the licensure examinations. The proposal still requires passage of both the standard written and the clinical vignette examinations before granting a license.

Mr. Janlee Wong indicated support for the proposal. Mr. Wong indicated that it could help address the ongoing shortage of social workers in California.
Ms. Esposito indicated her support for the proposal. Ms. Esposito indicated that it reduced the barriers to entry in California while preserving the requirement to pass the California licensure examinations.

Ms. Pines moved, and Dr. Russ seconded, to recommend that the Board sponsor legislation consistent with the staff proposal. The committee approved the motion.


Mr. Riches provided the committee with a summary of recent activity regarding the disclosure of public records including Executive Order S-03-06. The Executive Order requires each agency to review, and revise as necessary, policies relating to the disclosure of public records. A review of the board’s current policies revealed two issues that staff recommends be addressed by the committee. The first is a five year limitation on the disclosure of citations issued by the board. The second is the omission of settlements and arbitrations exceeding $10,000 that are required to be reported to the board by licensees and insurers.

Ms. Barbara Murphy, a member of the public, addressed the Committee and requested that the board’s Public Disclosure Policy be altered to require reporting of settlements and arbitrations and suggested that the dollar thresholds for reporting be lowered.

Ms. Riemersma questioned why the five year limitation on the disclosure of citations was problematic. Mr. Riches indicated that the California Public Records Act presumes that all government documents are available to the public unless they fall into specific exempt categories and the citations are not included in existing exemptions.

Dr. Russ suggested that Board staff investigate the issues raised by Ms. Murphy including practices by other boards and to explore methods to increase compliance with existing reporting requirements.

Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the board amend its public disclosure policy consistent with the staff proposal. The committee approved the motion.

VIII. Review and Possible Action Regarding Regulations Governing Pre-License Supervision Requirements.

Mr. Riches indicated that this item was carried over from the previous committee meeting. In 2003 the board had directed staff to revise the regulations governing supervisor qualifications. This proposal was delayed by the rulemaking moratorium put in place when Governor Schwarzenegger assumed office. Staff brought the proposal back to the committee for discussion in January. Based on the discussions in January staff revised the proposed language and is requesting that the committee recommend that the board pursue the rulemaking.

The staff proposal allows supervisors to count time spent supervising towards the requirement for having practiced psychotherapy and eliminates the requirement that individuals supervising marriage and family therapy interns have had five hours of patient contact per week.

Dr. Russ moved, and Ms. Pines seconded, that the committee recommend that the Board pursue a rulemaking consistent with the staff proposal. The committee approved the motion.
IX. Review and Possible Action Regarding Amendments to Sections 1833.1 and 1870 Regarding Supervisor Qualifications.

Item IX was a duplicate of Item VIII and no discussion occurred.

At 2:15 p.m., Ms. Pines left the meeting.

X. Review and Possible Action Regarding Recognition of Specialization in Dual Diagnoses by BBS Licensees and Certified Drug Abuse Counselors.

Noting the absence of a quorum, Mr. Riches and Mr. Manoleas provided a history of the discussions with the Department of Alcohol and Drug Programs that lead to the development of this concept. Dr. Russ and Mr. Manoleas discussed the possibility, in concept, of establishing a title protection law for board licensees and certified drug abuse counselors with additional training in dual diagnosis situations.

Ms. Riemersma, Ms. Esposito and Mr. Wong registered significant concerns with the concept.

XI. Suggestions for Future Agenda Items.

There were no suggestions for future agenda items.

The meeting adjourned at approximately 2:50 p.m.
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Item IV
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Memorandum

To: Policy and Advocacy Committee

From: Paul Riches
Executive Officer

Date: June 19, 2006

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.

The board will be actively participating with the MHSA Education and Training initiative. This initiative will be developing the plan for spending MHSA revenues dedicated to building the mental health workforce. This initiative has an advisory group (where the board is represented by Peter Manoleas) which has formed nine workgroups to write elements of the plan. The board is actively participating in the following workgroups:

1. Needs Assessment [Mona Maggio]
6. Distance Learning [Christy Berger]
8. Post Secondary Education and Training [Judy Johnson]
9. Licensing and Certification [Paul Riches]

- On June 12, 2006 Ms. Maggio attended the initiative’s Needs Assessment workgroup.
- On June 28, 2006 Ms. Berger will attend the Distance Learning workgroup.
- On July 6, 2006, Ms. Johnson will attend the Post-Secondary Education/Training workgroup.
- On July 12, 2006, Mr. Riches will attend the Licensing and Certification workgroup.
- On July 19, 2006, Mr. Manoleas will attend the Advisory Committee meeting.
These workgroups will be conducting meetings on an ongoing basis to develop the draft plan.

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 was provided at the May 18-19, 2006 board meeting. Staff is working through suggestions from that conference to begin developing proposals for board committees to consider.

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

No action to report.
Item V
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State of California

Memorandum

To: Policy and Advocacy Committee

From: Christy Berger
Legislation Analyst

Date: June 19, 2006

Telephone: (916) 574-7847

Subject: V. Review and Possible Action on Pending Legislation

Board-Sponsored Legislation

SB 1475 (Figueroa) Reorganization of LEP and Administration Statutes
This bill would reorganize and revise the Board's Administration statutes for clarity, remove obsolete provisions, and make some minor refinements. This bill would also reorganize and revise the Licensed Educational Psychologist (LEP) statutes to remove obsolete provisions, modernize statutes relating to licensure, scope of practice, continuing education, and enforcement, and would create better consistency with the Board's other practice acts. We expect these provisions to be amended into SB 1475 very soon.

AB 1852 (Yee) Licensed Mental Health Service Provider Education Program
This bill would make marriage and family therapist interns (MFT interns) and associate clinical social workers (ASW) eligible for educational loan repayment from the Licensed Mental Health Service Provider Education Program (Program). This bill would also provide technical cleanup of the Program's statute. This bill will be heard by the Senate Health Committee on June 21, 2006. Staff continues to have ongoing discussions with the Office of Statewide Health Planning and Development (OSHPD) to ensure other needed changes are in place by the end of this year.

Update on Other 2006 Legislation

AB 525 (Chu) Child Abuse Reporting
This bill was originally brought before the Policy and Advocacy Committee for review at its April 2006 meeting. The Committee voted to recommend that the Board take a position of "support" on this bill. However, due to a staff error, this bill never went before the full Board for a vote. This bill, sponsored by the California Association of Marriage and Family Therapists (CAMFT), would add emotional abuse to the definition of child abuse, clarify that such a report is not mandatory, (though one reading of the bill is that it would make such a report mandatory), and establishes some technical requirements regarding the report. This bill was recently passed by the Senate Public Safety Committee, and will be heard next by the Senate Appropriations Committee.

AB 2283 (Oropeza) Physicians and Surgeons: Cultural Background and Foreign Language Proficiency
Physicians are currently permitted to report information regarding their cultural background and foreign language proficiency at the time of license renewal to the Medical Board of California (MBC). This bill would require the MBC to aggregate this information and report it on their website, making it more accessible to consumers. The Board voted to support this bill, which is
scheduled for hearing on June 26, 2006 in the Senate Business, Professions, and Economic Development Committee.

AB 3013 (Koretz) Medical Information: Disclosures
This bill would strengthen patient confidentiality laws by conforming California law to provisions of HIPAA which limit the release of patient information, provide the patient the opportunity to prohibit such a release, and permit the health care provider to make judgments regarding releases in emergency situations. The Board voted to support this bill, which has been referred for hearing to the Senate Judiciary Committee.

SB 1476 (Figueroa) BBS Sunset
This bill would extend the Board’s sunset date by one year to July 1, 2009. It has passed the Senate and is now awaiting assignment to committee in the Assembly.

Attachments

AB 1852
Analysis of AB 525
AB 525
Attachment A
An act to amend Sections 128454 and 128456 of the Health and Safety Code, relating to mental health.

LEGISLATIVE COUNSEL’S DIGEST

AB 1852, as amended, Yee. Licensed mental health service provider education program. Mental Health Service Provider Education Program.

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 establishes the Licensed Mental Health Service Provider Education Program, and requires the foundation to develop the program to provide grants to licensed mental health service providers, as defined, who provide direct patient care in a publicly

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funded facility or a mental health professional shortage area, as defined.

Existing law requires the foundation to solicit the advice of representatives of specified agencies and officials, including, but not limited to, the Board of Behavioral Science Examiners.

This bill would revise the definition of “licensed mental health care practitioner” “service provider” for this purpose, to additionally include a registered psychologist, postdoctoral psychological assistant, postdoctoral psychology trainee employed in an exempt setting or employed pursuant to a State Department of Mental Health waiver, marriage and family therapist intern, and an associate clinical social worker, and would make a technical, nonsubstantive change.


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

SECTION 1. Section 128454 of the Health and Safety Code is amended to read:

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, registered psychologist, postdoctoral psychological assistant, postdoctoral psychology trainee employed in an exempt setting or employed pursuant to a State Department of Mental Health waiver, marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, and associate 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.

SEC. 2. Section 128456 of the Health and Safety Code is amended to read:

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 Sciences, 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.
BILL ANALYSIS

BILL NUMBER: AB 525
VERSION: AMENDED IN SENATE MAY 24, 2006

AUTHOR: CHU
SPONSOR: CAMFT

RECOMMENDED POSITION: SUPPORT

SUBJECT: CHILD ABUSE REPORTING

Existing Law:

1) Requires the following practitioners to report suspected child abuse or neglect:
   (PC § 11165.7)
   • Marriage and Family Therapists (MFT), MFT interns and trainees
   • Social workers, including Licensed Clinical Social Workers (LCSW) and Associate Clinical Social Workers (ACSW)
   • Licensed Educational Psychologists (LEP)
   • Other persons and professionals who come into direct contact with children, elders, and dependent adults

2) Defines "child abuse or neglect" as: (PC § 11165.3, 11165.6)
   • Physical injury inflicted intentionally upon a child
   • Sexual abuse
   • Neglect
   • Intentionally causing or permitting a child to suffer
   • Inflicting unjustifiable physical pain or mental suffering
   • Causing or permitting the child to be placed in a situation where the child or the child’s health is endangered
   • Unlawful corporal punishment or injury.

3) Requires a mandated reporter to report child abuse immediately or as soon as possible by telephone and in writing within 36 hours when, in his or her professional capacity, he or she reasonably suspects a child has been the victim of child abuse or neglect. (PC § 11166(a))

4) Permits a mandated reporter to make a report of child emotional abuse (not “unjustifiable mental suffering” which is considered child abuse), defined as a child who is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by, but not limited to, the following: (PC § 11166.05)
   • Severe anxiety
   • Depression
   • Withdrawal
   • Untoward aggressive behavior toward self or others

5) Requires reports of suspected child abuse or neglect to be made by mandated reporters to any entity required to accept mandated reports. (PC § 11165.9)
6) Permits the mandated reporter to release information related to the incident of child abuse or neglect to an investigator from an agency that is investigating the case of child abuse or neglect or to the pertinent branch of the Department of Social Services. (PC § 11167(b), 11167(c))

7) Requires the identity of mandated reporters to be confidential and disclosed only among involved agencies, or to the prosecutor of alleged child abuse, to counsel, or to the Department of Social Services when abuse or neglect in out-of-home care is reasonably suspected, or when the mandated reporter waives confidentiality, or by court order. (PC § 11167(d)(1))

8) Requires the child abuse investigator to advise the individual who is being investigated of the complaints or allegations against him or her in a manner that protects the identity of the mandated reporter. (PC § 11167(e))

9) Requires reports of child abuse or neglect and any investigative reports that result in a summary report being filed with the Department of Justice to be confidential and to be disclosed only to those persons or entities as permitted by law. (PC § 11167.5(a))

10) Requires the agency investigating a report of child abuse or neglect to provide the mandated reporter with a report of the results of the investigation and of any action the agency is taking regarding the child or family upon completion of the investigation or after the case has been closed. (PC § 11170(b)(2))

This Bill:

1) Adds child emotional abuse to the definition of "child abuse and neglect.” (PC § 11165.6)

2) Requires reports of suspected child emotional abuse to be made to any entity required to accept mandated reports. (PC § 11165.9)

3) Clarifies that the reporting of child emotional abuse is not a mandatory report. (PC § 11166(a))

4) Establishes the technical requirements of an authorized report of child emotional abuse. 11167(a).

5) Permits the authorized reporter to release information related to the incident of child emotional abuse to an investigator from an agency investigating the case or to the pertinent branch of the Department of Social Services. (PC § 11167(b), 11167(c))

6) Requires the identity of authorized reporters to be confidential and disclosed only among involved agencies, to the prosecutor, to counsel, or to the Department of Social Services, or when the authorized reporter waives confidentiality, or by court order. (PC § 11167(d)(1))

7) Requires the child abuse investigator to advise the individual who is subject to the investigation of the complaints or allegations against him or her in a manner that protects the identity of the authorized reporter. (PC § 11167(e))

8) Requires reports of child emotional abuse, and any investigative reports that result in a summary report being filed with the Department of Justice to be confidential and be disclosed only to those persons or entities as permitted by law. (PC § 11167.5(a))
9) Requires the agency investigating a report of child emotional abuse to provide the authorized reporter with a report of the results of the investigation and of any action the agency is taking with regard to the child or family upon completion of the investigation or after the case has been closed. (PC § 11170(b)(2))

Comment:

1) Author’s Intent. According to the author, in the last few years, there have been a lot of changes to the child abuse law which has lead to confusion regarding the reporting of child emotional abuse. This bill makes conforming changes, including stating that emotional abuse is child abuse, that confidentiality protections also apply to those who report emotional abuse (the same as those who report other types of abuse), and that those who report emotional abuse are entitled to find out what happened, just as they would for a mandated report. According to the sponsor, a couple of years ago child emotional abuse was placed in a separate section of the penal code than the Child Abuse and Neglect Reporting Act, and as a result of its relocation does not appear to be a form of abuse. The sponsor wants to make it clear that emotional abuse is a form of abuse, even though it is permissive to report. Such is the case in 48 other states, whether the report is permissive or mandatory.

2) Permissive vs. Mandatory. This bill would impact all of the Board’s licensees and registrants because they are mandated reporters of child abuse and neglect. One potential reading of this bill is that it would make the reporting of child emotional abuse mandatory. This is because the proposal adds child emotional abuse to the definition of child abuse, and child abuse is required to be reported.

3) Suggested Amendments.
   - The proposed section 11165.6 appears to have a typographical error. The suggested amendment is as follows:

   11165.6. As used in this article, the term "child abuse or neglect" includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse and neglect also includes instances in which a child suffers or is at substantial risk of suffering serious emotional damage as described in Section 11165.05. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

   - The following addition is suggested in section 11167(d)(1) to clarify that confidentiality also applies to non-mandated reports, in line with the sponsor's intent:

   11167(d)(1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated or authorized reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and
Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

4) **Support and Opposition.**

None known at this time.

5) **History**

2006
- Mar. 22 Withdrawn from committee. Re-referred to Com. on PUB. S.
- Mar. 15 Re-referred to Coms. on HUMAN S. and PUB. S.
- Mar. 8 Withdrawn from committee. Re-referred to Com. on RLS.
- Mar. 7 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
- Feb. 2 Referred to Com. on HEALTH.
- Jan. 26 In Senate. Read first time. To Com. on RLS. for assignment.
- Jan. 26 Read third time, passed, and to Senate. (Ayes 48. Noes 27. Page 4112.)
- Jan. 24 Read second time. To third reading.
- Jan. 23 Read second time and amended. Ordered returned to second reading.

2005
- May 25 In committee: Hearing postponed by committee.
- May 18 In committee: Set, first hearing. Referred to APPR. suspense file.
- Apr. 27 Re-referred to Com. on APPR.
- Apr. 26 Read second time and amended.
- Apr. 25 From committee: Amend, and do pass as amended, and re-refer to Com. on APPR. (Ayes 11. Noes 1.) (April 19).
- Apr. 12 In committee: Set, first hearing. Hearing canceled at the request of author.
- Apr. 5 Re-referred to Com. on HEALTH.
- Apr. 4 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
- Feb. 28 Referred to Com. on HEALTH.
- Feb. 17 From printer. May be heard in committee March 19.
- Feb. 16 Read first time. To print.
AMENDED IN SENATE MAY 24, 2006
AMENDED IN SENATE MAY 16, 2006
AMENDED IN SENATE MARCH 7, 2006
AMENDED IN ASSEMBLY JANUARY 23, 2006
AMENDED IN ASSEMBLY APRIL 26, 2005
AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 525

Introduced by Assembly Member Chu

February 16, 2005

An act to amend Sections 11162.5, 11165.6, 11165.9, 11166, 11167, 11167.5, and 11170 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL’S DIGEST

AB 525, as amended, Chu. Child abuse reporting.
Existing law defines the term “child abuse or neglect” for purposes of mandatory reporting of suspected instances of child abuse or neglect. Existing law specifies certain agencies to which mandated reports of suspected child abuse or neglect shall be made. Existing law requires those agencies to forward those reports that are determined not to be unfounded to the Department of Justice. Existing law also authorizes, but does not require, the reporting of instances where a child suffers or is at substantial risk of suffering serious emotional damage, as specified.
This bill would include within that definition of “child abuse or neglect,” instances where a child suffers or is at substantial risk of suffering serious emotional damage, as defined. This bill would generally conform the procedures for authorized reporting of instances of child abuse or neglect involving emotional damage, as specified, to certain existing procedures applicable to mandated child abuse reporting.

By increasing the reporting burden on local law enforcement agencies, this bill would impose a state-mandated local program.

Existing law requires a representative of a child protective services agency performing an investigation resulting from a required report of suspected child abuse or neglect to inform the individual who is the subject of the investigation, at the 1st contact, of the complaints or allegations against that person, as specified. This bill would apply that requirement in the context of reports of child abuse or neglect involving serious emotional damage that are authorized to be reported.

By increasing the duties of local government entities in connection with investigating certain instances of suspected child abuse, this bill would impose a state-mandated local program.

Existing law requires the investigating agency investigating suspected child abuse or neglect, upon completion of the investigation or after there has been a final disposition of the matter, to inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family. This bill would apply that requirement to the context of reports of child abuse or neglect involving serious emotional damage that are authorized to be reported.

This bill would also correct an obsolete cross-reference.

By increasing the duties of local government entities in connection with investigating certain instances of suspected child abuse, 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.

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

SECTION 1. Section 11162.5 of the Penal Code is amended to read:

11162.5. As used in this article, the following definitions shall apply:

(a) “Health practitioner” has the same meaning as provided in Section 11165.8 paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7.

(b) “Clinic” is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.

(c) “Health facility” has the same meaning as provided in Section 1250 of the Health and Safety Code.

(d) “Reasonably suspects” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

SECTION 1.

SEC. 2. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, the term “child abuse or neglect” includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. “Child abuse or neglect also includes instances in which a child suffers or is at substantial risk of suffering serious emotional damage as described in Section 11166.05. “Child abuse or neglect” does not include a mutual affray between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.
SEC. 2.  
SEC. 3.  Section 11165.9 of the Penal Code is amended to read:

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff’s department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

SEC. 3.  
SEC. 4.  Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may
include with the report any nonprivileged documentary evidence
the mandated reporter possesses relating to the incident.

1 (1) For the purposes of this article, “reasonable suspicion”
means that it is objectively reasonable for a person to entertain a
suspicion, based upon facts that could cause a reasonable person
in a like position, drawing, when appropriate, on his or her
training and experience, to suspect child abuse or neglect. For the
purpose of this article, the pregnancy of a minor does not, in and
of itself, constitute a basis for a reasonable suspicion of sexual
abuse.

2 (2) The agency shall be notified and a report shall be prepared
and sent, faxed, or electronically transmitted even if the child has
expired, regardless of whether or not the possible abuse was a
factor contributing to the death, and even if suspected child abuse
was discovered during an autopsy.

3 (3) Any report made by a mandated reporter pursuant to this
section shall be known as a mandated report.

4 (b) If after reasonable efforts a mandated reporter is unable to
submit an initial report by telephone, he or she shall immediately
or as soon as is practicably possible, by fax or electronic
transmission, make a one-time automated written report on the
form prescribed by the Department of Justice, and shall also be
available to respond to a telephone followup call by the agency
with which he or she filed the report. A mandated reporter who
files a one-time automated written report because he or she was
unable to submit an initial report by telephone is not required to
submit a written followup report.

5 (1) The one-time automated written report form prescribed by
the Department of Justice shall be clearly identifiable so that it is
not mistaken for a standard written followup report. In addition,
the automated one-time report shall contain a section that allows
the mandated reporter to state the reason the initial telephone call
was not able to be completed. The reason for the submission of
the one-time automated written report in lieu of the procedure
prescribed in subdivision (a) shall be captured in the Child
Welfare Services/Case Management System (CWS/CMS). The
department shall work with stakeholders to modify reporting
forms and the CWS/CMS as is necessary to accommodate the
changes enacted by these provisions.
(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected child
abuse or neglect when the clergy member is acting in some other
capacity that would otherwise make the clergy member a
mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any
custodian of records for the clergy member may report to an
agency specified in Section 11165.9 that the clergy member or
any custodian of records for the clergy member, prior to January
1, 1997, in his or her professional capacity or within the scope of
his or her employment, other than during a penitential
communication, acquired knowledge or had a reasonable
suspicion that a child had been the victim of sexual abuse that the
clergy member or any custodian of records for the clergy
member did not previously report the abuse to an agency
specified in Section 11165.9. The provisions of Section 11172
shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known
or suspected abuse has reached the age of majority by the time
the required report is made.

(C) The local law enforcement agency shall have jurisdiction
to investigate any report of child abuse made pursuant to this
paragraph even if the report is made after the victim has reached
the age of majority.

(e) Any commercial film and photographic print processor
who has knowledge of or observes, within the scope of his or her
professional capacity or employment, any film, photograph,
videotape, negative, or slide depicting a child under the age of 16
years engaged in an act of sexual conduct, shall report the
instance of suspected child abuse to the law enforcement agency
having jurisdiction over the case immediately, or as soon as
practicably possible, by telephone and shall prepare and send,
fax, or electronically transmit a written report of it with a copy of
the film, photograph, videotape, negative, or slide attached
within 36 hours of receiving the information concerning the
incident. As used in this subdivision, “sexual conduct” means
any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital,
anal-genital, or oral-anal, whether between persons of the same
or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.
1 (3) Masturbation for the purpose of sexual stimulation of the
2 viewer.
3 (4) Sadomasochistic abuse for the purpose of sexual
4 stimulation of the viewer.
5 (5) Exhibition of the genitals, pubic, or rectal areas of any
6 person for the purpose of sexual stimulation of the viewer.
7 (f) Any mandated reporter who knows or reasonably suspects
8 that the home or institution in which a child resides is unsuitable
9 for the child because of abuse or neglect of the child shall bring
10 the condition to the attention of the agency to which, and at the
11 same time as, he or she makes a report of the abuse or neglect
12 pursuant to subdivision (a).
13 (g) Any other person who has knowledge of or observes a
14 child whom he or she knows or reasonably suspects has been a
15 victim of child abuse or neglect may report the known or
16 suspected instance of child abuse or neglect to an agency
17 specified in Section 11165.9.
18 (h) When two or more persons, who are required to report,
19 jointly have knowledge of a known or suspected instance of child
20 abuse or neglect, and when there is agreement among them, the
21 telephone report may be made by a member of the team selected
22 by mutual agreement and a single report may be made and signed
23 by the selected member of the reporting team. Any member who
24 has knowledge that the member designated to report has failed to
25 do so shall thereafter make the report.
26 (i) (1) The reporting duties under this section are individual,
27 and no supervisor or administrator may impede or inhibit the
28 reporting duties, and no person making a report shall be subject
29 to any sanction for making the report. However, internal
30 procedures to facilitate reporting and apprise supervisors and
31 administrators of reports may be established provided that they
32 are not inconsistent with this article.
33 (2) The internal procedures shall not require any employee
34 required to make reports pursuant to this article to disclose his or
35 her identity to the employer.
36 (3) Reporting the information regarding a case of possible
37 child abuse or neglect to an employer, supervisor, school
38 principal, school counselor, coworker, or other person shall not
39 be a substitute for making a mandated report to an agency
40 specified in Section 11165.9.
(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney’s office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent’s substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney’s office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child’s welfare, or as the result of the failure of a person responsible for the child’s welfare to adequately protect the minor from abuse when the person responsible for the child’s welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.
SEC. 4.
SEC. 5. Section 11167 of the Penal Code is amended to read:

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child’s name, the child’s address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child’s parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.
(2) No agency or person listed in this subdivision shall
disclose the identity of any person who reports under this article
to that person’s employer, except with the employee’s consent or
by court order.
(e) Notwithstanding the confidentiality requirements of this
section, a representative of a child protective services agency
performing an investigation that results from a report of
suspected child abuse or neglect made pursuant to Section 11166
or Section 11166.05, at the time of the initial contact with the
individual who is subject to the investigation, shall advise the
individual of the complaints or allegations against him or her, in
a manner that is consistent with laws protecting the identity of
the reporter under this article.
(f) Persons who may report pursuant to subdivision (g) of
Section 11166 are not required to include their names.
SEC. 5.
SEC. 6. Section 11167.5 of the Penal Code is amended to
read:
11167.5. (a) The reports required by Sections 11166 and
11166.2, or authorized by Section 11166.05, and child abuse or
neglect investigative reports that result in a summary report being
filed with the Department of Justice pursuant to subdivision (a)
of Section 11169 shall be confidential and may be disclosed only
as provided in subdivision (b). Any violation of the
confidentiality provided by this article is a misdemeanor
punishable by imprisonment in a county jail not to exceed six
months, by a fine of five hundred dollars ($500), or by both that
imprisonment and fine.
(b) Reports of suspected child abuse or neglect and
information contained therein may be disclosed only to the
following:
(1) Persons or agencies to whom disclosure of the identity of
the reporting party is permitted under Section 11167.
(2) Persons or agencies to whom disclosure of information is
permitted under subdivision (b) of Section 11170 or subdivision
(a) of Section 11170.5.
(3) Persons or agencies with whom investigations of child
abuse or neglect are coordinated under the regulations
promulgated under Section 11174.
(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, “hospital scan team” means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (6) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (e) of Section 11170.
Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (A) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (B) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to
the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

SEC. 6.

SEC. 7. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information
maintained pursuant to subdivision (a) that is relevant to the
known or suspected instance of child abuse or severe neglect
reported by the agency. The agency shall make that information
available to the reporting medical practitioner, child custodian,
guardian ad litem appointed under Section 326, or counsel
appointed under Section 317 or 318 of the Welfare and
Institutions Code, or the appropriate licensing agency, if he or
she is treating or investigating a case of known or suspected child
abuse or severe neglect.
(2) When a report is made pursuant to subdivision (a) of
Section 11166, or Section 11166.05, the investigating agency,
upon completion of the investigation or after there has been a
final disposition in the matter, shall inform the person required or
authorized to report of the results of the investigation and of any
action the agency is taking with regard to the child or family.
(3) The Department of Justice shall make available to a law
enforcement agency, county welfare department, or county
probation department that is conducting a child abuse
investigation relevant information contained in the index.
(4) The department shall make available to the State
Department of Social Services or to any county licensing agency
that has contracted with the state for the performance of licensing
duties information regarding a known or suspected child abuser
maintained pursuant to this section and subdivision (a) of Section
11169 concerning any person who is an applicant for licensure or
any adult who resides or is employed in the home of an applicant
for licensure or who is an applicant for employment in a position
having supervisory or disciplinary power over a child or
children, or who will provide 24-hour care for a child or children
in a residential home or facility, pursuant to Section 1522.1 or
1596.877 of the Health and Safety Code, or Section 8714, 8802,
8912, or 9000 of the Family Code.
(5) For purposes of child death review, the Department of
Justice shall make available to the chairperson, or the
chairperson’s designee, for each county child death review team,
or the State Child Death Review Council, information maintained
in the Child Abuse Central Index pursuant to subdivision (a) of
Section 11170 relating to the death of one or more children and
any prior child abuse or neglect investigation reports maintained
involving the same victims, siblings, or suspects. Local child
death review teams may share any relevant information regarding
case reviews involving child death with other child death review
teams.

(6) The department shall make available to investigative
agencies or probation officers, or court investigators acting
pursuant to Section 1513 of the Probate Code, responsible for
placing children or assessing the possible placement of children
pursuant to Article 6 (commencing with Section 300), Article 7
(commencing with Section 305), Article 10 (commencing with
Section 360), or Article 14 (commencing with Section 601) of
Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
Code, Article 2 (commencing with Section 1510) or Article 3
(commencing with Section 1540) of Chapter 1 of Part 2 of
Division 4 of the Probate Code, information regarding a known
or suspected child abuser contained in the index concerning any
adult residing in the home where the child may be placed, when
this information is requested for purposes of ensuring that the
placement is in the best interests of the child. Upon receipt of
relevant information concerning child abuse or neglect
investigation reports contained in the index from the Department
of Justice pursuant to this subdivision, the agency or court
investigator shall notify, in writing, the person listed in the Child
Abuse Central Index that he or she is in the index. The
notification shall include the name of the reporting agency and
the date of the report.

(7) The Department of Justice shall make available to a
government agency conducting a background investigation
pursuant to Section 1031 of the Government Code of an
applicant seeking employment as a peace officer, as defined in
Section 830, information regarding a known or suspected child
abuser maintained pursuant to this section concerning the
applicant.

(8) (A) Persons or agencies, as specified in subdivision (b), if
investigating a case of known or suspected child abuse or
neglect, or the State Department of Social Services or any county
licensing agency pursuant to paragraph (4), or an investigative
agency, probation officer, or court investigator responsible for
placing children or assessing the possible placement of children
pursuant to paragraph (6), or a government agency conducting a
background investigation of an applicant seeking employment as
a peace officer pursuant to paragraph (7), to whom disclosure of
any information maintained pursuant to subdivision (a) is
authorized, are responsible for obtaining the original
investigative report from the reporting agency, and for drawing
independent conclusions regarding the quality of the evidence
disclosed, and its sufficiency for making decisions regarding
investigation, prosecution, licensing, placement of a child, or
employment as a peace officer.

(B) If Child Abuse Central Index information is requested by
an agency for the temporary placement of a child in an
emergency situation pursuant to Article 7 (commencing with
Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
and Institutions Code, the department is exempt from the
requirements of Section 1798.18 of the Civil Code if compliance
would cause a delay in providing an expedited response to the
agency’s inquiry and if further delay in placement may be
detrimental to the child.

(9) (A) Whenever information contained in the Department of
Justice files is furnished as the result of an application for
employment or licensing pursuant to paragraph (4) or (7), the
Department of Justice may charge the person or entity making
the request a fee. The fee shall not exceed the reasonable costs to
the department of providing the information. The only increase
shall be at a rate not to exceed the legislatively approved
cost-of-living adjustment for the department. In no case shall the
fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this
section to process trustline applications for purposes of Chapter
3.35 (commencing with Section 1596.60) of Division 2 of the
Health and Safety Code shall be deposited in a special account in
the General Fund that is hereby established and named the
Department of Justice Child Abuse Fund. Moneys in the fund
shall be available, upon appropriation by the Legislature, for
expenditure by the department to offset the costs incurred to
process trustline automated child abuse or neglect system checks
pursuant to this section.

(C) All moneys, other than that described in subparagraph (B),
received by the department pursuant to this paragraph shall be
deposited in a special account in the General Fund which is
hereby created and named the Department of Justice Sexual
Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency’s inquiry and if further delay in placement may be detrimental to the child.
(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person’s name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed
from the index by making a written request to the Department of Justice. The request shall be notarized and include the person’s name, address, social security number, and date of birth.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Item VI
State of California

Memorandum

To: Policy and Advocacy Committee

From: Christy Berger
Legislation Analyst

Date: June 14, 2006
Telephone: (916) 574-7847

Subject: VI. Update on Rulemaking Activity

The status of regulations proposed by the Board are as follows:

Title 16, CCR Section 1886.40, Citations and Fines
These regulations would provide the board with the authority to issue a fine between $2,501 and $5,000 for specified violations. This regulation proposal is pending the approval of the Department of Finance before being sent to the Office of Administrative Law (OAL) for approval.

Title 16, CCR Section 1803, Delegation of Authority to the Executive Officer
These regulations would allow the executive officer to sign orders to compel a physical or mental evaluation of a Board licensee or registrant as part of an investigation of a complaint. This regulation proposal is pending a regulation hearing at the July 2006 Board meeting.

Title 16, CCR Sections 1833.1 and 1870, Supervisor Requirements
These regulations would allow supervisors, who are currently required to have practiced psychotherapy for two out of the five years preceding any supervision, to additionally count time spent directly supervising persons who perform psychotherapy. At its April 2006 meeting, the Policy and Advocacy Committee voted to recommend the language to the Board. The Board declined to take action on this proposal at its May 2006 meeting and sent it back to the Committee for further discussion due to concerns about licensees who would become a supervisor after only 2 yrs of licensure, never see clients again, and yet remain a supervisor for the rest of their working life.

Title 16, CCR Section 1886, Citation and Fine of Continuing Education Providers
These regulations would provide the board with the authority to issue a citation and fine to a continuing education provider. This regulation proposal is currently on hold due to staff workload considerations.
Item VII
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State of California

Memorandum

To: Policy and Advocacy Committee

From: Christy Berger
Legislation Analyst

Date: June 20, 2006

Telephone: (916) 574-7847

Subject: VII. Discussion and Possible Action on Increasing Transparency of Licensure for Marriage and Family Therapists

Background
The Board has been considering ways to increase transparency of licensure for Licensed Clinical Social Workers. At its May 2006 meeting, the Board directed staff to pursue legislation to permit a person who has been licensed for a minimum of four years as a clinical social worker in another state, whose license is valid, active and without disciplinary action, to become licensed in California upon completion of required coursework and passing both board-required examinations.

This proposal 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.

The American Association of Marriage and Family Therapists (AAMFT), California Chapter, has asked the Board to consider increasing transparency for Marriage and Family Therapists (MFT) licensed in another state. The Board does not have reciprocity with any other state.

When a person has been licensed in another state as a MFT for at least two years and wishes to become licensed as a MFT in California, he or she must meet the following qualifications, regardless of how long he or she has been licensed: 1

- 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
- Complete the following coursework:
  - California law and ethics: Two semester units, must be taken in California
  - Child abuse assessment and reporting: Seven hours
  - Human Sexuality: 10 hours
  - Alcoholism and other chemical substance dependency: 15 hours
  - Spousal or partner abuse: 15 hours
  - Psychological testing: Two semester units
  - Psychopharmacology: Two semester units
- Pass both the standard written and clinical vignette examinations

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1 Business and Professions Code (BPC) Section 4980.80
For a person who has gained education and/or experience in another state, or has been licensed as an MFT for less than two years in another state, similar requirements apply. But in addition, the applicant must register as an MFT Intern and complete a minimum of 250 hours of experience (or more) prior to applying for the licensure examinations.\(^2\)

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 a full 3000 hours (most states require only 1500 hours). In such cases, the applicant has to earn additional hours of supervised experience. Additionally, some degrees earned in other states do not qualify.

**Discussion**
48 states plus the District of Columbia currently license MFTs for clinical independent practice. According to a survey of states by AAMFT, the scope of practice for clinical MFT licenses are comparable across all states, permitting MFTs to perform counseling and/or psychotherapy with individuals, couples, and groups. AAMFT provided some data regarding licensure requirements in each state. Staff performed additional research to complete the attached chart, which indicates basic requirements for licensure in each state.

Unlike California, most states do not require a specific degree title to become licensed as a MFT. According to AAMFT, the vast majority require a degree in marriage and family therapy or “the equivalent.” The number of units required for a qualifying degree vary from a low of 27 semester units (Indiana) to a high of 60 units (six states). The number of units required nationally averages 41, and California requires 48.

57% of states require 18 semester units specific to marriage and family therapy, though the number ranges from a low of three units (New York) to a high of 24 units (South Carolina and Washington). California requires 12 units.

All states that require practicum hours require more than California’s 150 (The District of Columbia and Washington require none). Interestingly, the vast majority of states do not accept any pre-degree hours other than practicum. Only nine states including California accept pre-degree hours of experience.

Post-degree experience requirements vary widely, from a low of 1,000 hours (Louisiana and North Carolina) to a high of 4,000 (Kansas, Utah, and Virginia). 18 states require 1,500 hours of experience or less. The average number of hours required is 2,643. Some states specify post-degree experience in terms of years rather than hours.

All states except for California use the examination developed by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). Six states require an additional state-developed oral, written, or jurisprudence examination.

**Questions for Consideration**
Should the Board work to increase transparency for the MFT profession? If so, in what way? What impact would the varying requirements for education and experience across states have on such a proposal?

**Attachments**
Marriage and Family Therapist Licensure Requirements Across the U.S. (table)
Business and Professions Code Sections 4980.37, 4980.39, 4980.40, 4980.41, 4980.43, 4980.80 and 4980.90

\(^2\) BPC Section 4980.90
Attachment A
Blank Page
<table>
<thead>
<tr>
<th>State</th>
<th>License Name</th>
<th>Scope of Practice</th>
<th>Degree Titles Accepted</th>
<th>Units Required</th>
<th>Practicum Hrs. Req.</th>
<th>Pre-licensed or post-degree if required</th>
<th>Exam Type(s) Required</th>
<th>Notes</th>
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<tbody>
<tr>
<td>AL</td>
<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>37 sem** 12 sem</td>
<td>500 Hrs. NA</td>
<td>1950</td>
<td>AMFTRB</td>
<td></td>
</tr>
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<td>AK</td>
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<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>33 sem (+4) 12 sem</td>
<td>500 Hrs. NA</td>
<td>1950</td>
<td>AMFTRB and State-developed Exam</td>
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<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>37 sem** 12 sem</td>
<td>500 Hrs. NA</td>
<td>See Notes</td>
<td>AMFTRB and Oral exam</td>
<td>Shall be 3 years of full-time experience</td>
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<td>33 sem (+6) 12 sem</td>
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<td>1,200</td>
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<td>CA</td>
<td>MFT</td>
<td>Minor level: study marriage, family, and community relationships; achieve self-adjustments; use therapeutic techniques, provide explanations and interpretations of psychosexual and psychological aspects of relationships, and family or group counseling.</td>
<td>MFT or equivalent</td>
<td>48 sem/72 12 sem/18 quarter 150 min 1700 min</td>
<td>State-developed written and oral exam</td>
<td>AMFTRB and State-developed jurisprudence exam</td>
<td></td>
<td></td>
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<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>45 sem 18 sem</td>
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<td>CT</td>
<td>LMFT</td>
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<td>MFT or equivalent</td>
<td>45 sem 12 sem</td>
<td>500 Hrs. NA</td>
<td>1100</td>
<td>AMFTRB and State-developed jurisprudence exam</td>
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<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>33 sem 9 sem</td>
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<td>MFT or equivalent</td>
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<td>LMFT</td>
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<td>MFT or equivalent</td>
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<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
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<td>MFT or equivalent</td>
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<td>Full-time</td>
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<td>3000</td>
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<td>LMFT</td>
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<td>MFT or equivalent</td>
<td>48 sem 18 sem</td>
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<td>3000</td>
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<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>27 sem/45 8 sem</td>
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<td>KS</td>
<td>MFT</td>
<td>Licensed Clinical MFT</td>
<td>MFT or equivalent</td>
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<td>4000</td>
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<td>MFT or equivalent</td>
<td>31 sem 16 sem</td>
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<td>MA</td>
<td>LMFT</td>
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<td>MFT or equivalent</td>
<td>40 sem 18 sem</td>
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<td>AMFTRB</td>
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<td>MD</td>
<td>LMFT</td>
<td>Equivalent to CA</td>
<td>MFT or equivalent</td>
<td>50 sem 12 sem</td>
<td>300 Hrs. NA</td>
<td>2000</td>
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Attachment B
§4980.37. DEGREE PROGRAM; COURSE OF STUDY AND PROFESSIONAL TRAINING

(a) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program which meets the educational qualifications for licensure shall include all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California’s population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(b) Educational institutions are encouraged to design the practicum required by subdivision (b) of Section 4980.40 to include marriage and family therapy experience in low-income and multicultural mental health settings.

§4980.39. ADDITIONAL COURSEWORK

(a) Any applicant for licensure as a marriage and family therapist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within
the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

§4980.40. QUALIFICATIONS

To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants shall possess a doctor’s or master’s degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this subdivision, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children. The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor’s or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.
(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of Section 4980.43.

(g) The applicant shall pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.
(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

(j) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and shall provide any other documentation the board deems necessary.

§4980.41. ELIGIBILITY TO SIT FOR LICENSING EXAMINATIONS; COURSEWORK OR TRAINING

All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (g) of Section 4980.40:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) 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.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.
(e) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

§4980.43. PROFESSIONAL EXPERIENCE; INTERNS OR TRAINEES

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of experience obtained prior to completing a master's or doctor's degree. This experience shall be composed as follows:

(A) Not more than 750 hours of counseling and direct supervisor contact

(B) Not more than 250 hours of professional enrichment activities.

(C) Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.
(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(7) Not more than 1000 hours of experience for direct supervisor contact and professional activities.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.
(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed
psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a
professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee
volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that
meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and
supervision requirements set forth in this chapter and is within the scope of practice for the
profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in
paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to
provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is
employed or volunteering in private practice shall be under the direct supervision of a licensee
enumerated in subdivision (f) of Section 4980.40. The supervising licensee shall either be
employed by and practice at the same site as the intern's employer, or shall be an owner or
shareholder of the private practice. Alternative supervision may be arranged during a
supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern
volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in
order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall
be credited toward licensure so long as the applicant applies for the intern registration within 90
days of the granting of the qualifying master's or doctor's degree and is thereafter granted the
intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients,
and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their
employers regularly conduct business, which may include performing services at other
locations, so long as the services are performed under the direction and control of their
employer and supervisor, and in compliance with the laws and regulations pertaining to
supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who
receive no more than a total, from all work settings, of five hundred dollars ($500) per month as
reimbursement for expenses actually incurred by those trainees, interns, or applicants for
services rendered in any lawful work setting other than a private practice shall be considered an
employee and not an independent contractor. The board may audit applicants who receive
reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

§4980.80. RECIPROCITY; EQUIVALENT REQUIREMENTS; PAYMENT OF FEES; FURTHER CONDITIONS

The board may issue a license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified by subdivision (g) of Section 4980.40 and pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(b) 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.

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

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

(e) (1) 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.

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

(f) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(g) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(h) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.
§4980.90. EXAMINATION; PERSONS WITH EDUCATION AND EXPERIENCE WHILE RESIDING OUTSIDE OF CALIFORNIA

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) Education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

1. A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

2. 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.

3. A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

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

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

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

6. On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

7. On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

8. With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been granted a degree in a single integrated program primarily designed to train marriage, family, and child counselors and if the applicant's education meets the requirements of Sections 4980.37 and 4980.40. The degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. If the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.
Item VIII
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Memorandum

To: Policy and Advocacy Committee
From: Christy Berger
Legislation Analyst

Date: June 19, 2006
Telephone: (916) 574-7847

Subject: VIII. Review and Possible Action on Draft Regulations Related to Supervisor Qualifications

Section 1833.1 of the board’s regulations describes the requirements for MFT Intern supervisors including a requirement that the supervisor “…has practiced psychotherapy for at least two years in the five year period immediately preceding any supervision and has averaged at least five patient/client contact hours per week.”

Section 1870 of the board’s regulations describes the requirements for ASW supervisors including a requirement that the supervisor “…has practiced psychotherapy as part of his/her clinical experience for at least two years within the last five years immediately preceding supervision.”

The board currently interprets supervision of an IMF or ASW to be “psychotherapy” for the purposes of meeting the practice requirement in Sections 1833.1 and 1870. The proposed regulation would make this interpretation explicit in the regulation. It would also delete the requirements for supervisors of MFT Interns to average five patient/client contact hours per week.

At its February 2003 meeting, the Board approved this proposal. However, the rulemaking process was never initiated for these changes. The proposed changes and recent revisions to the proposed language were taken up for review again at the January 2006 meeting of the Board’s Policy and Advocacy Committee. However, the Committee declined to take action until receiving the results of the supervision survey.

At its April 2006 meeting, the Policy and Advocacy Committee agreed to recommend to the Board that the proposed language be adopted. However, at the May 2006 Board meeting, the Board expressed concern that some licensees would become a supervisor after only 2 yrs of licensure, never see clients again, and yet remain a supervisor for the rest of their working life. However, there were concerns expressed by stakeholders that the current restrictions are decreasing the number of licensees qualified to supervise. The Board decided to return this proposal back to the Committee for further review and discussion.

Attachments
Proposed Language Section 1833.1
Proposed Language Section 1870
Attachment A
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:

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

2. 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

3. 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.

4. If such supervisor 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.

5. 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.

6. 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.

7. 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 or direct supervision hours per week.

8. 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 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) 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 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 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) 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.
Attachment B
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:

(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 and has averaged at least five (5) patient/client contact hours per week.

(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 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 with supervision literature through reading assignments specified by course instructors;

2. Facilitation of therapist-client and supervisor-therapist relationships;
The supervisor and the associate shall develop the “Supervisory Plan” as described in Section 1870.1 of the California Code of Regulations. The associate shall submit the original signed plan 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 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).

Item IX
State of California

Memorandum

To: Policy and Advocacy Committee  
Date: June 19, 2006

From: Paul Riches  
Telephone: (916) 574-7840

Subject: Reporting Settlements and Arbitrations

The board revised its public disclosure and complaint disclosure policies at its May 2006 meeting. Among the changes to these policies was requiring the board to disclose malpractice settlements and arbitrations in excess of $10,000. This change was made to conform the board’s disclosure policy with the California Public Records Act and provisions of the Business and Professions Code that require settlements and arbitrations in excess of $10,000 be reported to the board by insurance companies (see attachment A). However, the board seldom receives such reports and the committee indicated that it wanted to address the lack of reporting at a future meeting.

Staff contacted a number of professional organizations to get information regarding the major malpractice insurance companies for their members. It appears that there are three primary organizations providing professional liability coverage for mental health professionals:

- Healthcare Providers Service Organization (HPSO),
- American Professional Agency,
- CPH and Associates.

The absence of reporting is likely a consequence of the insurers all being located outside of California and not being familiar with the existing reporting requirements. Staff will contact each insurer and inform them of the reporting mandates and processes.
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Item X
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Memorandum

To: Policy and Advocacy Committee

Date: June 19, 2006

From: Christy Berger
Legislation Analyst

Telephone: (916) 574-7847

Subject: X. Review and Possible Action on Technical Regulation Cleanup Related to LEP and Board Administration Statutory Changes

Background
The Board is seeking to update the Licensed Educational Psychologist (LEP) statutes and the Board’s administration statutes. We expect this proposal to be amended into a bill very soon (Senate Bill 1475, Figueroa). The Board’s regulations will need some technical amendments in order to conform to these statutory changes.

Discussion
All proposed changes pertain to the LEP regulations. No changes will be needed to administration-related regulations.

Section 1854: The proposed amendment to this section is needed because the current statute, section 4986.20(a) references “…a degree deemed equivalent by the board…” However, the new statute, section 4989.30(a) instead references an “…educational institution approved by the board…”

Section 1855: This section pertains to outdated grandparenting provisions and is proposed to be deleted.

Section 1856: Subdivision (d) pertains to outdated grandparenting provisions and is proposed to be deleted.

Section 1857: This section pertains to outdated grandparenting provisions and is proposed to be deleted.

Section 1858: The content of this section has been included in section 4989.80 of the proposed statute in its entirety, except for subdivisions (b) and (j).

Recommendation

The Committee recommend that the Board direct staff to initiate a rulemaking to implement these changes to take effect on or after January 1, 2007.

Attachments
Proposed Language (Regulations)
Proposed Language (Statutes)
Attachment A
ARTICLE 5. LICENSED EDUCATIONAL PSYCHOLOGISTS

§1854.

Degrees deemed equivalent to those specified in Section 4986.20(a) of the Code shall include a master's degree or its equivalent obtained from a college or university accredited by one of the following agencies. Educational institutions approved by the board are defined as a college or university accredited by one of the following agencies:

(a) Western Association of Schools and Colleges.

(b) Northwest Association of Secondary and Higher Schools.

(c) Middle States Association of Colleges and Secondary Schools.

(d) New England Association of Colleges and Secondary Schools.

(e) North Central Association of Colleges and Secondary Schools.

(f) Southern Association of Colleges and Schools.

(g) The Credentials Evaluation Service of the International Education Research Foundation, Inc., where it evaluates the foreign degree as being equivalent to the required degree or degrees.

Authority cited: Section 4980.60, 4990.20(a), Business and Professions Code. Reference: Section 4986.20(a), 4989.30(a), Business and Professions Code.

§1855.

Semester hours in instructing a course in pupil personnel services approved by the board and offered by an institution accredited by one of the accrediting agencies set forth in Section 1854 above shall be deemed equivalent, within the meaning of Section 4986.20(d) of the Code, to semester hours of postgraduate work devoted to pupil personnel services under the following conditions:

(1) The applicant has instructed the particular course for at least two semesters;

(2) The particular course has not been submitted by the applicant for credit as a postgraduate course; and
(3) The particular course is not a practicum or field work course. In addition to the above, the board may, in its discretion, recognize other experience as equivalent to semester hours of postgraduate work devoted to pupil personnel services. Authority cited: Section 4980.60, Business and Professions Code. Reference: Section 4986.20, Business and Professions Code.

§1856.

(a) No more than one year of experience will be granted for any 12 month period.

(b) Part time experience may be accumulated provided that the experience is obtained within six (6) calendar years.

(c) Experience as a credentialed school psychologist employed by a parochial or private school may, at the board's discretion, be deemed equivalent to experience as a credentialed school psychologist in the public schools.

(d) Persons meeting this requirement must verify this experience by written statements from their sponsors as specified in Section 4986.20 of the Code. These statements shall include information regarding the applicant's:

(1) Skill in the administration of standardized individual tests for subjects varying from three (3) to twenty-one (21) years of age.

(2) Skill in the interpretation of results to parents, teachers, administrators, admissions committees, or other appropriate parties.

(3) Skill in the classification of subjects for special programming based on existing legislation.

(4) Recognition and diagnosis of learning problems with recommendations for solution of the problems.

(5) Recognition and amelioration of behavior problems.

(6) Interpretation of scores of standardized group tests.

(7) Skills in the use of psychological counseling or other therapeutic techniques with children and parents.

Authority cited: Section 4980.60 4990.20(a), Business and Professions Code. Reference: Section 4986.20 4989.30(e), Business and Professions Code.

§1857.

(a) An applicant who has completed a minimum of seven hundred and twenty (720) clock hours under professional supervision as specified herein in the following experiences shall be deemed to have suitable experience equivalent to one year of supervised professional experience in an accredited school psychology program, or under the direction of a licensed psychologist:
- (1) Utilization of all instruments presented within the prescribed course of study in the educational institution attended, with a wide variety of subjects (generally inclusive of WAIS, WISC, Binet, and group tests).

- (2) Administration of additional tests commonly employed in the field by school psychologists.

- (3) Consulting with teachers concerning learning and behavior problems of children enrolled in special education programs.

- (4) Referral to and use of community agencies.

- (5) Oral and written communication of results in accordance with the local supervisor’s requirements.

(b) The local supervisor shall consult with the intern at least once weekly during the period of internship and shall:

- (1) Possess a valid credential in school psychology; and

- (2) Have a minimum of two (2) years experience in the field of school psychology.

(c) The general supervisor shall arrange for and coordinate intern placement with the local supervisor, and shall consult with the intern and/or the local supervisor at least three times during the period of internship. A general supervisor shall be qualified as one of the following:

- (1) A credentialed school psychologist;

- (2) A licensed psychologist;

- (3) A licensed educational psychologist;

- (4) A state or accredited training institution designated supervisor of school psychology trainees.


§1858.

The Board may suspend or revoke the license of a licensee who:

- (a) Misrepresents the type or status of license held by the licensee.

(b) (a) Impersonates a licensee or who allows another person to use his or her license.

- (e) Aids or abets an unlicensed person to engage in conduct requiring a license.

- (d) Intentionally or recklessly causes physical or emotional harm to a client.

- (e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.
(f) When employed by another person or agency, encourages, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(g) Misrepresents or permits the misrepresentation of his or her professional qualifications, affiliations, or purposes.

(h) Has sexual relations with a client, or who solicits sexual relations with a client, or who commits an act of sexual abuse, or who commits an act of sexual misconduct, or who commits an act punishable as a sexual related crime if such act or solicitation is substantially related to the qualifications, functions or duties of an educational psychologist.

(i) Performs or holds himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

(j) Permits a person under his or her supervision or control to perform or permits such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.

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

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

(m) Advertises in a manner which is false or misleading.

(n) Reproduces or describes in public or in publications subject to general public distribution, 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 such test or device. An Educational Psychologist shall limit access to such test or device to persons with professional interests who can be expected to safeguard their use.

(o) Fails to comply with the child abuse reporting requirements of Penal Code Section 11166.

(p) Fails to comply with the elder and adult dependent abuse reporting requirements of Welfare and Institution Code Section 15630.

Authority cited: Section 4987, 4989.18, Business and Professions Code. Reference: Sections 730, 4986.70, 4989.80, 4986.71, and 4987, 4989.18, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.
Attachment B
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An act to amend Sections 2533, 4104, 4162, 4180, 4181, 4182, 4190, 4191, 4192, 4546, and 4548 of, and 4994, 4996.17, 4999, 4999.1, and 4999.4 of, to amend the heading of Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of, to add Chapter 13.5 (commencing with Section 4989.10) and Chapter 13.7 (commencing with Section 4990) to Division 2 of, to add Sections 4991 and 4991.2 to, to repeal Article 5 (commencing with Section 4986) of Chapter 13 and Article 1 (commencing with Section 4990) of Chapter 14 of Division 2 of, and to repeal Sections 4992.31, 4998.6, 4999.8, and 4999.9 of, the Business and Professions Code, relating to the healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST

SB 1475, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law creates the Board of Behavioral Sciences and makes it responsible for the licensure and regulation of clinical social workers and educational psychologists. Under existing law, moneys received by the board are deposited into the Behavioral Sciences Fund and are continuously appropriated to the board, other than the
This bill would recast the provisions creating the board. The bill would name provisions regulating social workers the Clinical Social Worker Practice Act and would modify licensure requirements with respect to experience gained outside this state. The bill would also establish the Educational Psychologist Practice Act that would continue the licensure and regulation of educational psychologists by the board. The bill would revise the provisions defining and regulating the practice of educational psychologists and would require licensees to complete continuing education as a prerequisite for licensure renewal. The bill would authorize the board to require those continuing education providers to pay fees to fund the administration of this requirement. Because the bill would direct their deposit into the Behavioral Sciences Fund, it would make an appropriation by increasing the amount of funds in a continuously appropriated fund. The bill would continue to make the violation of provisions regulating educational psychologists punishable as a crime and, because it would prohibit the commission of additional types of conduct, the bill would expand that crime and thereby impose a state-mandated local program.

(2) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and makes a violation of the act a crime.

Existing law requires every pharmacy to have written policies and procedures for detecting certain impairments or drug-related acts among licensees employed by or with the pharmacy.

This bill would instead require every pharmacy to have written policies and procedures for addressing those impairments or acts by those licensees.

Existing law requires an applicant for a wholesaler license to submit a surety bond or other security to the board, as specified.

This bill would exempt a government-owned and operated wholesaler from that requirement.

Under existing law, specified clinics, including surgical clinics, may purchase drugs at wholesale for administration or dispensing to the clinic’s patients. Existing law requires these clinics to maintain certain records for at least 7 years for inspection and to obtain a license from the board. Existing law specifies that each license is to be issued to a specific clinic and for a specific location. Existing law requires those
clinics, when applying for a license, to show evidence that a professional director, as defined, is responsible for the provision of pharmacy services. Existing law also requires those clinics, other than surgical clinics, to retain a consulting pharmacist to perform specified tasks, including certifying in writing, at least twice a year, that the clinic is or is not operating in compliance with specified requirements, and requires the most recent certification to be submitted with the clinic’s license renewal application.

This bill would instead require those clinics to maintain those records for at least 3 years and would require a separate license for each clinic location. The bill would expand the definition of “professional director” to include a dentist or podiatrist in certain circumstances. The bill would require a clinic to notify the board of any change of address, any change of the board of directors of a clinic’s nonprofit corporation or, in the case of a surgical clinic, any proposed change in ownership, as specified, and any change in professional director. The bill would require surgical clinics also to retain a consulting pharmacist to perform those specified tasks. The bill would require a consulting pharmacist to provide the certification, with any recommended corrective actions, in writing quarterly and to keep the certification on file for 3 years. Because the bill would specify additional requirements under the Pharmacy Law, a violation of which would be a crime, it would impose a state-mandated local program. The bill would make other technical changes.

(2)
(3) Existing law, the Psychiatric Technicians Law, provides for the licensure and regulation of psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians, imposes specified fees in connection with the issuance of licenses by the board, and authorizes the board to fix certain of those fees within specified minimums and maximums. Existing law requires the board to pay all revenue received into the State Treasury for credit to the Vocational Nursing and Psychiatric Technicians Fund. Existing law prohibits the board from maintaining a reserve balance greater than 3 months of the appropriated operating expenditures of the board in any fiscal year.

This bill would delete that prohibition and reduce the minimum amount of certain fees fixed by the board.

(3)
(4) Existing law provides for the registration of telephone medical advice services with the Telephone Medical Advice Services Bureau of
the Department of Consumer Affairs, and prohibits a business entity from providing those services to a patient at a California address unless the person is registered. Under existing law, any business entity that submits proof of accreditation by certain specified health committees and organizations is deemed provisionally registered.

This bill would delete that provision and modify the application requirements for registration.

(5) 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.


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

SECTION 1. Section 2533 of the Business and Professions Code is amended to read:

2533. The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct shall include, but shall not be limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist, as the case may be. The record of the conviction shall be conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) (1) The use or administering to himself or herself, of any controlled substance; (2) the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology of audiology safely; (3) more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this
($20) and may be fixed by the board at an amount no more than fifty dollars ($50).

(k) The biennial fee to be paid upon the filing of an application for renewal for a provider of an approved continuing education course or a course to meet the certification requirements for blood withdrawal shall be in an amount not less than one hundred fifty dollars ($150), and may be fixed by the board at an amount no more than two hundred dollars ($200).

SEC. 12. Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code is repealed.

SEC. 13. Chapter 13.5 (commencing with Section 4989.10) is added to Division 2 of the Business and Professions Code, to read:

Chapter 13.5. Licensed Educational Psychologists

Article 1. General

4989.10. This chapter shall be known, and may be cited as, the Educational Psychologist Practice Act.

4989.12. The Board of Behavioral Sciences shall administer and enforce the provisions of this chapter. For the purposes of this chapter it shall be designated as the board.

4989.14. The practice of educational psychology is the performance of any of the following professional functions pertaining to academic learning processes or the educational system or both:

(a) Educational evaluation.

(b) Diagnosis of psychological disorders related to academic learning processes.

(c) Administration of diagnostic tests related to academic learning processes including tests of academic ability, learning patterns, achievement, motivation, and personality factors.

(d) Interpretation of diagnostic tests related to academic learning processes including tests of academic ability, learning patterns, achievement, motivation, and personality factors.

(e) Providing psychological counseling for individuals, groups, and families.
(f) Consultation with other educators and parents on issues of social development and behavioral and academic difficulties.

(g) Conducting psychoeducational assessments for the purposes of identifying special needs.

(h) Developing treatment programs and strategies to address problems of adjustment.

(i) Coordinating intervention strategies for management of individual crises.

4989.16. (a) A person appropriately credentialed by the Commission on Teacher Credentialing may perform the functions authorized by that credential in a public school without a license issued under this chapter by the board.

(b) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900)), the Marriage and Family Therapist Practice Act (Chapter 13 (commencing with Section 4980)), or the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)).

4989.18. The board may, by rules or regulations, adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession, provided those rules or regulations are not inconsistent with Section 4989.54. Every person licensed under this chapter shall be governed by those rules of professional conduct.

Article 2. Licensure

4989.20. (a) The board may issue a license as an educational psychologist if the applicant satisfies, with proof satisfactory to the board, the following requirements:

(1) Possession of, at minimum, a master’s degree in psychology, educational psychology, school psychology, or counseling and guidance. This degree shall be obtained from an educational institution approved by the board according to the regulations adopted under this chapter.

(2) Attainment of 18 years of age.
(3) No commission of an act or crime constituting grounds for
denial of licensure under Section 480.
(4) Successful completion of 60 semester hours of
postgraduate work in pupil personnel services.
(5) Completion of three years of full-time experience as a
credentialed school psychologist in the public schools. At least
one year of the experience required by this paragraph shall be
supervised professional experience in an accredited school
psychology program or obtained under the direction of a
licensed psychologist or a licensed educational psychologist. The
applicant shall not be credited with experience obtained more
than six years prior to filing the application for licensure.
(6) Passage of an examination specified by the board.
4989.22. (a) Only persons who satisfy the requirements of
Section 4989.20 are eligible to take the licensure examination.
(b) An applicant who fails the written examination may, within
one year from the notification date of failure, retake the
examination as regularly scheduled without further application.
Thereafter, the applicant shall not be eligible for further
examination until he or she files a new application, meets all
current requirements, and pays all fees required.
(c) Notwithstanding any other provision of law, the board may
destroy all examination materials two years after the date of an
examination.
4989.24. The board shall not issue a license to a person who
has been convicted of a crime in this or any other state or in a
territory of the United States that involves sexual abuse of
children or who is required to register pursuant to Section 290 of
the Penal Code or the equivalent in another state or territory.
4989.26. The board may refuse to issue a license to an
applicant if it appears he or she may be unable to practice safely
due to mental illness or chemical dependency. The procedures
set forth in Article 12.5 (commencing with Section 820) of
Chapter 1 shall apply to a denial of a license pursuant to this
section.
4989.28. The board may deny an application for licensure if
the applicant is or has been guilty of unprofessional conduct as
described in Section 4989.54.
Article 3. Renewal and Continuing Education

4989.30. A license issued under this chapter shall expire no later than 24 months after its date of issue.

4989.32. To renew an unexpired license, the licensee shall, on or before the expiration date of the license, take all of the following actions:
   (a) Apply for renewal on a form prescribed by the board.
   (b) Pay a renewal fee prescribed by the board.
   (c) Inform the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state after the prior issuance or renewal of his or her license.
   (d) Complete the continuing education requirements described in Section 4989.34.

4989.34. (a) To renew his or her license, a licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 60 hours of approved continuing education in, or relevant to, educational psychology.

   (b) Notwithstanding subdivision (a), a licensee who possesses a current general pupil personnel services credential issued on or after July 1, 1994, shall be exempt from the continuing education requirement.

   (c) (1) The continuing education shall be obtained from either an accredited university or a continuing education provider approved by the board.

   (2) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

   (d) Training, education, and coursework by approved providers shall incorporate one or more of the following:

      (1) Aspects of the discipline that are fundamental to the understanding or the practice of educational psychology.
(2) Aspects of the discipline of educational psychology in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of educational psychology.

(e) The board may audit the records of a licensee to verify completion of the continuing education requirement. A licensee shall maintain records of the completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon its request.

(f) The board may establish exceptions from the continuing education requirements of this section for good cause, as determined by the board.

(g) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The amount of the fees shall be sufficient to meet, but shall not exceed, the costs of administering this section.

(h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

4989.36. A licensee may renew a license that has expired at any time within five years after its expiration date by taking all of the actions described in Section 4989.32.

4989.38. A suspended license is subject to expiration as provided in this article and may be renewed, following the period of suspension, if the licensee takes all of the actions described in Section 4989.32.

4989.40. A revoked license is subject to expiration as provided in this article and shall not be renewed. The applicant may apply to the board for reinstatement of his or her license and shall pay a reinstatement fee in an amount equal to the renewal fee in effect at that time and any delinquency fees that may have accrued and comply with other requirements of the board for reinstatement.

4989.42. A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. A licensee may apply for a new license if he or she satisfies all of the following requirements:
(a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension.
(b) Payment of the fees that would be required if he or she were applying for a license for the first time.
(c) Passage of the current licensure examination.

4989.44. (a) A licensee may apply to the board to request that his or her license be placed on inactive status.
(b) A licensee on inactive status shall be subject to this chapter and shall not engage in the practice of educational psychology in this state.
(c) A licensee who holds an inactive license shall pay a biennial fee of one-half of the amount of the standard renewal fee.
(d) A licensee on inactive status who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice educational psychology to active status. A licensee requesting that his or her license be placed on active status between renewal cycles shall pay the remaining one-half of his or her renewal fee. A licensee requesting to restore his or her license to active status, whose license will expire less than one year from the date of the request, shall complete 30 hours of continuing education as specified in Section 4989.34. A licensee requesting to restore his or her license to active status, whose license will expire more than one year from the date of the request, shall complete 60 hours of continuing education as specified in Section 4989.34.

Article 4. Regulation

4989.46. A licensee shall give written notice to the board of a name change within 30 days after each change, providing both the old and new names. A copy of the legal document authorizing the name change, such as a court order or marriage certificate, shall be submitted with the notice.

4989.48. A licensee shall display his or her license in a conspicuous place in the licensee’s primary place of practice.

4989.50. Except as authorized by this chapter, it is unlawful for any person to practice educational psychology or use any title or letters that imply that he or she is a licensed educational
psychologist unless, at the time of so doing, he or she holds a valid, unexpired, and unrevoked license issued under this chapter.

4989.52. All consideration, compensation, or remuneration received by the licensee shall be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made to the client.

Article 5. Enforcement

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. 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.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) 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 under this chapter.

(3) 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 under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license 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 by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

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

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

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) 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. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) 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.

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

(k) Gross negligence or incompetence in the practice of educational psychology.
(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

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

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, 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 licensed educational psychologist.

(o) 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.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing 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 that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, 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. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.
(u) When employed by another person or agency, encouraging, either orally or in writing, the employer’s or agency’s clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements Section 15630 of the Welfare and Institutions Code.

4989.56. The board shall revoke the license of a licensee, other than one who is also licensed as a physician and surgeon, who uses or offers to use drugs in the course of his or her practice as an educational psychologist.

4989.58. The board shall revoke the license of a licensee upon a decision that contains a finding of fact that the licensee engaged in an act of sexual contact, as defined in Section 729, when that act is with a client, or with a former client and the relationship was terminated primarily because of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

4989.60. A person whose license has been suspended or revoked shall not, until the reinstatement of his or her license, engage in any activity to which the license relates or any other activity or conduct in violation of the order or judgment by which the license was suspended.

4989.62. All proceedings by the board to suspend, revoke, or to take other disciplinary action against a licensee shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

4989.64. In addition to other proceedings provided for in this chapter, whenever a person has engaged, or is about to engage, in an act or practice that constitutes, or will constitute, an offense against this chapter, the superior court in and for the county where the act or practice takes place, or is about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, or the district attorney of the county. The proceedings under this section shall be governed by Chapter 3 (commencing
with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4989.66. A person who violates any of the provisions of this chapter is guilty of a misdemeanor.

Article 6. Revenue

4989.68. (a) The board shall assess the following fees relating to the licensure of educational psychologists:

(1) The application fee for initial licensure shall be a maximum amount of one hundred dollars ($100).

(2) The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars ($150).

(3) The fee for license renewal shall be a maximum amount of one hundred fifty dollars ($150).

(4) The delinquency fee shall be a maximum amount of seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(5) The written examination fee shall be a maximum amount of one hundred dollars ($100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.

(6) The fee for rescoring a written examination shall be twenty dollars ($20).

(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

4989.70. The board shall report each month to the Controller, the amount and source of all revenue received pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Behavioral Sciences Fund.
SEC. 14. Chapter 13.7 (commencing with Section 4990) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 13.7. BOARD OF BEHAVIORAL SCIENCES

Article 1. Administration

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of 11 members composed as follows:

(1) Two state-licensed clinical social workers.
(2) One state-licensed educational psychologist.
(3) Two state-licensed marriage and family therapists.
(4) Six public members.

(b) Each member, except the six public members, shall have at least two years of experience in his or her profession.

(c) Each member shall reside in the State of California.

(d) The Governor shall appoint four of the public members and the five licensed members with the advice and consent of the Senate. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.
(i) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

4990.02. “Board,” as used in this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), and Chapter 14 (commencing with Section 4991) means the Board of Behavioral Sciences.

4990.04. (a) The board shall appoint an executive officer. This position is designated as a confidential position and is exempt from civil service under subdivision (e) of Section 4 of Article VII of the California Constitution.

(b) The executive officer serves at the pleasure of the board.

(c) The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(d) With the approval of the director, the board shall fix the salary of the executive officer.

(e) The chairperson and executive officer may call meetings of the board and any duly appointed committee at a specified time and place. For purposes of this section, “call meetings” means setting the agenda, time, date, or place for any meeting of the board or any committee.

(f) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

4990.06. Subject to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code) and except as provided by Sections 155, 156, and 159.5, the board may employ any clerical, technical, and other personnel as it deems necessary to carry out the provisions of this chapter and the other chapters it administers and enforces, within budget limitations.

4990.08. The board shall keep an accurate record of all of its proceedings and a record of all applicants for licensure and all individuals to whom it has issued a license.

4990.10. The board may conduct research in, and make studies of problems involved in, the maintaining of professional
standards among those engaged in the professions it licenses and may publish its recommendations thereon.

4990.12. The duty of administering and enforcing this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10.), and Chapter 14 (commencing with Section 4991) is vested in the board and the executive officer subject to, and under the direction of, the board. In the performance of this duty, the board and the executive officer have all the powers and are subject to all the responsibilities vested in, and imposed upon, the head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

4990.14. The board shall have and use a seal bearing the words “The Board of Behavioral Sciences,” and shall otherwise conform to Section 107.5.

4990.16. Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

4990.18. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:

(a) The licensure of marriage and family therapists, clinical social workers, and educational psychologists.

(b) The development and administration of licensure examinations and examination procedures consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(d) Consumer education.

4990.20. (a) The board may adopt rules and regulations as necessary to administer and enforce the provisions of this chapter and the other chapters it administers and enforces. The adoption, amendment, or repeal of those rules and regulations shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
(b) The board may formulate and enforce rules and regulations requiring the following.

1. That the articles of incorporation or bylaws of a marriage and family therapist or licensed clinical social worker corporation include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or a deceased person shall be sold to the corporation or to the remaining shareholders of that corporation within the time that the rules and regulations may provide.

2. That a marriage and family therapist corporation or a licensed clinical social worker corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

4990.22. (a) Notwithstanding Section 13340 of the Government Code, and except as provided in Section 207, the funds in the Behavioral Sciences Fund are continuously appropriated, without regard to fiscal years, to the board for carrying out and enforcing the provisions of this chapter and the other chapters it administers and enforces.

(b) The board shall keep records that reasonably ensure that funds expended in the administration of each licensure or registration category shall bear a reasonable relation to the revenue derived from each category and report to the department no later than May 31 of each year on those expenditures.

(c) Surpluses, if any, may be used by the board in a manner that bears a reasonable relation to the revenue derived from each licensure or registration category and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.

4990.24. The powers and duties of the board, as set forth in this chapter, shall be subject to the review required by Division 1.2 (commencing with Section 473).

4990.26. Wherever “Board of Behavioral Science Examiners,” “Board of Social Work Examiners of the State of California,” or “Social Worker and Marriage Counselor Qualifications Board of the State of California” is used in any
law or regulations of this state, it shall mean the Board of Behavioral Sciences.

Article 2. Disciplinary Actions

4990.28. The board may refuse to issue a registration or license under the chapters it administers and enforces whenever it appears that the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to denial of a license or registration pursuant to this section.

4990.30. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General. The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.
(2) Two years for early termination of any probation period of
three years or more.
(3) One year for modification of a condition, reinstatement of
a license or registration revoked for mental or physical illness,
or termination of probation of less than three years.
(c) The petition may be heard by the board itself or the board
may assign the petition to an administrative law judge pursuant
to Section 11512 of the Government Code.
(d) The board shall give notice to the Attorney General of the
filing of the petition.
(e) The petitioner may request that the board schedule the
hearing on the petition for a board meeting at a specific city
where the board regularly meets.
(f) The petitioner and the Attorney General shall be given
timely notice by letter of the time and place of the hearing on the
petition and an opportunity to present both oral and
documentary evidence and argument to the board or the
administrative law judge.
(g) The petitioner shall at all times have the burden of
production and proof to establish by clear and convincing
evidence that he or she is entitled to the relief sought in the
petition.
(h) The board, when it is hearing the petition itself, or an
administrative law judge sitting for the board, may consider all
activities of the petitioner since the disciplinary action was taken,
the offense for which the petitioner was disciplined, the
petitioner's activities during the time his or her license or
registration was in good standing, and the petitioner's
rehabilitative efforts, general reputation for truth, and
professional ability.
(i) The hearing may be continued from time to time as the
board or the administrative law judge deems appropriate but in
no case may the hearing on the petition be delayed more than
180 days from its filing without the consent of the petitioner.
(j) The board itself, or the administrative law judge if one is
designated by the board, shall hear the petition and shall prepare
a written decision setting forth the reasons supporting the
decision. In a decision granting a petition reinstating a license or
modifying a penalty, the board itself, or the administrative law
judge, may impose any terms and conditions that the agency
7 deems reasonably appropriate, including those set forth in
8 Sections 823 and 4990.40. If a petition is heard by an
9 administrative law judge sitting alone, the administrative law
10 judge shall prepare a proposed decision and submit it to the
11 board. The board may take action with respect to the proposed
12 decision and petition as it deems appropriate.
13 (k) The petitioner shall pay a fingerprinting fee and provide a
14 current set of his or her fingerprints to the board. The petitioner
15 shall execute a form authorizing release to the board or its
16 designee, of all information concerning the petitioner’s current
17 physical and mental condition. Information provided to the board
18 pursuant to the release shall be confidential and shall not be
19 subject to discovery or subpoena in any other proceeding, and
20 shall not be admissible in any action, other than before the
21 board, to determine the petitioner’s fitness to practice as
22 required by Section 822.
23 (l) The board may delegate to its executive officer authority to
24 order investigation of the contents of the petition.
25 (m) The petitioner may request that the board schedule the
26 hearing on the petition for a board meeting at a specific city
27 where the board regularly meets.
28 (n) No petition shall be considered while the petitioner is
29 under sentence for any criminal offense, including any period
30 during which the petitioner is on court-imposed probation or
31 parole or the petitioner is required to register pursuant to
32 Section 290 of the Penal Code. No petition shall be considered
33 while there is an accusation or petition to revoke probation
34 pending against the petitioner.
35 (o) Except in those cases where the petitioner has been
36 disciplined for violation of Section 822, the board may in its
37 discretion deny without hearing or argument any petition that is
38 filed pursuant to this section within a period of two years from
39 the effective date of a prior decision following a hearing under
40 this section.
41 4990.32. The proceedings conducted under this article shall
42 be held in accordance with Chapter 5 (commencing with Section
43 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
44 4990.34. (a) Except as otherwise provided in this section, an
45 accusation filed pursuant to Section 11503 of the Government
46 Code against a licensee or registrant under the chapters the
board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, “discovers” means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

1. The date the board received a complaint or report describing the act or omission.
2. The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.
(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

4990.36. (a) The board may place a license or registration issued under the chapters it administers and enforces on probation under the following circumstances:

1. In lieu of, or in addition to, any order of the board suspending or revoking the license or registration.
2. (1) Upon the issuance of a license or registration to an individual who has been guilty of unprofessional conduct but who otherwise completed all education, training, and experience required for licensure or registration.
3. (3) As a condition upon the reissuance or reinstatement of a license or registration that has been suspended or revoked by the board.

(b) The board may adopt regulations establishing a monitoring program to ensure compliance with any terms or conditions of probation imposed by the board pursuant to subdivision (a). The cost of probation or monitoring may be ordered to be paid by the licensee or registrant.

4990.38. The board, in its discretion, may require a licensee or registrant whose license or registration has been placed on probation or whose license or registration has been suspended, to obtain additional professional training and to pass an examination upon completion of that training and to pay any necessary examination fee. The examination may be written, oral, or a practical or clinical examination.

4990.40. The board may deny an application or may suspend or revoke a license or registration issued under the chapters it administers and enforces for any disciplinary action imposed by another state or territory or possession of the United States, or by a governmental agency. The disciplinary action, which may include denial of licensure or revocation or suspension of the license or imposition of restrictions on it, constitutes unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

4990.42. The board shall revoke a license or registration issued under the chapters it administers and enforces upon a decision made in accordance with the procedures set forth in
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains a finding of fact that the licensee or registrant engaged in an act of sexual contact, as defined in Section 729, when that act is with a patient or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

4990.44. The proceedings under this article 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.

SEC. 15. Article 1 (commencing with Section 4990) of Chapter 14 of Division 2 of the Business and Professions Code is repealed.

SEC. 16. Section 4991 is added to the Business and Professions Code, to read:

4991. This chapter shall be known, and may be cited, as the Clinical Social Worker Practice Act. It shall be liberally construed to effect its objectives.

SEC. 17. Section 4991.2 is added to the Business and Professions Code, to read:

4991.2. “Accredited school of social work,” within the meaning of this chapter, is a school that is accredited by the Commission on Accreditation of the Council on Social Work Education.

SEC. 18. Section 4992.31 of the Business and Professions Code is repealed.

4992.31. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).
(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, “discovers” means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

SEC. 19. Section 4994 of the Business and Professions Code is amended to read:

4994. All notwithstanding Section 13340 of the Government Code and except as provided in Section 4984.6, all moneys in the Behavioral Sciences Fund shall are continuously appropriated to
the board, to be expended by the board for the purposes of the
programs under its jurisdiction.

SEC. 20. The heading of Article 4 (commencing with Section
4996) of Chapter 14 of Division 2 of the Business and
Professions Code is amended to read:

Article 4. Clinical Social Workers Licensure

SEC. 21. Section 4996.17 of the Business and Professions
Code is amended to read:

4996.17. (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. The board may
issue a license to any person who, at the time of application, has
held a valid active clinical social work 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 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. 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 this 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.

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

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

(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.

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

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide 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) 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 a 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 is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

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 Section 480, 4992.3, 4992.35, or 4992.36.

SEC. 22. Section 4998.6 of the Business and Professions Code is repealed.

4998.6. The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this
article, including rules and regulations requiring (a) that the
articles of incorporation or bylaws of a licensed clinical social
worker corporation shall include a provision whereby the capital
stock of that corporation owned by a disqualified person, as
defined in the Moscone-Knox Professional Corporation Act, or a
decceded person shall be sold to the corporation or to the
remaining shareholders of that corporation within the time that
the rules and regulations may provide, and (b) that a licensed
clinical social worker corporation shall provide adequate security
by insurance or otherwise for claims against it by its patients
arising out of the rendering of professional services.

SEC. 23. Section 4999 of the Business and Professions Code
is amended to read:

4999. (a) On and after January 1, 2000, no business
entity that employs, or contracts or subcontracts, directly or
indirectly, with, the full-time equivalent of five or more persons
functioning as health care professionals, whose primary function
is to provide telephone medical advice, shall engage in the
business of providing telephone medical advice
to a patient at a California address unless the business is
shall be registered with the Telephone Medical Advice Services
Bureau. The department may adopt emergency regulations
further defining when a health care professional’s primary
function is providing telephone medical advice.

(b) Any business entity required to be registered under
subdivision (a) that submits proof of accreditation by the
American Accreditation Healthcare Commission, URAC, the
National Committee for Quality Assurance, the National Quality
Health Council, or the Joint Commission on Accreditation of
Healthcare Organizations shall be deemed provisionally
registered by the bureau until the earlier of the following:


(2) The granting or denial of an application for registration
pursuant to subdivision (a).

(c) A medical group that operates in multiple locations in
California shall not be required to register pursuant to this section
if no more than five full-time equivalent persons at any one
location perform telephone medical advice services and those
Item XI
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Memorandum

To: Policy and Advocacy Committee
Date: June 19, 2006

From: Christy Berger
Legislation Analyst
Telephone: (916) 574-7847

Subject: Examination Time Frames and Abandonment of Licensure Applications

Background
In the past, the Board issued filing deadlines for oral examination applications. The Board no longer administers an oral examination, although the ability to set application filing deadlines is still permitted by Title 16, California Code of Regulations (CCR), Section 1805(b). This regulation is no longer needed.

The Board now administers examinations on a continuous basis, and implements new examination versions approximately once every six months. In order to ensure that applicants retaking an examination take a different version of an examination, the Board requires a 160- to 180-day waiting period between examination attempts. This waiting period is not required by law, though the Board has a strong legal rationale for the waiting period. This waiting period should be formalized in law.

Additionally, applicants are required to take an examination within certain time frames (typically one year) or their application becomes “abandoned.” When an application is abandoned, it is considered closed and the applicant must reapply should he or she wish to continue pursuing licensure. This new application requires the applicant to meet all current requirements and to pay the application fee.

The intent is to provide all candidates with a one-year period in which to take an examination, prior to considering the application abandoned. However, staff has discovered that there are conflicting laws regarding this one-year time period that may actually provide some candidates with more than one year.

Discussion
CCR Section 1806(c) requires candidates to take an examination within one year of notification of eligibility to take the examination. CCR Section 1833, and Business and Professions Code (BPC) Sections 4986.80(f) and 4996.4\(^1\) require an applicant who fails an examination to retake that examination within one year from the date of the failure.

CCR Section 1806(c) is intended to apply only to first-time applicants for the standard written examination and first-time applicants for the clinical vignette (CV) examination. Staff has been applying the regulation in this manner. Once an applicant has failed an examination, the law requiring a candidate to take the examination within one year from the date of the failure applies. However, when a candidate fails an examination, he or she also receives a notice of eligibility at 160 to 180 days from the date of the failure. In this case, both laws apply.

\(^1\) Title 16, CCR Section 1833 (Marriage and Family Therapist applicants), BPC Sections 4986.80(f) (Licensed Educational Psychologist applicants) and 4996.4 (Licensed Clinical Social Worker applicants)
The following examples are intended to illustrate the experience of examination candidates with the potential for application abandonment at different times in the examination process. It also indicates where laws regarding abandonment conflict.

**Candidate A has just received notice that she is eligible for the first time to take the Standard Written examination.** Candidate A has one year from the date of this notice of eligibility in which to take the examination. [No conflict here.]

**Candidate B has just passed the Standard Written examination, and has received notice that he is eligible to take the Clinical Vignette (CV) examination.** Candidate B receives his notice of eligibility to take the CV examination on the same day that he passed the Standard Written examination. Candidate B has one year from the date of his notice of eligibility to take the CV examination. [However, Candidate B also receives a “notice of eligibility” when he receives the candidate handbook from Thomson Prometric. This could buy him almost another year in which to take the examination.]

**Candidate C has just failed the Standard Written examination.** Candidate C receives notice that he failed the examination on the same day he takes the examination. This notice informs him that he has one year in which to retake the examination, and that he must wait 160 to 180 days between attempts. Candidate C files his application for re-examination, and at 175 days, receives a new candidate handbook informing him that he is now eligible to retake the examination. [Candidate C has a similar problem to Candidate B – which law applies to him? Must he retake the examination within one year of failing it, or within one year from receiving his notice of eligibility?]

Because CCR Section 1806 does not specify that it applies only to first-time candidates, and because an applicant is sent a notice of eligibility each time he or she becomes eligible, including after failing an examination, both laws apply in certain situations.

An applicant is notified of eligibility to take either the standard written or clinical vignette examination at the following times:

1. Upon approval of an application for licensure.
2. Upon approval of an application for examination.
3. When an applicant’s 160- to 180-day waiting period has elapsed, after approval of an application for examination.

Additionally, the requirement that applicants take an examination no more than two times in a 12-month period and the 160 to 180-day waiting period should be formalized in regulation.

**Recommendation**
Pursue a regulatory change to update Sections 1805 and 1806.

**Attachment**
Applicable Laws
Proposed Language Sections 1805 and 1806
Attachment A
BOARD OF BEHAVIORAL SCIENCES
Applicable Law Re: Abandonment of Applications

**LEP – Business and Professions Code § 4986.80(f)**

(f) The fee for each reexamination shall be the fee for each examination specified in subdivision (e). An applicant who has failed the written examination may within one year from the notification date of failure, retake that examination as regularly scheduled without further application. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

**LCSW - Business and Professions Code § 4996.4**

Notwithstanding Section 4996.3, an applicant who has failed any standard or clinical vignette written examination may apply for reexamination upon payment of the fee of up to one hundred fifty dollars ($150) including the examination fee and related administrative costs. An applicant who fails a standard or clinical vignette written examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Applicants failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

**MFT – Title 16, California Code of Regulations § 1833.3**

An applicant who fails any examination may within one (1) year from the date of that failure retake that examination as regularly scheduled without further application upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination unless a new application is filed, meeting all requirements, and required fees are paid.
Attachment B
Amend § 1805 as follows:

(a) Applications submitted to the board for registration or licensure shall be on a form prescribed by the board.

(b) The board may issue final filing dates for all examinations not to exceed ninety (90) days prior to any examination. An applicant who fails to submit a complete examination application to the board by a final filing date shall not be eligible for that examination and his or her application shall be considered abandoned if it meets the criteria in Section 1806(e).

(b) A 180-day waiting period is required between examinations for any applicant retaking an examination.

Amend § 1806 as follows:

An application shall be deemed abandoned if under any of the following circumstances:

(a) The application has not been completed by the applicant within one (1) year after it has been filed. An application shall be deemed complete when all documents and information required have been submitted to the board, or board.

(b) The applicant does not submit information showing that he or she has corrected the deficiencies specified in a deficiency letter within one (1) year from the date of the deficiency letter; or letter.

(c) The applicant fails to sit for examination within one (1) year after being notified of eligibility; or being notified of eligibility for the first time to take either of the following:
   (1) Standard written examination.
   (2) Clinical vignette examination.

(d) An applicant fails to retake an examination within one year from the date the applicant was notified of the failure.

(d) (e) The applicant fails to pay the initial license fee within one (1) year after notification by the board of successful completion of examination requirements.

An application submitted subsequent to the abandonment of a prior application after an application has been abandoned shall be treated as a new application, including any fees required, and current requirements.

Delete § 1833.3 as follows:

An applicant who fails any examination may within one (1) year from the date of that failure retake that examination as regularly scheduled without further application upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination unless a new application is filed, meeting all requirements, and required fees are paid.