



Board of  
Behavioral  
Sciences

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**AMENDED  
BOARD MEETING NOTICE  
August 17-18, 2011**

Department of Consumer Affairs  
1625 North Market Blvd.  
First Floor Hearing Room  
Sacramento, CA 95834

***Wednesday August 17th  
8:00 a.m.***

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

- I. Introductions
- II. Petition for Modification of Probation Terms:
  - a. Cassandra Kendall, ASW 21095
  - b. Balvinder Lallian, IMF 63646
- III. Petition for Early Termination of Probation, Connor McFadden, MFC 47257

**BOARD CLOSED SESSION**

- IV. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters
- V. Pursuant to Government Code Section 11126(e), the Board Will Meet in Closed Session for Confer and Receive Legal Advice from Counsel (*Ventimiglia v. Board of Behavioral Sciences*)

**FULL BOARD OPEN SESSION**

- VI. Presentation by Carolyn Fink, LCSW, Regarding The Soldiers Project
- VII. Public Comments for Items Not on the Agenda
- VIII. Suggestions for Future Agenda Items
- IX. Adjournment



Governor  
Edmund G. Brown Jr.  
State of California  
State and Consumer  
Services Agency  
Department of  
Consumer Affairs

**Thursday, August 18<sup>th</sup> 8:00 a.m.**

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

- X. Introductions
- XI. Approval of the May 18-19, 2011 Board Meeting Minutes
- XII. Executive Officer's Report
  - a. Budget Report
  - b. Operations Report
  - c. Personnel Update
  - d. Licensed Professional Clinical Counselor Update
  - e. Sunset Review Update
- XIII. Licensing and Examination Committee Report
- XIV. Compliance and Enforcement Committee Report
- XV. Policy and Advocacy Committee Report
  - a. Discussion and Possible Action Regarding Senate Bill 462 (Blakeslee)
  - b. Discussion and Possible Regulatory Action to amend California Code of Regulations Title 16, Section 1811 Relating to Advertising
  - c. Discussion on Possible Action Regarding Regulatory Changes to Implement Provisions of Senate Bill 1111 (Negrete McLeod, 2010)
  - d. Discussion and Possible Action Regarding the Use of the Title "Licensed Marriage and Family Therapist" in Board Licensing Law
  - e. Discussion and Possible Regulatory Action to Make Nonsubstantive and Technical Changes to California Code of Regulations Title 16, Sections 1832.5 and 1889.2
  - f. Legislative Update
  - g. Rulemaking Update
- XVI. Discussion and Possible Action on Assembly Bill 1424 (Perea)
- XVII. Suggestions for Future Agenda Items
- XVIII. Public Comment for Items Not on the Agenda
- XIX. Adjournment

*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](http://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.

## BACKGROUND

Many of our service members have suffered psychological injuries no less serious than the visible scars of war. Every military service member and his or her family is affected in some way by the disruption of normal life which may begin with deployment orders and continue through the challenges of readjustment upon coming home.



Recent studies indicate that 35% of Iraq war veterans access mental health services in the year they return home. Reservists and National Guard members have made up 30- 40% of the forces in Iraq and Afghanistan. They will be returning to their communities in large numbers, where they will need services in the private sector.

As mental health practitioners who understand the far-reaching consequences of these war-related experiences, we can provide the support that is needed to smooth the transition to family and civilian life.

It is often teachers, physicians, and other social service providers who are the first to see these families in distress. We offer seminars to these providers and to community groups to heighten awareness that the changes they are seeing may be related to having a family member in the service or one who is recently returned home.

## OUR MISSION

### Our Mission

The Soldiers Project was established to provide free psychological services to military personnel who have served during the conflicts in Iraq or Afghanistan and their loved ones.

The mission of The Soldiers Project is to bring together volunteer licensed mental health professionals in order to:

- Provide free and confidential counseling
- Educate the community regarding the psychological effects of war
- Provide in-depth training on combat trauma to our volunteer therapists

Judith Broder, M.D., Founder/Director  
Barbara Schochet, Ph.D., Assistant Director  
[www.thesoldiersproject.org](http://www.thesoldiersproject.org)

## CONTACT

### FOR INFORMATION OR FOR AN APPOINTMENT

Southern California: (818) 761-7438  
Toll Free: (877) 576-5343  
Email: [info@thesoldiersproject.org](mailto:info@thesoldiersproject.org)

Boston: (617) 507-1444  
Email: [boston@thesoldiersproject.org](mailto:boston@thesoldiersproject.org)

Chicago: (877) 761-4377  
Email: [chicago@thesoldiersproject.org](mailto:chicago@thesoldiersproject.org)

Long Island: (516) 284-7531  
Email: [longisland@thesoldiersproject.org](mailto:longisland@thesoldiersproject.org)

New York: (877) 769-7438  
Email: [newyork@thesoldiersproject.org](mailto:newyork@thesoldiersproject.org)

Northwest: (206) 290-1035  
Email: [northwest@thesoldiersproject.org](mailto:northwest@thesoldiersproject.org)

Pennsylvania: (215) 242-7736  
Email: [thesoldiersprojectsoutheast@chc.edu](mailto:thesoldiersprojectsoutheast@chc.edu)

Sacramento: (877) 557-5888  
Email: [sacramento@thesoldiersproject.org](mailto:sacramento@thesoldiersproject.org)

## HOW TO DONATE

MAKE A TAX DEDUCTIBLE CONTRIBUTION BY  
CHECK OR CREDIT CARD

P.O. Box 1751, Studio City, CA 91614

For more information, please visit us online:

[www.thesoldiersproject.org](http://www.thesoldiersproject.org)

The Soldiers Project is a 501(c)(3) charitable organization

[WWW.THESOLDIERSPROJECT.ORG](http://WWW.THESOLDIERSPROJECT.ORG)

PHOTOS: DEPARTMENT OF DEFENSE



## The Soldiers Project

Free, Confidential Psychological Counseling For  
Military Service Members And Their Loved Ones



## THE SOLDIERS PROJECT

The Soldiers Project is a private, non-profit group of volunteer licensed psychiatrists, psychologists, social workers, nurses, marriage and family therapists. We offer free, confidential counseling to military service members and veterans of the Iraq and Afghanistan conflicts and their extended families.



## HOMECOMING

Service Members, wives, husbands, children, parents and other loved ones are all affected by the separation that is part of serving in the military. Returning home from being in combat in a country at war presents real challenges. Everyone has expectations about the homecoming and it is hard to anticipate what it really will be like.

Homecoming often challenges our closest relationship with the task of learning about each other all over again. For instance, you may notice in yourself or family members:

- Moodiness, irritability, and angry outbursts.
- Difficulty establishing comfortable family routines.
- Emotional unavailability.
- Trouble concentrating or paying attention to each other.

Therapy offers families a safe place in which to talk and think about what each person experiences – the hopes and fears, the excitement and disappointments and even disturbing changes you may see in each other. In therapy, family members can gain a deeper understanding of each other's feelings and experiences and ease the transition home.

## FOR SERVICE MEN AND WOMEN/VETS

Many of the feelings and experiences that may be troubling for you now start out as normal responses to the abnormal situation of war.

If you are experiencing the following, we can help you:

- You feel emotionally flat.
- You can't relate to everyday concerns of the folks at home.
- You are hyper-alert and sensitive to your surroundings (like danger might be everywhere).
- It's hard to concentrate, hard to sleep and you have nightmares.
- You feel you don't fit in.
- No one seems to "get it" and you really miss the closeness and mutual understanding of your buddies.
- You get tearful for no reason.
- You get angry and "blow up" more often than before.
- You feel guilty, angry or ashamed.
- You are in chronic physical pain.



[www.thesoldiersproject.org](http://www.thesoldiersproject.org)

## FOR FAMILIES



HERE ARE SOME OF THE THINGS THAT YOU MAY EXPERIENCE THAT WE CAN HELP YOU WITH:

- You feel overwhelmed and angry at having to care for your family alone.
- You're tearful and so worried about your loved one that it's hard to keep up your normal routines.
- You feel lost and alone with no one to talk to who understands what you're going through.
- You and your loved one feel distant and awkward with each other.
- You're hurt and discouraged that your family member "needs space" and isn't as engaged with family as he or she was before deployment.
- Some of you have experienced the death of a loved one. You will need time to deal with this shock and grief. It's often helpful to talk with an experienced professional during this process.
- Your kids are angry, acting up in school, have sleep troubles or various new physical symptoms. They may be reacting to the absence and/or return of their parent and need help in putting their feelings into words.



THE WAR MAY BE OVER, BUT THE MEMORIES REMAIN

We are here to help

# The Soldiers Project

[www.SoldiersProject.org](http://www.SoldiersProject.org)

Free counseling for service members, veterans, and their families.

SHAPES AND FACES OF  
THE CALIFORNIA VETERAN

# FACES OF OUR FIGHTING FORCES



# NEW FACES, OLD FACES, DIFFERENT FACES



## CURRENT FIGHTING FORCE

WOMEN MAKE UP 15% OF TODAY'S SERVICE MEMBERS AND THIS NUMBER IS EXPECTED TO DOUBLE WITHIN 5 YEARS.

## WHAT THEY FACE

### ***PREVALENCE OF MENTAL HEALTH & COGNITIVE ISSUES***

2.2 MILLION HAVE SERVED AND ARE NOW HOME

500,000 are suffering with Major Depression/Anxiety, Complex PTSD, TBI /or all three.

MAJOR DEPRESSION-3 00,000

PTSD-500,000 1-6 RETURNING VETERANS

TBI-420,000 AND

ALL THREE CONDITIONS- 200,000

PLEASE NOTE: THESE FIGURES ARE FOR MENTAL HEALTH ISSUES ONLY-

- Additional 400,000 +have returned with SPINAL CORD INJURIES , AMPUTATIONS, BLINDNESS

# “High Risk” Indicators for Post-Traumatic Stress Disorder

Reprinted with permission of the American Academy of Experts in Traumatic Stress ([www.aaets.org](http://www.aaets.org))

- Prior exposure to severe adverse life events (e.g. combat)
- Prior victimization (e.g. childhood sexual/physical abuse)
- Significant losses
- Close proximity to event
- Extended exposure to danger
- Pre-trauma anxiety and depression
- Chronic medical condition
- Substance involvement
- Lack of familial/social support
- Having no opportunity to vent (i.e. unable to tell one’s story)
- Strong emotional reactions upon exposure to the event
- Physically injured by event, etc.

IN WHAT SHAPE DO MANY RETURN?



55% OF CASUALTIES  
CAUSE BY IED'S BLAST

## The Invisible Wounds of War

## COST OF WAR

Approximate cost to treat one (1) service member with moderate to severe TBI

\$\$\$269,000

\$\$\$409,000



182,000 deployed to OIF/OEF/OND

WHO WILL STAND WITH THEM, WHO WILL TREAT THEM



30,000 newly discharged veterans into California every year now,  
And 20,000 expected to be discharged into California every year for the next 5 years.

# California Women Veterans

the American Revolution. The number of military women serving our country continues to increase. Historically, many women who served in the military do not realize that they are eligible for state and federal benefits.

California's Deputy Secretary for Women Veterans serves as a central point of contact for providing assistance to women veterans via outreach, advocacy and educational programs and activities. She ensures that the California Department of Veterans Affairs maintains a targeted focus on addressing the needs of women veterans. You may find out more information at [www.calvet.ca.gov](http://www.calvet.ca.gov) or by calling (916) 653-2551.

161,000 Female Veterans

## for Veterans

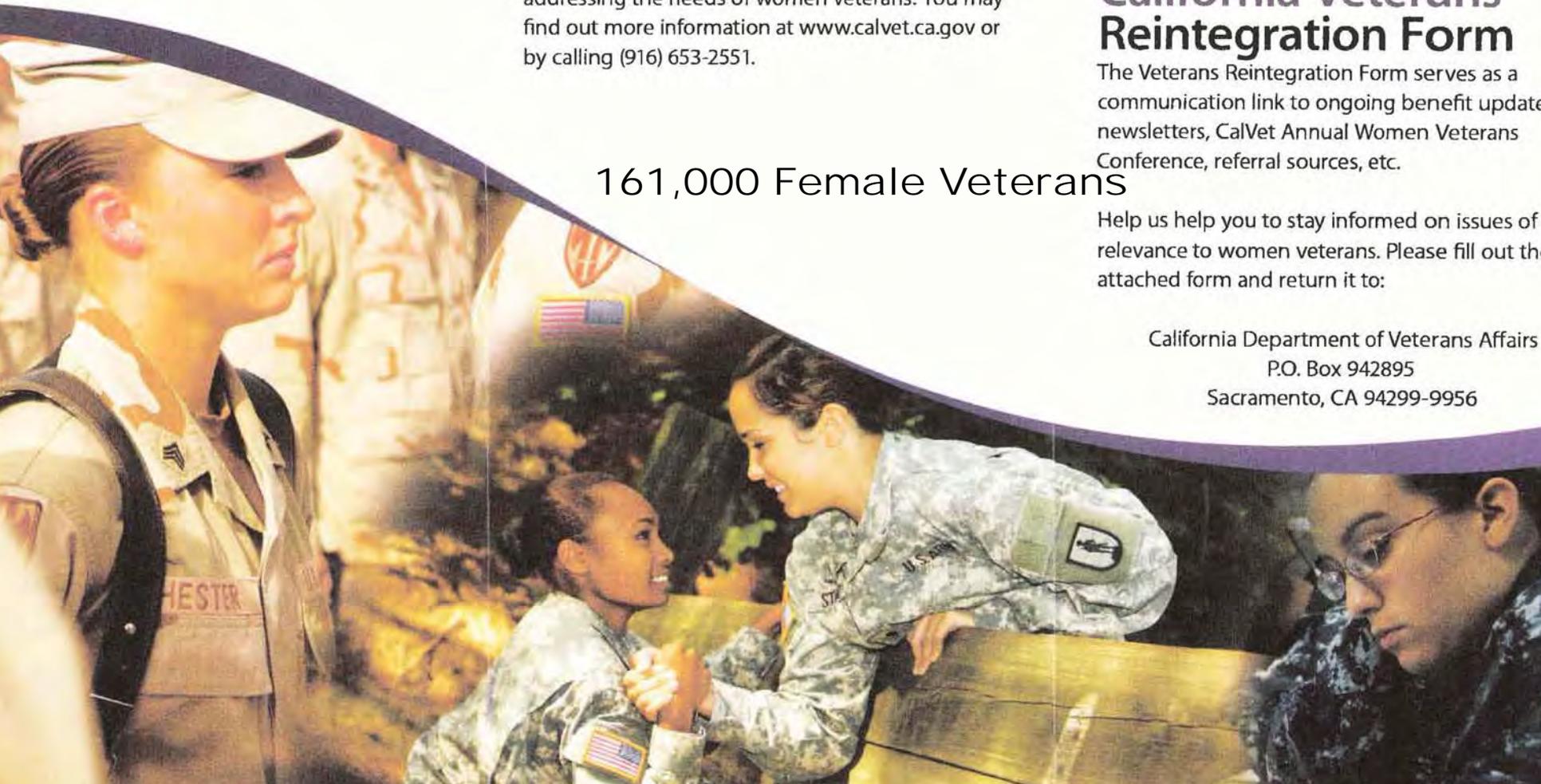
- College Tuition Fee Waivers
- Non-Resident College Fee Waiver
- Veterans Homes of California
- Disabled Veterans Business Enterprises
- Veteran Preference - CA Civil Service Exams
- Veterans Cemetery
- Veterans Claims Representation
- CalVet Farm and Home Loan Program

## California Veterans Reintegration Form

The Veterans Reintegration Form serves as a communication link to ongoing benefit updates, newsletters, CalVet Annual Women Veterans Conference, referral sources, etc.

Help us help you to stay informed on issues of relevance to women veterans. Please fill out the attached form and return it to:

California Department of Veterans Affairs  
P.O. Box 942895  
Sacramento, CA 94299-9956



It's about reintegration and getting all the way home!





# Family Members

- Feeling hurt and resentful that returning family member isn't as involved with you and the family as before deployment
- Problems in the kids: anger, behavior problems at school, learning problems, physical symptoms (stomach aches, headaches), sleep troubles

Impairment of family and social relationships. Disruption of the relationship with partner and with children.

Drug and/or Alcohol use in one or both of the adult partners.

No job, loss of job for either of the partners, no money, no benefits.

California schools has no way of knowing what child has a parent at war.

There is little help for children that are having a difficult time because the parent/s are deployed.

Results: leading to an increased risk for health issue, and increased risk for attempting suicide.



18 A DAY

# HOORAH

A close-up of a soldier's face, wearing a green camouflage cap. His face is covered in camouflage makeup in shades of green, brown, and black. He has blue eyes and a serious expression.

When you're in the field,  
you shouldn't have to  
worry about your makeup.

**NEW**  
active combat  
colors

They won't run,  
so you won't have to either.

**MAYBELLINE®**  
MAYBE SHE'S BORN WITH IT. MAYBE IT'S MAYBELLINE.

WHO COMES HOME-THE SHAPE OF THINGS A HOME



WHO ME, NEED HELP, HELL NO WAY

## **BOARD MEETING MINUTES - DRAFT May 18-19, 2011**

Four Points by Sheraton Sacramento International Airport  
4900 Duckhorn Drive  
Sacramento, CA 95834

### ***Wednesday, May 18th***

#### **Members Present**

Renee Lonner, Chair, LCSW Member  
Elise Froistad, Vice Chair, MFT Member  
Samara Ashley, Public Member  
Gordonna (Donna) DiGiorgio, Public Member  
Harry Douglas, Public Member  
Judy Johnson, LEP Member  
Christine Wietlisbach, Public Member  
Christina Wong, LCSW Member

#### **Staff Present**

Kim Madsen, Executive Officer  
Tracy Rhine, Assistant Executive Officer  
Rosanne Helms, Legislative Analyst  
Marina Karzag, Policy & Statistical Analyst  
Spencer Walker, Legal Counsel  
Christina Kitamura, Administrative Analyst  
Paula Gershon, Program Manager  
Sandra Wright, Examination Program Analyst

#### **Members Absent**

Patricia Lock Dawson, Public Member  
Karen Pines, Public Member

#### **Guest List**

On file

### **FULL BOARD OPEN SESSION**

#### **I. Introductions**

Renee Lonner, Board Chair, called the Board of Behavioral Sciences (Board) meeting to order at 8:05 a.m. Christina Kitamura called roll. A quorum was not established.

New Board member, Christina Wong, was introduced. Board members, Board staff, and audience members introduced themselves.

Samara Ashley joined the meeting at 8:08 a.m. A quorum was established.

#### **II. Approval of the February 23-24, 2011 Board Meeting Minutes**

Ms. Lonner listed amendments to the minutes:

- Page 2, item IV, 2<sup>nd</sup> paragraph, 3<sup>rd</sup> sentence should read: The deficit is a direct result of a multi-year contract in which the final payment was made in this fiscal year *as well as a result of* a reduction of funding.
- Page 2, item IV, last paragraph, 1<sup>st</sup> sentence should read: The Board currently has 12 vacancies between the LPCC staff and *previously* existing positions.

- Page 4, item VI, 1<sup>st</sup> paragraph, 2<sup>nd</sup> and 3<sup>rd</sup> sentences should read: The law allows the Board to *administer* a national exam or *to accept* a national exam for LPCC applicants instead of a Board-administered exam.
- Page 4, item VI, 1<sup>st</sup> paragraph, 4<sup>th</sup> sentence should read: The Board contracted with Dr. Tracy Montez, AMS, to perform the analysis necessary to determine if any *of the* national examinations met the standards required by law.
- Page 4, item VI, 1<sup>st</sup> paragraph, 7<sup>th</sup> sentence should read: Her findings were that the national *exams* met the standards required by law; however, there were some issues.
- Page 6, item VII, 7<sup>th</sup> paragraph, 2<sup>nd</sup> sentence should read: Two other concerns that he is hearing *are* about public safety and quality of education.
- Page 6, item VII, 9<sup>th</sup> paragraph, 1<sup>st</sup> sentence: The last word of the sentence should be replaced with “orientation.”
- Page 6, item VII, 9<sup>th</sup> paragraph, 4<sup>th</sup> sentence should read: If you put in a requirement that promotes best service to fit the characteristics of the *consumer*, the system would probably need to make some changes to fit the current status quo, not the Board’s requirements.

***Donna DiGiorgio moved to approved the February 23-24, 2011 Board meeting minutes as amended. Renee Lonner seconded. The Board voted (7 approved, 1 abstained, 0 opposed) to pass the motion.***

### **III. Approval of the March 24, 2011 Board Meeting Minutes**

Christine Wietlisbach noted an error on page 2, 3<sup>rd</sup> paragraph: “Christina” should be corrected to “Christine.” This correction should be made throughout the minutes where needed.

***Renee Lonner moved to approved the March 24, 2011 Board meeting minutes as amended. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.***

### **IV. Executive Officer’s Report**

#### **a. Budget Report**

Kim Madsen reported on the Board budget. As of March 31, 2011, Board budget reflected:

- \$5,253,293 total expenditures, which is 68% of the Board’s total budget;
- 23% spent on personnel services;
- 17% spent on Attorney General and Office of Administrative Hearing expenses;
- Remaining expenses attributed to operating expenses, equipment, and examination development;
- \$5,312,643 in revenue was collected through March 31, 2011;
- Projected expenses through the end of the fiscal year reflect an unencumbered balance of \$157,661.

Ms. Madsen reported on the MHSA budget. As of March 31, 2011, the MHSA budget reflected:

- \$86,969 total expenditures, which is 71% of the total budget;
- 54% spent on personnel services;
- 17% spent on operating expenses and equipment.

At the February Board meeting, MHSA expenditure projections indicated a \$30,000 deficit due to the receipt of a bill for a contract that was in the previous fiscal year. There was an accounting error, and that has been corrected. Revised projections now indicate a \$25,274 unencumbered balance.

Ms. Madsen reported that the Board's current fund condition reflects an eight month reserve balance. Loans to the General Fund in 2002/2003 in the amount of \$6,000,000 and in 2008/2009 in the amount of \$3,000,000 remain outstanding. In 2011/2012, another loan in the amount of \$3.3 million will be taken from the reserve account, which will leave the Board with about a five month reserve.

Harry Douglas asked if there is a requirement regarding how much reserve the Board should maintain. Ms. Madsen responded that she does not recall the amount of reserve that the Board is required to maintain. Historically, a three-month reserve has been the minimum amount. Mr. Douglas suggested that the Board review its fee structure.

Judy Johnson joined the meeting at 8:20 a.m.

#### **b. Operations Report**

Ms. Madsen reported that Board staff is comprised of 44 positions which include five staff members for the Licensed Professional Clinical Counselor (LPCC) program. Currently, a total of nine vacancies exist.

Ms. Lonner asked if the money building up in the reserve account is a result of the vacancies. Ms. Madsen responded affirmatively, adding that the savings is also a result of the various spending restrictions such as the travel restrictions.

There are 12 positions in the Licensing and Examination Program, two of which are vacant: the fingerprint unit and Licensed Educational Psychology (LEP) desk. The Board has prioritized and reassigned a number of the duties associated with these vacancies to existing staff. The additional workload has impacted all licensing and examination programs.

Effective May 1, 2011 the Board filled the vacancy within the Marriage and Family Therapist (MFT) unit which evaluates all MFT applications for examination. The training on the MFT evaluator desk takes an average of 6 months to complete. The Board had one person to evaluate these applications. As a result, applicants for the MFT examination are experiencing significant delays.

In April, the Board filled the vacancy in the cashiering unit. Renewal applicants were experiencing a six week delay to renew their license or registration. Since filling this vacancy, the cashiering unit has reduced the delay by half.

The Enforcement Unit has two vacancies: the Consumer Complaint Intake desk and a Field Investigator position. The critical workload associated with these positions has been reassigned to existing staff.

Five positions are allocated to the LPCC program. All five positions are currently vacant and an exemption request from the hiring freeze order has been submitted. The request remains pending.

Construction to expand the Board's suite has been completed.

Due to the ongoing budget deficit, travel restrictions, and insufficient staffing, the Board is unable to participate in school presentations and other outreach events. Board staff feels that a continuing presence at these types of events is important. Staff is researching alternative methods to present the information at outreach events.

The impact of existing vacancies is directly reflected in the Customer Satisfaction Survey Report. In comparing the averages for the same time period one year ago, stakeholders overall satisfaction with the Board has decreased from 3.4 to 2.9. Successful service declined from 61.0 to 50.0. Accessibility to the Board decreased from 3.2 to 2.6. The courtesy rating of the Board remains unchanged at 3.9.

Governor Brown issued an Executive Order, which restricts all travel. The Board will continue to evaluate all travel for compliance with the Executive Order and its statutory mandates.

**c. Personnel Update**

Ms. Madsen provided the personnel update. Terri Jauregui joined the Board staff in March 2011 to fill an Office Technician position within the Licensing Unit as the LEP Evaluator. She has accepted a promotion to perform the functions of an MFT Evaluator.

Linda Nash transferred to the Board in April 2011. She is performing the duties as a cashier within the Licensing Unit.

Kimberly deLong accepted a promotional position as a Special Investigator with the California Medical Emergency Services effective March 2, 2011. Kimberly worked as an Investigative Analyst within the Enforcement Unit.

**d. Mental Health Services Act Report**

Ms. Madsen reported that the Governors' proposal to realign government services will impact MHSA funding to the Board. The proposal seeks to reduce state administrative support related to the implementation of the MHSA in order to direct more MHSA funding to county mental health programs. As a result, effective June 30, 2011, MHSA funding to the Board will end. The staff position that was funded through MHSA funds was transferred to the Board fund effective March 2011.

The Board convened for a short break at 8:33 a.m. and reconvened at 8:48 a.m.

**V. Department of Consumer Affairs Update**

Cindy Kanemoto from the Department of Consumer Affairs' (DCA) Executive Office provided an update on DCA activities. Ms. Kanemoto addressed the Governor's Executive Order regarding the hiring freeze and the hiring freeze exemption requests. Currently, the Board's exemption requests are still pending.

Ms. Kanemoto addressed the Governor's Executive Order regarding travel restrictions. No travel is permitted unless it meets the definition for "mission critical" under the Executive Order. The Board requested one out-of-state travel exemption, which is still pending approval.

Ms. Kanemoto addressed the Consumer Protection Enforcement Initiative (CPEI). DCA has posted its third set of performance measures to the DCA website. Board members are encouraged to review these measurements as this is information available to the public. These measures show how long it takes from the receipt of a complaint until disciplinary action is taken, and is very helpful to the Board in reviewing their enforcement program. Ms. Madsen

was commended on the performance measures and extensive enforcement data provided in the packet.

DCA encourages the Board to move forward with regulations for some of the recommendations of CPEI especially in light of the LPCC regulations.

DCA encourages the Board to move forward with regulations to implement SB 1441 Uniform Standards. The Substance Abuse Coordination Committee met and approved proposed amendments by the subcommittee to standard #4 regarding testing requirements, which reduces the number of tests required per year.

DCA thanked the Board for allowing staff to participate in the BreEZe project.

DCA has been working on an evaluation form for the Executive Officer Evaluation Study. A new form has been created and will be presented at the Director's Meeting on June 1<sup>st</sup>.

DCA has received several requests from boards asking to increase the salary for an executive officer (EO). These salary increases must be approved by the Department of Personnel Administration and the Governor's Office. DCA wanted to ensure that all boards' EO salaries were reviewed to determine if the position was at the appropriate salary. Therefore, DCA has entered into a contract to review all EO salaries and changes made in the last 10 years, and provide a document indicating appropriate salaries. This study is expected in August. Until the study is completed, DCA will not move forward with increasing EO salaries.

Ms. Kanemoto thanked the Board for posting the meeting materials online, which is great for the public as well as a step in saving money.

**a. Update on the BreEZe project**

Sean O'Connor, BreEZe Business Project Manager, provided an overview and update on the BreEZe project. He provided an overview of the project concept, conceptual design, benefits, transaction fee, key success factors, project leadership, recent activities and next steps, and tentative implementation schedule.

BreEZe is an integrated licensing and enforcement solution, which will be the system that will be used to track all applications, complaints and investigative activity. It will replace the outdated systems currently being used.

BreEZe will be a self-service and single point of entry for customers with electronic applications and renewals, electronic payments, and expedited processing. For staff, BreEZe will provide pre-screened applications and automated routing.

The initial payment to the vendor paid for software and detail design, which was about \$1.7 million. The blueprint and software is owned by DCA. The majority of this multi-million dollar contract does not get paid to the vendor until the system is implemented. Each board and bureau of DCA will pay for their "transaction fee" based on their license volume.

The BreEZe team released a Request for Proposal for "Solution Vendors." All proposals were received, and a compliant vendor has been awarded the contract. The BreEZe team is currently negotiating proposed costs with the vendor.

The first phase of implementation will include BBS and is scheduled for July 2012.

At the end of the presentation, the floor was opened to questions.

Carrie Lew asked if the Board will need to designate staff to deal with the technical issues. Mr. O'Connor responded that the Board will not need designate staff to handle the technical issues. Board staff will provide consultation at the conceptual level.

Janlee Wong, National Association of Social Workers (NASW), posed questions regarding accessibility for disabled people, enforcement tracking, and customer service. Mr. O'Connor responded that enforcement tracking will be very secure because the public cannot have access to complaint investigations. Regarding accessibility, as part of technical requirements this system must be accessible. For the population who cannot navigate the system, they may submit hardcopy applications to the Board for processing. The boards/bureaus will provide the customer service; however, DCA will provide customer service regarding the technical issues of the system.

Judy Johnson expressed concern regarding the population of licensees who are not "technologically savvy." Mr. O'Connor responded that the technology will not be forced upon the stakeholders; instead the technology is available to assist those who wish to use it. Stakeholders can still mail applications directly to the Board for manual processing; however, they will not be able to track the application electronically.

## **VI. Licensing and Examination Committee Report**

### **a. Discussion and Possible Rulemaking Action Regarding Implementation of Assembly Bill 2699 (Bass), Chapter 270, Statutes of 2010**

Marina Karzag presented AB 2699. As a result of AB 2699, beginning January 1, 2010, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements if:

- Care is to uninsured or underinsured persons;
- Care is on a short-term, voluntary basis not to exceed 10 calendar days per event;
- Care is in association with a sponsoring entity that registers with the applicable healing arts board and provides specified information to the county health department of the county in which the health care services will be provided;
- It is without charge to the recipient or to a third party on behalf of the recipient; and
- The health care practitioner obtains authorization from the Board to participate in the sponsored event by submitting a copy of his or her license and a request for authorization to practice without a license, and paying a fee established by the regulating board through regulation.

This law sunsets on January 1, 2014.

AB 2699 is a result of an eight-day health event in Los Angeles County conducted by the Remote Area Medical Volunteer Corps (RAM) in August 2009. RAM experienced a shortage of volunteer medical, dental, and vision providers because of restrictions in state laws which prohibit specific out-of-state licensed medical personnel volunteers from providing short-term services, and RAM was forced to turn thousands of residents away.

State laws did not allow RAM to utilize certain types of out-of-state licensees. However, under the Board's statutes, RAM, as a nonprofit charitable institution, would have been able to utilize any individual that is not licensed in the state of California to provide mental health services only if those individuals were under the sole supervision of RAM.

The laws established by AB 2699 specifically apply to out-of-state licensed practitioners. Under these statutes, a sponsoring entity would be able to utilize the services of an out-of-state licensee without providing sole supervision of the licensee by adhering to the specified requirements.

AB 2699 includes all healing arts boards under the DCA, therefore, the Board must establish regulations that implement the process in which out-of-state licensed health care practitioners apply for authorization from the Board to participate in free health care events.

Before this law can be implemented, regulations must be approved which specify the methods of its implementation. DCA drafted a model regulation package for each of its healing arts boards to use as a standardized framework.

The regulation package written by DCA does the following:

- Specifies Registration and Recordkeeping Requirements for the Sponsoring Entity;
- Defines the Application Process for an Out-of-State Practitioner to Participate in a Sponsored Event;
- Defines Grounds for Termination of Authorization to Participate.

The regulations package drafted by DCA leaves several decisions to each board's discretion. At its March 2011 meeting, the Licensing and Examination Committee reviewed the draft regulations and approved specific modifications as follows:

- A health care practitioner requesting authorization to practice would pay a \$25 application processing fee to the Board;
- The Board may deny the applicant's request for authorization to participate if the applicant's license type is not substantially equivalent to a license type regulated by the Board. The Board may determine equivalency on a case-by-case basis.

In addition to the Committee's recommendations, staff also recommended the following modifications to the proposed regulations:

- A health care practitioner requesting authorization to practice would pay a \$28 application processing fee instead of the initially recommended \$25 fee;
- The Board would require that the health care practitioner must submit with his/her application either a full set of fingerprints or a Live Scan inquiry in order to establish the identity of the applicant and to permit the Board to conduct a criminal history record check;
- Require the Board to deny a practitioner's request for authorization to practice if the Board does not receive the results of the criminal history check within a sufficient timeframe;
- Requires the Executive Officer (EO) to hold an informal conference, if requested by the practitioner due to termination of authorization to practice, within 90 days from receipt of the request for an informal conference instead of the 30 days.
- Include a question on the form that asks the applicant whether or not he/she has committed or been convicted of a crime that would constitute grounds for denial of licensure.

DCA's Legal Office is still reviewing technical changes to the regulations. At this time, staff recommends having a discussion regarding the suggested modifications. Any additional modifications from DCA's Legal Office will be discussed in future meetings.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), referred to BPC Section 1820.2(c)(4)(A) and (B). He asked if the intent is to rule out anyone actively involved in those processes or ever been in those processes. The language is written to imply "ever been" charged. Ms. Rhine responded that the intent is as written, to imply "ever been charged."

Ms. Johnson stated that these health care events bring in a lot of people who have no insurance, are low income, or are homeless and need medical/dental care. Although the health care events are not catastrophic, other states such as Louisiana (New Orleans) that have held these events were able to quickly approve health care providers. It would be better to review the processes that other states follow in these situations than to create a complicated process.

Ms. Rhine responded that the regulations as written are governed by the statute. It is not the intent to make it more complicated at the Board level; the statute specifies the criteria that must be met.

Ms. Lonner asked if the language could be revised to include denial based on active disciplinary action pending in the licensee's current state or a criminal conviction relating to the practice and duties in the past five years. Ms. Rhine suggested that the Board decide what the policy should be and direct staff to work on the language. Staff will work with the Legal Office and propose language at the next meeting.

Elise Froistad suggested that staff develop language that allows the Board to retain discretion.

Discussion took place regarding the language of BPC Section 1820.2(c)(4)(A). A suggestion was made to add the term "unrestricted license." The Board expressed that it wanted to include language that would not exclude a rehabilitated licensee from another state who was charged with a crime a number of years ago.

Spencer Walker stated that the standards of various states may be different from California. Although underserved populations need health care, the Board is responsible for consumer protection. If a licensee from another state holds an "unrestricted license" but was convicted of child molestation, for example, years ago, the Board would not be able to deny approval. Folks in low income communities have very little funds, are more vulnerable, and are often victimized. Mr. Walker suggested changing "shall" to "may" under Section 1820.2(c). He also suggested changing the term "charged" to "convicted" under Section 1820.2(c)(4)(A).

Elise Froistad noted that a correction was needed for consistency to either the proposed language on Section 1820.1(a) "not later than 90 calendar days prior to the date" or the language on Registration of Sponsoring Entity under BPC Section 901 "at least 90 calendar days prior to the sponsored event."

***Elise Froistad moved to direct staff to work on the language of BPC Section 1820.1(a), 1820.2(c), and 1820.2(c)(4)(A) and submit proposed language to the Board at its next meeting. Christine Wietlisbach seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board convened for a break at 10:04 a.m. and reconvened at 10:17 a.m.

**b. Discussion and Possible Action Regarding the National Counselor Examination and the National Clinical Mental Health Counselor Examination**

Tracy Rhine reported that SB 788 which established LPCCs in California, states that the Board must evaluate the national examinations available for LPCCs. The Board contracted with Applied Measurement Services, LLC (AMS) in 2010 to evaluate the national examinations. Initially, there were some issues with the examinations offered by the National Board for Certified Counselors (NBCC). During the July 2010 Board meeting, the Board directed staff to continue working with NBCC to address concerns with the national examination in an effort to continue moving forward toward California acceptance of the national exam for LPCC licensure. Over the last year, Board staff has continued working with NBCC.

At its March 2011 meeting, the Licensing and Examination Committee reviewed recommendations from Office of Professional Examination Services (OPES) and AMS regarding the use of the National Clinical Mental Health Counselor Examination (NCMHCE) for LPCC licensure in California. Both OPES and AMS recommended to the Committee that the Board consider the NCMHCE, along with a Board administered law and ethic examination for licensure, if all previously noted issues were addressed by NBCC.

Shawn O'Brien, NBCC Vice President, Center for Credentialing and Education, presented the basic framework of the examination, statistics, and samples of how the exam looks in the computer-based testing environment.

***Renee Lonner moved to direct staff to enter into a contract with that National Board for Certified Counselors to use the National Clinical Mental Health Counselor Examination. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

**VII. Update on the Licensed Professional Clinical Counselor Gap Examination**

William Donnoe, Ed.D., President of Donnoe & Associates, Inc., provided a progress report regarding the development of the Gap Examination. Mr. Donnoe reported that in December 2010, the Board contracted with Donnoe & Associates, Inc. to develop the Gap exam for current MFTs and LCSWs who would grandparent to the LPCC. The Gap Analysis provided by AMS defined the Gap exam. Donnoe & Associates worked with this document to gather information to develop the examination plan, which was completed and presented in a report to the Board in January 2011. From the examination plan, the examination and pass point methodology were developed. This was completed in January 2011, and a report was presented to the Board. The exam has been delivered to the OPES. The next step is to work with OPES and the Board to develop a study guide.

**VIII. Discussion and Possible Legislative Action to amend Chapter 16 of Division 2 of the Business and Professions Code Relating to National Examination of Licensed Professional Clinical Counselors**

Ms. Rhine reported that the Business and Professions Code sets forth requirements for licensure during a grandparenting period. There are two pathways to LPCC licensure during the grandparenting period: 1) one path applies to Board licensed MFTs and LCSWs and, 2) the second path applies to all other applicants not licensed by the Board. All applicants during the grandparenting period must meet education and experience requirements, and they must pass three exams: the National Counselor Examination for Licensure and Certification (NCE) or the

Certified Rehabilitation Counselor Examination, the National Clinical Mental Health Counselor Examination (NCMHCE), and California Law and Ethics Examination.

The law states that LPCCs that did not qualify for grandparenting licensure as an MFT or LCSW must renew their licenses annually for six years. After the sixth renewal, the licensee must pass an exam.

The intent of this section of law was to ensure that all licensees meet the same threshold for demonstrating the ability to competently practice in California by requiring grandparented licensees to take the same licensure exam as all other California LPCCs. If the Board required a board-administered standard written exam, all grandparented licensees that qualified for licensure by passing two national exams would have to take the board-administered exam, consistent with all other LPCCs, within a seven year period or the license would be cancelled as an operation of law. If a grandparented licensee subject to these conditions has already obtained a passing score on the licensure exam required by the Board after January 1, 2012, that licensee would not have to retake that exam, but only provide proof of successful completion to the Board to satisfy the requirement. The intent of this provision was to accommodate the Board adopting a national exam, in which case there would be no difference in the exam completed by grandparented licensees and all other licensees.

If the Board decides to concur with the recommendation of the Committee to adopt the NCMHCE as the licensure exam for LPCCs, all licensees except those grandparented LPCCs that qualified for licensure as an MFT or LCSW, will have to obtain a passing score on the same licensure examinations: the NCMHCE and a California Law and Ethics exam. Now that all licensees will be taking the same exam, the Board may want to consider the need to have one subset of grandparented licenses subject to both annual renewal and possible cancellation.

Another argument is that at some point in the future the Board may find the need to change from the national exams to a board-administered exam, and therefore the grandparented licensees should be subject to the standing provision to take the current exam. However, the intent of the law would not stand as there would be a licensee population, both grandparented and non-grandparented, that would have passed only the national exam. BPC Section 4999.56 only applies to grandparented licensees and would not require other LPCCs that took the national exam to take a subsequent exam.

The question is whether the Board wants to keep this section of law or repeal it.

Harry Douglas commented that it is inequitable to make an individual who is practicing for 6 years in California, assuming they have the competence to do the job, to pass an exam.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), urged the Board to repeal this section of law because it penalizes those who come through the grandparenting path. They have to pass three exams to be grandparented, whereas the regular path will just have two exams to pass. The law then requires them to renew annually, with perhaps another exam to pass. CALPCC originally agreed to include this language in bill to allow the Board time to review the national exams and to develop a California exam if that was the decision, but now it is not needed.

***Judy Johnson moved to direct staff to submit legislative amendments to repeal BPC sections 4999.56 and 4999.101 and make conforming amendments to BPC Sections, 4999.102 and 4999.104. Harry Douglas seconded. The Board voted unanimously (8-0) to pass the motion.***

**IX. Discussion and Possible Action to Amend Business and Professions Code Section 4999.54 to Extend the Grandparenting Period for Licensed Professional Clinical Counselors**

Ms. Rhine reported that the Board was required to accept applications during a grandparenting period from January 1, 2011 through June 30, 2011. The Board has been unable to accept applications for registration or licensure, and continue to be unable to implement the program, due to pending regulations that allow the Board to accept the fees associated with the LPCC program.

In order to allow a six-month period for individuals to apply under the grandparenting requirements, staff recommends proposed legislative amendments that would allow the Board to accept grandparenting applications through December 31, 2011.

Mr. Caldwell, AAMFT-CA, requested to change of the start date to July 1, 2011 for consistency to the original statute. Ms. Rhine responded that the idea is to keep it open to allow the Board to create and post the applications and begin accepting the applications. Although it is not anticipated that applications will be processed prior to July 1<sup>st</sup>; changing the date to July 1<sup>st</sup> takes away discretion to accept applications early.

Ms. Porter asked if the Board changed the language to July 1<sup>st</sup>, can the Board distribute the applications prior to July 1<sup>st</sup> and not accept them until July 1<sup>st</sup>. Ms. Rhine responded no because once the applications are made public, the applications will be submitted prior to July 1<sup>st</sup>.

***Renee Lonner direct staff to submit draft language to the legislature for Board sponsored legislation to extend the grandparenting period in an urgency measure. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

**X. Discussion and Possible Legislative Action Regarding Hours of Experience Gained Under the Supervision of a Licensed Professional Clinical Counselors Pursuant to Business and Professions Code Section 4999.54**

Ms. Rhine reported that experience requirements during the grandparenting period require “at least two years, full-time or the equivalent, of post-degree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry or a master’s level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.”

This language excludes some LPCCs providing supervision in other states because the licensee does not meet the requirement of being certified by a national certifying or registering organization.

Ms. Rhine outlined questions for the Board to consider:

- Should LPCCs be included in this section allowing them to supervise grandparented individuals for 1,700 hours?
- If so, should the language be written to include LPCCs regardless if they are from another state or grandparented into California?
- Or, should LPCCs not be included?

Ms. Johnson expressed that she supports including LPCCs regardless of jurisdiction and does not see any issues regarding consumer protection.

Mr. Caldwell expressed that AAMFT-CA supports including LPCCs in this section but requests a minor change in the language: "a professional counselor licensed in another jurisdiction" changed to "a professional clinical counselor or equivalent licensed in another jurisdiction." Mr. Caldwell recalled previous discussions at meetings where it was mentioned that "professional counselor" licensure varies in other states. Some states differentiate between a counselor and a clinical counselor.

Ms. Porter agreed that some states grant the LPC - Licensed Professional Counselor - during the supervision years. After passing the exam and complete supervision, the LPC becomes "licensed to provide independent practice."

Ms. Johnson stated that for the proposed language is appropriate.

***Renee Lonner moved to direct staff to submit legislative amendments for Board sponsored legislation to make a change to BPC Section 4999.54(a)(1)(c) to add "a professional clinical counselor or equivalent" in an urgency measure. Christine Wietlisbach seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board convened for lunch at 11:42 a.m. and reconvened at approximately 12:30 p.m.

#### **XI. Discussion and Possible Action to Amend Senate Bill 704 to Include Licensed Professional Clinical Counselors and Intent Language Relating to Marriage and Family Therapists**

Rosanne Helms reported that Board is currently sponsoring SB 704, which seeks to restructure the examination process for applicants seeking MFT and LCSW licensure on or after January 1, 2013.

If SB 704 is passed into law, applicants for MFT and LCSW licensure must pass two exams: a California law and ethics exam and a clinical exam. These new exams replace the standard written and the clinical vignette exams currently in place.

SB 704 would restructure the process of order in which the exams are taken. A new registrant with the Board would be required to take the law and ethics exam within the first year of registration. If the law and ethics exam is not passed within the first renewal period, the registrant must complete a 12 hour law and ethics course in order to be eligible to take the exam in the next renewal cycle. The exam must be re-taken in each renewal cycle until passed. In addition, in each year the exam is not passed, the 12 hour law and ethics course must be taken to establish examination eligibility. According to current law, a registration cannot be renewed after six years. If a registrant's registration expires, he or she must pass the law and ethics exam in order to obtain a subsequent registration number.

Once a registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take the clinical exam. This exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the clinical exam.

As written, SB 704 does not seek to re-structure the examination process for applicants seeking an LPCC license. In order to maintain consistency and to afford LPCCs with the same

consumer protection measures as the Board's other licenses, staff recommends the Board consider adopting the proposed examination restructure for LPCC applicants as well.

SB 704 contains language stating that it is the intent of the Legislature for the Board to evaluate the national licensing exam used to license clinical social workers. If the Board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California, the Board may establish by regulation that this examination is to be used as the clinical examination.

Currently SB 704 contains no similar language for MFTs, although the Board intends to evaluate the national licensing exam for MFTs. Staff recommends that the Board consider adopting similar intent language for the national MFT examination.

Ms. Froistad expressed that she supports adding the language to allow the Board to evaluate the national licensing exam used to license MFTs and utilize this exam if the Board finds that it meets the prevailing standards in California.

Mr. Caldwell also expressed support.

***Renee Lonner moved to direct staff to sponsor legislation to implement the proposed changes and to make any non-substantive changes to the draft language. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

## **XII. Policy and Advocacy Committee Report**

### **a. Recommendation #1 - Support Assembly Bill 40 (Yamada)**

Ms. Karzag presented AB 40, Elder Abuse Reporting.

Ms. Karzag provided an overview of the existing law. Current law:

- Specifies that certain individuals, including MFTs, LCSWs, and LEPs, are mandated reporters of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility, except as specified, by calling either the local ombudsman or the local law enforcement agency immediately, or as soon as possible.
- Requires a mandated reporter to submit a written report to the agency within two working days.
- 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.
- Requires a mandated reporter to report suspected financial abuse of an elder or dependent adult that occurred in a long-term care facility to either the local ombudsman or local law enforcement agency.

Ms. Karzag provided an overview of what AB 40 will do. This bill:

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

According to the author's office, 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 would ensure that law enforcement is aware of all reports of this type of criminal activity.

The author's office stated that there was an issue of trust in that mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the client. However, there are statutes that ensure the confidentiality of the identity of the reporter, except as disclosed to specified agencies and under specified circumstances.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

Ms. Johnson expressed support for AB 40.

Mr. Caldwell, AAMFT-CA, expressed that AAMFT-CA does not have a formal position on AB 40 at this time. However, AAMFT-CA feels that this is an additional reporting burden, and that this is an information-sharing issue, not a matter of protecting the victim. It is not ideal to put the resolution of this matter on the mandated reporter rather than resolving it at the information-sharing issue between ombudsman and law enforcement.

Michael Brooks, Center for Clinical Social Work, shared the same concerns - that this is an issue with the ombudsman.

Rebecca Gonzales, National Association of Social Workers (NASW) California Chapter, expressed support for AB 40, stating that the additional reporting does not outweigh the benefits.

***Renee Lonner moved to take a support position on AB 40. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

**b. Recommendation #2 - Support Assembly Bill 154 (Beall)**

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

Ms. Helms provided an overview of the existing law. 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.
- Defines "severe mental illness" and "serious emotional disturbances of a child."
- Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs if the plan includes prescription drug coverage.
- 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.

Ms. Helms provided an overview of what AB 154 will do. This bill:

- Requires a health care services plan contract or health insurance policy that provides hospital, medical, or surgical coverage that is issued 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 under the same terms and conditions applied to other medical conditions. The benefits provided must include: 1) outpatient services, 2) inpatient hospital services, 3) partial hospital services, and 4) prescription drugs if the plan contract includes coverage for prescription drugs.
- Broadens the definition of “mental illness” as a mental disorder defined in the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV).
- Requires a plan or insurer to provide mental health coverage in its entire service area and in emergency situations as required by law and regulation.

The intent of this 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. Many health plans do not provide coverage for mental disorders. The plans that do provide coverage for mental disorders impose much stricter limits on mental health care coverage than on other medical care.

Parity laws require insurance coverage for mental health to be equal to or better than insurance already provided for other medical and surgical benefits, including maximum lifetime benefits, co-payments, and deductibles. Ms. Helms provided an overview of current parity laws and what they do:

- The Federal Mental Health Parity 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. However, this law does not apply to employers with fewer than 50 employees. The passage of 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 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.

Although the PPACA requires health insurance plans to provide mental health and substance use disorder treatment beginning, 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 uncovered until then.

This bill has been introduced several times. In 2007, 2008, and 2009, these bills were vetoed by Governor Schwarzenegger. The Board took a support position on all three bills. In 2010, the Board did not take a position on the bill, which was also vetoed by the Governor.

Insurance Code §10144.8(d) and Health and Safety Code §1374.74(g) are not consistent with each other. Staff suggested minor technical amendments to the author of the bill.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

***Christine Wietlisbach moved to take a support position on AB 154. Harry Douglas seconded. The Board voted unanimously (8-0) to pass the motion.***

**c. Recommendation #3 - Support Assembly Bill 171 (Beall) if amended**

Ms. Helms presented AB 171, Autism Spectrum Disorder.

Ms. Helms provided an overview of the existing law. 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.
- Defines “severe mental illness” and “serious emotional disturbances of a child.” The definition of “severe mental illness” includes “pervasive developmental disorder or autism” as one criterion within its definition.
- Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs if the plan includes prescription drug coverage.
- 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.

Ms. Helms provided an overview of what AB 171 will do. This bill:

- Requires every health care service plan contract or health insurance policy to provide coverage for the screening, diagnosis, and treatment of ASD.
- Defines “treatment for autism spectrum disorders” as: 1) behavioral health treatment, 2) pharmacy care, 3) psychiatric care, 4) psychological care, 5) therapeutic care, and 6) any other care for individuals with autism spectrum disorders that is demonstrated to be medically necessary.
- Prohibits a health care service plan from terminating coverage or refusing to deliver treatment because that person is diagnosed with or has received treatment for an ASD.
- Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts.

- Contains 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.
- Prohibits coverage for ASD from being denied on the basis that treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.
- Requires a health care service plan and health insurer to establish and maintain an adequate network of qualified autism service providers.

Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. This bill would make the law more explicit about what must be covered.

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, it is suggested that “screening of autism spectrum disorders” also be specifically defined.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill if the term “screening of autism spectrum disorders” is defined.

***Donna DiGiorgio moved to take a support position on AB 171 if amended. Christina Wong seconded. The Board voted unanimously (8-0) to pass the motion.***

**d. Recommendation #4 - Support Assembly Bill 181 (Portantino)**

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

Ms. Helms provided an overview of the existing law. 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.”
- 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.
- Requires the Office of the State Foster Care Ombudsperson to disseminate information on the rights of foster children.
- Creates a list of rights for children in foster care and transition-age foster youth relating to mental health services.

Ms. Helms provided a brief overview of what AB 181 will do. This bill requires the Office of the State Foster Care Ombudsperson to develop standardized information explaining the above rights in an age-appropriate manner and to distribute the information.

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. The goal of this bill is to provide additional rights to foster youth related to mental health services. According to research provided by the author’s office, children entering the foster care system are at risk for mental health issues for several reasons.

They 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.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill. The list of mental health rights has been amended since this time.

Ms. Froistad stated that in her experience working with children in foster care, she has seen the lack of care and support the children received. Therefore, she supports AB 181. Ms. Froistad added that although there are some implementation issues, there are too many children that are not receiving treatment.

Mr. Caldwell, AAMFT-CA, agreed with Ms. Froistad. He referred to the list of rights, specifically:

(e) To continue services with the same therapist for at least one year after a change in placement or a reunification.

(h) To be presented with all available mental health treatment services.

Mr. Caldwell asked if these listed items created new obligations on practitioners.

Mr. Caldwell also referred to subdivision (o) To be guaranteed privacy and confidentiality with mental health professional, unless a danger to self or others or if child abuse is suspected. He stated that there are more exceptions to privacy and confidentiality than suspected child abuse or danger to self or others. Mr. Caldwell asked if this is informational to children seeking services or does it create an obligation on practitioners.

Ms. Rhine's opinion is that it is informational, not that it creates a liability on practitioners. Mr. Walker agreed. Mr. Caldwell suggested adding clarifying language to subdivision (o).

Ms. Rhine explained that this list of rights for foster care children; it does not obligate or require the Board, or anyone else, to do anything because it is merely a "bill of rights."

Ms. Gonzales stated that NASW California Chapter supports for AB 181.

***Donna DiGiorgio moved to take a support position on AB 181 if amended. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

Ms. Rhine summarized the requested amendments: 1) strike subdivision (e), 2) add clarifying language to subdivision (h), and 3) add clarifying language to subdivision (o).

**e. Recommendation #5 - Support Assembly Bill 367 (Smyth)**

Ms. Helms presented AB 367, Elder Abuse Reporting, sponsored by California Association of Marriage and Family Therapists (CAMFT). AB 367 is a two-year bill.

Ms. Helms provided an overview of the existing law. Current law:

- Defines "mandated reporter" for purposes of reporting child abuse and neglect and for purposes of reporting elder or dependent adult abuse and neglect.
- 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 jurisdiction to investigate the reported case.

- Specifies the agencies a mandated reporter is required to report elder and dependent adult abuse and neglect, depending on where the abuse has occurred.

Ms. Helms provided a brief overview of what AB 367 will do. This bill:

- Requires an agency or a local law enforcement agency to accept a report by a mandated reporter, or any other person, of suspected elder or dependent adult abuse even if the agency lacks jurisdiction to investigate the report.
- Requires an 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.

Under current law, when a case of child abuse and neglect is reported to an agency, that agency must take the abuse report whether or not it has jurisdiction. The agency must then refer the matter to an agency with proper jurisdiction. However, similar provisions do not exist for the reporting of a case of elder and dependent adult abuse. As a result, mandated reporters trying to make a report of elder and dependent adult abuse may be sent from agency to agency, navigating local and county bureaucracies, until they find the proper department to take the report. 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.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

Jill Epstein, CAMFT, thanked the Board for its support on AB 367.

***Judy Johnson moved to take a support position on AB 367. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

**f. Recommendation #6 - Support Assembly Bill 671 (Portantino) if amended**

Ms. Helms presented AB 671, Child Welfare Services: Education and Training Requirements, sponsored by the National Association of Social Workers California Chapter. AB 671 is a two-year bill.

Ms. Helms provided a brief overview of the existing law. Current law:

- Provides for a statewide system of child welfare services that must be available in each county of the state.
- Requires all counties to establish and maintain specialized entities within their county welfare department which are responsible for the child welfare services program.

Ms. Helms provided an overview of what AB 671 will do. This bill:

- Requires a social work supervisor working for a county child welfare services agency to have either a master's degree in specified areas of study from an accredited or state approved graduate school, and equivalent education and experience as determined by the State Department of Social Services.
- Requires that all newly hired social work supervisor working for a county child welfare services agency as of January 1, 2012 meet specific additional educational requirements.

- Allows someone who does not meet the requirements to apply for an exception with the State Department of Social Services.
- States that an employee hired before January 1, 2012 does not have to satisfy the new education and experience requirements in order to keep their job as a social work supervisor in a county child welfare services agency.

There are currently no educational requirements for supervisors in child welfare services. 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.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support if amended position on this bill. Substantial amendments have been made since that time. Amendments that had been recommended by the Committee were:

- Clarification of work setting and place of employment.
- Clarification of acceptable employment before January 1, 2012 in order to be exempt from requirements.
- Narrow down acceptable degrees to those similar to what the Board would accept for licensure.

Issues that remain:

- The bill states that someone who has a master's degree in specified areas, or "equivalent education and experience, as determined by the department," is qualified to be a social work supervisor for a county child welfare services agency. This is a broad requirement that could result in the hiring of an individual without a master's level education, when the intent of the bill is to require a master's degree.
- This bill proposes to add a section to the Welfare and Institutions Code. The language appears out of context in the placement.

Mr. Caldwell stated that AAMFT-CA does not have a formal position on AB 671. However, he requested to amend the list of acceptable degrees to include the other MFT degree titles, such as marriage and family therapy and, if the omnibus bill passes, couples therapy.

Ms. Gonzales stated that NASW California Chapter will continue to work with stakeholders on the bill amendments. She added that they will take Mr. Caldwell's suggestion and the remaining issues outlined by Ms. Helms and work on those amendments.

Ms. Rhine summarized the requested amendments: 1) defining "equivalent education and experience" by adding all degree titles in the Board's licensing law, 2) clarification of possible exemptions and 3) adding MFT degree titles under acceptable degrees.

***Donna DiGiorgio moved to take a support position on AB 671 if amended. Christine Weitlisbach seconded. The Board voted (7 approved, 1 abstained, 0 opposed) to pass the motion.***

The Board convened for a break at 1:30 p.m. and reconvened at 1:45 p.m.

**g. Recommendation #7 - Oppose Assembly Bill 675 (Hagman) unless amended**

Ms. Helms presented AB 675, Continuing Education; Prohibition of Specified Courses. AB 675 is a two-year bill.

Ms. Helms provided an overview of the existing law. Current law:

- Requires the DCA to prescribe components for mandatory continuing education (CE) programs.
- States that the purpose of the guidelines is to ensure that mandatory CE is used to create a more competent licensing population and to protect the public.
- Requires Board licensees to certify during each renewal period the completion of at least 36 hours of CE in or relevant to the field of their practice.
- Requires the CE to be obtained from an accredited school or a Board-approved CE provider.
- Requires the board to establish, by regulation, a procedure for approving providers of CE courses.
- Requires that training, education, and coursework by approved providers must incorporate: 1) aspects of the discipline that are fundamental to the understanding or practice of marriage and family therapy, social work, or professional clinical counseling, or 2) aspects of the discipline of marriage and family therapy, social work, or professional clinical counseling in which significant recent developments have occurred.
- Requires a provider to ensure the content of a course is relevant to the practice of marriage and family therapy or clinical social work. The content of a course must also be related to direct or indirect patient/client care.
- 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. Although the law does not specifically prohibit this, it seemed to be contrary to the intent of the existing law.

Ms. Helms provided a brief overview of what AB 675 will do. This bill:

- Prohibits the following courses from being considered as having content relevant to the practice regulated by the board, and prohibits them being accepted for meeting CE requirements: 1) courses that advance or promote labor organizing on behalf of a union, 2) courses that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy.
- 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. If a provider violates this requirement, then the board shall withdraw its approval of the provider.

Ms. Helms provided an overview of concerns with AB 675:

- It is 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. 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." 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.

- Another concern is that the Board's mandated continuing education course covering law and ethics may fall into one of the prohibited course categories. Staff recommends that the bill be amended to clarify that a course covering law and ethics is permitted.
- Another concern is the misplacement in the Business and Professions Code.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take an oppose position unless the bill is amended.

Mr. Brooks expressed appreciation to the suggested amendments.

Mr. Caldwell stated that if this bill in its current form creates concerns for AAMFT-CA. If AB 675 passes in its current form, then discussions relating to Board policies and proposed regulatory changes cannot be discussed in CE courses.

Ms. Gonzales agreed with Mr. Caldwell, stating that it is important for NASW California Chapter to inform its members of legislation that affect the profession and affect the clients. Furthermore, it is stated in NASW's Code of Ethics that social workers should be politically active and work towards advancing the profession and their clients' best interests. Ms. Gonzales expressed the importance of teaching about the legislative process and political advocacy as it relates to the profession and to the clients.

Mr. Douglas agreed, stating that it is "too prescriptive in the wrong direction."

After some discussion regarding how to amend the language, it was agreed that the bill is too difficult to amend and not "fixable."

***Judy Johnson moved to take an oppose position on AB 675. Harry Douglas seconded. The Board voted unanimously (8-0) to pass the motion.***

#### **h. Recommendation #8 - Consider Assembly Bill 774 (Campos)**

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

Ms. Rhine provided a brief overview of the existing law. 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.
- Allows the requirement for licensure in a government health facility licensed by DPH to be waived for individuals gaining experience to qualify for licensure as MFTs and LCSWs for up to four years.
- 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.

The author of AB 774 stated that clinical social workers are working in many different California agencies and departments; however, an extension for the licensure waiver is only applied to those working in DPH licensed facilities. This bill would require DPH and the

Department of Mental Health to grant a waiver, and an extension of a waiver for extenuating circumstances, to a marriage and family therapist and a clinical social worker.

Staff presented a number of issues regarding the drafting of this bill at the April 2011 Policy and Advocacy Committee meeting. The bill has since been amended to address most of the issues identified by staff at that meeting; however, the recent amendments have also produced a new concern. Throughout the bill the entity required to issue waivers from licensure, and extensions of those waivers, is referred to as “the licensing department.” The bill does not define “licensing department.” There is a concern that a “licensing department” could be interpreted to mean the Board. This is not a regulatory jurisdiction of the Board.

Mr. Caldwell pointed out language that is already written in law that he considered “broad.” He also expressed that AAMFT-CA would not take a position on the bill.

Ms. Rhine explained that staff can work with the author’s office regarding the technical issues and inform them that the Board does not have jurisdiction.

The Board did not take a position on AB 774.

**i. Recommendation #9 - Support Assembly Bill 956 (Hernandez, R.) if amended**

Ms. Helms presented AB 956, Marriage and Family Therapy; Interns and Trainees: Advertisements, sponsored by CAMFT.

Ms. Helms provided an overview of the existing law. 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.
- Requires an unlicensed marriage and family therapist intern (MFT Intern) to inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a: 1) licensed MFT, 2) LCSW, 3) licensed psychologist, or 4) licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.
- Requires an advertisement of services performed by a marriage and family therapist trainee (MFT trainee) to include: 1) the trainee’s name, 2) the supervisor’s license designation or abbreviation, and 3) the supervisor’s license number.
- Requires all persons 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 and designation of the type of license or registration held.
- Specifies that 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, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

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.

Ms. Helms provided a brief overview of what AB 956 will do. This bill:

- Requires unlicensed MFT Interns and trainees to inform each client or patient, prior to performing any professional services of the following:
  - That he or she is an unlicensed MFT Intern or unlicensed MFT trainee;
  - The name of his or her employer; and
  - Indicate whether he or she is under the supervision of a licensed MFT, LCSW, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.
- Requires any advertisement by or on behalf of a MFT Intern and a MFT trainee must include, at a minimum, all of the following:
  - That he or she is an unlicensed MFT Intern or unlicensed MFT trainee;
  - The name of his or her employer; and
  - That he or she is supervised by a licensed person
- Prohibits the use of the abbreviation “MFTI” in an advertisement unless the title “marriage and family therapist registered intern’ was spelled out.

The Board approved the advertising regulations at its November 2008 meeting. As drafted, those approved regulations require that advertisements include a license or registration number.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position if this bill is amended to 1) require that advertisements include a license or registration number, and 2) require that MFT Interns provide each patient his or her registration number prior to performance of professional services.

***Christina Wong moved to take a support position on AB 956 if amended. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

**j. Recommendation #10 - Oppose Assembly Bill 958 (Berryhill, B.)**

Ms. Helms presented AB 958, Regulatory Boards: Limitations Periods. AB 958 is a two-year bill.

Ms. Helms provided an overview of the existing law. Current law:

- Requires that any accusation filed against a Board licensee or registrant must be filed within three years from the date the Board discovers the alleged act or omission or within seven years from the date the alleged act or omission occurred, whichever occurs first.
- 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.
- States that an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations.
- 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.
- 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.
- 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.

Ms. Helms provided an overview of what AB 958 will do. This bill:

- Requires that an accusation filed against a licensee of a board under DCA must be filed within one year after the board discovers the alleged act or omission or within four years after the alleged act or omission occurs, whichever occurs first.
- 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.
- States that if a licensee intentionally conceals evidence of wrongdoing, then the four year limitations period shall be tolled during the period of concealment.

The intent of this bill is to delete the statute of limitations period for specified DCA boards and bureaus, and replaces them with a standard, shorter limitations period that applies to all boards within DCA. The author's office argues 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.

Ms. Helms provided an overview of concerns with AB 958:

- 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 repeals current law that states an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations.
- This bill does not contain a similar provision, potentially leaving 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.
- The language proposed by this bill leaves out several features specified in current law. It does not allow tolling of the statute of limitations due to an ongoing criminal investigation, and contains no special extension of the statute of limitations for acts of sexual misconduct.

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. This bill addressed an enforcement complaint received by the Board. This complaint alleged that a licensee had repeatedly sexually abused a minor prior to the person being licensed with the Board. However, the Board had no authority to consider the case because the alleged conduct had taken place prior to the issuance of a license, and the statute of limitations had expired.

The Board's enforcement unit 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.

No Board discussion. No public comments.

***Christine Wietlisbach moved to take an oppose position to AB 958. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

**k. Recommendation #11 - Oppose Assembly Bill 993 (Wagner) unless amended**

Ms. Helms presented AB 993, Mediation and Counseling Services: Discipline and Immunity. This is a two-year bill.

Ms. Helms provided an overview of the existing law. 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.
- 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.
- States that a court-connected or private child custody evaluator must be a licensed MFT, clinical social worker, or other specified licensed professional or certified evaluator.
- 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.

According to the author, California family courts regularly appoint lawyers, social workers, MFTs, 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 and standards for discipline.

Because these professionals are often involved in custody disputes, they are often subject to attack. 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.

Ms. Helms provided an overview of what AB 958 will do. This bill:

- Specifies that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence 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 in a child custody or visitation dispute or while providing outpatient counseling required by a court to parties involved in a custody or visitation dispute.
- 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 or required the outpatient counseling services be provided. This type of complaint may not be made to a board that issued a license to a mediator or licensed mental health professional.

- 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.

Ms. Helms provided an overview of concerns with AB 993:

- As written, this bill states that either a mediator or a licensed mental health professional is not liable for damages for an act or omission constituting ordinary negligence if it is within the scope of duties and occurs while providing services required by the court in a custody or visitation dispute. However, 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.
- This bill specifies absence of liability for “ordinary negligence,” but does not define what constitutes ordinary negligence.
- Family Code §3195.2(c) states that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for disciplinary action against the mediator or licensed mental health professional.” This language removes the discretion of the licensing entity to judge, using its particular set of laws, whether their licensee should be subject to disciplinary action. It simply mandates that the Board make disciplinary action based on the findings of the court, which may not be familiar with that particular Board’s standards of conduct. Staff recommends that the language be revised to state that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for review and possible disciplinary action against the mediator or licensed mental health professional.”

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take an oppose position unless amended.

Ms. Lonner stated that the courts are not set up to handle mental health disciplinary cases. She asked what percentage of complaints is regarding custody evaluations.

Ms. Madsen responded that about 15% of complaints are custody evaluation complaints. Some of the complainants do not receive resolution at the court level, and come to the Board to take back to the court in order to invalidate the court’s decision.

***Donna DiGiorgio moved to take an oppose position to AB 993. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board convened for a break at 3:05 p.m. and reconvened at 3:20 p.m.

#### **I. Recommendation #12 - Consider Assembly Bill 1205 (Berryhill, B.)**

Ms. Helms presented AB 1205, Licensed Behavior Analysts. AB 1205 is a two-year bill.

Current law defines several types of professionals used in regional centers for functions related to behavioral analysis for persons with developmental disabilities, which are: 1) Behavior Analysts, 2) Behavior Management Consultants, 3) Associate Behavior Analysts, and 4) Behavior Management Assistants.

The intent of AB 1205 is an attempt to apply standards, criteria, and state recognition via licensure, to the profession of Applied Behavioral Analysis (ABA). ABA is commonly used to treat autism spectrum disorders. There has been an increase in the practice of this profession in California. However, the California Business and Professions Code does not apply any requirements to the practice of ABA.

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.

Ms. Helms provided an overview of what AB 1205 will do. 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, and specifies the types of services that may be provided.
- Requires the Board to issue a behavior analyst license to an applicant who meets all of the following requirements:
  - Possess a bachelor's and master's degree relevant to the field of behavior analysis, as determined by the Board, from an accredited school:
  - Completes at least 225 classroom hours of graduate instruction.
  - Completes at least 1,500 hours of supervised independent fieldwork under supervision of a licensed behavior analyst. Of this amount, 75 hours must be direct supervisor contact.
  - Pass an exam administered by either the Board, Behavior Analyst Certification Board, or another similar entity approved by the Board.
  - Be certified by the Behavior Analyst Certification Board or another similar entity approved by the Board.
- Requires that hours of supervised experience gained toward licensure must be accrued no more than six years prior to applying for a license.
- Requires the Board to issue an assistant behavior analyst license to an applicant who meets all of the following requirements:
  - Possess at least a bachelor's degree from an accredited school.
  - Complete at least 135 classroom hours of related instruction.
  - Complete at least 1,000 of supervised independent fieldwork under supervision of a licensed behavior analyst. Of this amount, at least 50 hours must be direct supervisor contact.
  - Be certified by the Behavior Analyst Certification Board or another similar entity approved by the Board Pass an exam administered by the Board, the Behavior Analyst Certification Board, or another similar entity approved by the Board.
- States that licensing of behavior analysts and assistant behavior analysts will begin on January 1, 2015.

The Behavior Analyst Certification Board (BACB), a nonprofit corporation, provides the Board Certified Behavior Analyst (BCBA) and the Board Certified Assistant Behavior Analyst (BCaBA) certifications.

Ms. Helms provided an overview of concerns with AB 1205:

- This bill currently does not contain a definition of a qualifying degree program for licensure for assistant behavior analysts. Instead, it states that an applicant must have a bachelor's degree. Staff suggests an amendment which narrows acceptable degrees to those relevant to the field of behavior analysis.
- Under the Board's proposed examination restructure, all current Board licensees will be required to pass a law and ethics examination. This bill does not currently require a law and ethics examination.
- 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, while a title act offers professionalization of the practitioners.
- This bill does not require a license in order to practice behavior analysis. Additionally, this bill would still permit a licensed behavior analyst or assistant behavior analyst to oversee the implementation of behavior analysis programs by others.
- As written, this bill states that the practice of applied behavior analysis excludes long-term counseling. Staff recommends that a definition of "long term counseling" and "short term counseling" be provided.
- There are several additional topics that staff suggests to address in this bill, including examination eligibility, limit on number of years an examination score is valid, supervision standards, establishment of fees, reciprocity and grandparenting requirements, continuing education requirements, unprofessional conduct guidelines, and retired license and inactive license guidelines.

At its meeting in April 2011, the Policy and Advocacy Committee did not recommend a position to the Board on this bill, but instead requested that the Board further discuss the policy implications of this legislation.

Ms. Porter stated that the California Association for Licensed Professional Clinical Counselors (CALPCC) voted to take a position of oppose to AB 1205.

Ms. Johnson expressed that ABA is a therapeutic technique, or a treatment modality, used with students with autism spectrum disorders and with children with other symptoms. Ms. Johnson expressed concern regarding the licensure of a treatment modality.

Ms. Lonner stated that this is a treatment modality for a single diagnosis.

Ms. DiGiorgio expressed concern regarding an additional new license program put upon the Board and opposes AB 1205.

Brief discussion took place regarding certification versus licensure, and whether the Board or the Department of Education is the appropriate entity to provide a pathway for ABA certification.

Brianna Lierman Hintze, California Association for Behavior Analysis (CalABA), agreed that there are many technical issues with AB 1205, which is why this is a two-year bill. CalABA

wants this to be a complete practice act; it is not intended to be a title act. She added that these professionals may receive certification; however, it does not mean that health plans will pay for coverage. Health plans deny coverage on the basis that the provider is not licensed or that it is not clearly stated in the scope of practice. CalABA acknowledges the costs it would take the Board to implement this licensing program, which is one reason why the implementation date is proposed for 2015.

Ms. Madsen asked how many behavior analysts are anticipated. Ms. Lierman Hintze responded about 1,500 behavior analysts and assistant behavior analysts in the first year are anticipated.

Ms. Madsen asked for an estimate on the fiscal analysis. Ms. Lierman Hintze responded \$875,000 to start up the program and \$200,000 for ongoing costs.

Ms. Lierman Hintze stated that behavior analysis is the recognized treatment modality for early intervention. She added that the bill allows other licensed mental health professionals to provide these services.

The Board did not take a position on AB 1205.

**m. Recommendation #13 - Support Senate Bill 146 (Wyland)**

Ms. Helms presented SB 146, Healing Arts: Professional Clinical Counselors. SB 146 is a clean-up bill sponsored by CALPCC.

Existing law provides for the licensure of professional clinical counselors (LPCCs) by the Board.

The purpose of this bill is to add LPCCs to statutory code sections where Marriage and Family Therapists (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 makes many technical amendments. It also includes several key amendments:

- Includes LPCCs in existing law requiring certain licensees to complete training in human sexuality;
- Includes the Board's amendment adding fees for various to the list of LPCC fees;
- Includes LPCCs and registered clinical counselor interns and trainees in the law providing a cause of action against a psychotherapist for injury caused by sexual contact with the psychotherapist;
- Extends the patient-psychotherapist privilege to confidential communications made between a patient and his or her LPCC, registered clinical counselor intern or trainee, or LPCC corporation;
- Includes LPCCs, clinical counselor interns, and clinical counselor trainees in the list of mandated reporters.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

No Board discussion. No public comments.

***Christine Wietlisbach moved to take a support position to SB 146. Christina Wong seconded. The Board voted unanimously (8-0) to pass the motion.***

**n. Recommendation #14 - Support Senate Bill 718 (Vargas)**

Ms. Karzag presented SB 718, Elder Abuse: Mandated Reporting.

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

Ms. Karzag provided an overview of what SB 718 will do. This bill:

- Allows a mandated reporter of elder or adult physical abuse to report suspected instances of abuse, including financial 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.
- Allows the written abuse report to be submitted through a confidential Internet reporting tool, if the county or long-term care ombudsman program chooses to implement such a system.
- Requires a county or long-term care ombudsman program that chooses to implement the system, to report to the appropriate legislative committees one year after implementing the system.

According to the author's office, the County of San Diego Adult Protective Services currently receives reports of suspected elder and adult abuse from mandated reports and the public on the same phone line. 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.

This bill would have a minimal impact on reporting requirements for mandated reporters and may benefit licensees by simplifying the reporting process.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill.

***Christine Wietlisbach moved to take a support position to SB 718. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.***

**o. Recommendation #15 - Support Senate Bill 747 (Kehoe) if Amended**

Ms. Helms presented SB 747, Continuing Education: Lesbian, Gay, Bisexual and Transgender Patients.

Ms. Helms provided an overview of the existing law. Current law:

- Requires DCA to establish guidelines to prescribe components for mandatory continuing education programs administered by any board within the department in order to enhance public protection.
- 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 (CE) in or relevant to their field of practice. The CE shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

Ms. Helms provided an overview of what SB 747 will do. This bill:

- Requires the Board's MFTs and LCSWs to take at least one CE 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.
- 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."

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 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).

All licensees must take a six-hour law and ethics course every renewal period. In total, a licensee must complete 36 hours of continuing education every renewal period.

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.

If a school does offer educational coursework covering LGBT issues, this bill does not allow that coursework to be used to fulfill the proposed CE requirement. Staff recommends language to allow coursework to satisfy the requirement.

LPCCs and LEPs were not included in this bill; both professions are likely to work with LGBT patients.

At its meeting in April 2011, the Policy and Advocacy Committee recommended the Board take a support position on this bill, if the bill was amended to allow previous educational coursework covering LGBT issues to fulfill the requirement, and pending Board discussion on inclusion of LPCCs and LEPs in the CE requirements.

Ms. Johnson stated that LEPs receive coursework in LGBT issues.

Ms. Froistad asked why and how to decide which CE courses to require when there are significant populations that call for specific training for adequate care.

Mr. Douglas stated that practitioners need to make self assessments and determine what training they need. Ms. Rhine responded that this is the Continuing Competency model. DCA is looking into adopting this model, which is the national trend right now.

Ms. Rhine stated that some of the required CE courses have been integrated into curriculum. Staff could look into those courses that are now required in curriculum and could be changed in regulation.

Mr. Caldwell stated that AAMFT-CA supports SB 747 if amended to allow the Board discretion to recognize coursework already taken and to change the limit on hours.

Ms. Kanemoto stated that DCA administration opposed SB 747.

Ms. Gonzales stated that NASW California Chapter supports SB 747.

Ms. Wong stated that it is important to have a basic level of knowledge with this population and to make a referral if that is necessary.

The Board did not take a position on SB 747.

**p. Legislative Update**

Ms. Helms reported briefly from the legislative update that was provided.

SB 274, Healing Arts bill, makes conforming changes to licensing law for the professions regulated by the Board. It will be used as a vehicle if the Board chooses to extend the grandparenting period for LPCCs Staff will also request this bill be made an urgency measure. This bill has been referred to the Senate Appropriations Committee.

SB 363, MFT Experience and Supervision bill, covers areas for the MFT practicum requirements, client centered advocacy, and supervision of MFT Interns. The bill has now been amended to allow an MFT trainee to continue to counsel clients while not enrolled in practicum if that lapse of enrollment is less than 90 calendar days (instead of 45 days), and if that period is immediately preceded and immediately followed by enrollment in a practicum course. This bill has been referred to the Assembly.

SB 704, Examination Re-Structure bill. This bill is on the third read in the Senate.

SB 943, Omnibus bill, has been referred to the Senate Appropriations Committee.

**q. Rulemaking Update**

Ms. Helms reported briefly from the rulemaking update that was provided.

LPCC, Exceptions to Continuing Education – The rulemaking package was approved by the State and Consumer Services Agency and the Department of Finance. It is currently under review at the Office of Administrative Law.

Revision of Advertising Regulations - The Board approved the proposed text at its meeting in November 2008. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.

HIV/AIDS Continuing Education Requirement for LPCCs - The Board approved the proposed text at its February 2011 meeting and directed staff to submit a regulation

package to make the proposed change. Staff will address this rulemaking proposal after the current pending regulatory proposal is approved.

### **XIII. Discussion and Possible Action on Senate Bill 541 and Senate Bill 544**

Ms. Helms presented SB 541, Regulatory Boards: Expert Consultants.

Ms. Helms provided a brief overview of the existing law. Current law:

- Allows personal services contracting to achieve cost savings when the services contracted are not available within civil service and requires a state agency to secure at least three competitive bids or proposals for each contract.
- Requires various approvals based on dollar amount of the contract.
- States that no officer or employee in state civil service shall contract on his or her own individual behalf as an independent contractor with a state agency.

In November 2010, DCA issued a memorandum to all boards and bureaus under its jurisdiction stating that all expert consultants utilized by the department must enter into a formal consulting services contract and follow all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code (PCC). This action by DCA is in response to ambiguity as to whether current law, as written in the Public Contract Code, applies to DCA's subject matter experts.

Ms. Helms provided an overview of what SB 541 will do. This bill:

- Allows a board to contract with an expert consultant, without being subject to the provisions of the State Contract Act, if the expert consulting is providing any of the following services:
  - Providing an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.
  - Assisting the board as a subject matter expert (SME) in exam development, exam validation, or occupational analysis.
  - Evaluating the mental or physical health of a licensee or applicant for licensure.
- Exempts the Board from the provisions in the PCC, therefore allowing the Board to enter into an agreement with an SME who is employed by a state agency.

A formal consulting services contract is a lengthy process which may greatly inhibit the ability of DCA boards and bureaus to utilize SMEs. DCA uses approximately 1,700 expert consultants annually. If SMEs may not be utilized, this could have a devastating impact on the timelines for enforcement and exam development.

The Board utilizes the services of approximately 375 expert consultants per year for development of its licensing exams, evaluation of school curriculum content, and expert opinions concerning enforcement matters. The new DCA policy would require the following of all SME consulting contracts:

- DCA Human Resources approval;
- Detailed performance criteria and schedule for performance, for all contracts \$1,000 or more;
- A detailed analysis of the costs of performing the contract;
- A complete resume for each contract participant with a major role for contracts of \$5,000 or more;

- For a contract of \$5,000 or more, an agency must request a copy of any negative performance evaluations from the Department of General Services.

Under this new policy, SMEs would be prohibited from beginning work until the contract is approved. DCA estimates a 60-day lead time will be needed for the contracting process before the SME can actually begin work. A 60 day lead time would significantly inhibit the Board's ability to develop exams, evaluate school programs. It would also create a significant backlog of enforcement investigations, placing consumers at risk.

Ms. Kanemoto commented that DCA is taking 10 days to complete a contract through its current process. This bill is only allowing up to 60 days. This bill has been reviewed by DCA and it will still require a contract. Instructions were sent to all boards and bureaus regarding procedures if this bill were to pass.

No Board discussion. No public comment.

***Renee Lonner moved to take a support position to SB 541. Christine Wietlisbach seconded. The Board voted unanimously (8-0) to pass the motion.***

Ms. Helms presented SB 544, Professions and Vocations: Regulatory Boards. This is a 2-year bill.

Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within 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.

Ms. Helms provided a brief overview of the existing law. Current law:

- States that any act of sexual abuse, misconduct, or relations with a patient, client, or customer by a board licensee is unprofessional conduct and subject to disciplinary action.
- Requires a physician and surgeon, osteopathic physician and surgeon, and doctor of podiatric medicine to report the following to their licensing entity within 30 days of the indictment: 1) the indictment or information charging them with a felony, or 2) conviction of the licensee of any felony or misdemeanor.
- Requires that the clerk of the court rendering a judgment to report within 10 days that a licensee of a specified 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.
- Allows a licensing agency to take one of the following actions if it determines a licensee is unable to practice safely due to mental or physical illness: 1) revoke the license; 2) suspend the right to practice; 3) place the licensee on probation; or 4) take another action the agency deems proper.
- 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.

Ms. Helms provided an overview of what SB 544 will do. This bill:

- 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.
- 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.
- 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:
  - A provision prohibiting another party to the dispute from contacting or cooperating with the board.
  - A provision prohibiting another party to the dispute from filing a complaint with the board or withdrawing a complaint already filed.
- Requires each healing arts board to annually report various information to DCA and the Legislature regarding number of complaints, accusations filed, citations issued, disciplinary actions taken, and various other enforcement related actions.
- 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.
- 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.
- Expands unprofessional conduct of a licensee of a healing arts board to include:
  - Failure to provide information in a timely manner to the board or its investigators upon request.
  - Failure to cooperate and participate in an investigation or disciplinary proceeding against the licensee.
- Requires a licensee of any healing arts board to report the following to their licensing entity:
  - The indictment or information charging them with a felony.
  - Conviction of the licensee of any felony or misdemeanor.
  - Any disciplinary action taken by another licensing entity or authority of this state, another state, or the federal government.
- 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;
  - 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;
  - Set a hearing date within three days of receiving a notice of defense or set a hearing date within three days of receiving a notice of defense.
- Requires a healing arts board to query the federal National Practitioner Data Bank prior to:
  - Granting a license to an applicant who lives in another state;

- 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;
- Granting a petition for reinstatement of a revoked or surrendered license.
- Requires the Board to revoke a license for a MFT or clinical social worker if it finds that person has committed a sex offense.
- 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 website.
- 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 determine the duration of the suspension and notify the licensee in writing of the suspension.
- 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.
- Sets penalties 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 authorization, at \$1,000 per day up to \$10,000.
- Requires a licensee's employer to report a suspension or termination for cause or resignation in lieu of suspension or termination for cause to the board, 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.
- Requires the Board to post on its website for each licensee, along with disclaimers and explanations of the information being disclosed and an explanation of the types of information not disclosed:
  - The status of the license
  - Whether the licensee has been subject to discipline;
  - Any felony convictions;
  - All current accusations filed by the Attorney General;
  - All malpractice judgments or arbitration awards;
  - A hospital disciplinary action resulting in termination;
  - A misdemeanor conviction resulting in disciplinary action.
- 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.

Previously SB 1111 was introduced as part of DCA's Consumer Protection Enforcement Initiative (CPEI). SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

Ms.Helms provided an overview of the issues with SB 544:

- 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.

- 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 allows 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.

- 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.

Licenses of the Board routinely supervise registrants or trainees who are gaining experience toward licensure. An amendment is needed to remove “notwithstanding” so that provisions allowing supervision of registrants or trainees remain valid or to insert language exempting a qualified supervisor who is supervising a trainee or registrant from this provision.

- This bill would require the Board to revoke a license for an MFT or clinical social worker if it finds that person has committed a sex offense. Current Board statute already requires the Board to revoke a license or registration upon finding that they engaged in sexual contact with a patient or former patient. Staff suggests the language this bill is adding in a new section 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.”
- 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.
- 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.
- This bill requires the Board to post certain disciplinary information about its licensees on its website 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.
- There are two sections in this bill which place language in statute for this Board that relates specifically to another board. These sections are not relevant to this Board and should be deleted.

Mr. Caldwell stated that AAMFT-CA does not have a formal position on SB 544 yet; however, AAMFT-CA has issues with privacy concerns specifically the requirement of disclosure of private information that may not be directly related to an investigation.

Ms. Gonzales asked how this bill differs from SB 1111. Ms. Helms responded that there were issues, such as due process, in SB 1111 that were removed in SB 544.

Bruce Ebert stated that SB 544 did not eliminate all of the issues regarding due process. He declined to specify those issues.

***Renee Lonner moved to take a support position to SB 544 if amended as outlined in the analysis. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

#### **XIV. Compliance and Enforcement Committee Report**

Ms. Madsen provided the Compliance and Enforcement Committee (Committee) report. At its meeting in March 2011, the Committee reviewed the Board's enforcement performance measures and information related to process improvements and the Board's participation in the DCA drug testing contract. The Board's participation in this contract had improved the monitoring of probationers with drug testing requirements.

A representative from DCA's training office presented an overview of the DCA Enforcement Training Academy.

The Committee's next meeting is scheduled on June 16, 2011 in Sacramento; however, this meeting may be cancelled due to travel restrictions.

Mr. Douglas commented that based on the presentation and the feedback from staff, the Enforcement Training Academy is an outstanding training program.

##### **a. Update on Senate Bill 1441 Substance Abuse Coordination Committee**

Ms. Madsen reported on SB 1441. In April 2011, the Substance Abuse Coordination Committee (SACC) met to consider the proposed revisions to the Uniform Standards regarding substance abusing licensees. The SACC accepted proposed revisions to Uniform Standard #4, #5, and #7.

Uniform Standard #4 establishes a two-tier testing level. Year one testing frequency ranges from 52 times to 104 times per year. Year two and beyond, testing frequency ranges from 36 times to 104 times per year. The standard provides exceptions to the testing frequency schedule.

Uniform Standard #5 revises the requirement a meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within one year.

Uniform Standard #7 adds that a worksite monitor may be a person in a position of authority who is capable of monitoring the licensee at work.

##### **b. Update on Retroactive Fingerprinting Project**

Ms. Karzag provided an update on the retroactive fingerprinting project. As of April 2011, approximately 29,000 of the 34,665 individuals have been fingerprinted. Licensees or registrants with their first expiration date occurring on September 30, 2011, are the last group of individuals that must comply under the new regulation.

Ms. Rhine stated that one staff person has been handling this entire project. This particular staff person is a limited-term employee and will be leaving in a week unless an exemption is approved.

**XV. Election of Board Officers for 2011-2012**

Spencer Walker suggested tabling this item until the end of the meeting on Thursday, May 19th. Electing a new Chair and Vice Chair today would mean that they would have to preside over the meeting on Thursday.

Renee Lonner tabled agenda item XV until Thursday, May 19<sup>th</sup>.

**XVI. Suggestions for Future Agenda Items**

Mr. Ebert made a suggestion for the Board to examine the overlap with HIPPA and compliance with HIPPA regulations, and to determine whether the Release of Information form is compliant with HIPPA.

Mr. Ebert made a suggestion to the Board to review its policies and procedures relating to the American with Disabilities Act, and determine if changes are needed.

**XVII. Public Comment for Items Not on the Agenda**

There were no public comments.

The meeting was adjourned at 5:14 p.m.

**Thursday, May 19<sup>th</sup>**

Four Points by Sheraton Sacramento International Airport  
Natomas Room  
4900 Duckhorn Drive  
Sacramento, CA 95834

*Participating via Teleconference:*  
925 Harbor Plaza  
Long Beach, CA 90802

**Members Present**

Renee Lonner, Chair, LCSW Member  
Elise Froistad, Vice Chair, MFT Member  
Samara Ashley, Public Member  
Gordonna (Donna) DiGiorgio, Public Member  
Harry Douglas, Public Member  
Judy Johnson, LEP Member  
Christine Wietlisbach, Public Member  
Christina Wong, LCSW Member

**Staff Present**

Kim Madsen, Executive Officer  
Tracy Rhine, Assistant Executive Officer  
Rosanne Helms, Legislative Analyst  
Marina Karzag, Policy & Statistical Analyst  
Spencer Walker, Legal Counsel  
Christina Kitamura, Administrative Analyst

**Members Absent**

Patricia Lock Dawson, Public Member  
Karen Pines, Public Member

**Guest List**

On file

**FULL BOARD OPEN SESSION**

**XVI. Introductions**

Renee Lonner, Board of Behavioral Sciences' (Board) Chair, called the meeting to order at 8:08 a.m. Christina Kitamura called roll and a quorum was established.

**XVII. Petition for Modification of Probation Terms, Dana Lynn Thomas, MFC 35710**

Administrative Law Judge (ALJ) Linda Cabatic opened the hearing for petition for modification of probation terms at 8:09 a.m. Dana Lynn Thomas, petitioner, was present and represented herself. Deputy Attorney General (DAG) Turner represented the State of California.

DAG Turner presented the petition for modification of probation terms and background of events that lead to the petitioner's disciplinary actions taken by the Board.

Ms. Thomas presented her case to the Board.

Board members asked questions to Ms. Thomas.

ALJ Cabatic closed the hearing at 8:47 a.m. The Board convened for a break and reconvened in closed session.

### **FULL BOARD CLOSED SESSION**

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

The Board discussed and took action on disciplinary matters.

The Board convened for a break at 9:42 a.m. and reconvened in open session.

### **FULL BOARD OPEN SESSION**

The Board revisited agenda item XV, which was tabled on Wednesday, May 18<sup>th</sup>.

***Donna DiGiorgio moved to nominate Christine Wietlisbach as Board Chair. Elise Froistad seconded. Ms. Wietlisbach accepted the nomination. The Board voted unanimously (8-0) to pass the motion.***

***Judy Johnson moved to nominate Patricia Lock Dawson as Board Vice Chair. Christine Wietlisbach seconded. The Board voted unanimously (8-0) to pass the motion.***

**XIX. Public Comments for Items Not on the Agenda**

There were no public comments.

**XX. Suggestions for Future Agenda Items**

There were no suggestions for future agenda items.

**XXI. Adjournment**

The meeting was adjourned at approximately 9:45 a.m.

**Fiscal Year 2010/2011**

Board Budget

The Board's 2010/2011 budget is \$7,986,577. As of June 30, 2011, Board expenditures total \$6,833,834 reflecting 96% of the Board's total budget. Regarding expenditures to date, 33% is attributed to personnel services with 21% related to enforcement activities. The remaining expenses are attributed to operating expenses, equipment, and examination development.

Projected expenses through the end of the fiscal year reflect an unencumbered balance of \$207,823.

Revenue

Revenue collected through June 30, 2011 totals \$6,579,696.32.

MHSA Budget

The MHSA 2010/2011 budget is \$122,000. Expenditures through June 30, 2011, total \$92,927 which reflects 76% of the total budget. Personnel services account for 53% of the budget with just 23% spent on operating expenses and equipment. Current expenditure projections reflect an unencumbered balance of \$27,324. Funding from MHSA was eliminated as of June 30, 2011.

Fund Condition

The Board's current fund condition reflects reserve balance of 2.8 months. The reduction in the Board's fund condition is a direct result of a \$3,300,000 dollar loan to the General Fund. You will recall that during the February 2011 board meeting it was reported the Board was notified on February 11, 2011 of the proposed loan to the General Fund.

Current loans to the General Fund total \$12,300,000 and are detailed below.

- 2002/2003 \$6,000,000
- 2008/2009 \$3,000,000
- 2011/2012 \$3,300,000

**Fiscal Year 2011/2012**

The Board's 2011/2012 budget is \$7,779,000. This figure reflects the ongoing five percent workforce cap savings (Executive Order S-01-10). Specifically, this order directed the Board to reduce its personnel expenses by five percent and maintain this savings in future budget years. Through reclassification of vacant staff positions and the elimination of one position, the Board achieved this savings.

Although the Board is solely supported by the fees of its licensees, the state's ongoing fiscal deficit continues to impact the operations of the Board. On July 22, 2011, the Board received direction to achieve an additional \$323,000 in savings from its 2011/2012 budget. The Board's plan for meeting the five percent savings is due August 8, 2011. Additionally, the Board continues to operate under Executive Orders that restrict hiring and travel.

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**BBS EXPENDITURE REPORT FY 2010/11**

OBJECT DESCRIPTION	09/10	FY 2010/11			
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 6/30/2011	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
<b>PERSONAL SERVICES</b>					
Salary & Wages (Civ Svc Perm)	1,427,474	1,917,191	1,574,464	1,670,000	247,191
Salary & Wages (Stat Exempt)	73,889	88,500	83,342	85,000	3,500
Temp Help (907)(Seasonals)	107,988	7,105	14,223	15,000	(7,895)
Temp Help (915)(Proctors)	0	444	0	0	444
Board Memb (Per Diem)	8,900	12,900	12,500	17,000	(4,100)
Overtime	9,148	13,533	0	0	13,533
Totals Staff Benefits	721,076	898,634	806,886	810,500	88,134
Salary Savings		(206,267)			(206,267)
<b>TOTALS, PERSONAL SERVICES</b>	<b>2,348,475</b>	<b>2,732,040</b>	<b>2,491,415</b>	<b>2,597,500</b>	<b>134,540</b>
<b>OPERATING EXP &amp; EQUIP</b>					
Fingerprint Reports	44,127	41,954	46,245	55,000	(13,046)
General Expense	83,649	115,534	59,563	70,000	45,534
<b>Printing</b>	<b>78,506</b>	<b>121,756</b>	<b>29,836</b>	<b>40,000</b>	81,756
Communication	15,407	40,342	12,004	14,000	26,342
<b>Postage</b>	<b>80,333</b>	<b>124,271</b>	<b>82,684</b>	<b>85,000</b>	39,271
<b>Travel, In State</b>	<b>80,549</b>	<b>123,787</b>	<b>105,134</b>	<b>110,000</b>	13,787
Travel, Out-of-State	3,018	0	0	0	0
<b>Training</b>	<b>9,901</b>	<b>20,463</b>	<b>3,488</b>	<b>4,000</b>	16,463
Facilities Operations	183,233	226,600	172,687	260,000	(33,400)
C&P Services - Interdept.	0	139,939	0	0	139,939
<b>C&amp;P Services-External Contracts</b>	<b>15,877</b>	<b>32,902</b>	<b>16,734</b>	<b>17,000</b>	15,902
<b>DEPARTMENTAL PRORATA</b>					
DP Billing (424.03)	308,736	439,351	421,485	425,000	14,351
Indirect Distribution Costs (427)	319,552	483,315	483,649	483,315	0
Public Affairs (427.34)	13,865	37,307	37,326	37,307	0
D of I Prorata (427.30)	11,925	18,487	18,652	18,487	0
Consumer Relations Division (427.35)	15,540	22,601	22,612	22,601	0
OPP Support Services (427.01)	0	490	0	0	490
Interagency Services (OER IACs)	217,591	355,065	144,186	294,535	60,530
Consolidated Data Services (428)	3,959	24,382	4,442	24,382	0
Data Proc (Maint,Supplies,Cont)	12,145	10,165	18,772	20,000	(9,835)
Statewide Pro Rata (438)	177,947	236,578	236,579	236,578	0
<b>EXAM EXPENSES</b>					
Exam Site Rental	82,437	99,630	51,065	99,630	0
Exam Contract (PSI) (404.00)	370,380	358,659	327,414	358,659	0
C/P Svs - External Subj Matter (404.03)	235,791	365,260	185,630	296,260	69,000
<b>ENFORCEMENT</b>					
Attorney General	844,865	1,006,174	1,042,025	1,142,000	(135,826)
Office of Admin. Hearing	67,397	242,228	166,969	195,000	47,228
Court Reporters	6,091	0	7,451	10,000	(10,000)
Evidence/Witness Fees	53,738	80,334	51,548	75,000	5,334
Division of Investigation	334,508	366,763	370,330	372,000	(5,237)
<b>LPCC</b>			<b>199,385</b>	<b>390,000</b>	<b>(390,000)</b>
<b>Minor Equipment (226)</b>	<b>34,811</b>	<b>26,700</b>	<b>24,525</b>	<b>25,500</b>	1,200
<b>Equipment, Replacement (452)</b>	<b>0</b>	<b>8,500</b>	<b>0</b>	<b>0</b>	8,500
<b>Equipment, Additional (472)</b>	<b>0</b>	<b>66,000</b>	<b>0</b>	<b>0</b>	66,000
<b>Vehicle Operations</b>	<b>0</b>	<b>19,000</b>	<b>0</b>	<b>0</b>	19,000
<b>TOTAL, OE&amp;E</b>	<b>3,705,878</b>	<b>5,254,537</b>	<b>4,342,419</b>	<b>5,181,254</b>	<b>73,283</b>
<b>TOTAL EXPENDITURES</b>	<b>\$6,054,353</b>	<b>\$7,986,577</b>	<b>\$6,833,834</b>	<b>\$7,778,754</b>	<b>\$207,823</b>

Reimbursements	FY 09/10 Actuals	Budget Alotment	Current as of 6/30/11
Fingerprints	(46,690)	(24,000)	(49,846)
Other Reimbursements	(11,665)	(26,000)	(12,685)
Unscheduled Reimbursements	(75,304)	0	(91,064)
<b>Total Reimbursements</b>	<b>(133,659)</b>	<b>(50,000)</b>	<b>(153,595)</b>

BLUE PRINT INDICATES THE ITEMS ARE SOMEWHAT DISCRETIONARY.

# 0773 - Behavioral Science

## Analysis of Fund Condition

Prepared 7/7/11

(Dollars in Thousands)

### Proposed Governor's Budget 2011-12

Includes Updated BreEze Funding  
Includes GF Loans and Repayments  
Includes BCP Concepts

	Actual 2009-10	Budget Act CY 2010-11	Governor's Budget BY 2011-12	BY +1 2012-13	BY +2 2013-14	BY +3 2014-15
<b>BEGINNING BALANCE</b>	\$ 4,493	\$ 4,885	\$ 5,228	\$ 1,930	\$ 1,488	\$ 909
Prior Year Adjustment	\$ 107	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 4,600	\$ 4,885	\$ 5,228	\$ 1,930	\$ 1,488	\$ 909
<b>REVENUES AND TRANSFERS</b>						
Revenues:						
125600 Other regulatory fees	\$ 79	\$ 72	\$ 78	\$ 78	\$ 78	\$ 78
125700 Other regulatory licenses and permits	\$ 1,884	\$ 3,706	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850
125800 Renewal fees	\$ 4,150	\$ 4,390	\$ 4,762	\$ 4,762	\$ 4,762	\$ 4,762
125900 Delinquent fees	\$ 50	\$ 71	\$ 77	\$ 77	\$ 77	\$ 77
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 8	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
150300 Income from surplus money investments	\$ 34	\$ 46	\$ 36	\$ 19	\$ 16	\$ 12
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3
161400 Miscellaneous revenues	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3
Totals, Revenues	\$ 6,211	\$ 8,293	\$ 7,811	\$ 7,794	\$ 7,791	\$ 7,787
Transfers <b>from</b> Other Funds						
Proposed GF Loan Repayment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers <b>to</b> Other Funds						
Proposed GF Loan	\$ -	\$ -	\$ -3,300	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 6,211	\$ 8,293	\$ 4,511	\$ 7,794	\$ 7,791	\$ 7,787
Totals, Resources	\$ 10,811	\$ 13,178	\$ 9,739	\$ 9,724	\$ 9,279	\$ 8,696
<b>EXPENDITURES</b>						
Disbursements:						
8860 FSCU (State Operations)	\$ -	\$ 10	\$ 9	\$ -	\$ -	\$ -
8880 Financial Information System for California	\$ -	\$ 4	\$ 36	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 5,922	\$ 7,887	\$ 7,645	\$ 7,798	\$ 7,954	\$ 8,113
Revised BreEze Funding	\$ -	\$ 49	\$ 119	\$ 348	\$ 333	\$ 278
SCO Subtotal	\$ 4	\$ -	\$ -	\$ -	\$ -	\$ -
<b>BCP CONCEPTS</b>						
Probation Monitoring	\$ -	\$ -	\$ -	\$ 18	\$ 18	\$ 18
Licensing Evaluator	\$ -	\$ -	\$ -	\$ 63	\$ 56	\$ 56
CPEI Investigator Classification Differential	\$ -	\$ -	\$ -	\$ 9	\$ 9	\$ 9
Total Disbursements	\$ 5,926	\$ 7,950	\$ 7,809	\$ 8,236	\$ 8,370	\$ 8,474
<b>FUND BALANCE</b>						
Reserve for economic uncertainties	\$ 4,885	\$ 5,228	\$ 1,930	\$ 1,488	\$ 909	\$ 222
<b>Months in Reserve</b>	7.4	8.0	2.8	2.1	1.3	0.3

#### NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2010-11 AND ON-GOING.
- ASSUMES INTEREST RATE AT 1%.
- ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR

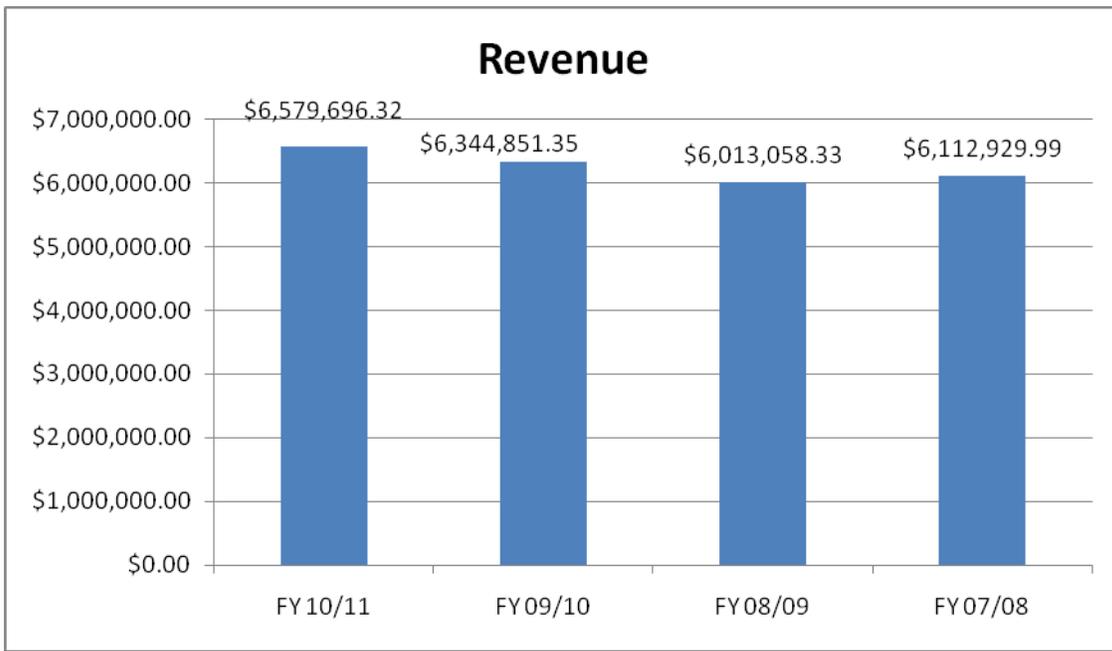
**MHSA EXPENDITURE REPORT FY 2010/11**

OBJECT DESCRIPTION	2009/10	FY 2010/11			
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 6/30/2011	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
<b>PERSONAL SERVICES</b>					
Salary & Wages (Civ Svc Perm)	61,483	73,542	45,337	45,400	28,142
Totals Staff Benefits	25,736	26,511	19,634	21,000	5,511
Salary Savings		<b>(3,083)</b>			<b>(3,083)</b>
<b>TOTALS, PERSONAL SERVICES</b>	<b>87,219</b>	<b>96,970</b>	<b>64,971</b>	<b>66,400</b>	<b>30,570</b>
<b>OPERATING EXP &amp; EQUIP</b>					
General Expense	1,965	404	0	0	404
Communication	644	0	206	250	(250)
Postage	0	0	85	100	(100)
Travel, In State	3,057	0	1,262	1,400	(1,400)
Training	5,180	0	0	0	0
Facilities Operations	2,360	2,000	2,396	2,400	(400)
Minor Equipment (226)	0	0	0	0	0
C&P Svcs - External (402)	163,860	0	1,380	1,500	(1,500)
Statewide Prorata (438)	7,116	22,626	22,627	22,626	0
<b>TOTAL, OE&amp;E</b>	<b>184,182</b>	<b>25,030</b>	<b>27,956</b>	<b>28,276</b>	<b>(3,246)</b>
<b>TOTAL EXPENDITURES</b>	<b>271,401</b>	<b>\$122,000</b>	<b>\$92,927</b>	<b>\$94,676</b>	<b>\$27,324</b>

Index - 3085

PCA - 18385

DGS Code - 057472



<b>FY 10/11</b>	<b>Revenue by Month</b>	<b>Actual Receipts Y-T-D (Revenue)</b>
July	\$762,284.90	\$762,284.90
August	\$612,879.75	\$1,375,164.65
September	\$888,896.00	\$2,264,060.65
October	\$560,370.10	\$2,824,430.75
November	\$393,690.35	\$3,218,121.10
December	\$560,118.27	\$3,778,239.37
January	\$527,079.68	\$4,305,319.05
February	\$409,637.17	\$4,714,956.22
March	\$597,687.20	\$5,312,643.42
April	\$512,561.91	\$5,825,205.33
May	\$322,487.96	\$6,147,693.29
June	\$432,003.03	\$6,579,696.32

<b>FY 09/10</b>	<b>Revenue by Month</b>	<b>Actual Receipts Y-T-D (Revenue)</b>
July	\$443,240.40	\$443,240.40
August	\$882,032.22	\$1,325,272.62
September	\$866,668.07	\$2,191,940.69
October	\$560,398.81	\$2,752,339.50
November	\$423,006.21	\$3,175,345.71
December	\$503,837.85	\$3,679,183.56
January	\$431,585.53	\$4,110,769.09
February	\$430,200.00	\$4,640,969.09
March	\$569,946.20	\$5,210,915.29
April	\$411,491.57	\$5,622,406.86
May	\$338,009.28	\$5,960,416.14
June	\$378,260.00	\$6,338,676.14
FM 13	\$6,175.21	\$6,344,851.35

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**To:** Board Members

**Date:** August 1, 2011

**From:** Christina Kitamura  
Administrative Analyst

**Telephone:** (916) 574-7835

**Subject: Executive Officer's Report: Operations Report**

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Materials for agenda item XII b. will be provided in a supplemental package and will be posted on the website at that time.

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**To:** Board Members

**Date:** July 25, 2011

**From:** Laurie Williams  
Personnel Liaison

**Telephone:** (916) 574-7850

**Subject: Personnel Update**

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### **New Employees:**

Alicia Day has accepted the Office Technician (Typing) vacancy in the Cashiering Unit effective August 2, 2011. Alicia will fill the cashiering position the Board was authorized through the Licensed Professional Clinical Counselor (LPCC) Budget Change Proposal. Alicia was previously employed with the Department of Corrections & Rehabilitation as a case management representative. She worked as a cashier in her prior employment with the California State Board of Equalization.

Joanna Huynh has accepted the Management Services Technician vacancy in the Licensing Unit effective August 15, 2011. Alicia will fill the LPCC Evaluator position the Board was authorized through the LPCC Budget Change Proposal. She will be responsible for the evaluation of the LPCC applications. Joanna will transfer to the Board from the Board of Vocational Nursing (BVN). In her position with BVN, she performed evaluations of foreign and domestic applicants. She also has experience in reviewing fingerprint records.

### **Departures:**

Ellen Viegas' limited-term appointment expired effective May 31, 2011. Ellen handled a wide array of duties during her two year limited-term assignment with the Board. Regrettably, due to the hiring freeze restrictions, the Board was unable to offer Ellen a permanent position.

Linda Nash accepted a promotional position as a Management Services Technician with the Medical Board of California June 3, 2011. Linda worked as a cashier within the Cashiering Unit.

### **Vacancies:**

The Board continues to experience challenges in recruiting for some of our current vacancies due to the Governor's Office Executive Order B-3-11 Statewide Hiring Freeze. The Board currently has a total of 9 vacancies. Seven vacancies are within our existing programs and two are associated with the LPCC program.

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**To:** Board Members

**Date:** July 25, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject: Licensed Professional Clinical Counselor Update**

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On May 24, 2011, the Office of Administrative Law approved the Licensed Professional Clinical Counselor (LPCC) regulation package. This rulemaking established the fees necessary to implement the LPCC program.

On June 7, 2011, the Board received an exemption to the hiring freeze to hire four staff for the LPCC program. To date, two positions have been filled and the candidates will begin with the Board in August. Recruitment and hiring for the remaining LPCC positions is ongoing.

Beginning in June schools that submitted degree programs to determine if the curriculum met the LPCC educational requirements received notification regarding the outcome of the Board's review. The Board created a list of schools with degree programs that meet the LPCC educational requirements. The list of schools will be posted to the Board's website. Schools with degree programs that did not meet the LPCC educational requirements were provided information regarding the deficiencies in the degree program.

Board staff continues to work with the Office of Information Services to modify its database to incorporate LPCCs. The modification will be phased in over several months. Therefore, some of the processes may be done manually until the database is fully operational.

Through the extraordinary efforts of a few staff members, LPCC applications were posted on the Board's website on July 26, 2011.

The Board initiated the contracting process with the National Board of Certified Counselors to administer the National Clinical Mental Health Counseling Examination to California candidates for LPCC licensure. Development of the Gap Examination and the Law and Ethics Examination for LPCC licensure is complete. It is anticipated that these examinations will be available to candidates in the fall.

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**To:** Board Members

**Date:** July 20, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject: Sunset Review**

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## Background

In 1989, the Little Hoover Commission (Commission) issued a report, entitled Boards and Commissions: California's Hidden Government, which found that, "California's multi-level, complex governmental structure today includes more than 400 boards, commissions, authorities, associations, councils and committees. These plural bodies operate to a large degree autonomously and outside of the normal checks and balances of representative government." The Commission concluded "the state's boards, commissions and similar bodies are proliferating without adequate evaluation of need, effectiveness and efficiency."

In response to the Little Hoover Commission's findings, the Legislature established the Joint Legislative Sunset Review Committee (Joint Committee) in 1994 whose duties included routinely reviewing the performance of the various regulatory boards. This process was known as Sunset Review. The purpose of the review was to determine if a Board should be allowed to continue to regulate the profession in question or not. The review addressed six areas of concerns identified by the Legislature.

- Clarifying Licensing Laws and Regulations - Laws and regulations appeared to benefit the profession, not the consumer or professional candidate.
- Implementing Disciplinary Action - Little or no disciplinary action was taken against a licensee.
- Representation – Board committees would make decisions usually according to staff or the executive officers concerning investigations or disciplinary actions to be taken against licensees.
- Lack of Follow-Through of Mission Statements - Boards were not carrying out their statutory responsibility for particular programs.
- Inefficiencies Board programs were not operating efficiently; consumer complaints were not responded to or resolved in a timely manner, and program spending was not prioritized.
- Unethical Standards - Boards lacked definitions of professional standards or what amounted to incompetent, negligent or unprofessional conduct.

Boards notified by the Joint Committee were requested to provide a detailed report regarding the board's operations and programs. Following submission of the report to the Joint Committee, a hearing was scheduled with the Joint Committee to discuss the report and any recommendations from the Joint Committee. If it was determined that a board should not continue to regulate the profession, the board would sunset. Boards within the Department of Consumer Affairs (DCA) that were required to sunset became a Bureau under DCA reporting directly to the DCA Director. The Board of Behavioral Sciences went through Sunset Review successfully in 1997, 2005, and 2006. Since 2006, the Legislature has not conducted any Sunset Review hearings.

### Current Sunset Review Process

In 2010, the Legislature announced efforts to resume the Sunset Review process to evaluate the effectiveness of boards and commissions. In 2010, nine DCA boards were subject to Sunset Review. Although some of the review processes were revised, the essential question to be answered is should the board be allowed to continue to regulate the profession in question or not.

On May 10, 2011, the Senate Committee on Business, Professions, and Economic Development (The Committee) notified the Board it will be one of nine boards reviewed early 2012. The Board received a questionnaire and a request for specific information regarding Board programs and operations. This comprehensive report is due to the Legislature on November 1, 2011. The Board will be scheduled for a hearing with The Committee in early 2012.

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**To:** Board Members

**Date:** July 28, 2011

**From:** Tracy Rhine  
Assistant Executive Officer

**Telephone:** (916) 574-7830

**Subject:** **Licensing and Examination Committee Report**

---

The June 16, 2011 meeting of the Licensing and Examination Committee (Committee) was cancelled due to travel restrictions. The next scheduled meeting of this Committee is September 15, 2011 in Sacramento.

The new membership of the Licensing and Examination Committee has been appointed by Board Chair Christine Wietlisbach. The following members constitute the Committee:

Christina Wong, Chair, LCSW Member  
Karen Pines, MFT Member  
Sarita Kohli, LCSW Member

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**To:** Board Members

**Date:** July 28, 2011

**From:** Tracy Rhine  
Assistant Executive Officer

**Telephone:** (916) 574-7830

**Subject: Compliance and Enforcement Committee Report**

---

The June 16, 2011 meeting of the Compliance and Enforcement Committee (Committee) was cancelled due to travel restrictions. The next scheduled meeting of this Committee is September 15, 2011 in Sacramento.

The new membership of the Compliance and Enforcement Committee has been appointed by Board Chair Christine Wietlisbach. The following members constitute the Committee:

Patricia Lock-Dawson, Chair, Public Member  
Samara Ashley, Public Member  
Harry Douglas, Public Member

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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

**AUTHOR:** SAM BLAKESLEE              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** SPECIAL EDUCATION ADVOCATES: CERTIFICATION

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### **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) Recommended Position.** At its meeting on July 21, 2011, the Policy and Advocacy Committee recommended the Board take an oppose position on this bill.

**7) Support and Opposition.**

Support

- San Luis Obispo County Office of Education

Oppose

- Disability Rights California

**8) 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.

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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**

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

February 16, 2011

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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.~~

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**To:** Board Members **Date:** July 28, 2011  
**From:** Rosanne Helms **Telephone:** (916) 574-7897  
Legislative Analyst  
**Subject: Review and Possible Action Related to Advertising Regulations**

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## Background

Business and Professions Code (BPC) Section 651(i) (attached) specifies that each of the healing arts boards and committees shall define by regulation 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 advertisements 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 the same code section 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.

#### **AB 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.

### **Recent Committee Action**

At its meeting on July 21, 2011, the Policy and Advocacy Committee recommended that staff incorporate language from AB 956 in order to make the proposed regulations consistent with the possible new statute.

Additionally, staff made the following changes in the proposal for consideration today:

1. Inclusion of "LPCC" as an acceptable abbreviation for use in the advertisements of a licensed professional clinical counselor.
2. Deletion of redundant sections.

### **Recommendation**

Consider the proposed language amending the advertising regulations in 16 CCR Section 1811.

If the Board approves the amendments, direct staff to make any non-substantive changes to the proposed language, and submit a regulation package to make the proposed changes.

### **Attachments**

- Attachment A: Proposed Regulatory Language – Revised August 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  
AUGUST 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, or MFT, or LMFT.

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

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

(D) Marriage and Family Therapist Registered Intern or MFT Registered Intern.  
The abbreviation "MFTI" shall not be used in an advertisement unless the title "marriage and family therapist registered intern" appears in the advertisement.

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

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

~~(5)~~ (G) Licensed Professional Clinical Counselor or LPCC.

(H) Professional Clinical Counselor Registered Intern or PCC Registered Intern.  
The abbreviation "PCCI" shall not be used in an advertisement unless the title "professional clinical counselor registered intern" appears in the advertisement.

(3) The license or registration number.

~~(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.~~

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

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

(d) 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.

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

(f) 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(j)

(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.

**Assembly Bill No. 956**

\_\_\_\_\_

Passed the Assembly July 14, 2011

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate July 11, 2011

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, 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 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.

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

SECTION 1. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. An unlicensed marriage and family therapist intern employed under this chapter shall comply with the following requirements:

(a) Possess, at a minimum, a master’s degree as specified in Section 4980.36 or 4980.37, as applicable.

(b) Register with the board prior to performing any duties, except as otherwise provided in subdivision (g) of Section 4980.43.

(c) Prior to performing any professional services, inform each client or patient that he or she is an unlicensed marriage and family therapist registered intern, provide his or her registration number and 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 by the American Board of Psychiatry and Neurology.

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

(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.

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

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

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

4980.48. (a) A trainee shall, prior to performing any professional services, inform each client or patient that he or she is an unlicensed marriage and family therapist trainee, provide the name of his or her employer, and indicate whether he or she is 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.

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

- (1) That he or she is a marriage and family therapist trainee.
- (2) The name of his or her employer.
- (3) That he or she is supervised by a licensed person.

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

Approved \_\_\_\_\_, 2011

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*Governor*

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**To:** Board Members

**Date:** July 28, 2011

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject:** Enforcement Regulations

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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 or registration 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 or registration to a registered sex offender.

**Rationale:** The Board is already prohibited from issuing a license or registration 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 or registration 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 or consumer's constitutional or statutory rights or privilege.
- d. Failure to notify the Board within a specified timeframe of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation.
- e. Failure to comply with a court order, issued in the enforcement of a subpoena, to release records.

## 4. Physical or Mental Impairment of Applicants for Licensure

**Proposed Action:** Use regulations to require that an applicant for licensure or registration 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 for a license or a registration undergo an evaluation or examination in order to verify an illness.

### **Recent Committee Action**

At its meeting on July 21, 2011, the Policy and Advocacy Committee recommended that staff make some clarifying changes to the unprofessional conduct sections of the proposed amendments.

Additionally, staff made the following changes in the proposal for consideration today:

1. Removal of the proposed amendment allowing the Board to require an applicant undergo an evaluation or examination in order to verify an illness, as the Board already has this authority. (Business and Professions Code §§ 4982.1, 4989.26, 4990.28, 4992.35).
2. Added registrants into proposed regulations requiring certain actions against registered sex offenders.

### **Recommended Action**

Conduct an open discussion regarding the inclusion of the proposed amendments in the Board's regulations. If the amendments are found acceptable, direct staff to make any non-substantive changes and submit regulations to make the proposed changes.

### **Attachments**

Attachment A: Proposed Language

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

Attachment C: SB 544 Analysis

Attachment D: SB 1111 Analysis

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## **Attachment A**

### **Proposed Language: Enforcement Regulations**

#### **§1803. DELEGATION OF CERTAIN FUNCTIONS**

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 820, 4980.07, 4990.04 and 4990.12, Business and Professions Code; and Sections 11415.60 and 11500-11528, Government Code.

#### **§1823. UNPROFESSIONAL CONDUCT**

As used in Section 4999.90 of the code, unprofessional conduct includes, but is not limited to:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, of filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Sections 4990.20, 4999.48, Business and Professions Code. Reference: Sections 4990.20, 4999.48, and 4999.90, Business and Professions Code.

## **§1845. UNPROFESSIONAL CONDUCT**

As used in Section 4982 of the code, unprofessional conduct includes, but is not limited to:

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

(b) Permitting a trainee or intern under his or her supervision or control to perform or permitting the trainee or intern to hold himself or herself out as competent to perform professional services beyond the trainee's or intern's level of education, training and/or experience.

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

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

(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(j) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4980.60, Business and Professions Code. Reference: Sections 4980.03, 4980.60 and 4982, Business and Professions Code; and Section 11166, Penal Code, and Section 15630, Welfare and Institutions Code.

## §1858. UNPROFESSIONAL CONDUCT

The Board may suspend or revoke the license of a licensee who: As used in Section 4989.54 of the code, unprofessional conduct includes, but is not limited to:

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

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

(c) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(d) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(e) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(f) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(g) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(h) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4989.18, Business and Professions Code. Reference: Sections 4989.18 and 4989.54, Business and Professions Code.

## **§1881. UNPROFESSIONAL CONDUCT**

~~The board may suspend or revoke the license of a licensee or may refuse to issue a license to a person who:~~ As used in Section 4992.3 of the code, unprofessional conduct includes, but is not limited to:

(a) Misrepresents the type or status of license held by such person or otherwise misrepresents or permits the misrepresentation of his or her professional qualifications or affiliations.

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

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

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

(e) Commits any dishonest, corrupt, or fraudulent act which is substantially related to the qualifications, functions or duties of a licensee.

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

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

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

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

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

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

(l) Reproduces or describes in public or in publications subject to general public distribution, any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate such test or device. The licensee shall limit access to such test or device to persons with professional interest who are expected to safeguard their use.

(m) Commits an act or omission which falls sufficiently below that standard of conduct of the profession as to constitute an act of gross negligence.

(n) Pays, accepts or solicits any consideration, compensation or remuneration for the referral of professional clients. All consideration, compensation or remuneration must be in relation to professional counseling services actually provided by the licensee. Nothing in this section shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for such collaboration except when disclosure of such fee is made in compliance with subparagraph (j) above.

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

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

(q) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw, or attempt to withdraw, a complaint the party has filed with the board.

(r) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(s) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee or a consumer of any rights or privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other

constitutional or statutory rights or privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee or a consumer to waive any constitutional or statutory rights or privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory rights or privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(t) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(u) Failure to provide, within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee.

(v) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4990.20, 4992.3, 4992.33 and 4996.11, Business and Professions Code; Section 11166, Penal Code, and Section 15630, Welfare and Institution Code.

## **§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS**

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.

3) Deny any petition to reinstate or reissue the individual's license or registration.

(b) This section shall not apply to any of the following:

1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has

otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

- 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
- 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

**Attachment B**  
**Related Code Sections**

**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.

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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 15<sup>th</sup> 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.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**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

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### **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:** Board Members

**Date:** July 22, 2011

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

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

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### **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**

At its July 21, 2011 meeting, the Policy and Advocacy Committee recommended that the Board consider changing the current title “Marriage and Family Therapist” to “Licensed Marriage and Family Therapist.” If the change is found to be appropriate, direct staff to 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**

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**To:** Board Members **Date:** July 25, 2011  
**From:** Rosanne Helms **Telephone:** (916) 574-7897  
Legislative/Regulatory Analyst  
**Subject: Technical and Non-Substantive Regulatory Changes**

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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**

At its meeting on July 21, 2011, the Policy and Advocacy Committee recommended that the Board consider these amendments. If the changes are found to be appropriate, direct staff to make any nonsubstantive changes to the attached amendments and submit a regulation package to make the proposed changes.

## **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:** Board Members **Date:** July 25, 2011  
**From:** Rosanne Helms **Telephone:** (916) 574-7897  
Legislative/Regulatory Analyst  
**Subject:** Review of Board Sponsored and Monitored Legislation

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**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 has been passed by the Legislature and is awaiting the Governor's signature.*

**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 on third reading on the Assembly Floor.*

#### **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 has passed the Assembly and has been sent to the Senate for concurrence.*

#### **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 is a two year bill.*

### **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 has been passed by the Legislature and is awaiting the Governor's signature.*

**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 on third reading on the Assembly Floor.*

**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.*

<b>THE BOARD IS MONITORING THE FOLLOWING LEGISLATION:</b>
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**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's suspense file.*

Updated: July 22, 2011

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**To:** Board Members **Date:** July 22, 2011  
**From:** Rosanne Helms **Telephone:** (916) 574-7897  
Legislative/Regulatory Analyst  
**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.

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**To:** Board Members

**Date:** August 1, 2011

**From:** Christina Kitamura  
Administrative Analyst

**Telephone:** (916) 574-7835

**Subject:** Discussion and Possible Action on Assembly Bill 1424

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Materials for agenda item XVI will be provided in a supplemental package and will be posted on the website at that time.

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