



Board of
Behavioral
Sciences

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MEETING NOTICE

Policy and Advocacy Committee July 21, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd
2nd Floor, Room N-220
Sacramento, CA 95834

9:30 a.m.

- I. Introductions
- II. Review and Approval of the April 7, 2011 Policy and Advocacy Committee Meeting Minutes
- III. Discussion and Possible Action Regarding Changes to Advertising Guidelines and Regulations
- IV. Discussion and Possible Action Regarding the Use of the Title "Licensed Marriage and Family Therapist" in Board Licensing Law
- V. Discussion and Possible Action Regarding Senate Bill 462 (Blakeslee)
- VI. Discussion and Possible Regulatory Action to Make Nonsubstantive and Technical Changes to California Code of Regulations Title 16, Sections 1832.5 and 1889.2
- VII. Discussion and Possible Action Regarding Regulatory Changes to Implement Provisions of Senate Bill 1111 (Negrete McLeod, 2010)
- VIII. Legislative Update
- IX. Rulemaking Update
- X. Public Comment for Items Not on the Agenda
- XI. Suggestions for Future Agenda Items



Governor
Edmund G. Brown Jr.
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.

Policy and Advocacy Committee Minutes- **DRAFT** April 7, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd, N-220
Sacramento, CA 95834

Members Present

Donna DiGiorgio, Chair, Public Member
Renee Lonner, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Marina Karzag, Policy & Statistical Analyst
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel

Members Absent

Guest List

On file

I. Introductions

Donna DiGiorgio, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:35 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and attendees introduced themselves.

II. Review and Approval of the January 13, 2011 Policy and Advocacy Committee Meeting Minutes

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC) stated that her comment on page two should read: Ms. Porter preferred that this requirement be a condition of license renewal as opposed to a pre-licensure requirement.

Renee Lonner moved to approve the January 13, 2011 Policy and Advocacy Committee meeting minutes as amended. Ms. DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

Renee Lonner moved to approve the Policy and Advocacy Committee meeting minutes of January 13, 2011 as amended. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to approve the meeting minutes as amended.

III. Discussion and Possible Action Regarding Acceptance of Post-Degree Hours of Experience Toward Licensure as a Professional Clinical Counselor

Tracy Rhine briefly presented. At its February 23, 2011 meeting the Board discussed double counting of hours for Marriage and Family Therapist (MFT) Interns and Associate Clinical Social Workers (ASW) towards License Professional Clinical Counselor (LPCC) licensure. The Board decided to refer the issue back to Committee for further policy discussion. The consensus among both stakeholders and Board members at the February meeting was to make no changes to current law and allow the double counting of hours under current statutory and regulatory constraints.

Ms. DiGiorgio stated that she had no objections, and opened the matter to the public for comment. No comments were made. No action was taken.

IV. Discussion and Possible Action Regarding Pending Legislation Including:

a. Assembly Bill 40 (Yamada)

Marina Karzag presented AB 40, Elder Abuse Reporting.

Existing law specifies that certain individuals, including MFTs, LCSWs, and Licensed Educational Psychologists (LEP), are mandated reporters of suspected instances of elder and dependent adult abuse, financial abuse, and abuse that occurred in a long term care facility, and must report the abuse by calling either the local ombudsman or the local law enforcement agency and submit a written report to that agency. The laws also restricts local ombudsman programs from sharing reports of elder or adult abuse with local law enforcement agencies without the consent of the subject of the reported abuse or his or her legal representative.

This bill would require mandated reporters to report suspected instances of elder or dependent adult abuse and elder or dependent adult financial abuse that occurred in a long-term care facility to *both* the local ombudsman and local law enforcement agency. This bill also allows non-mandated reporters to report suspected instances of elder or dependent adult financial abuse that occurred in a long-term care facility to either the local long-term care ombudsman program or the local law enforcement agency or both entities.

Ms. Karzag explained that the local ombudsman's limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation, and ultimately, resolution of certain elder and dependent adult abuse reports. Requiring mandated reporters to report suspected abuse that occurred in a long-term care facility with both the local ombudsman and local law enforcement would ensure that law enforcement is aware of all reports of this type of criminal activity.

Ms. Karzag explained that mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the subject/client. However, Welfare and Institutions Code Section 15633.5 ensures the confidentiality of the identity of the reporter, except as disclosed to specified agencies and under specified circumstances.

Ms. DiGiorgio and Ms. Lonner both agreed that it is important to protect the elderly population from these instances of abuse.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), stated that CAMFT opposed AB 40. The mandated reporter has a duty to report the abuse two or three times with the phone call report and the written report. Furthermore, there is a conflict: ombudsman representatives claim that reporters have a duty to inform law enforcement. However, federal law states that reporters cannot inform law enforcement without the authorization of the victim. CAMFT hopes to work out something with the author of the bill.

Rebecca Gonzalez, National Association of Social Workers (NASW) - California Chapter, stated that NASW-CA is supportive of AB 40 and added that with the additional requirements of the reporter, it did not outweigh the benefits of protecting the elderly.

Renee Lonner moved to support AB 40. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

b. Assembly Bill 154 (Beall)

Rosanne Helms presented AB 154, Mental Health and Substance Abuse Parity.

This bill requires a health care services plan contract or health insurance policy that provides hospital, medical, or surgical coverage that is issued, amended, or renewed on or after January 1, 2012 to provide coverage for the diagnosis and medically necessary treatment of a mental illness of a person of any age, including a child, under the same terms and conditions applied to other medical conditions.

The intent of the bill is to end discrimination against patients with mental disorders and substance abuse issues by requiring treatment and coverage of those illnesses at a level equitable to the coverage provided for other medical illnesses. The author notes that many health plans do not provide coverage for mental disorders, and the plans that do impose much stricter limits on mental health care coverage than on other medical care.

Current law requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. It defines severe mental illnesses as:

- Schizophrenia
- Schizoaffective disorder
- Bipolar disorder (manic-depressive illness)
- Major depressive disorders
- Panic disorder
- Obsessive-compulsive disorder
- Pervasive developmental disorder or autism
- Anorexia nervosa
- Bulimia nervosa.

Existing law also defines “serious emotional disturbances of a child.” Existing law requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract.

AB 154 expands the coverage so that it is not limited to the current list of severe mental illnesses. The benefits provided under this legislation must include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs.

AB 154 defines “mental illness” as a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV).

Ms. Helms explained that the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Act) was enacted in October 2008, which is a federal law. The Act banned differences in co-pays, deductibles, coinsurance, out of network coverage, out of pocket expenses and treatment limitations such as caps on visits, limits on days, and limits on duration of treatment for mental health or addiction therapy. This law does not apply to employers with fewer than 50 employees.

The Act did not mandate mental health or substance use disorder benefit coverage but only stated that if mental health/substance use disorder benefits are offered through a health insurance plan, that those benefits must not be more restrictive or limiting than those offered for medical and surgical coverage under the plan.

The 2010 Patient Protection and Affordable Care Act (PPACA, also known as the National Health Care Reform) requires private insurance plans to include certain mental health and substance use disorder treatment beginning in 2014. The mental health and substance use disorders covered are to be determined through rulemaking.

California’s current mental health parity law, AB 88, was enacted in 2000. The bill requires health plans to provide coverage for mental health services that are equal to medical services. However, they are required to cover only certain diagnoses that are defined as a severe mental illness or a serious emotional disturbance of a child. AB 154 would extend parity to mental illnesses not currently defined as a serious mental illness, as well as substance use disorders.

Although the PPACA requires health insurance plans to provide mental health and substance use disorder treatment, the law does not yet define mental health and substance use treatments to be covered. Additionally, the law does not go into effect until 2014, leaving many without coverage for treatment until then.

Staff recommends only one minor technical amendment to make language consistent in Insurance Code §10144.8(d) and Health and Safety Code §1374.74(g).

Ms. DiGiorgio expressed that the Board should support this.

Olivia Loewy, American Association for Marriage and Family Therapy - California Division (AAMFT-CA), stated that AAMFT-CA supports AB 154. Not knowing what form National Health Care Reform will take in relation to mental health care, it is important to have this law in place.

Ms. Riemersma stated that CAMFT supports AB 154. Regardless of the Federal Health Care Reform, this bill contains provisions that exceed the Federal Health Care requirements.

Ms. Gonzalez stated that NASW California Chapter also supports AB 154.

Renee Lonner moved to support AB 154. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

c. Assembly Bill 171 (Beall)

Rosanne Helms presented AB 171, Autism Spectrum Disorder.

Current law requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. The bill outlines the list of “severe mental illnesses.” One of the mental illnesses listed is “pervasive developmental disorder or autism.”

Current law requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs. Current law also requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract.

Due to loopholes in current law, those with autism spectrum disorders (ASD) are frequently denied coverage for their disorder. When they are denied coverage, those with ASD must go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for ASD seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with ASD by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.

This bill would require every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2012, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

AB 171 defines “treatment for autism spectrum disorders” to mean the following care, and necessary equipment that is ordered for an individual with autism spectrum disorder by an appropriately licensed or certified provider who deems it medically necessary:

- Behavioral health treatment
- Pharmacy care
- Psychiatric care
- Psychological care
- Therapeutic care
- Any other care for individuals with autism spectrum disorders that is demonstrated based on best practices or evidence based research, to be medically necessary.

This bill requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts.

This bill requires provisions for lifetime maximums, deductibles, copayments, coinsurance or other terms and conditions for coverage of autism spectrum disorders must not be less favorable than the provisions that apply to general physical illnesses covered by the plan.

AB 171 also prohibits coverage for autism spectrum disorder from being denied on the basis that treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

AB 171 requires a health care service plan and health insurer to establish and maintain an adequate network of qualified autism service providers.

This bill requires insurers to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. The bill specifically defines “diagnosis of autism spectrum disorders” and “treatment of autism spectrum disorders,” citing specific care that these entail. However, there is no definition of “screening of autism spectrum disorders.” As the purpose of this bill is to close loopholes allowing denial of medically necessary coverage, staff suggests that “screening of autism spectrum disorders” also be specifically defined.

Ms. Lonner stated that this is a bill that the Board should support. No public comments were made.

Renee Lonner moved to support AB 171 if amended. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

d. Assembly Bill 181 (Portantino)

Rosanne Helms presented AB 181, Foster Youth Mental Health Bill of Rights.

Current law establishes a list of rights for children in foster care, which includes the right “to receive medical, dental, vision, and mental health services.” Current law also establishes the Office of the State Foster Care Ombudsperson for the purposes of providing foster children with a way to resolve issues related to their care, placement, or services, and requires the Office of the State Foster Care Ombudsperson to disseminate information on the rights of foster children.

The goal of this bill is to provide additional rights to foster youth related to mental health services. According to the author’s office, although mental health treatment is listed as one of the foster youth’s rights, barriers often prevent foster children from receiving the mental health care that they need.

AB 181 creates a list of rights for children in foster care and transition-age foster youth relating to mental health services, and requires the Office of the State Foster Care Ombudsperson to develop standardized information explaining the above rights in an age-appropriate manner and to disseminate the information pursuant to the provisions of this bill.

The author’s office cite research that shows that 50-60% of children in foster care have moderate to severe mental health problems. However, only 28% of these children receive mental health services during the year after their contact with the child welfare system.

Although this bill outlines the rights of foster youth, it fails to require that mental health services be provided to those who may qualify.

Ms. Gonzalez stated that NASW California Chapter supports AB 181.

Ms. Riemersma stated that CAMFT supports AB 181.

Renee Lonner moved to support AB 181. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

e. Assembly Bill 367 (Smyth)

Rosanne Helms presented AB 367, Elder Abuse Reporting.

This bill is sponsored by CAMFT. Current law states that a report of child abuse and neglect must be accepted by specified agencies even if the agency to which the report is being made lacks the subject matter or geographical jurisdiction to investigate the reported case. However, a law does not exist for the reporting of elder and dependent abuse and neglect.

This bill requires a county adult protective services agency or local law enforcement agency that lacks jurisdiction to immediately refer the report of suspected abuse by telephone, facsimile, or electronic transmission to a county adult protective services agency or a local law enforcement agency with proper jurisdiction. Examples of when this may happen are when the alleged perpetrator lives out of the area, or if the investigation will be conducted out of the area. The mandated reporter then must spend time tracking down the appropriate authority. The intent of this legislation is to eliminate the burden on the mandated reporter to find the authority that actually has jurisdiction of the case.

Ms. Lonner and Ms. DiGiorgio both expressed support for this bill. No public comments were made.

Donna DiGiorgio moved to support AB 367. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

f. Assembly Bill 671 (Portantino)

Rosanne Helms presented AB 671, Child Welfare Services Education and Training Requirements. This bill is sponsored by NASW California Chapter.

Current law requires all counties to establish and maintain specialized entities within their county welfare department which are responsible for the child welfare services program, and provides a list of services that define "child welfare services."

The author notes that "currently, there are no educational requirements for supervisors in child welfare services. While counties provide supervisor training, it is no substitute for a master's level education in social work or in a behavioral science." The goal of this bill is to enhance consumer protection with respect to child welfare services by ensuring that supervisors have appropriate training, experience and education.

This bill requires a child welfare services social work supervisor to have one of the following types of education

- a. A master's degree in social work from a program accredited by the Council on Social Work Education, OR
- b. A master's degree in behavioral science from an accredited academic institution.
 - i. Twenty contact hours of population-specific education;

- ii. One year and 1,500 hours of documented, paid, supervised, equivalent master's post-graduate degree social work experience with children, youth, and families;
- iii. An evaluation from a supervisor;
- iv. A reference from an MSW or master's degree in behavioral sciences colleague; and
- v. An agreement to adhere to a professional code of ethics.

This bill declares a child welfare services social work supervisor that is employed before January 1, 2012 to be exempt from the above educational requirements.

Current law does not provide a definition of a "child welfare services social work supervisor." This creates a situation in which it is unclear if this is a supervisor for a particular agency, department, or county. Staff recommends an amendment be made to specify the department or agency under which such a person is employed.

This bill allows a master's degree in social work and a master's degree in behavioral science from an accredited academic institution. Behavioral science is a broad field and there could be a wide range of degrees encompassed under this title, which may or may not prepare someone to be a child welfare services social work supervisor. Staff recommends narrowing the degree type to degrees that would be accepted by the Board. The Board could specify acceptable degrees in regulation.

Some of the conditions of certification need additional detail in order to be meaningful:

- §16501.4(b)(2)(B)(iv) A reference from an MSW or master's degree in behavioral services colleague. Staff recommends requiring a letter of recommendation from a supervisor of the certificate-holder instead.
- §16501.4(b)(2)(B)(iv) An agreement to adhere to a professional code of ethics. Staff recommends it be specified that this agreement is to be in writing and signed by the certificate-holder.

This bill declares that "A child welfare services social work supervisor employed before January 1, 2012, is exempt from the requirements of this section".

To avoid ambiguity, the legislation should define the specific agency that the child welfare social work supervisor must be employed at before January 1, 2012, in order for the supervisor is be exempt from the requirements of this section.

Ms. Lonner stated that this is a positive bill if it is amended; there is a lot of confusion and a lot of drafting issues with this bill. She expressed concern over the exemptions. Ms. Lonner suggested a position of support if amended.

Ms. Loewy has questions pertaining to the definition and duties of a child welfare services supervisor. Furthermore, with the lack of definition/duties of a child welfare services supervisor, it is not clear as to why the qualifications and experience need to change.

Ms. Riemersma stated that CAMFT is opposed to AB 671. CAMFT feels that this privileges those with MSWs over those with other degree types. Some of the positions this bill would affect are those that currently only require a drivers license. CAMFT also

believes that there needs to be clarification as to what jobs this bill is aimed at because it is not clear. CAMFT also has concerns regarding the behavioral science degree.

Ms. Gonzalez stated that NASW California Chapter has no problem working on the issues pointed out. NASW California Chapter believes that in child welfare services there have been many examples of children whose lives have ended or abuse continued. It is an area where there must be well-qualified supervisors, and feels that the Masters degree is appropriate when there are such complex cases that require excellent judgment and critical thinking skills. The education provided by the MSW programs is specific and unique to work in child welfare services. NASW California Chapter is planning to amend the bill.

Ms. DiGiorgio stated that she would like to see the bill amended.

Ms. Lonner stated that this should be discussed at the Board level and suggests position of support if amended.

Renee Lonner moved to support AB 671 if amended.

Ms. Helms outlined amendments:

- Define the term “employed,”
- The work setting must specify the place of employment,
- Placement of Section 16501.4 proposed to be added to the Welfare and Institutions Code,
- Narrow the acceptable degrees,
- Clarify the requirements for conditions of certification,
- Clarify the exemption from educational requirements.

Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee took a short break at 10:31 a.m. and reconvened at 10:43 a.m.

g. Assembly Bill 675 (Hagman)

Rosanne Helms presented AB 675, Continuing Education Prohibition of Specified Courses.

Current law requires the director of the Department of Consumer Affairs (Department) to establish guidelines, by regulation, to prescribe components for mandatory continuing education (CE) programs administered by and board within the Department. The law states that the purpose of the guidelines are to ensure that mandatory CE is used to create a more competent licensing population, thereby enhancing public protection.

Current law requires that training, education, and coursework by approved providers must incorporate one or more of the following:

- a. Aspects of the discipline that are fundamental to the understanding or practice of marriage and family therapy, social work, or professional clinical counseling.
- b. Aspects of the discipline of marriage and family therapy, social work, or professional clinical counseling in which significant recent developments have occurred.

- c. Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy, social work, or professional clinical counseling.

Current law requires a provider to ensure the content of a course is relevant to the practice of marriage and family therapy or clinical social work and meets the requirements of the law. The content of a course must also be related to direct or indirect patient/client care:

- Direct patient/client care courses cover specialty areas of therapy, such as theoretical frameworks for clinical practice or intervention techniques with individuals, couples, or groups.
- Indirect patient/client care courses cover pragmatic aspects of clinical practice, such as legal or ethical issues, consultation, recordkeeping, office management, insurance risks and benefits, managed care issues, research obligations, or supervision training.

Current law requires a CE provider to meet the Board's course content and instructor qualifications criteria to become a board-approved provider, and allows the Board to revoke its approval of a provider or deny a provider application for good cause.

The author sponsored this bill after it came to his attention that the California Nurses Association (CNA) was offering CE credits to registered nurses (RNs) as an incentive to attend political events. The CNA also offers CE credits to RNs attending classes focused on lobbying and political organizing. The law does not specifically prohibit this. This bill seeks to revise existing law.

This bill requires a board requiring CE to only allow CE credit for courses with content relevant to the particular practice regulated by that board pursuant to its laws and regulations.

This bill prohibits acceptance of CE courses that advance or promote labor organizing on behalf of a union and courses that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy.

This bill prohibits an approved provider who offers a course that is described above as prohibited from being accepted as CE courses must not represent that the course is acceptable for meeting the CE requirements, and requires that if a provider violates this requirement, then the board shall withdraw its approval of the provider.

Ms. Helms stated that this bill appears to be consistent with the intent of the law to ensure that mandatory CE is used to create a more competent licensing population. Classes promoting labor organizing or promote political agendas do not appear to meet Board regulations specifying that the content of a course must be related to direct or indirect patient/client care. Therefore, this bill would simply specify a component of law that is already implied in the Board's statute.

Ms. Helms explained that it is unclear whether CE courses that discuss the legislative process and any changes to statutes and regulations affecting the profession would constitute "courses that advance or promote statutory or regulatory changes." It is very important for the board's licensees to know the law regarding their profession and be informed of recent statutory and regulatory changes that affect their profession. To avoid any confusion, staff recommends that language be added to clarify that courses

containing discussion of recent statutory and regulatory changes to the profession for which the CE is being offered is permitted.

Ms. Helms added that the bill proposes to add a code section that appears to be misplaced.

Ms. Lonner stated she opposes AB 675 unless amended. Ms. DiGiorgio agreed.

Ms. Gonzalez stated that NASW California Chapter opposes AB 675. NASW California Chapter directs social workers and advocates for them and their clients. They teach social workers about the legislative process, the budget process, how to get involved, and how to advocate and part of NASW California Chapter's Lobby Days.

Renee Lonner moved to oppose AB 675 unless amended. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

h. Assembly Bill 774 (Campos)

Ms. Rhine presented AB 774, Clinical Social Workers; Health Facilities; Licensure.

Current law requires that licensure requirements for professional personnel in state and other government health facilities licensed by the State Department of Public Health (DPH) not be less than those for professional personnel in health facilities under private ownership. Current law allows for a waiver to allow individuals working toward licensure as an MFT and LCSW for up to four years without a current license.

The law also allows DPH to extend the waiver from licensure requirements for those seeking licensure as an MFT and LCSW for an additional year based on extenuating circumstances.

This bill requires any department that employs a marriage and family therapist or clinical social worker to grant an extension of a waiver for extenuating circumstances if certain conditions are met.

According to the Author's office, clinical social workers are working in many different California agencies and departments, however, only an extension for the licensure waiver is only applied to those working in DPH licensed facilities.

This bill does not meet the intent stated by the author. As currently drafted, this bill would allow any state department employing an MFT or LCSW to issue an extension to a licensure waiver. This is problematic for several reasons: 1) a department is extending a waiver issued by another entity; 2) this legislation makes the employer and the entity issuing the extension of the waiver the same, which appears to be a conflict.

Furthermore, the code section in this legislation only requires licensure for personnel in governmental health facilities licensed by DPH. The author states that there are other health facilities that employ LCSWs and MFTS that are not licensed by DPH that cannot allow for a one year extension for extenuating circumstances, however, it is unclear if facilities not licensed by DPH are mandated to meet the licensure requirement and therefore need the waiver from licensure. If the requirement for licensure *does* apply to other government health facilities not licensed by DPH, then the amendments in this bill are misplaced and the code sections governing non-DPH health facilities should instead be amended.

Ms. Rhine concluded by stating that AB 774 does not do what is intended, and amendment are necessary before the Board can have a discussion on this bill. Board staff has been in touch with the author's staff and is providing technical assistance.

Ms. DiGiorgio stated that AB 774 is confusing and does not wish to declare a position on the bill until amendments are made.

Renee Lonner moved to not take a position on AB 774. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

i. Assembly Bill 956 (Hernandez, R.)

Ms. Helms presented AB 956, Marriage and Family Therapy: Interns and Trainees; Advertisement. This bill is sponsored by CAMFT.

Current law allows the Board to adopt regulations that define services to be advertised by professions under its jurisdiction for the purpose of determining whether advertisements are false or misleading.

Current law also requires an unlicensed MFT intern or an unlicensed MFT trainee to inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed MFT, LCSW, psychologist, or physician or surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

Current law requires an advertisement of services performed by a trainee to include the trainee's name, and the supervisor's license designation or abbreviation and license number.

Current law requires all persons or referral services regulated by the Board who advertise their services to include their license or registration number in the advertisement unless the advertisement contains the full name of the licensee or registered referral service and a designation of the type of license or registration held.

Current law specifies an unlicensed MFT intern may advertise if the advertisement complies with law stating that the patient is informed, prior to performance of any professional services, that he or she is unlicensed and under the supervision of a licensed MFT, LCSW, psychologist, or physician or surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

This bill requires an unlicensed MFT intern to inform each client or patient, prior to performing any professional services:

- That he or she is unlicensed and is a registered MFT Intern,
- The name of his or her employer,
- Indicate whether he or she is under the supervision of a licensed MFT, LCSW, psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

This bill requires any advertisement by or on behalf of an MFT registered intern must include that he or she is unlicensed and is a registered MFT intern, the name of his or her employer, and that he or she is supervised by a licensed person.

This bill also prohibits the use of the abbreviation “MFTI” in an advertisement unless the title “marriage and family therapist registered intern” appears in the advertisement.

This bill requires that the provisions regarding informing a client or patient and advertisement also apply to a MFT trainee.

The intent of this bill is to clear up inconsistencies in current law about advertising requirements for MFT interns and trainees. This bill would require MFT interns and trainees to be clear in their advertising that they are not yet licensed, and are under supervision. It would prohibit the acronym “MFTI” unless “marriage and family therapy intern” is spelled out in the advertisement.

The Board has been attempting to address the inconsistencies regarding advertising law for the past several years. At its meeting on November 18, 2008, the Board approved proposed language to CCR §1811 related to advertising, and directed staff to initiate a rulemaking package. However, the proposed rulemaking has been delayed by the LPCC rulemaking package that is currently in the approval process. This is because the LPCC rulemaking package also modifies Section 1811, and the Board is unable to propose two rulemaking packages modifying the same section at the same time.

Staff is planning to initiate the regulations process once the LPCC regulations are approved. The proposed advertising regulations include the following provisions that are not addressed in this bill:

- Requires that an advertisement include the individual’s license or registration number;
- Requires that an advertisement for a registrant’s services include the name, complete title or acceptable abbreviation of the supervisor’s license, and the supervisor’s license number.
- Allows inclusion of academic credentials in an advertisement, as long as the degree is earned and statements regarding the degree are true and not misleading.

The Board approved regulations require that advertisements include a license or registration number. The Committee may wish to discuss whether this bill should contain the same requirement. Additionally, the Committee may want to discuss requiring an MFT intern to provide each patient, prior to performance of any professional services, his or her registration number.

This bill would require an MFT intern or trainee to provide the name of his or her employer prior to performing any professional services; however, it is the supervisor, not the employer, who is responsible for the services performed by the intern or trainee.

Ms. Lonner stated that this bill should be supported with staff’s suggested amendments. Ms. DiGiorgio agreed and stated that she would like to see it include LPCCs also.

Ms. Riemersma stated that CAMFT does not have any objections to disclosure of the registration number. She clarified that the employer is ultimately responsible for the acts of employees. The supervisor is responsible for the quality of supervision that is provided. Therefore, it is important to include the name of the employer.

Renee Lonner moved to support AB 956 if amended.

Ms. Helms listed the suggested amendments:

- Require that advertisements include registration number, and
- Require that the registration number be provided to each patient prior to services.

Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

j. Assembly Bill 958 (Berryhill, B.)

Ms. Helms presented AB 958, Regulatory Board: Limitations Periods.

Current law requires that any accusation filed against a Board of Behavioral Sciences licensee or registrant must be filed within whichever occurs first of the following timeframes: 1) within three years from the date the board discovers the alleged act or omission; or 2) within seven years from the date the alleged act or omission occurred.

Current law allows the above statute of limitations period be tolled during any period if material evidence necessary for prosecuting or determining if disciplinary action is appropriate is not available to the Board due to an ongoing criminal investigation.

Current law states that an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations.

Current law also allows the statute of limitations to be tolled for the length of time required to obtain compliance when a report required to be filed with the Board by the licensee or registrant is not filed in a timely fashion.

Current law requires that if the alleged act or omission involves a minor, the statute of limitation is tolled until the minor reaches the age of majority. Furthermore, current law states that if the Board discovers an alleged act of sexual contact with a minor, under certain conditions described in the Penal Code, after the statute of limitations periods have expired, and if independent corroborating evidence exists, then an accusation shall be filled within three years from the date the Board discovers the alleged act.

Current law requires, for a complaint received by the Board on or after January 1, 2002, an accusation filled against a licensee alleging sexual misconduct must be filed within three years after the Board discovers the act or omission, or within ten years after the act or omission occurs, whichever is first.

AB 958 requires that an accusation filed against a licensee of a board under the DCA must be filed within whichever occurs first of the following timeframes: 1) within one year after the Board discovers the alleged act or omission; or 2) within four years after the alleged act or omission occurs.

This bill states that if the alleged act or omission involves a minor, then the four year limitations period shall be tolled until the minor reaches the age of majority, and states that if a licensee intentionally conceals evidence of wrongdoing, then the four year limitations period shall be tolled during the period of concealment.

This bill repeals statute of limitations law for several boards and bureaus under DCA, but not all of the board and bureaus.

The author's office notes the statute of limitations for crimes like fraud or grand theft have a four year statute of limitations. For professions under DCA, the Business and Professions Code (BPC) sets limitations for most boards at around three years from when a board is notified or seven years after the act or omission is alleged. They argue that a shorter statute of limitations reinforces the right to a speedy trial, and lessens the likelihood of prosecution based on improper or arbitrary motives.

BPC §4990.16 states that "Protection of the public shall be the highest priority of the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The intent of this bill to shorten the statute of limitations period is contrary to the Board's mandate to protect the public.

This bill does not contain language exempting a license obtained by fraud or misrepresentation. It repeals the Board's language, but does not replace it with new language. This could leave the Board unable to investigate an instance of obtaining a license by fraudulent means if the statute of limitations has passed. If this were to happen, then an unqualified individual who is not competent to safely practice would be allowed to continue unlicensed practice, jeopardizing consumer safety.

There are several exemptions with regard to minors and tolling statute of limitations that are not included in this bill but are included in the Board's law, which are planned to be repealed.

In 2008, SB 797 amended the unprofessional conduct codes of the Board's licenses to add new grounds for refusal, suspension, or revocation of a license based upon engaging in specified sexual acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.

The Board's enforcement division typically needs between six to twelve months to investigate an accusation upon discovery. After the Board's investigation, a case may also need to be reviewed by an expert consultant, which can take approximately two additional months. If unprofessional conduct is found, the case would then proceed to the Attorney General's office. A one year statute of limitations would inhibit the Board's ability to conduct a complete investigation, and would therefore jeopardize consumer protection.

Ms. DiGiorgio expressed opposition of AB 958 because it jeopardizes consumer protection.

Ms. Lonner agreed stating that this is conflict of all the legislation that has taken place over the past few years in regards to fingerprinting.

No public comments were made.

Donna DiGiorgio moved to oppose AB 958. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

k. Assembly Bill 993 (Wagner)

Ms. Helms presented AB 993, Mediation and Counseling Services: Discipline and Immunity.

According to the Author, California family courts regularly appoint lawyers, social workers, marriage and family therapists, and psychiatrists to perform mediation, custody evaluations, co-parenting counseling, or parenting coordinator duties. When appointed by the court, their role is for providing fact finding, not for providing psychological services. However, these professionals are licensed by different government entities, and are governed by different laws, approaches, and standards for discipline.

While acting as a court appointed neutral professional for these purposes, these professionals are often subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court. As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

Current law specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation. The law also states that mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the judicial council.

Current law allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional or a mediator.

Current law states that a court-connected or private child custody evaluator must be a licensed marriage and family therapist, clinical social worker, or other specified licensed professional or certified evaluator.

Current law also states that a court-connected or private child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct.

AB 993 specifies that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, if the act or omission is within the scope of his or her duties and occurs while providing mediation services in cases involving custody and visitation of children required by a court.

This bill defines a "licensed mental health professional" as a person providing counseling services in a child custody or visitation dispute and defines a "mediator" as a person who is a mediator in cases involving child custody and visitation.

This bill requires a complaint made by any person against a mediator or licensed mental health professional regarding an act or omission must be made to the court that set the matter for mediation. The bill requires the court to consider the complaint and determine whether it establishes unprofessional conduct that would subject the mediator or licensed mental health professional to disciplinary action by the board that issued his or her license to practice. If the court makes such a finding, it must refer the matter to that board for disciplinary action.

The bill states that a complaint may not be made to a board that issued a license to a mediator or licensed mental health professional for an act or omission of ordinary negligence during the performance of mediation and counseling services required by a court in a child custody or visitation dispute.

A licensed mental health professional that is not acting in a mediator role, would be acting as a licensed mental health professional, which would fall under the jurisdiction of the Board. Therefore, staff recommends an amendment to include only mediators within the scope of this bill.

The law currently specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. However, this bill does not address court-connected child custody evaluators.

This bill specifies absence of liability for “ordinary negligence,” but does not define what constitutes ordinary negligence.

Ms. Lonner stated that she opposes AB 993 unless amended, and expressed concerns about taking jurisdiction away from the Board.

Ms. DiGiorgio also opposed AB 993.

Ms. Riemersma stated that the Board has more authority because it has authority over gross negligence. Since the bill only addresses ordinary negligence, the Board’s authority is not taken away. She stated that ordinary negligence is defined in law.

Renee Lonner moved to oppose AB 993 unless amended. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

I. Assembly Bill 1205 (Berryhill, B.)

Ms. Helms presented AB 1205, Certified Applied Behavior Analyst. This bill was sponsored by California Association for Behavior Analysis. This bill is an attempt to apply standards, criteria, and state recognition via licensure, to the profession of Applied Behavioral Analysis (ABA).

Current law in the BPC, there is no language that requires regulation of ABA. There are professions in existing law that discuss behavior analysis and defines several types of professions used in regional centers.

The bill was recently been amended since the bill analysis was provided.

AB 1205 requires that no person may hold him or herself out to be a licensed ABA or a licensed assistant ABA unless the person is licensed by the Board of Behavioral Sciences.

The bill specifies the services that a licensed ABA and a licensed assistant ABA may provide. One item that was recently added to the list of services is supervision of unlicensed persons who implement treatment plans that they have designed or maintained.

The bill requires the Board to issue a certified applied behavior analyst license to an applicant who:

- Possess a bachelor's and master's degree that is relevant to the field of behavior analysis as determined by the Board and from a specified accredited institution,
- Has completed 225 classroom hours of graduate instruction,
- Has completed 1,500 hours of supervised independent fieldwork under supervision of a certified applied behavior analyst; 75 of those hours must be direct supervisor contact,
- Passed an exam administered by the Board, the Behavior Analyst Certification Board, or another similar entity approved by the Board, and
- Is certified by the Behavior Analyst Certification Board or another similar entity approved by the Board.

The bill requires the Board to issue a certified assistant applied behavior analyst license to an applicant who:

- Possess a bachelor's and master's degree by an accredited institution
- Completed 135 classroom hours of related instruction
- Completed 1,000 of supervised independent fieldwork under supervision of a certified applied behavior analyst; 50 of those hours must be direct supervisor contact
- Passed an exam administered by the Board, the Behavior Analyst Certification Board, or another similar entity approved by the Board,
- Is certified by the Behavior Analyst Certification Board or another similar entity approved by the Board.

This bill allows the ABA and assistant ABA to:

- Conduct assessment activities related to the need for behavioral interventions,
- Design, implement, and monitor behavior analysis programs for clients,
- Oversee the implementation of behavior analysis programs by others,
- Perform other activities normally performed by a behavior analyst directly related to the field.

Recent amendments allow the Board to:

- Implement regulations to implement this license and establish fees for licensure,
- Allow time limits for supervised experience,
- Establish guidelines for denial of license or suspension of license,
- Allows the Board to place a licensee on probation,
- Outline a license renewal process, and
- Outline a process for requiring continuing education.

The author's office states that because there is no licensure of ABAs, it is difficult for consumers to make an informed decision when choosing an applied behavior analyst. In some cases, ABA programs may be designed, supervised, and/or implemented by someone who lacks training and experience in ABA.

The Behavior Analyst Certification Board (BACB) provides the certification for Board Certified Behavior Analyst (BCBA) and Board Certified Assistant Behavior Analyst (BCaBA). The requirements for certification are the same as those outlined in this bill.

This bill currently does not contain a definition of a qualifying degree program for the assistant ABA licensure. The Committee may want to recommend that this bill define a qualifying degree program, including specific types of degrees accepted.

Staff has major concerns about the implementation of an additional license. The Board has currently been unable to obtain the resources it needs to implement the LPCC licensing program. Additionally, due to budget constraints and the hiring freeze, the Board has been unable to fill vacancies that serve its current licensees.

This bill establishes a title act, which prohibits the use of certain professional titles if a license is not held. A practice act would prohibit engagement in the practice of behavior analysis unless a license is held. A practice act offers public protection.

This bill does not require a license in order to practice behavior analysis. Additionally, this bill would still permit a certified applied behavior analyst or a certified assistant ABA to oversee the implementation of behavior analysis programs by others. The board has received public comment indicating that this is a major concern, because potentially unlicensed, unqualified practitioners would still be able to perform behavior analysis while the licensee supervises.

Staff suggests a number of additional topics be addressed in this bill:

- Greater detail of exam eligibility standards
- Requirement of a law and ethics exam
- Limit on number of years an examination score is valid
- Greater supervision standards, including maximum number supervised at once and qualifications for supervision
- Reciprocity and grandparenting requirements
- Guidelines for obtaining a retired license or an inactive license

In addition to the above mentioned topics, staff also suggested several technical amendments.

Ms. DiGiorgio stated that the Board is experiencing challenges in fulfilling its mandate now. She expressed that since this bill is more of a title issue than a practice issue, she does not support it at this time.

Ms. Lonner agreed. She expressed concern regarding the focus in the Board's mandate. This is a single diagnosis license that is proposed, and no other license is a single-diagnosis license. A certification is more appropriate for a single-diagnosis service.

Jane Howard, California Association for Behavior Analysis (CalABA), stated that while most of behavior analysts are working with developmentally disabled individuals, not all analysts are working solely with that population. Therefore, the statement that this is a single-diagnosis profession is not true. Behavior analysts also work with a broader range of individuals including people with traumatic brain injuries, adolescents with destructive behavior problems, and they work in the schools and with pediatricians.

Ms. Riemersma stated that CAMFT opposes AB 1205 for the same reasons that were identified. The proposed legislation talks about and it excludes long term counseling. That leaves open anything that can be done through long term counseling. She agrees that some regulatory mechanism is necessary, but the Board is not able to do so at this

time. There are licensed individuals in the mental health profession who are trained in this area and are treating this population.

Brianna Lierman Hintze, attorney for CalABA, stated that CalABA is willing to work on technical amendments. Some new amendments in the bill should address some of the issues identified. Implementation has been pushed out to 2015 to give the Board time to address issues with CalABA and refine the bill. The amendments move this from a title act to a practice act, and this is the direction that CalABA is moving towards. The newest version of the bill it is not just a title act prohibiting holding out as a *licensed* behavior analyst, but it also prohibits holding out as a *behavior analyst*. Ms. Lierman Hintze added that if AB 171 passes, health plans will still make the argument that they are not required to cover expenses because professionals are not licensed. The mandate to cover would not still ensure these services can be provided to these children if the professionals are not licensed.

Ms. Loewy asked if other states are licensing behavior analysts. Ms. Howard responded that there are six other states licensing behavior analysts. Ms. Howard offered to provide information on how each of those states is licensing this population.

Renee Lonner moved to not take a position on AB 1205 at this time. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

m. Senate Bill 146 (Wyland)

Ms. Helms presented SB 146, Healing Arts: Professional Clinical Counselors. This bill is sponsored by the California Association for Licensed Professional Clinical Counselors.

The purpose of this bill is to add LPCCs to statutory code sections where MFTs are already included. Adding LPCCs to other codes where other Board licensees are already included will allow LPCCs to be more effectively utilized in California.

This bill:

- Includes LPCCs in existing law requiring certain licensees to complete training in human sexuality,
- Includes LPCCs in the licensees for which Board must provide license status information on the internet,
- Adds a section setting guidelines for professional clinical counselor corporations,
- Adds LPCCs to the list of mandated reporters, and
- Makes clean up amendments to add LPCCs to several codes of law.

Ms. DiGiorgio and Ms. Lonner both stated that they support SB 146. No public comments were made.

Donna DiGiorgio moved to support SB 146. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

n. Senate Bill 718 (Vargas)

Ms. Karzag presented SB 718, Elder Abuse Mandate Reporting. Ms. Karzag stated that this bill was recently amended.

Current law requires mandated reporters of elder or adult physical abuse to report suspected instances of abuse by telephone immediately or as soon as possible and submit a written report within two working days.

As introduced, this bill would allow mandated reporters to send the required written report to the county adult protective service agencies through a confidential Internet reporting tool, if the county chooses to implement such a system.

Due to a currently lengthy wait time for elder or dependent adult abuse reporters calling on San Diego County's abuse reporting phone line, there is concern that public callers may hang up and not report the abuse, thus leaving seniors or adults at risk of further abuse. San Diego County would like to allow mandated reporters to submit reports through either the phone line or a secure electronic web referral system in order to decrease the wait time on the phone line and reduce this risk to elders and adults.

Due to recent budget cuts, which led to decreased staffing, and a high volume of calls, wait time has increased by 50 percent. As of November 2010, 27 percent of calls were abandoned.

As introduced there was an issue with the intent of the bill. The bill's language appeared to allow required written reports to be sent electronically. However, the language only referred to "reports" in general and did not clearly indicate whether or not the electronic report would be sent instead of the telephone call or the written report. The bill did not seem to change the requirement for mandated reporters to call immediately or as soon as possible.

The amended bill allows the mandated reported to report abuse by telephone or by the Internet reporting tool. If reported via telephone, the reporter can either send a written report or an electronic report.

The author's office stated that the funding for this web referral system would come out of San Diego County's existing budget. A County of San Diego, Adult Protective Services background paper states that the County is currently building a new software system that will include a component for web based reporting. If San Diego County is already creating a web referral system, then it may be able to use the system for the adult abuse reporting program at a minimal cost.

Ms. DiGiorgio stated that she supports SB 718; Ms. Lonner agreed.

Donna DiGiorgio moved to support SB 718. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

o. Senate Bill 747 (Kehoe)

Ms. Helms presented SB 747, Continuing Education: Lesbian, Gay, Bisexual and Transgender Patients. This bill was recently amended.

Current law requires the director of DCA to establish, by regulation, guidelines to prescribe components for mandatory continuing education programs administered by any board within the department. The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection.

Current law requires licensees of the Board, upon renewal of their license, to certify to the Board that he or she has completed at least 36 hours of approved continuing education in or relevant to their field of practice.

Current law states that the system of continuing education shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served

This bill requires MFTs and LCSWs to take at least one continuing education course, between two and five hours in length, that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons.

This bill requires the content of the course be similar to the content described in the publication of the Gay and Lesbian Medical Association titled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients."

This bill requires the Board to establish the required contents of the course by regulation, and to enforce this requirement in the same manner as it enforces other required continuing education requirements.

This new version of this bill makes the provisions of this bill effective January 1, 2014. Persons licensed by the Board must complete the course no later than January 1, 2017. Persons newly licensed by the Board must complete the course within four years of their initial license issuance date, or their second license renewal date, whichever occurs first.

According to the author's office, research, studies and human experiences have demonstrated that members of the lesbian, gay, bisexual and transgender (LGBT) community receive sub-par quality medical and mental health care when compared with the health care quality provided to the general population.

The Board does have a requirement that may offer its licensees some exposure to LGBT issues. Applicants seeking an MFT or LPCC license who begin graduate study after August 1, 2012 or complete graduate study after December 31, 2018, must have a degree that includes instruction in "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." There is no equivalent educational requirement for students seeking an LCSW license.

The Board does have several one-time continuing educational requirements that must be completed by all MFT, LCSW, and LPCC licensees. These additional courses must be completed prior to licensure or at the first renewal, depending on when the applicant began graduate study. These courses are:

- Spousal/partner abuse (7 hours);
- Human Sexuality (10 hours);
- Child Abuse (7 hours);
- Substance Abuse (15 hours);
- Aging/long term care (3 hours); and
HIV/AIDS (7 hours, currently MFTs and LCSWs only, Board is pursuing regulations to require this for LPCCs also)

All licensees must take a 6-hour law and ethics course every renewal period.

This bill does not allow previous educational coursework covering LGBT issues to fulfill the requirements of this bill. Staff proposed language that would allow that.

This bill does not include the LPCCs, and they have the same continuing education as MFTs and LCSWs. The bill also does not include the LEP licensees.

Ms. DiGiorgio stated that she would like to see this include previous qualifying education. She also suggested to take this back to the Board to receive input from the LEPs. Ms. Lonner agreed.

Ms. Riemersma stated that CAMFT opposes SB 747 because CAMFT is opposed to any content-specific mandatory continuing education. CAMFT believes that this should be addressed early at the educational level, not after one has been practicing for years. Some licensees have years of experience working with this population and should not be forced to take this course as a continuing education requirement.

Ms. Gonzalez stated that NASW California Chapter has similar concerns regarding content-specific mandatory continuing education.

Ms. Loewy stated that AAMFT-CA supports SB 747 if amended. One amendment would be to provide an exception to a licensee that has a specialization or training within this area. She also suggested 2 hours instead of up to five hours.

Ms. Lonner stated that she would like to get more information, particularly in regards to the coursework. Ms. DiGiorgio suggested taking this to the Board and requested more information: inclusion of LEPs and LPCCs, and qualifying education.

Renee Lonner moved to support SB 747 if amended. Donna DiGiorgio seconded. The Committee voted unanimously (2-0) to pass the motion.

V. Discussion and Possible Action Regarding Other Legislation Affecting the Board

Ms. Rhine reported that there was no other legislation to discuss for this item.

VI. Legislative Update

The Legislative Update was provided for review. Ms. Helms reported that the Omnibus Bill was assigned a number, SB 943.

VII. Rulemaking Update

The Rulemaking Update was provided for review. Ms. Helms reported that the LPCC regulation package was approved by the State and Consumer Services Agency. Next, it must be reviewed by the Department of Finance and then by the Office of Administrative Law.

VIII. Public Comment for Items Not on the Agenda

No public comments were made.

IX. Suggestions for Future Agenda Items

No suggestions for future agenda items were made.

The meeting was adjourned at 12:22 p.m.

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To: Committee Members
From: Rosanne Helms
Legislative Analyst
Date: July 8, 2011
Telephone: (916) 574-7897
Subject: Review and Possible Action Related to Advertising Regulations

Background

Business and Professions Code (BPC) Section 651(i) (attached) specifies that each of the healing arts boards and committees by regulation, shall define services to be advertised by professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading.

The statute requires the Board to adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services.

Currently California Code of Regulations Title 16 provides some general requirements regarding advertisement (Advertising Statutes and Regulations Sections, attached), for Marriage and Family Therapists (MFTs), Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs). However, the regulations do not specifically address all services that are available and how they should be advertised, e.g. licensees advertising as "Psychotherapists."

On November 17, 1995 the Board adopted Policy # E-95-2, Advertising Psychotherapy/Psychotherapist, to address the use of these terms. However, the Board is required to adopt regulations to enforce guidelines that apply generally to all licensees following the procedures established in the Administrative Procedures Act (APA).

The Board also mails out to Marriage and Family Therapist Interns, Trainees and Associate Clinical Social Workers and all new licensees, Advertising Guidelines Form 1800 37M-550 (Rev. 1/10), which provides information and sample formats of advertising for licensees.

Board staff has noted there are slight inconsistencies between the regulations, policy and the guidelines:

- Neither the Board's regulations nor Policy # E-95-2, require a licensee to provide their license number in advertisement, however the licensee is instructed to provide the license number in the guidelines.

The Board previously voted, as noted below, to require the license or registration number in an advertisement.

- The guidelines inform the licensee they may advertise their specific license type by using the complete title representing the license type. However, the Board's regulations do not specifically address this area.

The Board previously voted, as noted below, to allow the use of either a complete license title or a standard approved abbreviation.

Previous Action

In November 2008, the Board approved amendments and directed staff to initiate a rulemaking under the APA to adopt the proposed language amending 16 CCR Section 1811 in order to resolve several issues related to advertising. At the same meeting, the Board also directed staff to update the policy and guidelines documents in order to be consistent with the regulatory amendments.

The regulatory amendments approved at 2008 meeting incorporated the following changes:

- Require any advertisement to include the licensee's full name, complete license title or acceptable abbreviation, and the license or registration number.
- Includes registrants in the above advertising requirements, and additionally requires them to provide this same information for their supervisor.
- Defines acceptable abbreviations that may be used in an advertisement.
- Specifies that a person may include their academic credentials in an advertisement as long as the degree is earned, and representations and statements regarding their degree are true and not misleading.
- Allows the Board to issue a citation and fine for violations of advertising guidelines.

However, shortly after the approval by the Board of this regulatory language, staff learned that they would first need to run a regulatory package to implement the licensed professional clinical counselor (LPCC) licensing program. The LPCC regulation package affected many of the same code sections as the proposed advertising rulemaking. Due to the conflict of amending a code section with two separate packages and the urgent nature of the LPCC package, the advertising proposal was placed on hold.

Current Legislation

AB 956, sponsored by the California Association of Marriage and Family Therapists (CAMFT), is proposing several changes in law relating to advertisements for marriage and family therapy services. Board staff has been working with CAMFT to ensure that these proposed legislative changes are compatible with the Board's proposed regulatory changes.

In the previous version of the proposed advertising regulations, the Board had voted to require a supervisor's license information be included in any advertisement for an MFT intern. However, AB 956 instead proposes requiring that the MFT intern provide the name of his or her employer. The proposed regulations now incorporate this change that will be made with AB 956.

SB 956 will change the law for MFT interns as follows:

1. Requires an unlicensed marriage and family therapist intern to provide each client or patient, prior to performing any professional services, with the following information (BPC §4980.44(c)):
 - a. That he or she is an unlicensed marriage and family therapist registered intern (current law);
 - b. His or her registration number (new provision);
 - c. The name of his or her employer (new provision); and
 - d. Indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology (current law).
2. Requires any advertisement by or on behalf of a marriage and family therapist registered intern must include, at a minimum, all of the following (BPC §4980.44(d)):
 - a. That he or she is a marriage and family therapist registered intern;
 - b. The intern's registration number;
 - c. The name of his or her employer; and
 - d. That he or she is supervised by a licensed person.
3. Prohibits the use of the abbreviation "MFTI" in an advertisement unless the title "marriage and family therapist registered intern" appears in the advertisement. (BPC §4980.44(d)(2)).

SB 956 will change the law for MFT trainees as follows:

1. Requires a trainee to inform each client or patient, prior to performing any professional services, of the following (BPC §4980.48(a)):
 - a. That he or she is an unlicensed marriage and family therapist trainee (current law);
 - b. The name of his or her employer (new provision);
 - c. Indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology (current law).
2. Requires any advertisement of services performed by a trainee must include, at a minimum, all of the following (BPC §4980.48(c)):
 - a. That he or she is a marriage and family therapist trainee;
 - b. The name of his or her employer; and
 - c. That he or she is supervised by a licensed person.

Current Regulatory Proposal

Due to the addition of the LPCC license, 16 CCR Section 1811 had been updated since the advertising proposal was adopted by the Board in 2008. The new regulatory proposal includes the following changes:

1. Current version of Section 1811;
2. All previously approved changes from 2008; and
3. Changes incorporating the SB 956 provisions.

Recommendation

Recommend to the Board that staff initiate a rulemaking under the APA to adopt the proposed language amending 16 CCR Section 1811.

Attachments

Attachment A: Proposed Regulatory Language – Revised June 2011

Attachment B: Regulatory Language Previously Approved By the Board – November 2008

Attachment C: Laws Related to Advertising

Attachment D: AB 956 Text

**ATTACHMENT A
BOARD OF BEHAVIORAL SCIENCES
PROPOSED REGULATORY CHANGES
ADVERTISING
JUNE 2011 UPDATED VERSION**

**§1811. USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS
ADVERTISING**

~~(a)~~ All persons or referral services regulated by the board who advertise their services shall include their license or registration number in the advertisement unless such advertisement contains the following specific information: all of the following information in any advertisement:

~~(a)~~ (1) The full name of the licensee, registrant, or registered referral service as filed with the board; ~~and~~

~~(b)~~ (2) ~~A designation of the~~ The type of complete title of the license or registration held or an acceptable abbreviation, as follows:

~~(1)~~(A) Licensed Marriage and Family Therapist, MFT or LMFT.

~~(2)~~ (B) Licensed Educational Psychologist or LEP.

~~(3)~~ (C) Licensed Clinical Social Worker or LCSW.

(D) Registered Marriage and Family Therapist Intern or Registered MFT Intern.

(E) Registered Associate Clinical Social Worker or Registered Associate CSW.

~~(4)~~ (F) Registered MFT Referral Service.

~~(5)~~ (G) Licensed Professional Clinical Counselor

(H) Registered Professional Clinical Counselor Intern or Registered PCC Intern.

(3) The license or registration number.

~~(c)~~(b) ~~An unlicensed~~ A registered Marriage and Family Therapist ~~Registered~~ Intern may advertise if such advertisement complies with Section 4980.44(c) of the Code making disclosures required by that section.

~~(d)~~(c) ~~An unlicensed~~ A registered Associate Clinical Social Worker may advertise if such advertisement complies with Section 4996.18 ~~(e)~~(h) of the Code making disclosures required by that section.

~~(e)~~(d) ~~An unlicensed~~ A registered Professional Clinical Counselor Intern may advertise if such advertisement complies with Section 4999.45(c) of the Code making disclosures required by that section.

(e) Registrants must include the name of his or her employer, or if not employed, the name of the entity for which he or she volunteers.

(f) Licensees may use the words “psychotherapy” or “psychotherapist” in an advertisement provided that all the applicable requirements of subsection (a) are met.

(g) It is permissible for a person to include academic credentials in advertising as long as the degree is earned, and the representations and statements regarding that degree are true and not misleading and are in compliance with Section 651 of the Code. For purposes of this subdivision, “earned” shall not mean an honorary or other degree conferred without actual study in the educational field.

(h) The board may issue citations and fines containing a fine and an order of abatement for any violation of Section 651 of the Code.

(i) For the purposes of this section, “acceptable abbreviation” means the abbreviation listed in subsection (a)(2) of this Section.

Note: Authority cited: Sections 137, 650.4, 651, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 137, 651, 4980, 4980.44, and 4996.18, and 4999.45, Business and Professions Code.

**ATTACHMENT B
BOARD OF BEHAVIORAL SCIENCES
PROPOSED REGULATORY CHANGES
ADVERTISING
2008 - PREVIOUS VERSION**

MFT, LEP, LCSW

16CCR§1811. ~~USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS~~ ADVERTISING

~~(a)~~ All persons or referral services regulated by the board who advertise their services shall include their license or registration number in the advertisement unless such advertisement contains the following specific information: all of the following information in any advertisement:

~~(a)~~ (1) The full name of the licensee, registrant, or registered referral service as filed with the board; and

~~(b)~~ (2) A designation of the The type of complete title of the license or registration held or an acceptable abbreviation, as follows:

~~(1)~~ (A) Licensed Marriage and Family Therapist, MFT or LMFT.

~~(2)~~ (B) Licensed Educational Psychologist or LEP.

~~(3)~~ (C) Licensed Clinical Social Worker or LCSW.

(D) Registered Marriage and Family Therapist Intern or Registered MFT Intern.

(E) Registered Associate Clinical Social Worker or Registered Associate CSW.

~~(4)~~ (F) Registered MFT Referral Service.

(3) The license or registration number.

~~(e)~~ ~~(b)~~ An unlicensed A registered Marriage and Family Therapist ~~Registered Intern~~ may advertise if such advertisement complies with Section ~~4980.44(a)(4)~~ 4980.44(c) of the Code making disclosures required by that section.

~~(d)~~ ~~(c)~~ An unlicensed A registered Associate Clinical Social Worker may advertise if such advertisement complies with Section ~~4996.18 (e)~~ 4996.18(h) of the Code making disclosures required by that section.

(d) Registrants must include the name, the complete title or acceptable abbreviation of the supervisor's license and the supervisor's license number.

(e) It is permissible for a person to include academic credentials in advertising as long as the degree is earned, and the representations and statements regarding that degree are true and not misleading and in compliance with Section 651 of the Code. For purposes of this subdivision, "earned" shall not mean an honorary or other degree conferred without actual study in the educational field.

(f) The board may issue citations and fines containing a fine and an order of abatement for any violation of Section 651 of the Code.

(g) For the purposes of this section, "acceptable abbreviation" means the abbreviation listed in subsection (a)(2) of this Section.

Note: Authority cited: Sections 137, 650.4, 651, and 4980.60 and ~~4990.14~~, Business and Professions Code. Reference: Sections 137, 651, ~~4980 and~~ 4980.44 and ~~4996.18~~, Business and Professions Code.

Attachment C
Board of Behavioral Sciences
2011 Laws Related to Advertising

MFT

BPC §4980.03(e)

(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.

BPC §4980.48

(a) A trainee 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.

(b) Any person that advertises services performed by a trainee shall include the trainee's name, the supervisor's license designation or abbreviation, and the supervisor's license number.

BPC §4982

The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

LEP

BPC §4989.49

"Advertising," 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, magazine, or directory, or any printed matter whatsoever, with or without any limiting qualification. Signs within religious buildings or notices in bulletins from a

religious organization mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

BPC §4989.54

The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

LCSW

BPC §4992.2

"Advertising," 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, magazine, or directory, or any printed matter whatsoever, with or without any limiting qualification. Signs within religious buildings or notices in bulletins from a religious organization mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

BPC §4992.3

The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(q) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as define in Section 651.

16 CCR §1881

The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:

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

LPCC

BPC §4999.12(i)

(j) "Advertising" or "advertise" includes, but is not limited to, 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. It also includes business solicitations communicated by radio or television broadcasting. 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.

BPC §4999.90(p)

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

MFT, LEP, LCSW, AND LPCCS

16 CCR §1811 USE OF LICENSE NUMBER IN DIRECTORIES AND ADVERTISEMENTS

All persons or referral services regulated by the board who advertise their services shall include their license or registration number in the advertisement unless such advertisement contains the following specific information:

(a) The full name of the licensee or registered referral service as filed with the board; and

(b) A designation of the type of license or registration held as follows:

(1) Licensed Marriage and Family Therapist.

(2) Licensed Educational Psychologist.

(3) Licensed Clinical Social Worker.

(4) Registered MFT Referral Service.

(5) Licensed Professional Clinical Counselor

(c) An unlicensed Marriage and Family Therapist Registered Intern may advertise if such advertisement complies with Section 4980.44(c) of the Code making disclosures required by that section.

(d) An unlicensed Associate Clinical Social Worker may advertise if such advertisement complies with Section 4996.18 (e) of the Code making disclosures required by that section.

(e) An unlicensed Professional Clinical Counselor Intern may advertise if such advertisement complies with Section 4999.45(c) of the Code making disclosures required by that section.

16 CCR §1889.3. ADVERTISING AND REFERRAL GUIDELINES

(a) An MFT referral service shall advertise and make referrals in accordance with Sections 650.4 and 651 of the Code and Section 1811 of these regulations.

(b) An MFT referral service shall only make referrals to marriage and family therapists with current, valid licenses. Referrals made to marriage and family therapists on probation shall be made in accordance with the terms of probation set by the board.

ALL LICENSEES

§651. PUBLIC COMMUNICATION CONTAINING FALSE, FRAUDULENT, MISLEADING, OR DECEPTIVE STATEMENT, CLAIM, OR IMAGE; ADVERTISEMENTS; PENALTY

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or

other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomat of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

AMENDED IN SENATE MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 956

Introduced by Assembly Member Roger Hernández
(Coauthor: Assembly Member Bonnie Lowenthal)

February 18, 2011

An act to amend Sections 4980.44 and 4980.48 of the Business and Professions Code, relating to marriage and family therapy.

LEGISLATIVE COUNSEL'S DIGEST

AB 956, as amended, Roger Hernández. Marriage and family therapy: interns and trainees: advertisements.

Existing law, the Marriage and Family Therapist Act, provides for the licensure or registration and regulation of marriage and family therapists and interns by the Board of Behavioral Sciences and makes a violation of its provisions a crime. Existing law requires marriage and family therapist interns, trainees, and applicants for licensure or registration to at all times be under supervision. Existing law requires interns and trainees to 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, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry. Existing law requires any person that advertises services performed by a trainee to include the trainee's name, the supervisor's license designation or abbreviation, and the supervisor's license number.

This bill would require an intern or trainee, prior to performing professional services, to provide each client or patient with the name of his or her employer and indicate whether he or she is under the

supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry. *The bill would require an intern, prior to performing professional services, to provide a client or patient with the intern’s registration number.* The bill would require any advertisement by or on behalf of an intern or trainee to include specified information, including the name of the employer of the intern or trainee and that the intern or trainee is supervised by a licensed person. The bill would also require an advertisement for ~~interns~~ *an intern* to include *the intern’s registration number* and the title “marriage and family therapist registered intern” if the abbreviation MFTI is used in the advertisement.

Because a violation of the bill’s provisions would be a crime, this bill would impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section 4980.44 of the Business and Professions
- 2 Code is amended to read:
- 3 4980.44. An unlicensed marriage and family therapist intern
- 4 employed under this chapter shall comply with the following
- 5 requirements:
- 6 (a) Possess, at a minimum, a master’s degree as specified in
- 7 Section 4980.36 or 4980.37, as applicable.
- 8 (b) Register with the board prior to performing any duties,
- 9 except as otherwise provided in subdivision (g) of Section 4980.43.
- 10 (c) Prior to performing any professional services, inform each
- 11 client or patient that he or she is an unlicensed marriage and family
- 12 therapist registered intern, provide *his or her registration number*
- 13 *and* the name of his or her employer, and indicate whether he or
- 14 she is under the supervision of a licensed marriage and family
- 15 therapist, licensed clinical social worker, licensed psychologist,
- 16 or a licensed physician and surgeon certified in psychiatry by the
- 17 American Board of Psychiatry and Neurology.

1 (d) (1) Any advertisement by or on behalf of a marriage and
2 family therapist registered intern shall include, at a minimum, all
3 of the following information:

4 (A) That he or she is a marriage and family therapist registered
5 intern.

6 (B) *The intern's registration number.*

7 ~~(B)~~

8 (C) The name of his or her employer.

9 ~~(C)~~

10 (D) That he or she is supervised by a licensed person.

11 (2) The abbreviation "MFTI" shall not be used in an
12 advertisement unless the title "marriage and family therapist
13 registered intern" appears in the advertisement.

14 SEC. 2. Section 4980.48 of the Business and Professions Code
15 is amended to read:

16 4980.48. (a) A trainee shall, prior to performing any
17 professional services, inform each client or patient that he or she
18 is an unlicensed marriage and family therapist trainee, provide the
19 name of his or her employer, and indicate whether he or she is
20 under the supervision of a licensed marriage and family therapist,
21 a licensed clinical social worker, a licensed psychologist, or a
22 licensed physician certified in psychiatry by the American Board
23 of Psychiatry and Neurology.

24 (b) Any person that advertises services performed by a trainee
25 shall include the trainee's name, the supervisor's license
26 designation or abbreviation, and the supervisor's license number.

27 (c) Any advertisement by or on behalf of a marriage and family
28 therapist trainee shall include, at a minimum, all of the following
29 information:

30 (1) That he or she is a marriage and family therapist trainee.

31 (2) The name of his or her employer.

32 (3) That he or she is supervised by a licensed person.

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O

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To: Policy & Advocacy Committee

Date: July 21, 2011

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Consideration of “Licensed Marriage and Family Therapist” Title

Background

Current statute and Board regulations use the title “Marriage and Family Therapist” (MFT) to refer to a Board licensee who practices marriage and family therapy.

It has been requested that the Board instead consider instead utilizing the title “Licensed Marriage and Family Therapist” (LMFT).

Issue

The title change was requested in order to clarify that the Board’s marriage and family therapy licensees hold a valid state license. The Board’s other licensees (Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs)) all contain the term “licensed” in their titles.

As marriage and family therapy interns are not licensees of the Board, use of the term “Marriage and Family Therapy Intern” (MFT Intern) would continue unchanged.

The attached list of all 50 states shows the titles given to someone who is licensed to practice marriage and family therapy. Only two other states, Hawaii and Wisconsin, use the term “Marriage and Family Therapist.” All other states use the term “Licensed Marriage and Family Therapist,” or some variation of this title that includes the word “licensed.”

Implementation

Adoption of the title change from “Marriage and Family Therapist” to “Licensed Marriage and Family Therapist” would be a lengthy process. It would require that staff change all of the Board’s regulations, make comprehensive statutory changes, and update all forms, publications, and the web site with the new title.

Due to limited staff time and resources, staff recommends, that, if adopted, the phase-in of the term “licensed marriage and family therapist” would occur gradually. Staff proposes phasing in the new term as new legislation and regulations are run, and as forms, publications, and the web site are updated.

Recommendation

Conduct an open discussion regarding the advantages and disadvantages of changing the current title “Marriage and Family Therapist” to “Licensed Marriage and Family Therapist.” If the change is found to be appropriate, recommend to the Board that staff include the title “Licensed Marriage and Family Therapist” in all **new** regulatory and legislative proposals and make conforming changes to Board forms and publications as appropriate.

Attachment

Marriage and Family Therapist Titles in Other States

Attachment: Marriage and Family Therapist Titles in Other States

State	Title	Initials	Title Associate	Initials Associate
Alaska	Licensed Marital and Family Therapist	LMFT	Marital and Family Therapy Associate	MFT-A
Alabama	Licensed Marriage and Family Therapist	LMFT	Marriage And Family Therapist Associate	MFT Associate
Arkansas	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	LAMFT
Arizona	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	LAMFT
California	Marriage and Family Therapist	MFT	Marriage and Family Therapist Intern	MFT Intern
Colorado	Licensed Marriage and Family Therapist	LMFT	None	None
Connecticut	Licensed Marital and Family Therapist	LMFT	None	None
District of Columbia	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
Delaware	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	LAMFT
Florida	Licensed Marriage and Family Therapist	LMFT	Registered Marriage and Family Therapist Intern	MFT Intern
Georgia	Licensed Marriage and Family Therapist	LMFT	Associate Marriage and Family Therapist	
Hawaii	Marriage and Family Therapist	MFT	Marriage and Family Therapy Intern	
Iowa	Licensed Marital and Family Therapist	LMFT	Temporary Licensed Marital and Family Therapist	Temporary LMFT
Idaho	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapy	LAMFT
Illinois	Licensed Marriage and Family Therapist	LMFT	Associate Licensed Marriage and Family Therapist	
Indiana	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapist Associate	LMFTA
Kansas	Licensed (Clinical) Marriage and Family Therapist	LCMFT, LMFT	None	None
Kentucky	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapy Associate	LMFT-A
Louisiana	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapist Intern	MFT Intern
Massachusetts	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapist Intern	MFT Intern
Maryland	Licensed Marriage and Family Therapist	LCMFT	Licensed Graduate Marriage and Family Therapist	LGMFT
Maine	Licensed Marriage and Family Therapist	LMFT	Conditional license	None
Michigan	Licensed Marriage and Family Therapist	LMFT	None	None
Minnesota	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	LAMFT
Missouri	Licensed Marital and Family Therapist	LMFT	Provisional Licensed Marital and Family Therapist	
Mississippi	Licensed Marriage and Family Therapist	LMFT	None	None
Montana	Licensed Marriage and Family Therapist	LMFT	none	

Attachment: Marriage and Family Therapist Titles in Other States

State	Title	Initials	Title Associate	Initials Associate
North Carolina	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapy Associate	LMFTA
North Dakota	Licensed Marriage and Family Therapist	LMFT	Associate Marriage and Family Therapist	AMFT
Nebraska	Licensed Independent Marriage and Family Therapist	LIMFT	Provisionally Licensed Mental Health Practitioner	PLMHP
New Hampshire	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
New Jersey	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
New Mexico	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	LAMFT
Nevada	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
New York	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapist Intern	MFT Intern
Ohio	Licensed Independent Marriage and Family Therapist	IMFT, LMFT	None	None
Oklahoma	Licensed Marriage and Family Therapist	LMFT	None	None
Oregon	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapy Intern	LMFT Intern
Pennsylvania	Licensed Marriage and Family Therapist	LMFT	None	None
Rhode Island	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
South Carolina	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapist Intern	LMFT Intern
South Dakota	Licensed Marriage and Family Therapist	LMFT	Marriage and Family Therapy Intern	MFT Intern
Tennessee	Licensed Marital and Family Therapist	LMFT	None	None
Texas	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapist Associate	LMFT-A
Utah	Licensed Marriage and Family Therapist	LMFT	Licensed Associate Marriage and Family Therapist	
Virginia	Licensed Marriage and Family Therapist	LMFT	None	None
Vermont	Licensed Marriage and Family Therapist	LMFT	None	None
Washington	Licensed Marriage and Family Therapist	LMFT	Licensed Marriage and Family Therapist Associate	LMFTA
Wisconsin	Marriage and Family Therapist	MFT	Marriage and Family Therapist Training License	None
West Virginia	Licensed Marriage and Family Therapist	LMFT	none	
Wyoming	Licensed Marriage and Family Therapist	LMFT	provisional license	None

Source: AAMFT Government Affairs Database, 2011

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 462 **VERSION:** AMENDED MAY 31, 2011

AUTHOR: SAM BLAKESLEE **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: SPECIAL EDUCATION ADVOCATES: CERTIFICATION

Existing Law:

- 1) Requires a local educational agency to initiate and conduct meetings in order to develop, review, and revise the individualized education program of each individual with exceptional needs. (Education Code (EC) §56340)
- 2) Requires each meeting to develop, review, or revise an individualized education program to be conducted by a team which includes the following participants(EC §56341):
 - The pupil's parents, a representative selected by the parents, or both;
 - At least one regular education teacher of the pupil if participating in the regular education environment;
 - At least one special education teacher of the pupil;
 - A representative of the local education agency;
 - Other individuals who have knowledge or special expertise regarding the pupil;
 - The pupil with exceptional needs, when appropriate;
 - If the pupil has a specific learning disability, a person qualified to conduct individual diagnostic exams of children; and
 - The infant/toddler service coordinator, when appropriate.
- 3) Provides students with exceptional needs and their parents with certain safeguards, including requesting a due process hearing, requesting mediation, or requesting an alternative dispute resolution. (20 USC 1415 et seq.)
- 4) States that it is the intent of the Legislature that parties of special education disputes be encouraged to attempt to resolve the issue through mediation before filing a request for a due process hearing. These mediation sessions are intended to be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, educational placement of the child, or the provision of free appropriate public education to the child to the satisfaction of both parties. (EC §56500.3(a))

- 5) Requires the mediation conference to be conducted by a person with the following qualities: (EC §56500.3(d))
 - Knowledgeable in the process of reconciling differences in a nonadversarial manner;
 - Under contract with the Department of Education; and
 - Knowledgeable in the laws and regulations governing special education.
- 6) Requires the mediation conference to be scheduled within 15 days of the receipt of request for mediation. (EC §56500.3(e)).
- 7) Allows a public agency to offer parents and schools who choose not to use mediation an opportunity to meet with at disinterested party, who is under a specified type of contract, who would explain the benefits of and encourage the parents to use the mediation process. (EC §56500.3(j))

This Bill:

- 1) Defines a “certified special education advocate” as a non-attorney individual, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs. (EC §56395.1)
- 2) Allows a special education local plan area to do the following: (EC §56395.1)
 - a) Develop a voluntary special education advocate certification program;
 - b) Determine the yearly fee to be charged to someone seeking certification;
 - c) Notify the Board of Behavioral Sciences (Board) whether a person seeking certification has completed alternative dispute resolution training; and
 - d) Provide alternative dispute resolution training at least twice per year for persons seeking certification.
- 3) Requires the Board to do the following: (EC §§56395.1, 56395.3)
 - a) Administer a test which those seeking certification as a special education advocate must pass in order to obtain certification. The test would certify that the applicant has sufficient knowledge and understanding of the process for resolving special education disputes;
 - b) Certify a person who has successfully passed the test and fulfilled the training requirement, for a period of time not to exceed five years; and
 - c) Charge a fee to a person seeking certification, not to exceed the reasonable testing costs.
- 4) States a certified special education advocate will do the following: (EC §56395.4)
 - a) Speak, write or work on behalf of a pupil who qualifies as an individual with exceptional needs, upon invitation of the parent;

- b) Register with the Board and renew certification every five years by passing the prescribed test;
 - c) Have a report available that states the frequency of their advocacy activities, subject matter of issues worked, fees received, and the length of time taken to resolve each case; and
 - d) Disclose in writing at the beginning of an individualized education team meeting or mediation session the relationship to the pupil or parents, and whether payment for services is being received.
- 5) Prohibits the Board from requiring additional training as a condition of certification renewal. (EC §56395.4)
- 6) Requires the Board to administer the certification test for a special education advocate in the applicant's native language. (EC §56395.3)

Comments:

- 1) Intent of This Bill.** This bill would allow a special education local plan area to develop a voluntary special education advocate certification program for those who participate as a member of pupil individualized education teams or in mediation conferences.

According to the author's office, "The purpose of this bill is to protect families against predatory advocates while reducing administrative and legal costs borne by school districts resulting from disputes and litigation over the adequacy and administration of special education Individual Education Programs (IEPs). Currently, many parents of children with special needs are being taken advantage of by advocates pushing them to engage their school or school district into due process litigation. This incurs great cost to both the parents and the school district. This bill would make sure that individuals who claim to be 'advocates' have adequate training in alternative dispute resolution and are familiar with the legal and fiscal implications of due process litigation."

- 2) Intent of Bill Not Realized.** The author's office states that this bill "would make sure that individuals who claim to be 'advocates' have adequate training in alternative dispute resolution and are familiar with the legal and fiscal implications of due process litigation." However, this bill does not require that individuals providing services as a special education advocate be certified, have training, or pass an examination ensuring knowledge and understanding of the process of resolving special education disputes. This bill offers no additional public protection as it is purely voluntary and does not regulate an activity or practice.

- 3) Incongruent Program Structure.** This bill requires the special education local plan area to develop the special education certification program, establish certification fees, and develop a training program related to alternative dispute resolution. However, this bill requires the Board to issue the special education advocate certificates, develop the related examination, and collect fees that are reasonable to the cost of the examination. This presents a number of problems, including but not limited to:

- a) The local plan area determines a certification fee based on reasonable costs associated with training. However, the Board issues the certificates. The bill does not give the Board the authority to collect fees for costs it will incur for program administration.

- b) The Board must develop a test based on a knowledge, practice, and skill set not under its jurisdiction. The practice of dispute resolution is not related to any activity regulated by the Board. Additionally, the training and scope of education is developed by the special education local plan area. It would be impossible for the Board to develop an examination based on the structure of the proposed certification program.
- c) The special education local plan area develops the certification program, but the Board is required to issue the certificates. It is unclear how the Board would issue certification without developing and implementing the certification program.

4) Value of Certification Questionable. Certification as a special education advocate by the Board requires training that may consist of four hours of alternative dispute resolution training, relevant ethics training, and review of relevant special education laws. The language in the bill does not outline necessary education or experience requirements for certification. Additionally, this bill prohibits the Board from requiring any education or proof of continuing competency in special education advocacy upon renewal of certification. Certification essentially denotes passage of an examination, online or in person, that demonstrates understanding of the process for resolving special education disputes. Without continuing competency requirements and initial education and experience requirements, the value of certification is unclear.

5) Profession Not Related to Board’s Regulatory Scope. The scope of practice of a special education advocate is not similar to the scope of practice for any of the Board’s current licensees. Therefore, staff believes the task of certification is better left to an agency that is directly involved in the education process, such as the Department of Education, or even the special education local plan areas.

6) Support and Opposition.

Support

- San Luis Obispo County Office of Education

Oppose

- Disability Rights California

7) History.

2011

- May 31 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.
- May 26 Held in committee and under submission.
- May 20 Set for hearing May 26.
- May 16 Placed on APPR. suspense file.
- May 6 Set for hearing May 16.
- May 4 Read second time and amended. Re-referred to Com. on APPR.
- May 3 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 9. Noes 0. Page 760.) (April 27).
- Apr. 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on ED.
- Apr. 8 Set for hearing April 27.
- Apr. 7 Re-referred to Com. on ED.
- Mar. 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

- Feb. 24 Referred to Com. on RLS.
- Feb. 17 From printer. May be acted upon on or after March 19.
- Feb. 16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 462

**Introduced by Senator Blakeslee
(Coauthor: Senator Runner)**

February 16, 2011

An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. Special education: special education advocates: certification.

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would ~~require~~ *authorize a special education local plan areas area, collectively,* and in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education program team, or, upon the invitation of a parent, in a mediation conference, as specified. The bill would authorize *a special education local plan areas area* to provide alternative dispute resolution training, and require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to administer a test, to persons seeking certification, as specified. The bill would also require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to certify, and maintain a registry of, persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. ~~Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.~~

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would require the Superintendent or his or her designee to certify that the listed persons, including *certified* special education advocates, or organizations provide services for free or at a reduced cost.

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

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

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

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

1 SECTION 1. Chapter 4.2 (commencing with Section 56395)
2 is added to Part 30 of Division 4 of Title 2 of the Education Code,
3 to read:

4
5 CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES
6

7 56395. It is the intent of the Legislature to protect families of
8 individuals with exceptional needs and to improve the relationship
9 between special education advocates and school districts by
10 providing a voluntary special education advocate certification
11 program.

12 56395.1. For the purpose of this chapter:

13 (a) "Alternative dispute resolution" means nonadversarial
14 techniques used to reduce conflict and to come to a mutually
15 beneficial agreement.

16 (b) "Certified special education advocate" means any
17 nonattorney person, paid or unpaid, who speaks, writes, or works
18 on behalf of a pupil who qualifies as an individual with exceptional
19 needs, as defined in Section 56026, and who has been certified
20 pursuant to the provisions of this chapter.

21 56395.2. (a) ~~Special~~A special education local plan ~~areas~~ area,
22 in collaboration with the department, ~~shall~~ may do all of the
23 following:

24 ~~(1) Collectively, and in consultation with the Office of~~
25 ~~Administrative Hearings, develop a voluntary special~~
26 ~~education~~(1) *Develop a voluntary special education* advocate
27 certification program that includes a test, which shall be
28 administered by the ~~Office of Administrative Hearings~~ *Board of*
29 *Behavioral Sciences*, to certify that the person has sufficient
30 knowledge and understanding of the process for resolving special
31 education disputes.

1 (2) Determine the yearly fee to be charged ~~by a special education~~
 2 ~~local plan area~~ to a person seeking certification as a special
 3 education advocate that shall not exceed the reasonable costs of
 4 providing training pursuant to subdivision (b).

5 (3) Notify the ~~Office of Administrative Hearings~~ *Board of*
 6 *Behavioral Sciences* whether a person seeking certification has
 7 completed alternative dispute resolution training.

8 (b) ~~Special education local plan areas are authorized to~~ *A special*
 9 *education local plan area* may provide alternative dispute
 10 resolution training at least twice per year for persons seeking
 11 certification as a special education advocate. This training also
 12 may be offered by an entity pursuant to a contract with a special
 13 education local plan area. The training may consist of all of the
 14 following:

15 (1) At least four hours of alternative dispute resolution training.

16 (2) Relevant ethics training.

17 (3) Review of relevant special education laws.

18 56395.3. The ~~Office of Administrative Hearings~~ *Board of*
 19 *Behavioral Sciences* shall do all of the following:

20 (a) Administer a test, either online or in person, to a person
 21 seeking certification as a special education advocate. The test shall
 22 be offered in the native language of the person seeking certification
 23 as a special education advocate.

24 (b) Certify a person who has successfully passed the test
 25 described in subdivision (a) and who has fulfilled the training
 26 requirements listed in subdivision (b) of Section 56395.2.
 27 Certification may be granted for a period not to exceed five years.

28 ~~(e) Post a registry of certified special education advocates on~~
 29 ~~its Internet Web site.~~

30 ~~(d)~~

31 (c) Charge a fee to a person seeking certification as a special
 32 education advocate that shall not exceed the reasonable costs of
 33 administering the test pursuant to subdivision (a) ~~and maintaining~~
 34 ~~the registry pursuant to subdivision (e).~~

35 56395.4. (a) A certified special education advocate shall do
 36 all of the following:

37 (1) Upon the invitation of a parent, speak, write, or work on
 38 behalf of a pupil who qualifies as an individual with exceptional
 39 needs pursuant to paragraph (1) of subdivision (b) of Section
 40 56341, or subdivision (b) of Section 56500.3.

1 (2) Register with the ~~Office of Administrative Hearings Board~~
2 *of Behavioral Sciences* and renew their certification every five
3 years by successfully passing the test described in subdivision (a)
4 of Section 56395.3. Additional training shall not be required in
5 order to renew certification. ~~Registrants shall indicate whether~~
6 ~~they are a paid or an unpaid advocate. If a person registers as a~~
7 ~~paid advocate, and he or she is referred by an attorney, he or she~~
8 ~~shall be required to report the identity of the person who employs~~
9 ~~him or her.~~

10 (3) Have a report, available upon request by parents, special
11 education local plan area staff, a school district, or the department,
12 regarding the frequency of their advocacy activities, the subject
13 matter of the issues upon which he or she has worked, the fees, if
14 any, he or she has received for his or her advocacy, and the length
15 of time he or she took to resolve each case.

16 (4) Disclose at the beginning of an individualized education
17 program team meeting and at the beginning of a mediation session,
18 in writing, his or her relationship to the pupil or his or her parents
19 and indicate whether he or she is receiving payment of any kind
20 for his or her services.

21 (b) A certified special education advocate shall not be
22 reimbursed by a parent, organization, advocacy group, or school
23 district for the certification fee imposed pursuant to paragraph (2)
24 of subdivision (a) of Section 56395.2 or subdivision ~~(d)~~(c) of
25 Section 56395.3.

26 (c) Nothing in this section shall be construed to allow fees or
27 costs awarded to a prevailing party pursuant to the federal
28 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
29 et seq.) to be awarded to a special education advocate.

30 56395.5. (a) A parent, as defined in Section 56028, is not
31 required to be certified pursuant to the provisions of this chapter
32 in order to represent his or her child.

33 (b) A mediator, as described in subdivision (d) of Section
34 56500.3, shall require nonparent participants in a mediation session
35 to disclose their relationship to the pupil and their status as an
36 advocate.

37 SEC. 2. Section 56502 of the Education Code is amended to
38 read:

1 56502. (a) All requests for a due process hearing shall be filed
2 with the Superintendent in accordance with Section 300.508(a)
3 and (b) of Title 34 of the Code of Federal Regulations.

4 (b) The Superintendent shall develop a model form to assist
5 parents in filing a request for due process that is in accordance
6 with Section 300.509 of Title 34 of the Code of Federal
7 Regulations.

8 (c) (1) The party, or the attorney representing the party,
9 initiating a due process hearing by filing a written request with the
10 Superintendent shall provide the other party to the hearing with a
11 copy of the request at the same time as the request is filed with the
12 Superintendent. The due process hearing request notice shall
13 remain confidential. In accordance with Section 1415(b)(7)(A) of
14 Title 20 of the United States Code, the request shall include the
15 following:

16 (A) The name of the child, the address of the residence of the
17 child, or available contact information in the case of a homeless
18 child, and the name of the school the child is attending.

19 (B) In the case of a homeless child or youth within the meaning
20 of paragraph (2) of Section 725 of the federal McKinney-Vento
21 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available
22 contact information for the child and the name of the school the
23 child is attending.

24 (C) A description of the nature of the problem of the child
25 relating to the proposed initiation or change, including facts relating
26 to the problem.

27 (D) A proposed resolution of the problem to the extent known
28 and available to the party at the time.

29 (2) A party may not have a due process hearing until the party,
30 or the attorney representing the party, files a request that meets
31 the requirements listed in this subdivision.

32 (d) (1) The due process hearing request notice required by
33 Section 1415(b)(7)(A) of Title 20 of the United States Code shall
34 be deemed to be sufficient unless the party receiving the notice
35 notifies the due process hearing officer and the other party in
36 writing that the receiving party believes the due process hearing
37 request notice has not met the notice requirements. The party
38 providing a hearing officer notification shall provide the
39 notification within 15 days of receiving the due process hearing
40 request notice. Within five days of receipt of the notification, the

1 hearing officer shall make a determination on the face of the notice
2 of whether the notification meets the requirements of Section
3 1415(b)(7)(A) of Title 20 of the United States Code, and shall
4 immediately notify the parties in writing of the determination.

5 (2) (A) The response to the due process hearing request notice
6 shall be made within 10 days of receiving the request notice in
7 accordance with Section 1415(c)(2)(B) of Title 20 of the United
8 States Code.

9 (B) In accordance with Section 300.508(e)(1) of Title 34 of the
10 Code of Federal Regulations, if the local educational agency has
11 not sent a prior written notice under Section 56500.4 and Section
12 300.503 of Title 34 of the Code of Federal Regulations to the parent
13 regarding the subject matter contained in the due process hearing
14 request of the parent, the response from the local educational
15 agency to the parent shall include all of the following:

16 (i) An explanation of why the agency proposed or refused to
17 take the action raised in the due process hearing request.

18 (ii) A description of other options that the individualized
19 education program team considered and the reasons why those
20 options were rejected.

21 (iii) A description of each assessment procedure, assessment,
22 record, or report the agency used as the basis for the proposed or
23 refused action.

24 (iv) A description of other factors that are relevant to the
25 proposed or refused action of the agency.

26 (C) A response by a local educational agency under
27 subparagraph (B) shall not be construed to preclude the local
28 educational agency from asserting that the due process request of
29 the parent was insufficient, where appropriate.

30 (D) Except as provided under subparagraph (B), the party
31 receiving a due process hearing request notice, within 10 days of
32 receiving the notice, shall send to the other party, in accordance
33 with Section 300.508(f) of Title 34 of the Code of Federal
34 Regulations, a response that specifically addresses the issues raised
35 in the due process hearing request notice.

36 (e) A party may amend a due process hearing request notice
37 only if the other party consents in writing to the amendment and
38 is given the opportunity to resolve the hearing issue through a
39 meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the
40 United States Code, or the due process hearing officer grants

1 permission, except that the hearing officer may only grant
2 permission at any time not later than five days before a due process
3 hearing occurs. The applicable timeline for a due process hearing
4 under this chapter shall recommence at the time the party files an
5 amended notice, including the timeline under Section 1415(f)(1)(B)
6 of Title 20 of the United States Code.

7 (f) The Superintendent shall take steps to ensure that within 45
8 days after receipt of the written hearing request the hearing is
9 immediately commenced and completed, including, any mediation
10 requested at any point during the hearing process pursuant to
11 paragraph (2) of subdivision (b) of Section 56501, and a final
12 administrative decision is rendered, unless a continuance has been
13 granted pursuant to Section 56505.

14 (g) Notwithstanding any procedure set forth in this chapter, a
15 public agency and a parent, if the party initiating the hearing so
16 chooses, may meet informally to resolve an issue or issues relating
17 to the identification, assessment, or education and placement of
18 the child, or the provision of a free appropriate public education
19 to the child, to the satisfaction of both parties prior to the hearing.
20 The informal meeting shall be conducted by the district
21 superintendent, county superintendent, or director of the public
22 agency or his or her designee. A designee appointed pursuant to
23 this subdivision shall have the authority to resolve the issue or
24 issues.

25 (h) Upon receipt by the Superintendent of a written request by
26 the parent or public agency, the Superintendent or his or her
27 designee or designees immediately shall notify, in writing, all
28 parties of the request for the hearing and the scheduled date for
29 the hearing. The notice shall advise all parties of all their rights
30 relating to procedural safeguards. The Superintendent or his or her
31 designee shall provide both parties with a list of persons, including
32 *certified* special education advocates, and organizations within the
33 geographical area that can provide free or reduced cost
34 representation or other assistance in preparing for the due process
35 hearing. This list shall include a brief description of the requirement
36 to qualify for the services. The Superintendent or his or her
37 designee shall certify that the listed persons or organizations
38 provide services for free or at a reduced cost, but shall otherwise
39 have complete discretion in determining which individuals or
40 groups shall be included on the list.

1 (i) In accordance with Section 1415(f)(3)(B) of Title 20 of the
2 United States Code, the party requesting the due process hearing
3 shall not be allowed to raise issues at the due process hearing that
4 were not raised in the notice filed under this section, unless the
5 other party agrees otherwise.

6 ~~SEC. 3.— If the Commission on State Mandates determines that~~
7 ~~this act contains costs mandated by the state, reimbursement to~~
8 ~~local agencies and school districts for those costs shall be made~~
9 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
10 ~~4 of Title 2 of the Government Code.~~

O

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To: Committee Members

Date: July 8, 2011

From: Rosanne Helms
Legislative/Regulatory Analyst

Telephone: (916) 574-7897

Subject: **Technical and Non-Substantive Regulatory Changes**

California Code of Regulations (CCR) Title 1, Section 100 allows an agency to add to, revise or delete regulatory text without following the specified rulemaking procedures if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of a CCR rights provision. Due to recent statutory changes, technical and non-substantive amendments to current regulations are needed.

Proposed Changes

Staff has identified two changes that meet the above criteria within Division 18 of Title 16 of the CCR. They are as follows:

1. **Repeal §1832.5.** This section allows the Board to accept a degree from a school that had been approved to operate by the Bureau for Private Postsecondary and Vocational Education (BPPVE) as of June 30, 2007. The BPPVE was sunset on July 1, 2007.

The purpose of this section was to allow the Board to continue to accept degrees from schools that had been approved by the BPPVE prior to its sunset date. There is a provision in this section stating it shall become inoperative if a successor agency to the BPPVE is established.

Assembly Bill 48, Chapter 310 (Portantino, Statutes of 2009) created the Bureau for Private Postsecondary Education (BPPE), which replaced the BPPVE. Therefore, this section is now inoperative.

2. **Amend §1889.2(b).** This section discusses Board revocation of the registration of an MFT referral service. It states that the referral service appeals committee is to consist of three Board members, one of whom is a public member and two of whom shall be members representing two of the three license types issued by the Board. With the addition of the professional clinical counselor license (LPCCs), the Board now issues four license types. This section needs to be revised to reflect this.

Recommendation

Direct staff to make any nonsubstantive changes to the attached amendments and submit to the Board for consideration.

Attachment

Proposed Regulatory Language

Proposed Regulatory Language
07/21/11
Attachment

Repeal §1832.5

~~§1832.5 REQUIREMENTS FOR DEGREES FROM EDUCATIONAL INSTITUTIONS APPROVED BY THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION~~

~~(a) A doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university that held an approval to operate from the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007 shall be considered by the board to meet the course requirements necessary to qualify for licensure under Section 4980.40 or registration under 4980.44 of the Code provided that the degree is awarded on or before June 30, 2012.~~

~~(b) This Section will become inoperative if legislation reenacts the Private Postsecondary and Vocational Education Reform Act of 1989, Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code and the Bureau for Private Postsecondary and Vocational Education, or if legislation provides for a successor agency to the Bureau for Private Postsecondary and Vocational Education and that agency commences operations on or after January 1, 2009.~~

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4980.40.5 and 4980.44, Business and Professions Code.

Amend §1889.2

§1889.2. REVOCATION OR DENIAL OF REGISTRATION

(a) The board may revoke its registration of an MFT referral service or deny an MFT referral service application for good cause. For the purposes of this subsection, "responsible party" includes any owner, co-owner, or member on the board of directors of an MFT referral service. Good cause includes, but is not limited to, the following:

- (1) the responsible party of an MFT referral service is convicted of a felony or misdemeanor offense substantially related to the activities of an MFT referral service;
- (2) the responsible party of an MFT referral service, who is a licensee of the board, fails to comply with any provisions of Chapters 13 and 14 of the Business and Professions Code or Title 16, Division 18 of the California Code of Regulations;
- (3) an MFT referral service fails to comply with any provisions of Sections 650, 650.4, or 651 of the Code or these regulations; or

(4) an MFT referral service makes a material misrepresentation of fact in information submitted to the board.

(b) After a thorough case review, should the board decide to revoke or deny its registration of an MFT referral service, it shall give the MFT referral service written notice setting forth its reasons for revocation or denial. The MFT referral service may appeal the revocation or denial in writing, within fifteen (15) days after service of the revocation or denial notice, and request a hearing with the board's designee. The revocation is stayed at this point.

Should the board's designee decide to uphold the revocation or denial, the MFT referral service may appeal the decision of the board's designee in writing, within fifteen (15) days after service of the decision of the board's designee, and request a hearing with a referral services appeals committee appointed by the board chairperson. The hearing will take place at the next regularly scheduled board meeting, provided the appeal is received before the meeting is noticed to the public. It is at the discretion of the board's designee whether to stay the revocation further.

The referral services appeals committee shall contain three board members, one of whom shall be a public member, and two of whom shall be members representing two of the ~~three~~ four license types regulated by the board. The decision of the referral services appeals committee is final.

Note: Authority Cited: Sections 650.4 and 4980.60, Business and Professions Code. Reference: Section 650.4, Business and Professions Code.

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To: Policy & Advocacy Committee Members

Date: July 8, 2011

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Enforcement Regulations

Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe.

Legislative Efforts

SB 1111 (Negrete McLeod) was introduced in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

The Senate Business, Professions, and Economic Development Committee is currently sponsoring SB 544. This bill contains many of the same provisions as SB 1111, with intent of improving efficiency and increasing accountability for boards within DCA. If passed, SB 544 would provide healing arts boards with additional regulatory tools and authority for investigating and prosecuting violations of law. With these new authorities, it is expected that these boards will be able to reduce the average timeframe for an enforcement investigation to 12 to 18 months. SB 544 is a two-year bill, meaning it failed to pass out of the Senate, but will be eligible for consideration in 2012.

Due to the urgent need to protect consumers by streamlining the enforcement process, the Senate Business, Professions, and Economic Development Committee and DCA have asked healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 that do not require new statutory authority.

Proposed Regulatory Items

The DCA legal office has identified several components of the current and previous legislative efforts that may be established through regulations. They can be grouped into four categories:

1. Delegation of Certain Functions

Proposed Action: Use regulations to delegate to the Board's Executive Officer the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license, or allow the Executive Officer to delegate this function to another designee.

Rationale: In cases where a licensee has voluntarily admitted to charges and agreed to the revocation, surrender, or suspension of their license, there is little discretion for the Board not to adopt the agreement. Allowing the Executive Officer to approve such an agreement, instead of requiring a full board vote, will shorten the timeframe for these cases, allowing them to become effective more quickly.

2. Required Actions Against Registered Sex Offenders

Proposed Action: Use regulations to require that the Board deny or revoke a license if the applicant or licensee is required to register as a sex offender pursuant to Penal Code Section 290. In addition, require that the Board deny any petition to reinstate or reissue a license to a registered sex offender.

Rationale: The Board is already prohibited from issuing a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code. This proposal would clarify that the Board must revoke a license upon finding that an applicant or licensee was convicted of a sex offense, and would clarify that the Board must deny a petition for reinstatement or reissuance.

3. Unprofessional Conduct

Proposed Action: Use regulations to add the following as acts of unprofessional conduct:

- a. Including or permitting inclusion in a civil settlement agreement a provision prohibiting a party in a dispute from contacting, cooperating with, or filing a complaint with the Board, or requiring a party withdraw a complaint with the Board.
- b. Failing to provide the Board lawfully requested documents within a specified timeframe.
- c. Failure to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory privilege.
- d. Failure to notify the Board within a specified timeframe of felony charges or indictment, arrest, conviction, or of disciplinary action by another licensing entity.
- e. Failure to comply with a court ordered subpoena to release records.

4. Physical or Mental Impairment of Applicants for Licensure

Proposed Action: Use regulations to require that an applicant for licensure be required to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental or physical illness.

Rationale: BPC Section 820 allows a Board to order a licensee to submit to physical or mental health examinations if it appears the licensee's ability to practice in a competent manner may be impaired due to a physical or mental illness. BPC Sections 4982.1, 4989.26, 4990.28, and 4992.35 specify that the Board may refuse to issue a license or registration if it appears the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. This proposal would clarify that the Board may require an applicant undergo an evaluation or examination in order to verify an illness.

Recommended Action

Conduct an open discussion regarding the inclusion of the above items in the Board's regulations. If the above items are found acceptable, direct staff to draft regulatory language for consideration by the Board.

Attachments

Attachment A: BPC Sections 729, 820, 4982.1, 4989.26, 4990.28, and 4992.35; Education Code Section 44010; Penal Code Section 290.

Attachment B: SB 544 Analysis

Attachment C: SB 1111 Analysis

Attachment A

Business & Professions Code Section 729

(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by

imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000). For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

- (1) "Psychotherapist" has the same meaning as defined in Section 728.**
- (2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.**
- (3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.**
- (4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.**

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

Business and Professions Code Section 820

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists

designated by the agency. The report of the examiners shall be made available to the licensee and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Business and Professions Code Section 4982.1

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

Business and Professions Code Section 4989.26

The board may refuse to issue a license to an applicant if it appears he or she may be unable to practice safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to a denial of a license pursuant to this section.

Business and Professions Code Section 4990.28

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

Business and Professions Code Section 4992.35

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

Education Code Section 44010

"Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

- (a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.

- (b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- (c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- (d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.
- (e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- (g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- (h) Any attempt to commit any of the offenses specified in this section.
- (i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

Penal Code Section 290

- (a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

7. Requires the Board to revoke a license or registration for a marriage and family therapist or clinical social worker if it finds that person had sexual contact with a patient or former patient. (BPC §§4982.26, 4992.33)
8. Establishes the Health Quality Enforcement Section within the Department of Justice. This section is responsible for investigating and prosecuting proceedings against licensees and applicants for the Medical Board, Board of Podiatric Medicine and the Board of Psychology. (Government Code §12529(a))

This Bill:

1. Requires a state agency, upon written request from a healing arts board, to immediately release all records about a licensee who is in the custody of a state agency. A state agency with knowledge that a person it is investigating is licensed by a board must immediately notify that board of the investigation. (BPC §40)
2. Requires any of the following agencies to provide a board with records, upon request, including medical records, confidential records, and records related to closed or open investigations (BPC §42):
 - a. Local and state law enforcement agencies;
 - b. State and local governments;
 - c. State agencies;
 - d. Licensed health care facilities; and
 - e. Employers of a licensee of a board.
3. Prohibits a licensee of a board from including either of the following in a settlement agreement to a civil litigation action, and makes the violation unprofessional conduct (BPC §44):
 - a. A provision prohibiting another party to the dispute from contacting or cooperating with the board.
 - b. A provision prohibiting another party to the dispute from filing a complaint with the board or withdrawing a complaint already filed.
4. Allows the director of the Department of Consumer Affairs (DCA), or a designee, to audit and review inquiries and complaints, dismissals of disciplinary cases, opening or closure of investigations, and discipline short of formal accusation regarding licensees of **any healing arts board**. (Business and Professions Code §116)
5. Requires each healing arts board to annually report various information to DCA and the Legislature (BPC §505):
 - a. Total complaints closed without discipline;
 - b. Total complaints and reports referred for formal investigation;
 - c. Number of accusations filed and final disposition of accusations;

- d. Number of citations issued;
 - e. Number of final licensee disciplinary actions taken;
 - f. Total cases in the enforcement process from time of complaint, for more than six months, twelve months, eighteen months, and twenty-four months.
 - g. Average process time for complaints;
 - h. Total number of licensees in diversion or on probation for drug and alcohol abuse;
 - i. Number of probation violation reports;
 - j. Number of petitions for reinstatement.
6. States that conviction for any act of sexual abuse, misconduct, or conviction of a felony requiring registration as a sex offender is considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board. (BPC §726(b))
7. States that a conviction or violation of a federal or state statute or regulation regulating dangerous drugs or controlled substances is unprofessional conduct, and that discipline may be ordered against a licensee or a license denied once time for appeal has elapsed. (BPC §§734, 735)
8. States use of any controlled substance, dangerous drugs, or alcoholic beverages to the extent it is dangerous to the licensee, others, or to the extent it impairs the ability of the licensee to safely practice is a misdemeanor and unprofessional conduct and discipline may be ordered against a licensee by a healing arts board. (BPC §736)
9. Expands unprofessional conduct of a licensee of a healing arts board to include the following (BPC §737):
- a. Failure to provide information in a timely manner to the board or its investigators upon request.
 - b. Failure to cooperate and participate in an investigation or disciplinary proceeding against the licensee.
10. Requires a licensee of any healing arts board to report the following to their licensing entity (BPC §802.1):
- a. The indictment or information charging them with a felony.
 - b. Conviction of the licensee of any felony or misdemeanor.
 - c. Any disciplinary action taken by another licensing entity or authority of this state, another state, or the federal government.
11. Requires the report referenced in #10 above to be made within 30 days of the indictment, charging of the felony, or of the arrest, conviction, or disciplinary action, and makes failure to report subject to a fine of \$5,000 and is considered unprofessional conduct.

12. Requires that the clerk of the court rendering a judgment to report within 10 days that a licensee of a healing arts board has committed a crime or is liable for any death or injury resulting in a judgment of more than \$30,000 due to negligence, error, or unauthorized professional services. (BPC §803)
13. Requires a prosecuting agency to notify a healing arts board of any filings of a felony against one of their licensees immediately. (BPC §803.5)
14. Requires the Department of Justice to submit any subsequent reports or information to a board regarding one of its licensees within 30 days from notification of subsequent arrests, convictions, or other updates. (BPC §803.7)
15. Requires the office of the Attorney General to serve an accusation, or submit to a healing arts board for service, within 60 calendar days of receipt from the board. (BPC §803.8(a))
16. Requires the office of the Attorney General to serve a default decision, or submit to a healing arts board for service, within 5 days after the time period allowed for filing a notice of defense. (BPC §803.8(b))
17. Requires the office of the Attorney General to set a hearing date within three days of receiving a notice of defense, unless the healing arts board instructs otherwise. (BPC §803.8(c))
18. Adds issuing a limited or restricted license to the list of actions a licensing agency may take if it determines a licensee is unable to practice safely due to mental or physical illness. (BPC §822)
19. Requires a healing arts board to query the federal National Practitioner Data Bank prior to doing the following (BPC §857):
 - a. Granting a license to an applicant who lives in another state.
 - b. Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in this state or another state.
 - c. Granting a petition for reinstatement of a revoked or surrendered license.
20. Allows a healing arts board to query the data bank before issuing any license. The board may charge a fee to cover the cost of the query. (BPC §857)
21. Makes practicing a healing art without a current and valid license, a licensee supervising the practice of such a person, or fraudulently buying, selling, or obtaining a license to practice a healing art, a public offense punishable by a fine of up to \$100,000 and one year in jail, or both. (BPC §880)
22. Requires the Board to revoke a license for a marriage and family therapist or clinical social worker if it finds that person has committed a sex offense, as defined. (BPC §§4982.26, 4992.33)
23. Allows a board to give its executive officer authority to adopt a proposed default decision to revoke a license if the licensee fails to file a notice of defense or appear at the hearing. The executive officer may also adopt a proposed settlement agreement to

revoke a license if the licensee has agreed to the revocation or surrender of the license. (BPC §4990.44)

24. The executive officer must report the number of these default decisions and settlement agreements adopted at scheduled board meetings. (BPC §4990.44)
25. Allows the board to enter into a settlement agreement with a licensee or applicant. Settlement agreements against a licensee are considered public record and must be posted on the board's web site. (BPC §4990.45)
26. Requires a license be automatically suspended while a licensee is incarcerated after conviction of a felony, even if the conviction is being appealed. Upon notification of the conviction, the board must do the following: (BPC §4990.46(a),(b))
 - a. Determine the duration of the suspension.
 - b. Notify the licensee in writing of the suspension.
 - c. If determined that the conviction was substantially related to the qualifications, functions, or duties of the licensee, the license must be suspended until the time for appeal has elapsed.
27. States that a conviction or charge regulating dangerous drugs or controlled substances, or a conviction of Penal Code sections 187, 261, 262, or 288 (which outline crimes of murder, rape, or lewd or lascivious acts) are substantially related to the qualifications, functions, or duties of a licensee and no hearing is needed to decide this issue. However, a board may decline or set aside the suspension when it appears to be in the interest of justice, or to maintain the integrity or confidence in the regulated practice. (BPC §4990.46(c))
28. States that discipline may be ordered against a licensee once the following has happened (BPC §4990.46(d)):
 - a. The time for appeal has elapsed;
 - b. The conviction has been affirmed on appeal; or
 - c. An order grants probation and suspends the imposition of the sentence.
29. States that once the conviction of one of the actions described in item #28 is finalized or the probation has been granted, the penalty must be heard by an administrative law judge. (BPC §4990.46(d))
30. Requires the board to deny an application, revoke the license, and not reinstate or reissue the license of a licensee or applicant who is required to register as a sex offender. (BPC §4990.48)
31. Allows a board the authority to examine the records of patients, in the office of a licensee, who have complained to the board about that licensee. (BPC §4990.49(a))
32. Allows the Attorney General and the board to investigate alleged violations of the law within the following constraints: (BPC §4990.49)

- a. Documents relevant to the investigation may be inspected and copied if the patients written permission is obtained.
- b. Documents related to a licensee's business operations may be inspected and copied where relevant.
- c. Review and copying of documents must not unnecessarily disrupt business operations.
- d. A licensee has 10 days to comply with a request for certified documents by the Attorney General or the board. Failure to comply is unprofessional conduct unless good cause can be shown.

33. Sets the following penalties: (BPC §4990.50)

- a. For a licensee or health care facility that fails or refuses to comply with a request for a patient's certified medical records (with patient's written authorization): \$1,000 per day the records are not produced after the 15th day, up to \$10,000.
- b. For a licensee or health care facility that fails or refuses to comply with a court order mandating the release of records to the board: \$1,000 per day for each day after the due date set by the court, up to \$10,000. Licensee is guilty of a misdemeanor and subject to a fine of up to \$5,000.
- c. Multiple violations of the above subject a licensee to a fine of up to \$5,000 or six months in county jail, or both. Multiple violations of the above subject a health care facility to a fine of up to \$5,000 and reporting to the State Department of Public Health for disciplinary action with respect to licensure.
- d. Failure to comply with a court order mandating a release of records is unprofessional conduct and grounds for suspension or revocation of a license.

34. Requires a licensee's employer to report any of the following to the board within 15 business days, and makes failure to report subject to a fine of up to \$100,000 if it is a willful failure to report, or \$50,000 if it is not a willful failure: (BPC §4990.51)

- a. Suspension or termination for cause.
- b. Resignation in lieu of suspension or termination for cause.

35. Requires the board to post the following on its web site for each licensee, along with disclaimers and explanations of the information being disclosed, and an explanation of the types of information not disclosed. (BPC §4990.52)

- a. The status of the license, including good standing, subject to temporary restraining order, interim suspension order, or subject to a restriction or cease practice order;
- b. Whether the licensee has been subject to discipline by the board or by any other board;
- c. Any felony convictions;
- d. All current accusations filed by the Attorney General;

- e. All malpractice judgments or arbitration awards;
- f. A hospital disciplinary action resulting in termination or revocation of hospital staff privileges; and
- g. A misdemeanor conviction resulting in disciplinary action.

The website must have disclaimers and explanations of the information being disclosed, as well as an explanation of the types of information not disclosed. (BPC §4990.52)

36. Requires the board to automatically suspend a license if the licensee has a license in another state or with the federal government and that license is suspended or revoked. The board may decide not to suspend the license for good cause when it appears to be in the interest of justice or maintains the integrity of the profession. This does not apply to a licensee who maintains primary practice in California. (BPC §4990.53)
37. Allows any healing arts board to utilize the Health Quality Enforcement Section and its vertical investigative model. (Government Code §12529.8)

Comment:

- 1) **Legislative Intent.** Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe. The intent of this bill is to improve efficiency and increase accountability for boards within DCA, by providing these boards with additional regulatory tools and authority for investigating and prosecuting violations of law. With these new authorities, it is expected that healing arts boards will be able to reduce the average timeframe for an enforcement investigation to 12 to 18 months.
- 2) **Previous Legislation.** SB 1111 (Negrete McLeod) was introduced in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was also to provide the boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.
- 3) **Attorney General's Office Timeframes.** This bill requires the Attorney General's office to submit a default decision within five days of the time period allowed to file a notice of defense, and to set a hearing date within three days of receiving notice of defense. Currently these processes are taking approximately two to three months, and three to four months, respectively. Staff recommends a more feasible time frame, such as thirty days, be considered.
- 4) **National Databank.** This bill requires the Board to query the federal National Practitioner Data Bank prior to the licensure of certain applicants, and states the Board may query this databank prior to issuing any license. It also allows the Board to charge a fee to cover the cost of the query.

This would require a significant amount of staff time, as well as impose significant costs on the Board to run the queries. Although the statute does allow the Board to charge a fee to cover the costs, a statute or regulatory change would be needed in order to be able to charge a fee.

In addition, this bill requires the Board to post on its web site whether or not a licensee has been disciplined by another state. There would be no way for the Board to obtain this information unless it queried all applicants for licensure.

Staff recommends an amendment be considered that would clarify that all applicants for licensure must be queried, and a corresponding fee be set in statute that would allow the Board to cover the costs of doing this.

- 5) Unlicensed Practice.** This bill adds a new section of law stating that notwithstanding any other provision of law, a licensee who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art is guilty of a crime.

Licensees of the Board routinely supervise registrants or trainees who are gaining experience toward licensure. An amendment is needed that does one of the following:

- a. Removes the term “notwithstanding” so that provisions allowing supervision of registrants or trainees remain valid; or
- b. Inserts language exempting from this provision a qualified supervisor who is supervising a trainee or registrant.

- 6) Sexual Contact with a Patient.** This bill would require the Board to revoke a license for a marriage and family therapist or clinical social worker if it finds that person has committed a sex offense. The bill also contains some general language requiring the board to revoke a license of a psychotherapist if a sex offense has been committed.

Current Board statute, BPC Section 4990.40, already requires the Board to revoke a license or registration upon finding that they engaged in sexual contact with a patient or former patient when the relationship was terminated for that reason. Staff suggests that the language this bill is adding in a new section as 4990.47 instead be added to section 4990.40, in order to expand the scope of that section to include committing a sex offense, as well as to define the term “sex offense.”

In addition, this bill writes language into code specifically requiring the license of an MFT or LCSW be revoked if a sex offense has been committed. If the suggested language above is added to general Board statute, it would cover all four of the Board’s licenses and adding language to each licensing statute would no longer be necessary. However, if this language remains in MFT and LCSW statute, staff recommends conforming language be added to LEP and LPCC licensing law.

- 7) Suspension of a License.** This bill requires the Board to suspend a license under certain conditions, such as having a suspended or revoked license in another state or being incarcerated after conviction of a felony. However, provisions are needed in order to establish procedures for expiration, renewal, and reinstatement of a license that has been suspended under these conditions.
- 8) Internet Disclaimers.** This bill requires the board to post certain disciplinary information about its licensees on its web site for each licensee, along with disclaimers and explanations of the information being disclosed, and an explanation of the types of information not disclosed. The bill requires these explanations be adopted by regulation.

Staff requests that the provision requiring explanations be adopted by regulation be deleted from the bill, as it is not necessary that standard explanations be placed in regulation.

9) Unnecessary Language. There are two sections in this bill, BPC §§4990.50(h), and 4990.53(i), which place language in statute for this Board that relates specifically to another board. Specifically, these sections state that the Dental Board, Medical Board, and the Board of Psychology are not subject to the requirements of the section being added. These sections are not relevant to this Board and should be deleted.

10) Support and Opposition.

Support: None on file.

Oppose Unless Amended: California Nurses Association

Opposition: None on file.

11) History.

2011

May 2 Set, first hearing. Hearing canceled at the request of author.

Apr. 21 Set for hearing May 2.

Apr. 20 Hearing postponed by committee.

Apr. 14 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B. P. & E.D.

Apr. 8 Set for hearing April 25.

Mar. 24 Re-referred to Coms. on B. P. & E.D. and JUD.

Mar. 21 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Mar. 3 Referred to Com. on RLS.

Feb. 18 From printer. May be acted upon on or after March 20.

Feb. 17 Introduced. Read first time. To Com. on RLS. for assignment. To print.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1111 **VERSION:** INTRODUCED FEBRUARY 17, 2010

AUTHOR: NEGRETE MCLEOD **SPONSOR:** DEPARTMENT OF CONSUMER
AFFAIRS

RECOMMENDED POSITION: SUPPORT

SUBJECT: HEALTH CARE ENFORCEMENT REFORM ACT

Existing Law:

- 1) Requires the Board of Behavioral Sciences (Board) to disclose information on its web site relevant to an individual's license status and address of record. (Business and Professions Code Section 27)
- 2) Allows the Director (Director) of the Department of Consumer Affairs (DCA) to audit and review inquires or complaints regarding licensees, dismissals of disciplinary cases, investigations and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine. (BPC Section 116)
- 3) Allows an Administrative Law Judge (ALJ) to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (BPC 125.3)
- 4) Allows the Board to issue a licensee a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Board and allows the licensee to contest the finding of violation and assessment of fine at a hearing conducted in accordance to the Administrative Procedures Act (APA). (BPC 125.9)
- 5) Specifies that the director may employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law and that it is the intent of the Legislature that inspectors used by the Board shall not be required to be employees of the Division of Investigation, but may be either employees, or under contract to the Board. (BPC 155)
- 6) Prohibits the Board from entering into a settlement with a licensee or applicant before the Board has issued an accusation or statement of issues. (Government Code Section 11415.60)
- 7) Prohibits a physician and surgeon from including in a civil dispute settlement an agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with the Medical Board based on any action arising from his or her practice. (BPC 2220.7)
- 8) Requires the Medical Board to submit an annual report to the legislature relating to enforcement activity of the Board. (BPC 2312)

This Bill:

March 18, 2010

- 1) Establish the Consumer Health Protection Enforcement Act with the specified intent to provide the healing arts boards within DCA with regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.
- 2) Requires the Board to post on its web site discipline of a licensee by another board of another jurisdiction, civil judgments against a licensee and any felony conviction of a licensee reported to the Board. (BPC 720.28)
- 3) Allows the Director to audit and review inquires or complaints regarding licensees, dismissals of disciplinary cases, investigations and discipline short of formal accusation by the Board. (BPC 116)
- 4) Allows an ALJ to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the *actual* costs of investigation and enforcement of the case and to pay the Board's actual cost of monitoring while on probation. (BPC 125.3)
- 5) Allows the Board to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person that owes the Board money. (BPC 125.4)
- 6) Allows the Board to conduct a citation appeal hearing with its Executive Officer and two board members, instead of requiring the appeal to proceed through the APA process. (BPC 125.9)
- 7) Specifies that the Board may contract with either the Medical Board or with the Department of Justice to provide investigative services as determined necessary by the Board's executive officer. (BPC 155)
- 8) Establishes the Health Quality Enforcement Unit within the Division of Investigations, with the primary purpose of investigating complaints against licensees and applicants within the jurisdiction of the healing arts boards. (BPC 159.5)
- 9) Allows the executive officer of the Board to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued. (BPC 720.2)
- 10) Allows the executive officer of the board to adopt a proposed settlement agreement when are administrative action to revoke a license has been filed by the board and the licensee has agreed to surrender his or her license. (BPC 720.2)
- 11) Authorizes the Board to enter into a settlement with a licensee prior to the board's issuance of an accusation or statement of issues against the licensee or applicant and prohibits that licensee from petitioning for modification of the terms of that settlement. (BPC 721.4)
- 12) Allows the Director to issue a temporary order that a licensee cease all practice when evidence that the licensee's conduct poses an imminent risk of serious harm to the public health, safety, or welfare or that the licensee has failed to comply with a request to inspect records. (BPC 720.6(a))
- 13) Requires the Board's executive officer, to the extent practicable, to provide notice to a licensee subject to a temporary cease practice order, at least 24 hours prior to the hearing. (BPC 720.6(b)(1))

- 14) Specifies that a temporary cease to practice order issued pursuant to this bill, will remain in effect up to 120 days. (BPC 720.6(b)(2))
- 15) Requires the executive officer to, upon receipt of new information relevant to a cease practice order, provide that information to the Director for review. (BPC 720.3(e))
- 16) Provides for the automatic suspension of a license during the time that a licensee is incarcerated after the conviction of a felony and provides that the Board shall suspend the license until the time for appeal has elapsed if, upon review by an ALJ, the conviction was substantially related to the qualifications, functions or duties of the licensee. (BPC 720.8)
- 17) Specifies that a conviction of a charge of violating any state or federal statute or regulation relating to controlled substances or dangerous drugs is conclusively presumed to be substantially related to the qualifications, functions, or duties of the licensee and no hearing on the automatic suspension will be held. (720.8(c))
- 18) Prohibits a licensee from including in a civil dispute settlement an agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with the Board based on any action arising from his or her practice. (BPC 720.14)
- 19) Authorizes the Attorney General to inquire into any alleged violation of the Board's licensing law and to inspect records relevant to complaints received by the Board. (BPC 720.16)
- 20) Provides that a licensee must comply with a request for the certified records of a patient within 10 days of receipt of that request or be subject to a civil penalty of \$1,000 a day. (BPC 720.18)
- 21) Requires a state agency, upon receiving a request from the Board, to provide all records in the custody of an agency and requires state agencies to notify the Board of an investigation the agency is conducting involving a Board licensee. (BPC 720.20)
- 22) Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of the Board to provide records requested prior to receiving payment from the Board. (BPC 720.22)
- 23) Requires an employer of a Board licensee to report to the Board the suspension or termination for cause of any Board licensee. (BPC 720.24)
- 24) Requires the Board to report annually to DCA and the Legislature information relating to enforcement activity, including, consumer calls received by the Board, total number of complaint forms received by the Board, the total number of convictions reported to the Board, and the total number of licensees on probation. (BPC 720.26)
- 25) Requires the Attorney General's office to serve an accusation within 60 calendar days after the receipt of a request from the Board.(BPC 720.30)
- 26) Requires the Attorney General's office to serve a default decision within five days following the time period allowed for the filing of a Notice of Defense and to set a hearing within three days of receiving a Notice of Defense, unless otherwise instructed by the Board. (BPC 720.30)
- 27) Requires the Board to check the National Practitioner Data Bank for previous disciplinary action in another state against a licensees or applicant prior to granting or renewing a license. (BPC 720.35)

- 28) Makes the violation of any state or federal statute or regulation relating to dangerous drugs or controlled substances unprofessional conduct. (BPC 734 and 735)
- 29) Makes failure to furnish information in a timely manner to the Board and to cooperate in any disciplinary investigation unprofessional conduct. (BPC 737)
- 30) Requires Board licensees to report to the Board any arrest, indictment, conviction or disciplinary action taken against a licensee by another licensing entity of this state or another state. (BPC 802.1)
- 31) Requires the district attorney, city attorney, or other prosecuting agency to notify the Board and the clerk of the court of any filings against a licensee of the Board charging a felony. (BPC 803.5)
- 32) Requires the Department of Justice to submit notice of subsequent arrests, convictions or other updates to the Board with 30 days. (BPC 803.7)
- 33) Allows DCA to annually establish a maximum fee amount for the Board, adjusted consistent with the California Consumer Price Index. (BPC 870)
- 34) Specifies that it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice without a current and valid license. (BPC 880)
- 35) Allows the Board to use the Department of Justice Health Quality Enforcement Section to provide investigative activities.(Government Code Section 12529)

Comment:

1) Author's Intent. This bill was introduced as part of DCA's Consumer Protection Enforcement Initiative (CPEI). A number of DCA recommendations require statutory changes in order to provide authority for the Boards under DCA to move forward with recommendations.

2) Support and Opposition.

Support:

None on File

Opposition:

None on File

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To: Committee Members **Date:** July 7, 2011
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative/Regulatory Analyst
Subject: Review of Board Sponsored and Monitored Legislation

BOARD-SPONSORED LEGISLATION

SB 274 (Wyland) Professional Clinical Counselors

The Board is in the process of implementing the LPCC licensing program. This bill proposes to do the following to assist in the implementation of the LPCC program:

- Extend the grandparenting period through December 31, 2011, for those seeking licensure as an LPCC, as the current grandparenting period is set to expire before the Board is able to accept applications.
- Make a technical change to allow supervision by professional clinical counselor or equivalent as acceptable supervision for a grandparenting candidate.
- Remove the requirement of annual license renewal for grandparented LPCCs.
- Clarify existing law regarding the definition of engaging in practice.
- Require clinical counselor interns to provide the same level of documentation of their experience as applicants for other licenses issued by the Board

Status: This bill is on third reading on the Assembly Floor.

SB 363 (Emmerson) Marriage and Family Therapists

This bill proposes three amendments to clarify the law as it relates to marriage and family therapist (MFT) interns and trainees. The amendments are as follows:

1. **MFT Trainee Practicum:** Amends the law to allow a trainee to counsel clients outside of practicum if the period outside of practicum is less than 90 calendar days and if that period is immediately preceded and immediately followed by enrollment in a practicum course.

2. **Client-Centered Advocacy:** Under current law, the number of client-centered advocacy hours that an MFT intern may obtain is limited only by the amount of direct supervisor contact hours acquired by the intern. For example, if an intern received the minimum number of direct supervisor contact hours for 104 weeks, that individual could potentially receive credit for 1,146 hours of client-centered advocacy.

Client-centered advocacy is defined in the Business and Professions Code as including, but not limited to, “researching, identifying, and accessing resources, or other activities related to obtaining or providing services and support for clients or groups of clients receiving psychotherapy or counseling services.” However, in order to properly prepare them for clinical practice, the majority of an MFT intern’s experience hours should be gained by providing psychotherapy. This bill proposes to limit the client centered advocacy allowed for an MFT intern to 500 hours.

3. **Supervision of MFT Interns:** Under current law, Licensed Professional Clinical Counselors (LPCCs) are not allowed to supervise MFT interns. However, all of the other licensees of the Board of Behavioral Sciences are able to supervise these interns. This bill proposes to allow LPCCs to supervise MFT interns if they meet the additional training and education requirements that are required of them by law in order to treat couples and families.

Status: This bill is in the Assembly Appropriations Committee.

SB 704 (Negrete McLeod) Healing Arts: Licensees: Board of Behavioral Sciences

This bill proposes a restructuring of the examination process for the Board’s Marriage and Family Therapist (MFT), Professional Clinical Counselor (LPCCs) and Clinical Social Worker (LCSW) licensees.

Under current law, applicants must take and pass a standard written examination upon completion of examination eligibility requirements, including completion of experience requirements. Once an applicant passes the standard written examination, they are eligible to take a clinical vignette examination. An applicant must pass both examinations to be eligible for licensure.

SB 704 requires applicants for licensure to pass two new exams: a California law and ethics examination and a clinical examination. These new exams would replace the standard written and the clinical vignette exams currently in place.

Under this bill, the timing of when examinations would be taken would change. The California law and ethics examination would be taken during the registration period while the applicant gains experience hours. The clinical examination would be taken once the registrant has completed all supervised work experience, education requirements, and passed the California law and ethics examination.

Status: This bill is on third reading on the Assembly Floor.

SB 943 (Committee on Business, Professions, and Economic Development) – Board Omnibus Bill

This bill proposes technical clean-up amendments to the Board’s marriage and family therapy, licensed educational psychologist, licensed clinical social worker, and licensed professional clinical

counselor statute. The bill also proposes amendments which either includes LPCCs in statute where the Board's other licensees are already included, or makes LPCC law consistent with the law for the Board's other licenses.

Status: This bill is in the Assembly Appropriations Committee.

BOARD-SUPPORTED LEGISLATION

AB 40 (Yamada) Elder Abuse: Reporting

This bill would require mandated reporters to report suspected instances of elder or dependent adult abuse that occurred in a long-term care facility to both the local ombudsman and the local law enforcement agency.

Under current law, a mandated reporter must report suspected instances of elder or dependent adult abuse occurring in a long-term care facility to either the local ombudsman or the local law enforcement agency. However, the law restricts local ombudsman programs from sharing reports of such abuse with local law enforcement without the consent of the subject of abuse or his or her legal representative.

By requiring mandated reporters to report to both entities, this bill protects victims by ensuring that both the local ombudsman and local law enforcement are aware of all reports of this type of criminal activity.

The Board adopted a "support" position on this legislation at its meeting on May 18, 2011.

Status: This bill is in the Senate Human Services Committee.

AB 154 (Beall) Health Care Coverage: Mental Health Services

This bill would require a health care services plan to provide coverage for the diagnosis and medically necessary treatment of a mental illness under the same terms and conditions applied to other medical conditions. Current mental health parity laws only require coverage for severe mental illness and a child's severe emotional disturbance.

The Board adopted a "support" position on this legislation at its meeting on May 18, 2011.

Status: This is a two-year bill.

AB 367 (Smyth) Elder Abuse: Reporting

Current law requires an agency without jurisdiction to accept and refer a report of child abuse or neglect. However, a similar provision does not exist for elder and dependent adult abuse or neglect. This bill would require a county adult protective services agency or a local law enforcement agency to accept and refer a report of suspected elder and dependent adult abuse even if that agency lacks the jurisdiction to investigate the report.

The Board adopted a “support” position on this legislation at its meeting on May 18, 2011.

Status: This is a two-year bill.

AB 956 (Hernandez, R.) Marriage and Family Therapy: Interns and Trainees: Advertisements

This bill would require marriage and family therapist interns and trainees to inform each client, prior to performing professional services, that they are an unlicensed intern or trainee, provide the name of his or her employer, and to indicate that he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

This bill would also require marriage and family therapist interns and trainees to be clear in their advertising that they are not yet licensed, and are under supervision. It would prohibit the acronym “MFTI” unless “marriage and family therapy intern” is spelled out in the advertisement.

The Board adopted a “support” position on this legislation at its meeting on May 18, 2011.

Status: This bill is on third reading on the Senate floor.

SB 146 (Wyland) Healing Arts: Professional Clinical Counselors

This bill adds licensed professional clinical counselors (LPCCs) to statutory code sections consistent with the inclusion of other Board licensees. Key amendments include adding LPCCs to the list of mandated reporters, and adding LPCCs to the list of practitioners that are defined as a psychotherapist.

The Board adopted a “support” position on this legislation at its meeting on May 18, 2011.

Status: This bill is in the Assembly Appropriations Committee.

SB 541 (Price) Regulatory Boards: Expert Consultants

This bill would allow a board under the jurisdiction of the Department of Consumer Affairs (DCA) to contract with an expert consultant without being subject to the provisions of the State Contract Act, if the expert is providing any of the following services:

- Providing an expert opinion on enforcement related matters;
- Assisting the board as a subject matter expert in exam development, exam validation, or occupational analysis; or
- Evaluating the mental or physical health of a licensee or applicant for licensure.

The intent of this bill is to clear up ambiguity as to whether current law applies to the DCA’s subject matter experts. A formal consulting services contract is a lengthy process which may greatly inhibit the ability of DCA boards and bureaus to utilize subject matter experts.

The Board adopted a “support” position on this legislation at its meeting on May 18, 2011.

Status: This bill is in the Assembly Appropriations Committee.

SB 718 (Vargas) Elder or Dependent Abuse

Current law requires mandated reporters of elder or adult physical abuse to report suspected abuse by telephone immediately or as soon as possible and submit a written report within two working days. This bill would instead allow a mandated reporter of elder or adult physical abuse to report suspected instances of abuse by telephone or by a confidential Internet reporting tool immediately or as soon as practicably possible, and if reported by telephone, then submit a written report or Internet report within two working days.

The Board adopted a “support” position on this legislation at its meeting on May 18, 2011.

Status: This bill is in the Assembly Appropriations Committee.

THE BOARD IS MONITORING THE FOLLOWING LEGISLATION:

AB 171 (Beall) Autism Spectrum Disorder

Due to loopholes in current law, those with autism spectrum disorders are frequently denied coverage for their disorder. This bill would require every health care service plan contract or health insurance policy that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

The Board adopted a “support if amended” position on this legislation at its meeting on May 18, 2011. The Board has asked that a minor technical clarification be made.

Status: This is a two-year bill.

AB 181 (Portantino and Beall) Foster Youth: Mental Health Bill of Rights

This bill would create a mental health bill of rights for children in foster care and transition-age foster youth.

The Board adopted a “support if amended” position on this legislation at its meeting on May 18, 2011. The Board requested minor amendments be made for clarity.

Status: This is a two-year bill.

AB 671 (Portantino) Child Welfare Services – Education and Training Requirements

This bill would require a social work supervisor working for a county child welfare services agency to have a master’s degree in a specified field of study, or education and experience deemed equivalent.

The intent of this bill is to provide increased consumer protection for those utilizing the child welfare services system by ensuring that supervisors have appropriate education and training.

The Board adopted a “support if amended” position on this legislation at its meeting on May 18, 2011. The Board requested that the bill be amended to allow a Master’s degree in all degree titles that are acceptable for licensure as a marriage and family therapist. Additionally, the Board felt that

“equivalent education and experience” allowed in lieu of a Master’s degree needed further definition, and that allowable exemptions to the law be more specifically detailed.

Status: This is a two-year bill.

AB 675 (Hagman) Continuing Education

This bill would prohibit certain courses from being accepted as meeting continuing education requirements for licensees under the jurisdiction of the Department of Consumer Affairs. Prohibited courses include those that advance or promote labor organizing on behalf of a union, and courses that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy.

The Board adopted an “oppose” position on this legislation at its meeting on May 18, 2011. It is very important for the Board’s licensees to know the law regarding their profession, understand the legislative process in order to be able to advocate for patients, and be informed of recent statutory and regulatory changes that affect their profession. It is unclear whether continuing education courses that discuss the legislative process and any changes to statutes and regulations affecting the profession would constitute “courses that advance or promote statutory or regulatory changes.” In addition, it is unclear if the Board’s mandatory continuing education course covering law and ethics may fall into one of the prohibited course categories.

Status: This is a two-year bill.

AB 774 (Campos) Health Facilities: Licensure

Under existing law, the licensure requirements for professional personnel in state and other government health facilities licensed by the State Department of Public Health (DPH) must not be less than the requirements for professional personnel in health facilities under private ownership. However, the requirement for licensure in a government health facility licensed by DPH may be waived for individuals gaining experience to qualify for licensure as a marriage and family therapist or a licensed clinical social worker for up to four years from the date employment began. DPH may extend the waiver for one year under certain circumstances.

While current law allows only DPH to grant a waiver, marriage and family therapists and clinical social workers are working in other California agencies and departments as well. These other agencies are not currently able to grant a waiver. This bill would require DPH and the State Department of Mental Health to grant a waiver and a waiver extension to a marriage and family therapist and a clinical social worker if certain criteria are met.

The Board opted to take no position on this legislation at its meeting on May 18, 2011.

Status: This is a two-year bill.

AB 958 (Berryhill, B.) Regulatory Boards: Limitations Periods

This bill would reduce the Board’s statute of limitations period for filing an accusation against a licensee. The proposed timeframes are the first occurring of the following:

- Within one year after the Board discovers an alleged act or omission (current law gives the Board three years); or

- Within four years after the alleged act or omission occurs (current law gives the Board seven years).

The Board adopted an “oppose” position on this legislation at its meeting on May 18, 2011. The bill is contrary to the Board’s mandate of public protection. Business and Professions Code §4990.16 states that “Protection of the public shall be the highest priority of the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

Status: This is a two-year bill.

AB 993 (Wagner) Mediation and Counseling Services: Discipline and Immunity

This bill would require a complaint made against a mediator or licensed mental health professional, made against that person while he or she was providing services required by the court, must be made to the court that required the mediation or counseling services. If the court determines that unprofessional conduct has occurred, it must refer the matter to the licensing board for disciplinary action.

The Board adopted an “oppose” position on this legislation at its meeting on May 18, 2011, noting that a person acting as a licensed mental health professional would fall under jurisdiction of the Board. The bill also removes the discretion of the licensing entity to judge, using its particular set of laws, whether their licensee should be subject to disciplinary action.

Status: This is a two-year bill.

AB 1205 (Berryhill, B.) Certified Applied Behavior Analysts

This bill requires that no person may hold him or herself out to be a behavior analyst, or an assistant behavior analyst, unless the person is licensed by the Board of Behavioral Sciences.

The Board opted to take no position on this legislation at its meeting on May 18, 2011.

Status: This is a two-year bill.

SB 544 (Price) Professions & Vocations: Regulatory Boards

This bill would provide healing arts boards under the Department of Consumer Affairs with additional regulatory tools and authority for investigating and prosecuting violations of the law, in an effort to reduce the average timeframe for enforcement investigations to 12 to 18 months.

The Board adopted a “support if amended” position on this legislation at its meeting on May 18, 2011. The Board supports the intent of this bill, which is to protect consumers from potentially dangerous practitioners by improving the efficiency and increasing the accountability of healing arts boards in their investigations of enforcement matters. However, it had several suggested amendments intended to address concerns and to increase the efficiency of the process.

Status: This is a two-year bill.

AB 747 (Kehoe) Continuing Education: Lesbian, Gay, Bisexual and Transgender Patients

This bill would require marriage and family therapists and licensed clinical social workers to take at least one continuing education course of two to five hours in length, that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons.

The Board opted to take no position on this legislation at its meeting on May 18, 2011.

Status: This bill is in the Assembly Appropriations Committee.

Updated: July 6, 2011

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To: Policy and Advocacy Committee

Date: July 5, 2011

From: Rosanne Helms
Legislative/Regulatory Analyst

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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 implements 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 approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on May 24, 2011. It became effective immediately.

Title 16, CCR Section 1887.3, HIV/AIDS Continuing Education Course for LPCCs

This proposal revises current Board regulations to include LPCCs in the requirement to take a one-time, seven hour continuing education course covering the assessment and treatment of people living with HIV/AIDS. The Board approved the proposed text at its February 23, 2011 meeting and directed staff to submit a regulation package to make the proposed change. This rulemaking will be submitted to OAL for initial notice by the end of this year.

Title 16, CCR Sections 1820, 1820.1, 1820.2, 1820.3, Exemptions for Sponsored Free Health Care Events

As a result of AB 2699 (Bass, Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily

exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation.

DCA is has drafted a model regulation package for each of its healing arts boards to use as a standardized framework and is currently in the process of making revisions to this framework. Once the framework is finalized staff will present it to the Board for approval.

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, 2008. Due to changes in regulations from the LPCC regulation package as well as other changes to the proposed text, staff will seek approval to a revised version of this rulemaking proposal at the August 17-18 2011 Board meeting.