



Board of
Behavioral
Sciences

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MEETING NOTICE

Policy and Advocacy Committee January 13, 2011

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

10:00 a.m.

- I. Introductions
- II. Review and Approval of the October 12, 2010 Policy and Advocacy Committee Meeting Minutes
- III. Discussion and Possible Action Regarding HIV/AIDS Continuing Education Course Requirement for Licensed Professional Clinical Counselors
- IV. Policy Discussion and Possible Action Regarding Proof of Employment by Registrants for Supervised Work Experience Hours; Stipends
- V. Discussion and Possible Legislative Action Regarding Licensed Professional Clinical Counselor Supervision of Marriage and Family Therapist Interns
- VI. Rulemaking Update
- VII. Public Comment for Items Not on the Agenda
- VIII. Suggestions for Future Agenda Items

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

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

NOTICE: The meeting 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.



Arnold Schwarzenegger
Governor
State of California
State and Consumer
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To: Policy and Advocacy Committee Members **Date:** December 27, 2010

From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst

Subject: HIV/AIDS Continuing Education Course for LPCCs

Currently, the Board's marriage and family therapist (MFT) and clinical social worker (LCSW) licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) (California Code of Regulation (CCR) Title 16 Section 1887.3(c)).

Proposed regulations do not require the Board's professional clinical counselor licensees (LPCCs) to take a continuing education course covering HIV/AIDS. However, LPCCs are as likely as MFTs and LCSWs to treat patients with HIV or AIDS.

Intent of the Law

Business and Professions Code (BPC) Section 32 states that a board regulating certain professions, including marriage and family therapists, licensed educational psychologists, and clinical social workers, should consider including training regarding the characteristics and method of assessment and treatment of AIDS in its continuing education or training requirements. This section of law was established before the creation of the LPCC Act.

Discussion

All MFTs, LCSWs, and LPCCs are required to complete 36 hours of continuing education relevant to their field of work during each renewal period (BPC §§4980.54, 4996.22, 4999.76). They must also complete a six hour law and ethics course each renewal period (CCR Title 16 §1887.3).

These licensees are also required to have coursework covering a variety of topics. Typically, this coursework is a requirement of licensure, however, depending on when the license was obtained, it may be a renewal requirement if the coursework was not required at the time of licensure. These topics are as follows:

1. Human Sexuality (CCR Title 16 §1807);
2. Child Abuse (CCR Title 16 §1807.2);

3. Spousal/Partner Abuse (BPC §§4980.57, 4996.22, 4999.32, 4999.33) ;
4. Aging and Long Term Care (BPC §§4980.395, 4996.26, 4999.32, 4999.33);
5. Substance Abuse (CCR Title 16 §1887.3(b))

In addition to the above requirements, MFTs and LCSWs are required to take a one-time, seven hour continuing education course covering the assessment and treatment of people living with HIV/AIDS as a condition of their renewal. There is currently no requirement in law that an LPCC have any coursework covering HIV/AIDS, either as continuing education or as part of a graduate degree program.

Recommendation

Conduct an open discussion regarding whether LPCCs should be required to take a one-time, seven hour continuing education course covering the assessment and treatment of people living with HIV/AIDS.

If the Committee recommends that the course should be required, review the following draft regulatory language for Board consideration:

1. Amend Title 16 Section 1887.3(c) of the CCR to include professional clinical counselors as one of the license types that must take a seven hour continuing education course covering HIV/AIDS.

Attachments

1. Suggested amendments to Title 16, CCR Section 1887.3(c).

California Code of Regulations Title 16 Section 1887.3(c)

Note: These regulations are pending approval at the Office of Administrative Law. Approval is expected in early 2011.

- (a) During each renewal period, a licensee shall accrue at least thirty-six (36) hours of continuing education coursework as defined in Section 1887.4. A licensee may accrue no more than eighteen (18) hours of continuing education earned through self-study courses during each renewal period.
- (b) A marriage and family therapist and clinical social worker licensee who started graduate study prior to January 1, 1986, shall take a continuing education course in the detection and treatment of alcohol and other chemical substance dependency during their first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 29 of the Code. This is a one-time requirement for those licensees specified above. Equivalent alcohol and other chemical substance dependency courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.
- (c) ~~Pursuant to Section 32 of the Code, a~~ A marriage and family therapist, ~~and~~ clinical social worker, and professional clinical counselor licensee shall take a continuing education course in the characteristics and methods of assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) during their first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 32 of the Code. This is a one-time requirement for all licensees. Equivalent HIV and AIDS courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.
- (d) Any person renewing his or her license on and after January 1, 2004 shall complete a minimum of six (6) hours of continuing education in the subject of law and ethics for each renewal period. The six (6) hours shall be considered part of the thirty-six (36) hour continuing education requirement.
- (e) If a licensee teaches a course, the licensee may claim credit for the course only one time during a single renewal period, receiving the same amount of hours of continuing education credit as a licensee who attended the course.
- (f) A licensee may not claim the same course more than once during a single renewal period for hours of continuing education credit.

(g) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing education requirement.

(h) Provisions of this section shall apply to licensed educational psychologists as follows:

(1) Beginning January 1, 2012 and through December 31, 2012 licensees shall complete at least eighteen (18) hours of continuing education prior to his or her license renewal, in accordance with subdivision (d) through (g).

(2) On and after January 1, 2013, licensees shall meet the requirements of subdivision (a) through (g).

Note: Authority Cited: Sections 4980.60, 4989.34, 4990.20 and 4999.76 Business and Professions Code. Reference: Sections 29, 32, 4980.54, 4989.34, 4996.22 and 4999.76 Business and Professions Code.

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To: Policy & Advocacy Committee Members

Date: December 27, 2010

From: Rosanne Helms
Legislative/Regulatory Analyst

Telephone: (916) 574-7897

Subject: Stipend Applicants: Acceptable Proof of Employment

Background

When applying for licensure, a Marriage and Family Therapy Intern (MFT Intern) and Associate Social Worker (ASW) registrant must provide the Board with verification of his or her employment for all required supervised work experience hours. By law, this verification can be provided in one of two ways (Business and Professions Code (BPC) sections 4980.43(b)(1)&(2), 4996.23(i)&(j):

1. Provide the Board with a letter from the employer verifying his or her volunteer status; or
2. Provide the Board with copies of his or her W-2 tax forms for each year of experience claimed.

Recently, the Board has received applications from several registrants who are not able to provide the Board with a W-2 or a volunteer status letter, because they were not employees or volunteers. Instead, they received a stipend in exchange for work performed with a specified agency. Typically the stipend is being credited to the registrant for the repayment of a student loan or educational expenses.

Common Types of Stipends

There are many types of stipend programs. Some common examples include the following:

1. County Department of Mental Health Stipend Programs

These are sometimes done in partnership with various colleges and universities. An example of this type of program is the Los Angeles County Department of Mental Health stipend program. The Department of Mental Health partnered with the Southern California Consortium of MFT Schools. Graduating MFT students from these schools may be eligible to apply for an educational stipend. In return, they agree to work as an MFT Intern at an agency within the county's mental health system that is in need of mental health providers for at least 12 months.

2. State Stipend Programs

The California Department of Mental Health provides stipends to second year social work or marriage and family therapy students who meet certain qualifications. Recipients of the stipends complete an employment payback agreement with a county public mental health agency or a community-based organization under contract to a county public mental health agency. Once they graduate and obtain MFT Intern or ASW registrant status, they are required to complete their employment payback. They are typically paid a salary at this time in addition to their stipend, thus they are considered employees of the agencies.

The Board's MFT Intern and ASW registrants participate in such a program. All of the Board's MFT and LCSW licensees pay a \$10 fee to the Mental Health Practitioner Education Fund at the time of their license renewal. This funds an educational loan repayment program for mental health service providers. To be eligible to apply for this program, health service providers must work at a publicly funded or public mental health facility, a non-profit mental health facility, a mental health professional shortage area, or in the public mental health system.

3. Federal Stipend Programs

The Indian Health Service and National Health Service Corps are federal programs offering loan reimbursement to MFTs and MFT Interns who work in specified underserved settings.

Most of these government stipend programs also pay the participants a salary for their services while working. Therefore, they are issued a W-2 form and meet the Board's requirement of being able to provide this form in order to verify the hours of experience claimed.

However, occasionally the Board receives applications where experience was gained under other types of non-government stipend programs. They may be through universities or other service agencies. If a 1099 form instead of a W-2 form is issued, the applicants hours gained may not be counted.

Example #1: The Board received one application for licensure where the applicant had obtained a full time Post-MSW fellowship at the Yale University Child Study Center. The applicant worked at the Center for one year under a supervisor and in turn received a \$14,000 stipend payment in addition to health coverage. The Board was required by law to reject these experience hours because the applicant received a 1099 form from Yale for these services, not a W-2 form.

Example #2: Another applicant worked in the Palo Alto Unified School District providing counseling and behavioral support to students. While, according to the District her job was equivalent to that of other W-2 employees, working as a contract (1099) employee provided her with scheduling flexibility that she needed. The Board was also required to reject these experience hours.

Example #3: A third applicant worked as a psychotherapy intern at Homeward Bound, an organization in Marin County that provides services to the homeless. Because she received a stipend, she was not considered an employee or a volunteer. This applicant agreed to repay the stipend. By doing this, she was given a volunteer status and the Board was able to accept her experience hours.

Tax Law

The IRS provides certain tax benefits for educational purposes. IRS Form 970, "Tax Benefits for Education," outlines these benefits. According to this publication, a scholarship or fellowship is tax free only if you are a candidate for a degree at an eligible educational institution, and you must use the money to pay qualified educational expenses (tuition, course-related expenses such as books). However, a scholarship or fellowship earned in exchange for services is considered taxable.

According to IRS Form 970 (Chapter 1, page 6): "Generally, you must include in income the part of any scholarship, fellowship, or tuition reduction that represents payment for past, present or future teaching,

research, or other services. This applies even if all candidates for a degree must perform the services to receive the degree.”

Therefore, under a typical governmental stipend program, both the stipend and the wages earned would be taxable. Therefore the applicant would receive a W-2 and the Board would be able to accept the experience hours toward licensure.

1099 Forms

MFT Interns or ASW registrants that are required to complete a 1099 tax form each year are considered independent contractors, not employees, and the Board may not accept their hours of experience.

There are several reasons the Board does not allow interns and associates to be independent contractors. MFT Interns and ASWs contracting themselves out independently would be able to “freelance,” making money indefinitely as an ASW or MFT Intern with no commitment to a particular supervisor or organization. By not having to pay wages to that person as an employee, the organization escapes the tax implications of employing the person, and therefore has no incentive to require that the person work toward licensure.

If the Board simply accepts 1099 forms, this opens the door to independent contractors being able to freelance indefinitely. However, it seems there are some cases where circumstances beyond the registrant’s control required that they receive a 1099, and they received the same experience and supervision as a W-2 employee would. Additionally, because the Board does not accept these forms, it may encourage some applicants who received a 1099 to attempt to pass themselves off as volunteers. (although the Board does require volunteers to submit a letter from the employer to verify volunteer status).

Recommendation

Conduct an open discussion regarding educational stipends in order to explore if any further action is needed.

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To: Policy and Advocacy Committee

Date: December 29, 2010

From: Tracy Rhine
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: Supervision of Marriage and Family Therapy Interns by Licensed Professional Clinical Counselors; Statutory Change

Background

At its November 4, 2010 meeting the Board considered changes to Business and Professions Code (BPC) Section 4980.03 to allow Licensed Professional Clinical Counselors (LPCCs) to provide clinical supervision to Marriage and Family Therapy (MFT) Interns and Trainees.

BPC section 4980.03(g) outlines the requirements a supervisor must meet in order to supervise MFT interns. Currently, LPCCs are not included as licensees that may supervise MFT interns. The conforming change for supervision of Associate Social Workers (ASWs) was made in the pending regulatory package.

Two issues were raised at the November Board meeting regarding the draft language presented by staff that would allow professional clinical counselor licensees to provide supervision to MFT interns. The first issue was that the draft language made changes to BPC section 4980.03 to allow LPCCs to supervise registrants without also making conforming changes to code sections that outline the relevant licensing law construction with other licensing acts.

The second issue was brought forth by the public. It was noted the Board should consider clarifying that an LPCC may not supervise an MFT Intern unless the licensee has met the additional training and education requirements to treat couples and families (as set forth in BPC §4999.20).

Amendments

The proposed amendments make conforming changes to BPC Sections 4980.01 and 4996.13, related to not limiting other specified licensing acts. Amendments to BPC Section 4980.03 clarify that an LPCC must meet the additional requirement to work with couples and families in order to supervise MFT interns.

Recommendation

Consider the attached amendments to BPC §§4980.01, 4980.03, and 4996.13. Direct staff to submit language to the legislature for inclusion in the Board sponsored omnibus bill.

ATTACHMENT

Proposed statutory amendments

Proposed Amendments for 2011 Omnibus Bill; LPCC Supervisor

January 13, 2011

§4980.01

(a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, Licensed Professional Clinical Counselor Act or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.

(c) (1) This chapter shall not apply to an employee working in any of the following settings if his or her work is performed solely under the supervision of the employer:

(A) A governmental entity.

(B) A school, college, or university.

(C) An institution that is both nonprofit and charitable.

(2) This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution.

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provision of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

§4980.03.

(a) "Board," as used in this chapter, means the Board of Behavioral Sciences.

(b) "Intern," as used in this chapter, means 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.

(c) "Trainee," as used in this chapter, means 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.

(d) "Applicant," as used in this chapter, means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4980.36 and 4980.37, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure as specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

- (e) "Advertise," as used in this chapter, includes, but is not limited to, any public communication, as defined in subdivision (a) of Section 651, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.
- (f) "Experience," as used in this chapter, means experience in interpersonal relationships, psychotherapy, marriage and family therapy, and professional enrichment activities that satisfies the requirement for licensure as a marriage and family therapist pursuant to Section 4980.40.
- (g) "Supervisor," as used in this chapter, means an individual who meets all of the following requirements:
 - 1) Has been licensed by a state regulatory agency for at least two years as a marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.
 - 2) A professional clinical counselor licensee must meet the requirements of Section 4999.20.
 - 3) Has not provided therapeutic services to the trainee or intern.
 - 4) Has a current and valid license that is not under suspension or probation.
 - 5) Complies with supervision requirements established by this chapter and by board regulations.
- (h) "Client centered advocacy," as used in this chapter, includes, but is not limited to, researching, identifying, and accessing resources, or other activities, related to obtaining or providing services and supports for clients or groups of clients receiving psychotherapy or counseling services.

§4996.13

Nothing in this article shall prevent qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, they shall not hold themselves out to the public by any title or description of services incorporating the words psychosocial, or clinical social worker, or that they shall not state or imply that they are licensed to practice clinical social work. These qualified members of other professional groups include, but are not limited to, the following:

- (a) A physician and surgeon certified pursuant to Chapter 5 (commencing with Section 2000).
- (b) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).
- (c) Members of the State Bar of California.
- (d) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980).
- (e) Professional Clinical Counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10)
- (f) A priest, rabbi, or minister of the gospel of any religious denomination.

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To: Policy & Advocacy Committee Members **Date:** December 28, 2010
From: Rosanne Helms
Legislative/Regulatory Analyst **Telephone:** (916) 574-7897
Subject: Rulemaking Update

PENDING REGULATORY PROPOSALS

Title 16, CCR Sections 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1832, 1833.1, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, 1888, and adding 1820, 1821, and 1822, Licensed Professional Clinical Counselors, Exceptions to Continuing Education Requirements

Background

This proposal would implement all provisions related to SB 788, Chapter 619, Statutes of 2009, and the creation of Licensed Professional Clinical Counselors. Additionally, this rulemaking incorporates changes approved by the Board relating to Continuing Education requirements for licensed educational psychologists. The Board approved the proposed text at its September 1, 2010 meeting.

Status

The rulemaking package was submitted to the State and Consumer Services Agency (Agency) in October 2010. It is still awaiting approval. Once approved at Agency, it must be reviewed by the Department of Finance and then by the Office of Administrative Law.

Title 16, CCR Section 1811, Revision of Advertising Regulations

This proposal revises the regulatory provisions related to advertising by Board Licensees. **The Board approved the originally proposed text at its meeting on November 18, 2009. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.**

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