



Board of
Behavioral
Sciences

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BOARD MEETING NOTICE

January 13, 2011

Alliant International University
2855 Michelle Drive, Room 319
Irvine, CA 92606

1:30 p.m.

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

- I. Review and Approval of September 9, 2010 Board Meeting Minutes
- II. Discussion and Possible Action on Marriage and Family Therapist Practicum Requirement; Trainees Counseling Clients; Exceptions
- III. Public Comment for Items Not on the Agenda
- IV. Suggestions for Future Agenda Items

FULL BOARD CLOSED SESSION

- V. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION - Adjournment



Arnold Schwarzenegger
Governor

State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

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 is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

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BOARD MEETING MINUTES - *DRAFT* September 9, 2010

The Board of Behavioral Sciences met via telephone on September 9, 2010 at the following locations:

Department of Consumer Affairs
San Francisco Room
3rd Floor North, N318
1625 N. Market Blvd.
Sacramento, CA 95834

Alliant International University
Scripps Ranch Campus
MFT Program, Daley Hall 2nd Floor
10455 Pomerado Rd
San Diego, CA 92131

Hotel Maya
Fuego Restaurant
700 Queensway Drive
Long Beach, CA 90802

Pioneer High School
10800 E Benavon Street
Whittier, CA 90606

1151 Dove Street, #170
Newport Beach, CA 92660

415 Karla Court
Novato, CA 94949

1104 Ridgefield
Carson City, NV 89706

1615 E. 17th Street
Santa Ana, CA 92705

5506 Ranchito Avenue
Sherman Oaks, CA 91401

Members Present

Renee Lonner, Chair, LCSW Member
Elise Froistad, MFT Member, Vice-Chair
Samara Ashley, Public Member
Jan Cone, LCSW Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Michael Webb, MFT Member
Christine Wietlisbach, Public Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Spencer Walker, Legal Counsel
Marsha Gove, Examination Analyst
Roseanna Helms, Legislative/Regulatory Analyst

Members Absent

Patricia Lock-Dawson, Public Member

FULL BOARD OPEN SESSION

Renee Lonner called the meeting to order at approximately 11:00 a.m. Marsha Gove called roll, and a quorum was established.

I. Discussion and Possible Action Regarding Previous Board Action to Require California Licensed Marriage and Family Therapists and Licensed Clinical Social Workers to Take a Gap Examination for Licensure as a Licensed Professional Clinical Counselor

Spencer Walker, Legal Counsel, reported that the Board, at its July 28, 2010 meeting, revisited the prior Board vote to not require an examination for marriage and family therapists (MFTs) and licensed clinical social workers (LCSWs) seeking licensure as a Licensed Professional Clinical Counselor (LPCC) during the grand-parenting period. He indicated that based on information presented at that meeting, the Board voted to require a Gap Examination; the action reversed the Board's May 7, 2010 action. Mr. Walker reported that subsequently, on August 24, 2010, the Board received correspondence from an attorney representing the California Association of Marriage and Family Therapists (CAMFT). The letter alleged violations of the Bagley Keene Open Meeting Act had occurred at the Board's July 23, 2010 meeting. Mr. Walker indicated that, specifically, it was alleged that the Board improperly and unlawfully met in closed session to discuss whether a Gap Examination should be required.

Mr. Walker commented that public perception is key when conducting the people's business. He reported that in the interest of fostering improved public perception and relations with the Board of Behavioral Sciences, the September 9, 2010 Board Meeting was scheduled for the purpose of discussing and possibly rescinding the Board's July 28, 2010 action to require a Gap Examination. Mr. Walker stated that if the Board elects to rescind its previous action, following comment from the public, the Board's May 7, 2010 action to not require a Gap Examination would be revived, and the Board would move on to the next agenda item.

Mr. Walker recommended to the Board to rescind its previous action and move on to discussion and possible action regarding the LPCC Gap Examination.

Renee Lonner moved to rescind the Board's July 28, 2010 motion and the related Board action to require a Gap Examination. Donna DiGiorgio seconded.

The matter was opened for board discussion. There was no discussion. The matter was open for public comment.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), asked if the Board were to take action to rescind the July vote, the parties interested in Agenda Item II should act as though the discussion preceding the vote never occurred. He clarified by asking if interested parties should act as though the discussion leading up to the Board's vote never occurred, or only that the vote itself never occurred. Mr. Walker responded that it would be as if the July discussion and action never occurred.

With the motion on the floor, a roll-call vote was taken. The Board voted unanimously (10-0) to rescind the July 28, 2010 action.

II. Discussion and Possible Action Regarding the Licensed Professional Clinical Counselor Gap Examination

Ms. Lonner asked Mr. Walker to discuss the legal issues that the Board should be aware of prior to beginning the discussion of this agenda item.

Mr. Walker indicated that, since the Board voted to rescind its July 28, 2010 action to require a Gap Examination for licensure as an LPCC, the Board's previous decision to not require that examination has been revived. He indicated that the May 7, 2010 decision currently stands as the Board's decision in this matter. He added that since the Board's action taken in July 2010 has been rescinded, the agenda item that permitted such action must still be addressed because it was not tabled. Mr. Walker indicated that as such, the language used to frame the issue in Agenda Item II is the same language that appeared on the July 28, 2010 agenda.

Mr. Walker continued that in order to avoid any public perception or concerns regarding the procedural aspects of again addressing this issue, he recommended that the May 7, 2010 action to not require the Gap Examination also be rescinded before commencing discussions on the necessity of the examination. Ms. Lonner asked Mr. Walker to confirm that rescinding the May 2010 action would "wipe the slate clean" and the Board would then have a fresh discussion about the need for the Gap Examination. Mr. Walker responded that Ms. Lonner's understanding of the issue was correct.

Michael Webb moved to rescind the Board's May 7, 2010 motion and the related Board action to not require a Gap Examination for grand-parenting purposes. Christine Wietlisbach seconded.

The matter was opened for board discussion. There was no discussion. The matter was open for public comment. There was no public input regarding this matter.

With the motion on the floor, a roll-call vote was taken. The Board voted unanimously (10-0) to rescind the July 28, 2010 action.

Prior to the onset of discussion regarding the LPCC Gap Examination, Mr. Walker encouraged meeting participants to be aware that any discussions that occurred at the July 28 and May 7, 2010 meetings, since both actions had been rescinded, had nothing to do with the September 9, 2010 meeting. He added that the participants needed to deal with the issue at hand as though it was being addressed for the first time.

Ms. Lonner asked Tracy Rhine, Assistant Executive Officer, to review the item. Ms. Rhine introduced herself. She then proceeded to explain that SB 788, which created the LPCCs, sets forth a grand-parenting period. One of the pathways to licensure during the grand-parenting period is for licensees regulated by the Board of Behavioral Sciences – specifically MFTs and LCSWs. Ms. Rhine stated that Business and Professions Code (BPC), Section 4999.54, states that MFTs and LCSWs would have to take an examination on the differences between an LPCC and an MFT, and an LPCC and an LCSW, if the Board and OPES found that there are differences between the professions. She read the pertinent Code section, 4999.54(b), to meeting participants, as follows:

“The Board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

“(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

“(B) The practice of professional clinical counseling and the practice of clinical social work.”

Ms. Rhine indicated that the Board has contracted with Dr. Tracy Montez to perform an audit of the practice of LPCCs and how that practice differs from the practice of MFTs and LCSWs. Ms. Rhine asked Dr. Montez to report her findings from the audit.

Dr. Montez, Applied Measurement Services (AMS), introduced herself and presented the Board with the results of her review of the MFT, LCSW, and LPCC practices. She reported that consistent with the statement of work and contracted services or significant differences were examined to determine whether a Gap exam is needed. Dr. Montez explained that to standardize the analysis of the professions, the exam plans or content outlines from the respective occupational analyses of the MFT, LCSW, and LPCC practices were compared. She indicated that qualitative data from interviews and document reviews were also used to supplement the comparisons.

Dr. Montez stated that with respect to the analyses, the results show the expectations for entry level practice as an MFT, LCSW, or LPCC differ. Those differences were noted across the three broad content areas of Diagnostic and Assessment Services; Professional Practice Activities; and Professional Development. Dr. Montez noted that due to a confidentiality agreement with the National Board for Certified Counselors (NBCC), she is precluded from disclosing further details. She indicated it was nonetheless important to emphasize that although the three professions perform work tasks across those three domains, it is the depth of knowledge and the associated practice expectations upon entry into the profession that differ. Dr. Montez reported that it was the conclusion of AMS that those differences will diminish once the full requirements for grand-parenting are achieved. She added that LCSWs and MFTs grand-parenting into the LPCC profession would be expected to meet minimum acceptable competence standards to practice as an LPCC in California. Dr. Montez noted that it would then be AMS' recommendation to the Board that a Gap Examination is not necessary.

The matter was then opened for discussion.

Mr. Webb asked Dr. Montez for clarification as to whether she was recommending that a Gap Examination is not necessary. Dr. Montez answered affirmatively, indicating she is staying with her original and ongoing recommendation that a Gap Examination is not necessary.

Ms. Lonner asked Dr. Montez if it was her opinion that the spirit and intent of the law would be met even if no Gap Exam was administered; that it is consistent with the relevant code section pertaining to LPCCs. Dr. Montez responded that she is not an expert in law and therefore declined to respond to the question. She stated that the services she was contracted to perform were to look for meaningful differences between the professions. Dr. Montez indicated she did find differences, but it was her opinion that once the

requirements for grand-parenting are met, those differences would diminish and the individuals who are currently licensed and in good standing as an MFT or LCSW could then meet the same expectations for entry level practice as an LPCC.

Ms. Lonner expressed her understanding of Dr. Montez's position that the noted differences between the MFT, LCSW and LPCC professions would be diminished by the established requirements for grand-parenting into the LPCC profession. Dr. Montez confirmed, and she explained there are several course requirements that must be met which represent those areas that are not tested as in-depth on the MFT and LCSW exam plans as compared to the LPCC exam.

Ms. Rhine attempted to frame the issue by explaining that what Dr. Montez is saying is that there are differences, but those differences would be remediated before licensure would occur. She added that part of the discussion should be that the law does not say that the Board should develop an examination if significant or meaningful differences exist, but rather if any (emphasis added) differences exist. Ms. Rhine expressed her understanding of Dr. Montez's findings, which are that differences exist between the professions.

Ms. Lonner indicated that her understanding of the statute is that it does not allow any subjectivity. She asked Mr. Walker or Ms. Rhine if they were of the same understanding as she, that there is very little subjectivity in the statute as written. Mr. Walker agreed with Ms. Lonner's interpretation of the law. He indicated his reading of the statute is that it does not provide any "wobble room." He commented that since Dr. Montez had reported that the differences will no longer exist when it comes to licensure, there is no violation of the statute by not requiring an examination. However, if the differences are only reduced then it would mean that some of the noted differences would continue to exist after licensure. He asked Dr. Montez for clarification, if possible. Dr. Montez responded that she is comfortable in saying that the way the statute was written is that the differences would be alleviated. The requirements were established so that if the candidate took the required coursework they would therefore be on equal standing. She added that it appears from AMS' analysis that the homework was done in terms of reviewing the gaps in knowledge, and it was built into the remediation. She indicated that the remediation would cover the areas which are deficient. Dr. Montez emphasized that her findings are contingent on the applicant meeting the other requirements in the statute. Mr. Walker stated his understanding that if the candidate meets the requirements at the time of licensure, the differences would no longer exist once licensure is obtained. Dr. Montez responded that the expectation is that the candidates would have the exposure and would therefore be expected to practice at the entry level standards.

Mr. Walker commented that based on Dr. Montez' clarification, it was his opinion that not requiring a Gap Examination would meet the requirements in existing statute. Ms. Lonner asked Mr. Walker if he was saying that legally a Gap Examination is not required. Ms. Wietlisbach expressed her disagreement with the notion that the problem would be remediated simply by taking coursework. She expressed the position that if that were true, everyone would obtain licensure right after graduating from college; she added the position that that is the reason for taking the state board examination. She expressed uncertainty that the Board could definitely say that the candidate would meet the requirements for licensure once the remedial coursework is completed, and that the candidate still needed to be tested on what they have learned.

Ms. Lonner expressed her agreement with Ms. Wietlisbach, but argued that the quantity of material is so different between what would be on a Gap Examination and what is on a licensing examination. Ms. Wietlisbach responded that the Gap Exam would only need to test on the differences, so it would not be the same as the licensing exam. She expressed the belief that the law clearly requires the Board to test on the differences.

Ms. DiGiorgio asked the time frame for the grand-parenting period. Ms. Rhine responded the period ran from January 1, 2011 through June 30, 2011, with an additional twelve months to remediate deficiencies. She added that the time frame, in total, was eighteen months. Kim Madsen explained that a candidate who applies during the grand-parenting period would have the application reviewed and would be notified of any deficiencies. The candidate would have one year from the date of notification to clear those deficiencies.

Dr. Montez clarified that this was a unique situation because the grand-parenting candidates are individuals who already hold a license and are in good standing. They are not individuals who have not passed a licensing examination but rather have been practicing and in good standing.

Judy Johnson expressed thoughts similar to those of Dr. Montez. She noted that the grand-parenting candidates currently hold a professional license under which they have been practicing, and that license is in good standing. The individuals understand what is within the scope of practice. Ms. Johnson stated that if these candidates are taking classes for content, it is different; that is why it is considered grand-parenting. The Board is not saying these individuals need to take an examination in order to become licensed; they have already been practitioners.

Ms. Lonner again asked Mr. Walker if, from the legal standpoint, he does or does not feel a Gap Examination is necessary or required by law. Mr. Walker responded that after listening to the comments from the board members, he was not comfortable with the statement that the deficiencies would not exist at the time of licensure. He expressed that the Board would need some type of proof or evidence that that would not be the case. He stated that without such proof before the Board, he stated the position that the examination is required because differences have been identified.

Mr. Webb expressed the understanding that there is already a provision in place for remediation and that there is no Gap Examination required for an LPCC who wants to practice Marriage and Family Therapy. He asked Ms. Rhine if his understanding is accurate. Ms. Rhine asked if Mr. Webb was speaking about the provision in law that states that LPCCs cannot work with couples or families unless they take specified coursework and have accrued a certain number of hours of experience. Mr. Webb responded affirmatively. He asked if there are a specific number of hours in question. He expressed the understanding that the requirement was more about taking appropriate coursework. Ms. Rhine explained to Mr. Webb that the issue he raised is separate from the issue being discussed. Mr. Webb again expressed concern with the idea that there would be no Gap Exam necessary. Ms. Johnson clarified that those candidates were not trying to obtain another license.

Ms. Rhine commented to Mr. Webb that the section he was referring to specifically pertains to LPCCs who, after becoming licensed by the Board, intend to work with couples or families. Those individuals have to earn a certain number of hours of supervised experience working with those populations, and also must complete specified coursework.

She emphasized that those are individuals who are already licensed as LPCCs. Mr. Webb expressed concern that the Board may get into the position of having to require a Gap Exam any time a licensed individual wants to practice in another domain; for example, an LCSW who wants to practice as an MFT, or vice versa. Ms. Rhine expressed her understanding of Mr. Webb's concerns, and clarified that the issue currently under discussion is strictly based on what is in statute for this specific licensing category. The current discussion pertains only to a Gap Examination for the LPCC profession. She emphasized that it is not simply something subjective the Board decided to do, but rather a provision the Board is tasked with implementing. Ms. Lonner expressed to Mr. Webb that this is a separate license type, which is different from the different forms of specialty certifications that an individual can obtain.

Ms. Lonner noted that the Board has not introduced a new license in many years. She asked staff if there is any precedent or anything to think about, perhaps in terms of other boards, to better understand how the issue has been viewed previously. She offered the position that the issue was a legal issue versus a more subjective approach. Mr. Walker responded that the subject is both a factual and legal issue. He stated that the factual issue is whether or not any differences exist. He noted that differences have been found to exist. Differences have been identified. The legal issue is, according to statute, the Board must test on those differences. He stated that there is no evidence or proof of any kind before the Board to indicate that some of the identified differences would not exist after licensure. He indicated that the Board needs to ensure that it is protecting consumers; by protecting consumers, the Board would be following the law. Mr. Walker emphasized this was the Board's obligation and duty.

Ms. Lonner and Ms. Johnson commented that it seems clear what the Board must do, versus choosing an option that might be preferred.

Ms. DiGiorgio asked Mr. Walker if he had stated that the exam would be required unless proof could be provided that by taking the coursework those differences would be remediated. Mr. Walker responded that he had originally taken that position. He explained that because of input by board members during this discussion, he had been provided with additional information that resulted in his change of perspective, which is that there is no wiggle room the way the law is written.

Mr. Webb asked Mr. Walker what was the intent of the language. He recognized that there are differences in the "anatomy." He explained that LPCCs and MFTs have the ability to accomplish the same job; they may do it differently, one may do it better, but they have the ability to do the same job. In that sense, there are no differences in terms of the scope in which they do their job. Mr. Webb questioned whether the intent was in regards to the differences in "anatomy" or in regards to one cannot do the other job adequately.

Mr. Walker responded that in trying to determine the intent of the legislature when enacting a statute, one first looks at the plain meaning of the statute by looking at the words. He stated that when looking at the plain meaning of the LPCC statute regarding grand-parenting, the word that must be focused on is "any." He explained that if the legislature had wanted certain differences to not be included in the analysis, the legislature would have specifically exempted or excluded those issues. Mr. Walker emphasized that, because the word "any" is used, there is no wiggle room.

Elise Froistad asked for clarification regarding “any differences” versus “any meaningful differences,” referring to a comment that had been made earlier. She asked if the statute contained language about “meaningful differences.” Ms. Madsen explained that the term “meaningful differences” was not in the law, but had from the onset been part of the discussion in developing the language for this statute. She expressed the belief that most if not all of the individuals involved in crafting the language assumed that differences should be “meaningful.” Ms. Madsen noted that it was not until it was pointed out that the statute states “any” differences was it realized that the group’s assumption was erroneous.

Discussion continued about the wording and intent of the law. Ms. Lonner expressed her agreement with Mr. Walker’s interpretation, and expressed the position that if the legislature had intended the Board to have any leeway, the language in the statute would have contained qualifiers regarding the differences. Ms. Lonner stated that in her opinion, the language was intended to be “cut and dry.”

Ms. Wietlisbach asked about Mr. Walker’s earlier comment regarding the Board doing its job in terms of public protection. She stated the position that it doesn’t seem that requiring a Gap Exam with individuals who have been in private practice is a safety issue or an issue of public protection. She noted that the individuals in question have previously been found safe to practice. She asked if there was any way that a previous determination of competence to practice could be taken into consideration in the current situation. Ms. Wietlisbach expressed the position that a Gap Examination will not change whether an individual is safe to practice. Ms. Johnson commented that it is a matter of competence and scope of practice. Mr. Walker affirmed that it comes down to competence, and added that when dealing with competence one is talking about safety of the public. He stated that because the legislature found that testing is required if any differences exist, the legislature clearly found this to be a consumer protection issue in the broad sense.

Ms. DiGiorgio asked why, if the language allowed the Board no flexibility, there was any need for discussion or Board vote on the subject. Ms. Johnson and Ms. Lonner agreed with the question. Mr. Walker responded that because the statute requires the Board to make a determination about whether differences exist and to test on those differences, the Board’s Executive Officer could not drive a policy if the Board did not take action to set a policy; in this case whether or not an examination is required. He pointed out that the Board drives the Executive Officer. Mr. Walker emphasized that is why the issue is before the Board, and why it must be voted on by the Board. He stated that the Board must set the policy on the issue of whether or not the examination is required. He continued that once the Board votes to make a determination about requiring the exam, the action sets the policy and gives direction to the Executive Officer to develop that examination. This is what will be voted on.

Ms. Rhine reported that the issue originally came before the Board because of the need to hear the findings from the study done by AMS, and discuss whether there were in fact differences in the professions. Ms. DiGiorgio raised the subject of Dr. Montez’ recommendation that no examination is required. Ms. Rhine confirmed that was the recommendation, but emphasized the recommendation was based on the fact that the differences found by Dr. Montez were not significant in nature or meaningful. She explained that if the Board accepted the report that there are differences in the professions, then the Board must then adhere to the statutory requirement that the Board implement a Gap Examination. Ms. Lonner noted that Dr. Montez’ recommendation was offered as a psychometrician expert, not as an attorney.

Mr. Webb asked if the differences were merely qualitative; in other words, there are no differences in that they are able to do the same thing, but the differences of mere quality, but each can practice at a level of competence in which there is no difference. Ms. Lonner stated that is not what she heard Dr. Montez say. Mr. Webb continued that the LPCC may be able to practice qualitatively at a higher level, but the LCSW can still practice, but they are still practicing at minimal competency. In that sense, there are no differences. Ms. Lonner responded that Dr. Montez could address that, and added that this is not what is stated in law. The law states “any differences.” Mr. Webb stated that the law mentions “differences exist between the practice;” you have the words “any differences” and “the practice of professional clinical counseling” and “the practice of marriage and family therapy.” Mr. Webb explained that “practice” is meaning on a clinical level, meaning one will practice maybe on a higher level, clinically in terms of qualitatively. However, the marriage and family therapist can practice at a minimal competency level. There is a difference, but the difference is such that it will put the public at risk.

Ms. Lonner asked Mr. Walker for his input. Mr. Walker again expressed that since Dr. Montez has found differences in the professions, the Board must test on those differences.

Jan Cone commented about the varying opinions and types of information being presented to the Board. She asked if there should be more weight given to the data from an objective consultant than to other data that has been presented via discussion of the issue. She expressed concern that if the Board has only one piece of information leading to a statement that there are differences in the professions, can a different opinion by the Board counteract that objective data. Ms. Madsen responded that it is important to remember that the Board is a regulatory agency and is charged with implementing and carrying out the BPC statutes that govern the Board’s licensees. She voiced her willingness to make use of any legal flexibility a statute might afford, but emphasized that absent any such wiggle room it is very difficult to show proof of public protection by not adhering to the law. She commented that it is those times when there is deviation from the requirements of the law that lead to negative publicity and reactionary responses. Ms. Madsen stated that while it would be a relief from the staffing perspective to not have to develop and administer a Gap Examination, she could foresee significant problems if the Board deviated from what the statute states.

Mr. Walker added that if the Board decided to not require the Gap Examination, it would be necessary to make sure there was documented proof or evidence to support the finding that there are no differences between the professions. He indicated that requiring the exam would be a sound decision because it is supported by the analysis prepared by Dr. Montez, that analysis finding that there are differences, although those differences were not construed to be “meaningful.” Ms. DiGiorgio asked if the word “meaningful” is part of the statute. Ms. Madsen responded that it is not; the statute says “any.” Mr. Walker clarified he was referring to the analysis prepared by AMS.

Ms. Lonner commented that the task Dr. Montez was contracted to perform was an analysis of the professions to determine if there are differences in the professions. Dr. Montez confirmed Ms. Lonner’s assessment of the task. She reiterated that the analysis went back to the occupational analysis performed for the professions under discussion. She stated that the job analysis is considered a scientific study of the professions at a precise moment in time. It is a way of standardizing an examination, with critical studies

performed and documents examined. Dr. Montez emphasized that there is a scientific basis to the services she was contracted to provide.

Ms. Froistad commented that although the board members may have different opinions about the issue, it did not seem that legally those opinions have any weight. Rather, the scientific research performed by Dr. Montez would have more weight than the opinions of those who are discussing the matter. Ms. Lonner agreed with Ms. Froistad.

Mr. Webb asked Mr. Walker and Ms. Madsen what would happen if, hypothetically, the Board was to vote to not require a Gap Examination, and that decision was challenged. What would be the consequence? Mr. Walker responded that if the Board voted to require a Gap Exam, the decision would be in line with the findings reported by Dr. Montez. If the vote was to not require the exam, the Board would have to break down the analysis by AMS. Each of the identified differences would have to be countered by documented evidence in support of the differing opinions. He noted that while the Board can vote to disagree with the findings of the analysis and not require a Gap Exam, based on opinions that may be opposed to Dr. Montez', such a decision would be difficult to support. Mr. Walker stated that the report is very clear.

Ms. Johnson expressed the concern that the Board needs to be efficient with its time, adding that with the impact of the budget delays and related restrictions, this is a time-sensitive issue. She pointed out that there will be many professionals and consumers who will be affected by this decision, and emphasized the need to make a decision and move forward with implementation of LPCC licensure in California. Ms. Lonner agreed.

The matter was opened for input by the public.

Richard Segal, counsel to California Association of Marriage and Family Therapists (CAMFT), stated there were points he wanted to discuss, some of which CAMFT agrees with, and others that lean in favor of not having the Gap Examination. First, he made reference to Mr. Walker's explanation that the primary way to determine the Legislature's intent in drafting a statute is to look at the words in the statute itself. He noted that the entire discussion about the Gap Exam had been based around what the statute says and what the Board believes it requires them to do. Mr. Segal commented that the difficulty is that it seems in some of the paraphrasing that has occurred over the preceding several months has resulted in the meaning of the statute having changed in terms of what has unfolded versus what the law actually says. He referred to two memos that had been presented to the Board by Ms. Rhine in which reference is made to differences in the *professions*. He noted that the same language was used in the contract with Dr. Montez asking her to examine if there are differences in the *professions*. Mr. Segal also noted that the word "professions" was used several times in the letter from the American Association for Marriage and Family Therapy, California Division (AAMFT-CA). He expressed the opinion that many board members feel constrained because the statute says "any differences" as opposed to any "material" or "substantial" differences. He stated that the entire assumption of the discussion has been any differences in the professions, because that is what involved parties have been told repeatedly.

Mr. Segal stated that the statutory language that needs to be reviewed is BPC Section 4999.54(b). He read the section as follows:

“The Board and the Office of Professional Examination services shall jointly develop an examination on the differences, if any differences exist between the following: ... The practice (emphasis added) of professional clinical counseling and the practice (emphasis added) of marriage and family therapy; (and) ... The practice of professional clinical counseling and the practice of clinical social work.”

He noted that the language in that section was different from the sections of the statute that talk about and at the beginning of the statute declare that there are differences in the three professions. There are different names and courses of study. He stated that there is no dispute that the professions are different. He summarized the pertinent statute as saying that there are differences in the professions, and a third profession is being created. Now it must be determined if the *practices* of the professions are different, and test on those differences if any are identified.

Mr. Segal continued that if the intent had been that the Board must test on any differences, the law would have said that there are differences and therefore a test must be given. He again emphasized that the law states that a test must be given if differences in the *practices* are identified and test on those differences if any. Mr. Segal added that Dr. Montez had conducted a study, as requested, on the differences in the professions. He emphasized that Dr. Montez was not asked to determine if there are differences in the practices of the professions. He noted that any comments made on that subject by Dr. Montez in her report were very minor and in his opinion do not provide a basis to make that decision because all of the major differences that were identified pertain to educational background, courses of study, and how a candidate can ameliorate by completing the course of study required for the grand-parenting candidate. He commented that the results of the study did not address what the various professions actually do.

Mr. Segal went on to say that in order to determine that a Gap Examination is required, according to the express language in the statute, the finding has to be made that there are differences in the practices of the professions, an issue he noted that Mr. Webb had also raised. Mr. Segal expressed CAMFT's opinion that there was no evidence before the Board on which that statement could be based.

Mr. Segal noted one area in which he was in disagreement with Mr. Walker pertains to the burden the Board has in this situation. He noted that Mr. Walker's point was that, without proof of no differences, the exam is required. He then referred to BPC Section 4999.54(b)(2). Mr. Segal paraphrased the section as indicating that if the Board determines that an examination is necessary – for example, if the Board determines that there are differences in the practices – then a test must be administered. He expressed the opinion that the Board's obligation is to test if differences are found in the practices. He offered the position that the statute provides if no differences are found in the practices, then, by default, no test is required. Mr. Segal stated that the information provided to the Board to date has all been about differences in the professions, but that is not the correct question. He stated emphatically that the correct question pertains to differences in the practices. He expressed CAMFT's opinion that as a result of how things have progressed, in addition to the information that has been provided to the Board about what the question is, there is no information before the Board on which a determination can be made that differences exist in the practices of the professions, such that a Gap Examination is required.

Mr. Segal spoke next about Mr. Walker's interpretation that the statute offers no wiggle room. He noted that it is a general rule of statutory interpretation that a statute is not interpreted to be absurd in its results, but rather that all statute must be interpreted to have a reasonable result. He offered the hypothetical scenario involving a facet of LPCC practice being a dimming of lights when in session. He continued that such is not the same in MFT practice. Mr. Segal noted that this would be a difference in the practice of LPCC versus MFT. He then stated that it would likely be considered absurd to assume that the legislature requires testing on the ability to dim lighting, even though a difference in the practices has been identified. Mr. Segal stated it was clear to him that the wording "any difference" doesn't really mean "any difference;" it has to mean any reasonable difference under the circumstances. He argued that while CAMFT would agree that it would be clearer to have the statute include wording like "meaningful" or "substantial," but the absence of those words does not mean that any means absolutely any under any circumstances. He expressed the position that such would not be a reasonable reading of the statute.

In closing, Mr. Segal commented that the fact that the Board has been given the discretion to examine this issue and is not just ordered to administer an examination when the statute recognizes there are differences in the professions seems to imply two things. First, he believed it implies that the Board is not supposed to be looking at the professions but rather at the practices of those professions as set forth in statute. He added that, secondly, it implies that the Board is allowed a certain amount of discretion as to where to draw the line as to what a "real" difference is in those practices. He continued that that is why regulatory bodies exist - to make such determinations given the guidance provided by the statutes by the legislature.

Mr. Walker responded that Mr. Segal had raised a good point regarding profession and practice. He expressed the view that Dr. Montez should be asked if in her opinion there is a difference between profession and practice, so the Board can make a determination whether or not it does have adequate information at its disposal.

Dr. Montez stated that in her analysis, "profession" and "practice" have the same meaning. She noted that the words tend to be used interchangeably, explaining that one might hear about professions analysis, practice analysis, occupational analysis or task analysis. All are essentially looking at relatively the same thing where licensure is concerned, that being the expectations for entry level practice. Dr. Montez read to the group from the Standards for Educational and Psychological Testing, Standard XIV, 14, as follows:

"The content domain to be covered by a credentialing or licensing test should be defined clearly and justified in terms of the importance of the content for the credential worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted."

Dr. Montez then read the additional comments in the book that underscored her earlier assertion that the words "profession" and "practice" are used interchangeably. She noted that when an occupational analysis or job analysis is conducted, you will see the words

profession and practice used interchangeably, the idea being that you are looking at the tasks performed by those individuals in the profession.

Mr. Segal responded by noting that the question is not what the clinical definition would be, but rather what the statutory definition would be. He noted that what the group was attempting to accomplish is to determine what the legislature meant. He stated that from the statutory interpretation standpoint, if you start off with the idea that there are three different professions, there would be no need for the analysis to be performed to determine if there are differences, since the legislature already has said that differences exist. He repeated his earlier assertion that the statutory language would have said that there are differences, therefore you must test on the differences. Mr. Segal again stated that his interpretation of the statute is that it has been determined there are differences in the professions, and now the Board needs to determine whether there are any differences between the practices of the professions. If there are differences found, then the Board must test on those differences. He expressed the position that the distinction exists in the legislation, which could necessitate a distinction between the two words in Dr. Montez's analyses. He added that if the words meant the same thing, he considered the approach taken in this case to be absurd because the legislature would have already declared the right answer.

Dr. Montez clarified that in her analyses the words are used interchangeably. She explained that the analysis did involve looking at the three professions and their expectations of practice, including the particular tasks performed in the professions and the underlying knowledge used to perform those tasks in the practice setting.

Mary Riemersma, CAMFT, expressed concern that, since it appeared the discussion was returning to where it had been prior to the May Board Meeting, board members were arriving at conclusions about an issue without the benefit of public input. She spoke about the statement of work from which Dr. Montez was performing her analysis. She commented that the Statement of Work says there would be public meetings throughout California to obtain public input related to meaningful differences between the LPCC, MFT, and LCSW professions, said meetings to be held in February and March. Ms. Riemersma noted that to her knowledge, those hearings did not occur. She continued that, if the group was speaking about the letter of the law, the letter of the law says that the work would be done by the Office of Professional Examination Services. She noted that it was not until a question was raised about that that the issue was brought forth for public comment.

Ms. Riemersma voiced CAMFT's belief that a test is unnecessary. She commented that when looking specifically at the practices of the professions, you see three professions that deliver the same service, making an examination unwarranted and unnecessary. Ms. Riemersma stated that CAMFT concurs with Dr. Montez' findings, even though the Statement of Work Dr. Montez was responding to contained incorrect language and was talking about differences in the professions; Ms. Rhine's memos to the Board also speak about differences in the professions and not differences in the practices. She emphasized, as had Mr. Segal, that the letter from AAMFT-CA contained seven references to differences in the professions, adding that it fails to state the law accurately. Ms. Riemersma added that if the group is talking about accuracy and looking at the intent of the law, to CAMFT it is clear.

Ms. Riemersma spoke about participating in the negotiations on the legislation with the various stakeholders involved in those discussions. She named various involved parties, including the Board's former Executive Officer, Paul Riches. Ms. Riemersma reported that Mr. Riches had presented a detailed analysis comparing the scopes of practice of the three disciplines. His conclusion at that time, was that after reviewing the scopes of practice of the three disciplines, what you were left with was professions that ultimately deliver the same service although the approaches are different. She noted that all three are providing mental health services with members of the public and the two differences that are attempting to be grand-parented into the LPCC profession have passed examinations that qualify them and have determined them safe to practice with the public providing mental health counseling and psychotherapy. She voiced the position that it is unnecessary to require further testing for work that said licensees can already perform. She stated that the statute was very carefully worded to make sure the involved parties were looking at practices and not differences in the professions.

Richard Leslie, counsel to CAMFT, expressed the opinion that the Board has been provided with bad information and voiced an interest in reviewing certain points so the Board would fully understand CAMFT's position on this issue, which he described as serious.

Mr. Leslie first referred to the AAMFT letter dated May 10, 2010, which he noted was received by the Board three days following the May Board Meeting during which the Board unanimously passed a motion. Mr. Leslie repeated Mr. Segal's earlier comment that seven times in the AAMFT letter the word "professions" is used. He emphasized that the word "professions" is nowhere in the statute that AAMFT refers to when speaking of BPC 4999.54(b)(1) or (b)(2). He added that in Ms. Rhine's memo of August 30, 2010, she states that BPC Section 4999.54(b)(2) gives the Board the authority to determine if an examination on the differences in the professions is necessary. He again emphasized that in looking at sections 4999.54(b)(1) and (b)(2), no reference is made to the "professions."

Mr. Leslie expressed the opinion that Mr. Webb had made a key statement in the Board's discussion and raised a key issue. Mr. Leslie reminded the group that MFTs and LCSWs work with individuals, adults and children, couples, families and groups. He asked for a response to the question about what, in practice, an LPCC can do that an MFT or LCSW cannot do. He expressed an interest in having a discussion with the Board in an open meeting and open forum to explore that question. Mr. Leslie voiced the position that a review of the situation would reveal things an LPCC cannot do in their practice that an MFT or LCSW can do. He provided as an example that MFTs are authorized in law to perform custody evaluations; LPCCs are not. He continued by noting that he could provided a list of settings where an LPCC cannot work but an MFT can, and tasks such as treating minors without parental consent. He again emphasized that there is nothing an LPCC can do that an MFT cannot do. Mr. Leslie repeated his position that the discussions on this issue be conducted with participation by board members and the public.

Mr. Leslie again restated the concern that the letter from AAMFT seven times misstates the law. He commented about earlier statements by the Board Chair that the Board must do what the law says. Mr. Leslie again restated the CAMFT position that while the AAMFT correspondence refers to differences in the professions, the law refers to differences in the practices. He further restated Mr. Segal's earlier position that it is already established that there are differences in the professions. He alluded to what he noted as being Dr. Montez' perspective that the two words are treated the same; Mr. Leslie offered the differing

perspective that they are not to be treated the same. Again, it was noted that the pertinent section does not contain the word professions, but rather refers to practice.

Mr. Leslie commented again about the use of words in the AAMFT letter being seven failed attempts to quote the law correctly. Mr. Leslie expressed concern with the misunderstanding and noted his interest in learning how and why the misunderstanding occurred. Mr. Leslie again made reference to Ms. Rhine's memo of August 30, again noting the use of the word professions.

Mr. Leslie then made reference to two meetings conducted between AAMFT and Board staff that CAMFT did not know about and which he stated, to his knowledge, no member of the public was aware of. Ms. Madsen asked if Mr. Leslie was referring to CAMFT's allegations of violations to the Bagley-Keene Open Meeting Act, and emphasized that such was not the issue before the Board at the current meeting. She stated that the group was discussing whether a Gap Examination for MFTs and LCSWs is necessary; whether differences are found to exist and, if so, does the Board need to offer an examination. She added that if he wished to discuss the Bagley-Keene Open Meeting Act, such discussion could be held in another forum. She again emphasized that such discussion could not occur under the agenda item at hand. Mr. Leslie asserted he was not speaking about the Bagley-Keene Open Meeting Act. Ms. Madsen asked that he then cease making reference to that issue.

Ms. Riemersma commented to Ms. Madsen that Mr. Leslie was not discussing the Bagley-Keene Open Meeting Act. Ms. Riemersma stated that the point being raised by Mr. Leslie is that there were meetings with AAMFT-CA. Mr. Walker commented that that was not an issue and the day's proceedings were not the forum to raise that issue. Ms. Riemersma responded that she was talking about a statement of work that was provided to Dr. Montez, which called for obtaining public input. Ms. Madsen responded that the Board had obtained public input as was known to Ms. Riemersma. It was established that Ms. Riemersma had attended all of the public meetings held to discuss the subject of a Gap Examination. Ms. Riemersma responded that while the various meetings that had occurred were all conducted lawfully, there were some meetings that did not occur at a time when CAMFT had the ability to provide input. She asserted the comments made by CAMFT representatives had nothing to do with the issue related to the Bagley-Keene Open Meeting Act. Mr. Leslie again revisited the issues he had raised earlier.

Mr. Walker commented to Ms. Lonner that Dr. Montez had previously indicated she used the words "profession" and "practice" interchangeably. He stated there was no reason to continue to have public comment on that issue, which he asserted was occurring at the current meeting. Mr. Walker stated that if there were others who wanted to provide different comments, they should be allowed to speak, but that it was unnecessary to further belabor the meaning or use of the two words in question.

Ms. Lonner commented that the Board has addressing practice throughout. Mr. Leslie again asked what a counselor could do in practice that an MFT or LCSW cannot do. Ms. Lonner offered career counseling as a response. Mr. Leslie responded that career counseling is not a regulated activity. Mr. Walker again reminded meeting participants that the meeting was at the point where public comment was being taken and there was no reason for the Board to answer questions.

Ms. Johnson noted to Ms. Lonner that an answer to Mr. Leslie's question would best be provided by Dr. Montez. Mr. Leslie again asked the question about what an LPCC can do that an MFT or LCSW cannot. Mr. Walker stated it was up to the Board Chair whether or not to permit Dr. Montez to respond to the question. He again reminded Mr. Leslie that the public comment period on a particular issue was not the appropriate forum for the public to make a comment and have another member of the public answer the question. Mr. Leslie responded that CAMFT would like to have a forum to discuss the issue. Mr. Walker again stated that it was up to the Board Chair whether to allow response from Dr. Montez to Mr. Leslie's question; absent such permission the meeting needed to move on. Ms. Lonner expressed the belief that Dr. Montez had already addressed the issue, and therefore Ms. Lonner preferred to not permit Dr. Montez to respond. Mr. Walker confirmed that Dr. Montez had in fact previously addressed the issue. Ms. Lonner expressed the position that there was no point in having Dr. Montez repeat herself, and the meeting should move on.

Ms. Lonner asked that further public comment on this issue be conducted in a courteous and respectful manner.

Ben Caldwell, AAMFT-CA, noted that there had been quite a bit of discussion about the intent of the legislation. He stated that there is specific intent language contained in BPC Section 4999.11; he read a portion of that section. Dr. Caldwell expressed the position that it is a leap of language and logic to say that there are differences in the professions but doing those professions is the exactly same. He stated that it has been AAMFT's contention from the beginning that there are meaningful differences between the practices, and a test should be administered addressing those differences. He added the position that such action is consistent with the language in the legislation.

Janlee Wong, National Association of Social Workers (NASW) California Chapter, expressed his appreciation to the Board and all involved parties for their efforts in working on the issue of a Gap Exam. He voiced his agreement with Ms. Riemersma, Mr. Leslie, and Mr. Segal. He noted that his interpretation of the statute is that the Board has discretion to decide whether or not to require a Gap Exam. He expressed his agreement with the findings in Dr. Montez' report and her recommendation to the Board. Mr. Wong commented that the Board needs to consider other input as well, such as public comment, as well as from board members who are practitioners. He added that he did not agree that the decision had been made for the Board, but that the Board has the authority to decide what to do.

Mr. Wong also commented that it is important to consider how people practice. He noted that an occupational analysis is a very scientific manner of obtaining such information, but added that another way to do so is by gaining input from practitioners who are practicing in the professions of marriage and family therapy, clinical social work and professional clinical counseling, and evaluating that information.

No further public comment was presented.

Renee Lonner moved that the Board find that a Gap examination is necessary and staff of the Board is directed to develop that examination. Judy Johnson seconded.

Mona Foster, Board Member, noted that the statute states that the Board and the Office of Professional Examination Services (OPES) shall develop the exam. She asked if the

earlier motion was all inclusive. Mr. Walker responded affirmatively, because the Board is part of the Department of Consumer Affairs. However, for purposes of clarification, he recommended that Ms. Lonner to withdraw her motion, and have the second agree to that withdrawal.

Ms. Lonner withdrew her earlier motion; Ms. Johnson agreed. Mr. Walker then suggested that the motion be made to require a Gap Examination and have the examination developed.

Renee Lonner moved that the Board find that a Gap Examination is necessary and direct staff to have an examination developed. Judy Johnson seconded. The Board, via roll-call vote, voted five to three (5-3) to require the Gap Examination. The motion passed.

It was noted that two of the board members who had previously been involved in the meeting were not available at the time the roll call vote was taken. A quorum was nonetheless maintained. Mr. Walker confirmed that the vote was based on the number of members present at the time of the vote.

III. Public Comment for Items Not on the Agenda

No public comment was offered.

Ms. Froistad asked permission to make a comment. She expressed her disappointment over the threatening of legal action and the questioning of the Board staff and the Board's integrity by CAMFT. She stated her position that the Board and staff has always behaved honestly and followed the law. She expressed frustration over the need to conduct the day's meeting under the circumstances it was called.

Ms. Lonner voiced her agreement with Ms. Froistad's comments. She expressed her dismay stating that differences of opinion are to be expected. She added that those differences in perspective should be aired in a manner that is not perceived as an attack on character. Ms. Lonner voiced her respect for all of the stakeholders who attend and participate in the meetings and commented that she expected the same respect be shown to the Board. She encouraged any stakeholders who continue to be upset to sit down with a member of the Board and discuss their concerns.

Mr. Webb added his agreement with the other board members' comments noting his disappointment as an MFT. He also corrected those meeting participants who had previously referred to him as doctor, noting that the title was not appropriate for him.

IV. Suggestions for Future Agenda Items

No suggestions were offered.

The opened meeting session adjourned at 11:45 a.m. The Board moved into closed session.

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To: Board Members

Date: December 29, 2010

From: Tracy Rhine
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: Marriage and Family Therapist Trainee; Practicum Requirement

Background

In early 2007, the Board began discussing some needed revisions to the education requirements for Marriage and Family Therapist (MFT) licensure. Through a number of meetings of the Marriage and Family Therapist Education Committee (Committee), and subsequent discussion at Board meetings, board staff, MFT educators, licensee member associations and other stakeholders developed the concepts that eventually became Board sponsored legislation to change the education requirements of MFTs. SB 1218 (Correa) containing the Board's education change proposal was vetoed by the Governor in 2008. However, subsequent and identical legislation, SB 33 (Correa) Chapter 26, Statutes of 2009, was signed into law the following year and became effective January 1, 2010.

One change in the new law requires MFT trainees, after August 1, 2012, to be enrolled in a practicum course while counseling clients (BPC §4980.36(d)(1)(B)(iii)). Currently, a trainee must take 6 semester units or 9 quarter units of practicum as part of his or her degree program, and may not practice as a trainee until he or she has completed 12 semester units or 18 quarter units of coursework in a qualifying degree program and obtains an approval and written agreement from his or her degree program. Additionally, a trainee treating clients must be enrolled in a master's or doctorate degree program designed to qualify him or her for licensure (BPC §4980.03(c)). According to Committee minutes, the provision requiring enrollment in a practicum course for trainees counseling clients evolved from an initial proposal brought to the Committee that would have simply increased the number of units of practicum required for licensure to the equivalent of 9 semester units, which represented a proportional increase corresponding to the increase in the direct client contact hours required. However, during discussions stakeholders conveyed to Board members that the increasing of the practicum unit requirement would be burdensome to some schools and the increase in units required may displace other courses integral to the MFT education program. In response to these concerns the Board did not mandate increased units of practicum, but instead, included in legislation the language currently found in law requiring trainees to be enrolled in practicum if he or she is counseling clients.

Issues

Two issues had been brought to staff's attention surrounding this change in law. First, with the passage of SB 33, there appeared to be a conflict between the following sections of the BPC:

BPC §4980.36(d)(1)(B)(iii) *A student must be enrolled in a practicum course while counseling clients.*

§4980.42(a) *Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." **Trainees may gain hours of experience outside the required practicum.** Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.* [emphasis added]

The language above was initially interpreted to be inconsistent by staff and possible solutions had been discussed at both the Policy and Advocacy Committee and Board meetings. However, the California Association for Marriage and Family Therapists (CAMFT), in its letter dated June 2, 2010, contended that no inconsistency actually existed due to fact that Section 4980.36(d)(1)(B)(iii) referenced and applied only to *students*, not *trainees* (See Attachment D). In the response to this assertion, and others contained in letters submitted by CAMFT regarding the Board's interpretation of this section of law, Board Counsel rendered a legal opinion (Attachment A). In the attached statutory analysis Board Counsel opines that no conflict exists between BPC Sections 4980.36(d)(1)(B)(iii) and 4980.42 as "gaining experience" does not necessitate counseling clients and further, refutes the argument that a *student* is not a *trainee*. Please see the attached statutory analysis for a full discussion.

The second issue related to this change in law is associated with the operation of this provision. Staff has been made aware of possible implementation problems with requiring a trainee to be enrolled in practicum while counseling clients. Several schools have inquired on how this provision would operate during intersession and summer break, when students may not be able to enroll in a practicum course. This could present both issues related to continuity of care, when a trainee would have to take a summer off of work leaving those clients with a different practitioner or without care, and barriers to licensure when a trainee will not be able to gain direct client hours because they are unable to enroll in practicum. However, it should be noted that only 225 hours of face-to-face experience is required, and if these hours were completed within one school year (approximately 34 weeks of course enrollment – with time off between semesters), it would require a trainee to complete only seven hours of client contact per week. Additionally, up to 75 of the 225 hours may be Client Centered Advocacy, which by its definition is not counseling clients and would not require enrollment in a practicum course.

The intent of the Board in requiring practicum for trainees counseling clients is to ensure that these minimally trained individuals have greater oversight from the school and to also provide mentorship and support for the trainees that they would not get outside the practicum course. By requiring enrollment in practicum and not increasing the total units of practicum required for MFT licensure, the Board afforded the flexibility to the schools to provide more practicum with the same amount of units. For example, one school contacted staff and stated that their institution would be offering one quarter unit practicum courses so that the trainee could be enrolled in a course every quarter, but not have to take extra units to meet the requirement.

At its April 9, 2010 meeting the Policy and Advocacy Committee voted to request that staff prepare draft language allowing trainees to counsel clients during breaks in the scholastic calendar year such as winter intersession or spring break, and bring the issue back to the full Board for discussion.

At its May 2010 meeting, the Board considered the draft language, as well as other options offered by staff to address the issues outlined above, including allowing trainees to counsel clients outside of practicum and, alternatively, not allowing any exemptions from the practicum requirement (including breaks in the scholastic calendar). After a full discussion by the Board and the public, the Board voted to allow trainees to counsel clients outside of practicum if that period outside of practicum is less than 45 days.

Previous Board Action

At its July 28, 2010 meeting the Board directed Board Counsel to conduct a statutory analysis and render a legal opinion on whether a trainee under current law would be required to be enrolled in practicum to counsel clients. Additionally, the Board directed staff to make technical changes to the draft language that will allow a trainee to counsel clients when not enrolled in practicum for a period of less than 45 days.

Proposed Amendments

This proposal amends section 4980.42(b) to clarify that trainees may gain experience outside of practicum but may not counsel clients unless enrolled in practicum. Amendments to BPC 4980.42(a) and to BPC §4980.36(d)(1)(B)(iii) allow for an exception during a period of time less than 45 days.

Recommendation

Review and discuss the attached statutory analysis and review draft statutory language to implement the 45 days exception to the practicum requirement of BPC Section 4980.36(d)(1)(B)(iii). If acceptable, direct staff to submit language to the legislature for a Board sponsored bill.

Attachment

- A. Statutory Analysis by Board Counsel
- B. Proposed Draft Language for Practicum Amendments
- C. Letter, CAMFT, June 28, 2010
- D. Letter, CAMFT, June 2, 2010

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MEMORANDUM

DATE	November 3, 2010
TO	MEMBERS OF THE CALIFORNIA BOARD OF BEHAVIORAL SCIENCES via KIM MADSEN Executive Officer California Board of Behavioral Sciences (BBS)
SUBJECT	Marriage and Family Therapist (MFT) Practicum Course Requirement Business and Professions Code section 4980(d)(1)(B)(iii).

I was requested to provide a statutory analysis and opinion on whether a trainee under current law would be required to enroll in a practicum course while counseling clients.

Question Presented

Is the requirement in Business and Professions Code section 4980.36(d)(1)(B)(iii) that a student must be enrolled in a practicum course while counseling clients apply to trainees?

Short Answer

Yes, Business and Profession Code section 4980.36(d)(1)(B)(iii) requires all students, including trainees, to be enrolled in a practicum course while counseling clients.

Analysis

Beginning in early 2007 the Board began discussing some necessary revisions to the education requirements for a Marriage and Family Therapist (MFT). Subsequently, the Board sponsored legislation (SB 1218, Correa) in 2008 to change the education requirements. Although this legislation was ultimately vetoed by the Governor, subsequent and identical legislation (SB 33, Correa) was signed into law the following year and became effective January 1, 2010. (Stats. 2009, ch. 26.) One change in the new mandatory law requires MFT trainees, after August 1, 2012, to be enrolled in a

practicum course while counseling clients. (Bus. & Prof. Code § 4980.36(d)(1)(B)(iii).) One statutory provision that was not amended in the 2009 legislation is Business and Profession Code section 4980.42.¹ Subdivision (a) of this permissive section provides, in pertinent part, "Trainees may gain hours of experience outside the required practicum."

In interpreting the statutory provisions in question, we may rely upon several principles of statutory construction. "In construing a statute, a court's objective is to ascertain and effectuate the underlying legislative intent." (*Moore v. California State Board of Accountancy* (1992) 2 Cal.4th 999, 1012.) In determining legislative intent, we look first to the language of the statute, giving effect to its "plain meaning." (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208-209.) In addition, various sections of all codes must be read together and harmonized if possible. (*Channell v. Superior Court of Sacramento County* (1964) 226 Cal. App.2d 246; *Rupley v. Johnson* (1953) 120 Cal.App.2d 548; *In Re Thrasher's Guardianship* (1951) 105 Cal.App.2d 768.) As such, the codes are to be regarded as blending into each other and constituting but a single statute. (*Pesce v. Department of Alcoholic Beverage Control* (1958) 51 Cal.2d 310.) Consequently, the codes must be construed to give effect to all provisions, if reasonably possible. (*Pareses v. California State Board of Prison Directors* (1929) 208 Cal. 353; *People v. Pryal* (App.1914) 25 Cal.App. 779.) Also, it must be presumed that the Legislature, when enacting this statute, was aware of existing related laws and intended to maintain a consistent body of rules. (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1055-1056; *People v Vessell* (1995) 36 Cal.App.4th 285, 289. If two seemingly inconsistent statutes conflict, the court's role is to harmonize the law. (*People v. Pieters* (1991) 52 Cal.3d 894, 899.) Consequently, sections 4980.36(d)(1)(B)(iii) and 4980.42 must be read together and harmonized with other relevant provisions in existing law.

Upon a cursory reading of these statutes, it may appear section 4980.36(d)(1)(B)(iii) is inconsistent or conflicts with section 4980.42 since the later statute authorizes trainees to gain hours of experience outside the required practicum and the newly enacted statute requires students be enrolled in a practicum course while counseling clients. However, by adhering to and applying the aforementioned principles of statutory construction, there is no conflict between these two provisions of the Marriage and Family Therapist Act (MFT Act) since both provisions can be harmonized in such a manner that provides legal effect to both provisions.

Under the "plain meaning" rule of statutory construction, courts first look to the language of the statute itself. When the language of the statute is clear and unambiguous, there is no need for further construction. In the present case the language of both section 4980.36(d)(1)(B)(iii) and 4980.42 is clear and unambiguous. In relevant part, section 4980.36(d)(1)(B)(iii) provides the following:

¹ All statutory references are to the Business and Professions Code.

“A student must be enrolled in a practicum course while counseling clients.”

A “student” is a common word and is defined by the American Heritage Dictionary of the English Language in pertinent part as: “One who is enrolled or attends classes at a school, college, or university.” The statute simply requires students qualifying hours for the required experience to be enrolled in a practicum course while **counseling** clients. All trainees under the Act are students by definition. In relevant part, under the Act’s definitional provisions, a trainee is defined to mean “an unlicensed person who is currently enrolled in a master’s or doctor’s degree program, as specified in Sections 4980.36 and 4980.37, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.” Since the term “student” is commonly understood to mean one who is enrolled or attends classes at a school, college or university, a “trainee” is also by statutory definition a “student” since a trainee is defined as one who is “currently enrolled in a master’s or doctor’s degree program. Consequently, all trainees are students. Because all trainees are also students, the requirement under section 4980.36(d)(1)(B)(iii) that all students must be enrolled in a practicum course while counseling clients applies equally to trainees. This practicum course requirement is not inconsistent with section 4980.42.

Section 4980.42, subdivision (a) provides the following:

“Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee’s supervised course of study and that the person is designated by the title trainee. **Trainees may gain hours of experience outside the required practicum. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.** [Emphasis added.]

Section 4980.42 is a permissive statute insofar as it authorizes and provides that trainees **may** gain hours of experience outside the required practicum. This statute is not inconsistent with section 4980.36(d)(1)(B)(iii) which requires student, including trainees, to be enrolled in practicum course while counseling clients. Section 4980.42 allows trainees to gain experience outside the required practicum. Experience that involves “counseling,” however, requires a trainee to be enrolled in a qualifying practicum course. This requirement does not contradict or conflict with section 4980.42 since section 4980.42 simply authorizes trainees to gain hours of experience outside the required practicum. The required practicum requirements still apply. In relevant part, section 4980.42 also provides that hours of experience gained outside the required practicum shall be subject to the requirements of subdivision (b) and to the **other requirements of this chapter**. The other requirements of the chapter include the recently enacted practicum course requirement while counseling services are provided to clients. Therefore, section 4980.36(d)(1)(B)(iii) requires all students, including trainees, to be enrolled in a practicum course while counseling clients.

I trust this is responsive to your inquiry. Please feel free to call me at (916) 574-8220 if you have any questions regarding this opinion.

Sincerely,

DOREATHEA JOHNSON
Deputy Director, Legal Affairs

A handwritten signature in black ink, appearing to read "Gary Duke". The signature is written in a cursive style with a large initial "G" and "D".

By: Gary Duke
Senior Staff Counsel

Proposed Amendments Related to MFT Practicum (January 13, 2010).

4980.42. TRAINEES' SERVICES

(a) Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee."

(b) Trainees may gain hours of experience outside the required practicum but must be enrolled in practicum to counsel clients, as set forth in Section 4980.36(d)(B)(iii), except as provided in subdivision (c).

(c) Trainees may counsel clients while not enrolled in a practicum course if the period of lapsed enrollment is less than forty-five calendar days.

(d) All hours of experience gained pursuant to subdivisions (b) and (c) These hours shall be subject to the requirements of subdivision ~~(e)~~ (e) and to the other requirements of this chapter.

~~(b)~~ (e) On and after January 1, 1995, all hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

§4980.36 QUALIFYING DEGREE PROGRAM FOR LICENSURE OR REGISTRATION; BEGINNING GRADUATE STUDY AFTER AUGUST 1, 2012 OR COMPLETING GRADUATE STUDY AFTER DECEMBER 31, 2018

(a) This section shall apply to the following:

(1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage 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 approved by the Bureau for Private Postsecondary and Vocational Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of 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.

(c) A doctor's or master's degree program that qualifies for licensure or registration shall do the following:

(1) Integrate all of the following throughout its curriculum:

(A) Marriage and family therapy principles.

(B) The principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments, among others.

(C) An understanding of various cultures and the social and psychological implications of socioeconomic position, and an understanding of how poverty and social stress impact an individual's mental health and recovery.

(2) Allow for innovation and individuality in the education of marriage and family therapists.

(3) Encourage students to develop the personal qualities that are intimately related to effective practice, including, but not limited to, integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(4) 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.

(5) Provide students with the opportunity to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:

(1) Both of the following:

(A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.

(B) Practicum that involves direct client contact, as follows:

(i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.

(ii) A minimum of 225 hours of face-to-face experience counseling individuals, couples, families, or groups. Up to 75 of those hours may be gained performing client centered advocacy, as defined in Section 4980.03.

(iii) A student must be enrolled in a practicum course while counseling clients, except as specified in Section 4980.42(c).

(iv) The practicum shall provide training in all of the following areas:

(I) Applied use of theory and psychotherapeutic techniques.

(II) Assessment, diagnosis, and prognosis.

(III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.

(IV) Professional writing, including documentation of services, treatment plans, and progress notes.

(V) How to connect people with resources that deliver the quality of services and support needed in the community.

(v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low-income and multicultural mental health settings.

(2) Instruction in all of the following:

(A) Diagnosis, assessment, prognosis, and treatment of mental disorders, including severe mental disorders, evidence-based practices, psychological testing, psychopharmacology, and promising mental health practices that are evaluated in peer reviewed literature.

(B) Developmental issues from infancy to old age, including instruction in all of the following areas:

(i) The effects of developmental issues on individuals, couples, and family relationships.

(ii) The psychological, psychotherapeutic, and health implications of developmental issues and their effects.

(iii) Aging and its biological, social, cognitive, and psychological aspects.

(iv) A variety of cultural understandings of human development.

(v) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(vi) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(vii) The understanding of the impact that personal and social insecurity, social stress, low educational levels, inadequate housing, and malnutrition have on human development.

(C) The broad range of matters and life events that may arise within marriage and family relationships and within a variety of California cultures, including instruction in all of the following:

(i) Child and adult abuse assessment and reporting.

(ii) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(iii) Cultural factors relevant to abuse of partners and family members.

(iv) Childbirth, child rearing, parenting, and stepparenting.

(v) Marriage, divorce, and blended families.

(vi) Long-term care.

(vii) End of life and grief.

(viii) Poverty and deprivation.

(ix) Financial and social stress.

(x) Effects of trauma.

(xi) The psychological, psychotherapeutic, community, and health implications of the matters and life events described in clauses (i) to (x), inclusive.

(D) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(E) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability, and their incorporation into the psychotherapeutic process.

(F) The effects of socioeconomic status on treatment and available resources.

(G) Resilience, including the personal and community qualities that enable persons to cope with adversity, trauma, tragedy, threats, or other stresses.

(H) Human sexuality, including the study of physiological, psychological, and social cultural variables associated with sexual behavior and gender identity, and the assessment and treatment of psychosexual dysfunction.

(I) Substance use disorders, co-occurring disorders, and addiction, including, but not limited to, instruction in all of the following:

(i) The definition of substance use disorders, co-occurring disorders, and addiction. For purposes of this subparagraph, "co-occurring disorders" means a mental illness and substance abuse diagnosis occurring simultaneously in an individual.

(ii) Medical aspects of substance use disorders and co-occurring disorders.

(iii) The effects of psychoactive drug use.

(iv) Current theories of the etiology of substance abuse and addiction.

(v) The role of persons and systems that support or compound substance abuse and addiction.

(vi) Major approaches to identification, evaluation, and treatment of substance use disorders, co-occurring disorders, and addiction, including, but not limited to, best practices.

(vii) Legal aspects of substance abuse.

(viii) Populations at risk with regard to substance use disorders and co-occurring disorders.

(ix) Community resources offering screening, assessment, treatment, and follow-up for the affected person and family.

(x) Recognition of substance use disorders, co-occurring disorders, and addiction, and appropriate referral.

(xi) The prevention of substance use disorders and addiction.

(J) California law and professional ethics for marriage and family therapists, including instruction in all of the following areas of study:

(i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of marriage and family therapy.

(ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including, but not limited to, family law.

(iii) The current legal patterns and trends in the mental health professions.

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

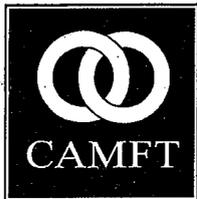
(v) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

(vi) Differences in legal and ethical standards for different types of work settings.

(vii) Licensing law and licensing process.

(e) The degree described in subdivision (b) shall, in addition to meeting the requirements of subdivision (d), include instruction in case management, systems of care for the severely mentally ill, public and private services and supports available for the severely mentally ill, community resources for persons with mental illness and for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. This instruction may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(f) The changes made to law by this section are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended to expand or restrict the scope of practice for marriage and family therapists.



We're here for You!

June 2, 2010

*CAMFT is
dedicated to the
advancement and
understanding of
the profession of
marriage and
family therapy as
both an art
and a science, to
maintaining high
standards of
professional
ethics and
qualifications,
and to expanding
the recognition
and utilization of
the profession.*

Kim Madsen
Executive Officer
Board of Behavioral Sciences
1625 North Market Blvd., Suite S200
Sacramento, California 95834

Dear Ms. Madsen:

This letter is in reference to the upcoming Monday, June 7, 2010, Board of Behavioral Sciences [hereinafter "Board"] Policy and Advocacy Committee Meeting in Sacramento. It is anticipated that there will be a discussion regarding the Marriage and Family Therapist Practicum Requirement as found in Business and Professions Code [hereinafter "Code"] section 4980.36, subdivision (d)(1)(B)(iii).

In short, it is the position of the California Association of Marriage and Family Therapists [hereinafter "CAMFT"] that the restriction now found in Business and Professions Code section 4980.36, subdivision (d)(1)(B)(iii), "A student must be enrolled in a practicum course while counseling clients," applies only to students who are not yet classified as a Marriage and Family Therapist Trainee. As a result, section 4980.42, subdivision (a), of the Code, which states in pertinent part, "Trainees may gain hours of experience outside the required practicum," remains good law and is unaffected by the enactment of section 4980.36 of the Code.

The Statutes

As noted above, there are two (2) statutes that pertain to this discussion:

- (1) Business and Professions Code section 4980.42, subdivision (a), provides in pertinent part, "Trainees may gain hours of experience outside the required practicum."
- (2) Business and Professions Code section 4980.36, subdivision (d)(1)(B)(iii), effective January 1, 2010, provides, "A student must be enrolled in a practicum course while counseling clients."

California Association
of Marriage and
Family Therapists

7901 Raytheon Road
San Diego, CA 92111
P: (858) 292-2638
F: (858) 292-2666
www.camft.org

The Issue

It has come to the attention of CAMFT and CAMFT members, that the Board is interpreting newly enacted section 4980.36, subdivision (d)(1)(B)(iii), of the Code, as applying to both trainees and students, essentially anyone enrolled in a Marriage and Family Therapy Education program that is not an intern. Such an interpretation would prohibit trainees from gaining hours of experience outside the required practicum course as provided in section 4980.42, subdivision (a), of the Code.

Principles of Statutory Construction

There are four (4) principles of statutory construction which govern the analysis of sections 4980.36, subdivision (d)(1)(B)(iii), and 4980.42, subdivision (d), of the Code. Those are as follows:

- (1) When interpreting a statute, courts first examine the statutory language, giving it a plain and commonsense meaning. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737);
- (2) Courts presume that the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules (*People v. Vessell* (1995) 36 Cal.App.4th 285, 289);
- (3) If two seemingly inconsistent statutes conflict, the court's role is to harmonize the law (*People v. Pieters* (1991) 52 Cal.3d 894, 899); and,
- (4) If inconsistent statutes cannot otherwise be reconciled, a particular or specific provision will take precedence over a conflicting general provision, and the specific provision will be considered as an exception to the general statute whether it was passed before or after such general enactment. (*People v. Gilbert* (1969) 1 Cal.3d 475, 479.)

CAMFT's Position

Adhering to the principals of statutory construction as set forth above, it is CAMFT's position that the Board's proposed interpretation of section 4980.36, subdivision (d)(1)(B)(iii), is inconsistent with the intent of the Legislature.

First, the plain language of section 4980.36, subdivision (d)(1)(B)(iii), of the Code, makes it clear that students, and only students must be enrolled in a practicum while counseling clients. It does not say that trainees must be enrolled in a practicum while counseling clients.

The Board's own publication, the Marriage and Family Therapist Student Handbook [hereinafter "Handbook"] makes it clear who is a trainee and who is a student. On page 5, the Handbook defines a Marriage and Family Therapist Trainee as one who has completed a

minimum of 12 semester or 18 quarter units in a qualifying degree program and has a written agreement between the school and each work site that details each party's responsibilities, including how supervision will be provided.

It is therefore CAMFT's position that the plain language of section 4980.36, subdivision (d)(1)(B)(iii), of the Code, makes it clear that students who are not yet trainees, must be enrolled in a practicum while counseling clients.

Second, regardless of which statute was enacted first, section 4980.36, subdivision (d)(1)(B)(iii), referring to students, is a general statute. It refers to all students in general. Section 4980.42, subdivision (a), of the Code, on the other hand, is a specific statute that creates a very limited exception for trainees. The language of section 4980.42, subdivision (a), makes it clear that once a student becomes a trainee, they can gain hours of experience outside the required practicum course. In accordance with the above principles of statutory construction, the specific provision, section 4980.42, subdivision (a), of the Code, takes precedence over the general provision, section 4980.36, subdivision (d)(1)(B)(iii), and is considered an exception to the general statute requiring that students be enrolled in a practicum course when counseling clients.

Lastly, to interpret section 4980.36, subdivision (d)(1)(B)(iii), of the Code, as now prohibiting trainees from earning hours of experience outside the practicum, would be an absurd consequence and would be inconsistent with the language of 4980.42, subdivision (a), of the Code. Essentially, the Board would be engaging in a rewriting of section 4980.36, subdivision (d)(1)(B)(iii), importing the word "trainee," where no such word is and creating two inconsistent statutes.

Conclusion

We look forward to attending the Board's Policy and Advocacy Committee meeting this coming Monday, June 7, 2010, in Sacramento, and having a chance to address the Committee regarding CAMFT's concerns with the Board's proposed interpretation of section 4980.36, subdivision (d)(1)(B)(iii) of the Code.

Sincerely,

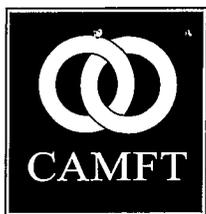


Douglas Lee
Staff Counsel



Mary Riemersma
Executive Director

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June 28, 2010

Kim Madsen
Executive Officer
Board of Behavioral Sciences
1625 North Market Blvd., Suite S200
Sacramento, California 95834

Dear Ms. Madsen and Members of the Board:

The purpose of this letter is to address an issue that was raised during the Monday, June 7, 2010, Board of Behavioral Sciences [hereinafter "Board"] Policy and Advocacy Committee Meeting. Specifically, whether allowing trainees to continue to gain hours of experience outside the required practicum was consistent with the Board's mandate "to protect the public from incompetent, unethical, or unprofessional practitioners." (See Bus. & Prof. Code, § 4980.34, subd. (c).)

It is the position of the California Association of Marriage and Family Therapists [hereinafter "CAMFT"] that allowing trainees to continue gaining hours of experience outside the required practicum, pursuant to the strict requirements of the Marriage and Family Therapist Act [hereinafter "Act"], is consistent with the Board's mandate of public protection.

Analysis of Marriage and Family Therapist Act As Applied To Trainees

Trainees have been continuously allowed to gain hours of experience outside the required practicum while adhering to the strict requirements of the Act. Allowing trainees to gain hours of experience in this fashion furthers the Board's mandate "to protect the public from incompetent, unethical, or unprofessional practitioners," by enabling trainees to develop important skills prior to becoming marriage and family therapists.

Who Is A Trainee?

As you are aware, a trainee, as defined by section 4980.03, subdivision (c), of the Code, is "an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.36 and 4980.37, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program."

What Can A Trainee Do?

Trainees are allowed to accrue up to 1,300 hours of work experience towards the 3,000 hour requirement.

Section 4980.42, subdivision (a), of the Code, further expands on the role of trainees. It provides that trainees "may perform activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study." As previously noted, this same subdivision allows trainees to gain hours of experience outside the required practicum.

How Does The Act Restrict Trainee Activities and Services?

Consistent with the Board's mandate of public protection, the Act has several built in restrictions that govern the activities and services of trainees. Some, but not all, of these restrictions also apply to interns.¹ As the following shows, the restrictions on how trainees perform activities and services, in many instances, are greater than those imposed on interns.

- (1) Trainees must be designated by the title, "trainee." (Bus. & Prof. Code, § 4980.42, subd. (a).)
- (2) All hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. (Bus. & Prof. Code, § 4980.42, subd. (b).)
- (3) The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. (Bus. & Prof. Code, § 4980.42, subd. (b).)
- (4) Trainees, shall at all times, be 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. (Bus. & Prof. Code, § 4980.43, subd. (b).)
- (5) Trainees can gain hours of experience only as an employee or a volunteer. (Bus. & Prof. Code, § 4980.43, subd. (b).)
- (6) Trainees shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. (Bus. & Prof. Code, § 4980.43, subd. (c)(1).)

¹ Section 4980.03, subdivision (b), of the Code, defines an intern as, "an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the Board."

- a. The supervision requirement for trainees is greater than for interns. Section 4980.43, of the Code provides that interns must receive at least one hour of direct supervisor contact in each week for which experience is credited in each work setting and must receive an additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting.
 - b. Additionally, interns working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. Trainees may not. (Bus. & Prof. Code, § 4980.43, subd. (c)(6).)
- (7) Trainees cannot earn hours or work experience in 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 these licensed professions. (Bus. & Prof. Code, § 4980.43, subds. (d)(1)(C), and (e)(2); See also Title 16, Calif. Code of Regs. § 1833, subd. (d)(2).)
 - a. There is no similar restriction for interns. In fact, only interns may gain hours of experience in a private practice setting. (See Bus. & Prof. Code, § 4980.43, subd. (e).)
- (8) Trainees shall not receive any remuneration from patients or clients, and shall only be paid by their employers. (Bus. & Prof. Code, § 4980.43, subd. (h).)
- (9) Trainees 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. (Bus. & Prof. Code, §4980.43, subd. (i).)
- (10) Trainees shall have no proprietary interest in their employers' business and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers. (Bus. & Prof. Code, § 4980.43, subd. (i).)
- (11) Trainees who provide volunteered services or other services can receive no more than a total from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred for services rendered. (Bus. & Prof. Code, § 4980.43, subd. (j).)
- (12) Trainees shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. (Bus. & Prof. Code, § 4980.48, subd. (a).)

Public Policy and Public Protection Mandate That Trainees Be Allowed To Continue Gaining Hours Of Experience Outside The Required Practicum Course

CAMFT agrees that the role of the Board is to protect the public from incompetent, unethical, and/or unprofessional practitioners. Protecting the public necessarily includes educating and training trainees to as to their ethical and professional duties. There is no better place to receive such education and training than in the workplace while under supervision.

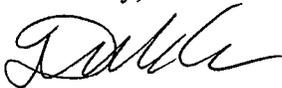
CAMFT supports that trainees should have some limitations on their activities while unlicensed. CAMFT's concern is that forcing trainees to be enrolled in a practicum course while counseling clients (Bus. & Prof. Code, § 4980.36, subd. (d)(1)(B)(iii)), is unduly harsh, prohibitive, unnecessary and disruptive to the treatment process with clients and employers.

To date, CAMFT is unaware of any concern regarding trainee's earning hours while not enrolled in a practicum course. The rules and regulations governing how, when and where trainees work, ensures the public that trainees are properly supervised, that their schools have agreements with places of employment. Patients who engage in therapy with trainees are aware of their unlicensed status.

From a more practical standpoint, requiring trainees to be enrolled in a practicum course while counseling clients jeopardizes patient safety and welfare, and places employers in potential jeopardy. A prime example of this is the situation where a trainee is working with a patient or patients and must stop because of summer break. Essentially, the trainee will be forced by the Board to abandon the patient, or at least refer the patient to another provider, thereby destroying the trust and relationship that patient has developed with the trainee.²

Finally, it should be noted that section 4980.01, subdivision (c), of the Code, exempts from the Act any individual, whether volunteer or employee, working in the following settings: A governmental entity; A school, college, or university; An institution that is both nonprofit and charitable. While subdivision (c), requires that the individual work under the supervision of the entity, school, or institution, it virtually allows anyone, whether licensed or not, whether registered or not, whether or not he or she has completed any Marriage and Family Therapy Coursework, to practice therapy in these settings. Trainees, on the other hand, are subjected to the rules and regulations set forth above, thereby providing greater public protection.

Sincerely,



Douglas Lee
Staff Counsel



Mary Riemersma
Executive Director

² The other option is simply an exercise in futility. CAMFT has now been made aware that schools, in order to skirt the practicum requirement are simply going to create a one (1) unit practicum course which students can be enrolled in while counseling clients.