



Board of Behavioral Sciences

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MEETING NOTICE

Policy and Advocacy Committee January 26, 2012

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

9:30 a.m.

- I. Introductions
II. Review and Approval of the October 13, 2011 Policy and Advocacy Committee Meeting Minutes
III. Legislative Clean-Up to Business and Professions Code Sections 4980.44, 4980.48, 4980.78, 4980.80, 4999.62 and 4999.76
IV. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of Regulations Title 16, Section 1833 Related to Telehealth
V. Discussion and Possible Action to Amend Business and Professions Code Sections 4980.397 and 4992.05 Related to Accepting Passing Scores from National Examination Vendors
VI. Rulemaking Update
VII. Public Comments for Items Not on the Agenda
VIII. Suggestions for Future Agenda Items

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

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

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



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

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Policy and Advocacy Committee Minutes - **DRAFT** October 13, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #N220
Sacramento, CA 95834

Members Present

Renee Lonner, Chair, LCSW Member
Judy Johnson, LEP Member
Christine Wietlisbach, Public Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst

Members Absent

None

Guest List

On file

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:33 a.m. Christina Kitamura called roll, and a quorum was established. Christine Wietlisbach was absent at the opening of the meeting. Staff, Committee members, and attendees introduced themselves.

II. Review and Approval of the July 21, 2011 Policy and Advocacy Committee Meeting Minutes

Ms. Lonner noted a correction on page 9, 4th paragraph up. "Issues" should be corrected to "issue."

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested a correction on the top of page 5, AAMFT to AAMFT-CA.

Renee Lonner moved to approve the July 21, 2011 Policy and Advocacy Committee meeting minutes as amended. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

III. Legislative Update

Rosanne Helms reported that four bills sponsored by the Board of Behavioral Sciences were signed by the Governor: SB 274 regarding extension of the grandparenting period for professional clinical counselors (LPCC), SB 943 Board Omnibus Bill, SB 363 regarding marriage and family therapist interns and trainees, and SB 704 regarding examination restructure.

SB 274 was an urgency measure and is already effective. SB 704 will not take place until January 2012. SB 943 and SB 363 will take effect January 1, 2012.

Also signed by the Governor were the following bills: SB 146 regarding LPCC clean-up language, SB 718 regarding elder and dependent adult abuse, and AB 1424 regarding suspension of profession license due to unpaid tax debt.

The Governor vetoed SB 747 regarding continuing education in lesbian, gay, bisexual, and transgender patients.

Dr. Johnson noted on SB 363, #3 should also state that licensed educational psychologists (LEP) do not supervise MFT interns.

Mr. Caldwell requested a future discussion regarding SB 363, #1 regarding marriage and family therapist trainee practicum and the interpretation of the law.

IV. Rulemaking Update

Ms. Helms reported that a list of regulatory proposals was currently pending. This list was provided under Rulemaking Update in the meeting materials provided.

V. Legislative Clean-Up Business and Professions Code Sections 4980.34, 4980.43, 4980.78, 4980.397, 4980.398, 4980.399, 4984.4, 4989.42, 4992.05, 4992.07, 4992.09, 4996.6, 4999.22, 4999.32, 4999.45, 4999.46, 4999.57, 4999.58, 4999.59, 4999.90, 4999.106, 4999.120 and Health and Safety Code Section 124260

Ms. Helms reported that staff has determined that several sections of the Business and Professions Code (BPC), and one section of the Health and Safety Code (HSC) pertaining to the Board of Behavioral Sciences require amendments that clarify or add consistency to the law.

1. Amend BPC Section 4980.34 – Addition of Licensed Professional Clinical Counselors (LPCCs)

Section 4980.34 states the intent of the Legislature that the Board license marriage and family therapists (LMFTs), clinical social workers (LCSWs), and educational psychologists (LEPs). It does not currently include licensure of LPCCs.

Recommendation: Add LPCCs to this section.

2. Amend BPC Section 4980.43 – Supervised Experience

Section 4980.43(c) specifies the type of supervision that is required for credited experience. As written, this law implies that direct supervision is required for all experienced gained. However, staff believes that there are certain types of experience for which direct supervision is not appropriate.

Recommendation: Amend Section 4980.43(c) to exempt experience gained through professional enrichment activities, as defined in 4980.43(a)(7)(B), from direct supervision.

3. Amend BPC Sections 4999.32, 4999.57, 4999.58, and 4999.59 – Reference to California Law and Professional Ethics Course

LPCC code Sections 4999.57, 4999.58, and 4999.59 each discuss examination eligibility requirements for various types of out of state applicants or licensees. These sections erroneously imply that the applicant must complete an 18-hour California law and professional ethics course, in addition to the 18-hour ethics course that is already required under subdivision (e) of Section 4999.32. Staff does not believe it is the intent of the law to require an applicant to complete two 18-hour California law and professional ethics courses.

In addition, subdivision (e) of Section 4999.32 states that the 18-hour California law and ethics course must be taken, but it does not specify any of the course content that such a course should have as Sections 4999.57, 4999.58, and 4999.59 do.

Recommendation: Delete the 18-hour California law and ethics course requirement in Sections 4999.57, 4999.58, and 4999.59, as these sections already specify that the applicant must meet the requirements of subdivision (e) of Section 4999.32, which requires the same course.

Amend paragraph (6) of subdivision (e) of Section 4999.32 to specify that the course content of the California law and ethics course must contain the elements that were previously listed in Sections 4999.57, 4999.58, and 4999.59.

4. Amend BPC Section 4980.78 – California Law and Professional Ethics

Section 4980.78 discusses substantially equivalent education requirements for out of state applicants for licensure or registration applying after January 1, 2014. Under current law, such an applicant is required to take an 18-hour course in California law and professional ethics. The new law effective January 1, 2014 also requires a course in California law and professional ethics, however there is no specification on the length of the course.

Recommendation: Amend Section 4980.78 to require the course in California law and professional ethics be 18 hours in length.

5. Amend BPC Sections 4980.397 and 4992.05 – Acceptance of Valid Passing Exam Scores

These sections were added by SB 704, which restructures the examination process for the Board's LMFT, LCSW, and LPCC licensees beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

For LPCCs, SB 704 specified that a valid passing score on the clinical examination must have been obtained less than seven years prior to the application date. This is because LPCC law gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Counselor Examination (NCMHCE). The Board chose to use the NCMHCE, which has been offered for many years. Therefore, the law needed to specify how long past NCMHCE passing scores would be acceptable.

The Board is also considering using a national examination as the clinical examination for LMFTs and LCSWs. However, there is no limit in current law on how old of a passing score is allowable. For example, if the Board were to accept a national exam for LMFTs, an applicant could, under current law, apply using an exam score for the accepted exam that was 20 years old.

Recommendation: Amend Sections 4980.397 and 4992.05 to limit the valid passing clinical exam scores of LMFT and LCSW applicants to those obtained less than seven years prior to the application date.

6. Amend BPC Sections 4980.398, 4980.399, 4992.07, and 4992.09 – Examination Restructure Transition

These sections outline scenarios for LMFT and LCSW applicants who have already taken or obtained eligibility for previous examinations once the examination restructure becomes effective.

Recommendation: Make technical amendments to clarify that if an applicant has previously passed the standard written exam, but not the clinical vignette exam, then under the examination restructure, he or she would need to pass the new clinical exam. However, he or she would not need to take the new California law and ethics exam, because the previously passed standard written exam had already fulfilled this requirement.

7. Amend BPC Sections 4984.4, 4989.42, 4996.6, and 4999.106 – Fingerprinting

These sections outline requirements for a licensee whose license was not renewed within three years after its expiration, to obtain a new license.

California Code of Regulations (CCR) Title 16, Section 1815, requires all licensees and registrants to submit fingerprints and complete a state and federal level criminal offender record information search through the Department of Justice. In addition, Section 4999.51 of the LPCC code requires LPCC applicants for licensure or intern registration to do this as well. However, this requirement is not currently referenced in these sections.

Recommendation: Amend Sections 4984.4 (LMFTs), 4989.42 (LEPs) and 4996.6 (LCSWs) to reference the fingerprinting requirement in regulations, and amend Section 4999.106 (LPCCs) to reference the similar requirements in LPCC code.

8. Amend BPC Sections 4980.04, 4999.22 – Licensed Marriage and Family Therapist Act

Amend Section 4980.04 to reference the Licensed Marriage and Family Therapist Act. Section 4999.22 should reference the Licensed Marriage and Family Therapist Act, instead of the marriage and family therapy licensing laws.

Recommendation: Make amendments to Sections 4980.04 and 4999.22 to reference the Licensed Marriage and Family Therapist Act.

9. Amend BPC Section 4999.45 – 90 Day Rule for PCC Interns

Section 4999.45(a) states that a PCC intern must not perform any duties, except as a clinical counselor trainee, until he or she is registered as an intern. This is in conflict with Section 4999.46(d), which allows post-degree hours of experience to be gained as long as the applicant applies for intern registration within 90 days of degree conferral.

Recommendation: Amend 4999.45(a) to clarify and make consistent in law that a PCC intern may perform duties as an intern provided that he or she applies for intern registration within 90 days of the granting of his or her degree, and that he or she is registered as an intern by the Board.

10. Amend BPC Section 4999.45 – Annual Renewal for PCC Interns

Section 4999.45(d) states that a PCC intern must file for renewal annually. This implies that a PCC intern may continue to practice as long as they fill out a renewal form and send it to the Board. However, the Board must review the application and determine that the intern meets certain criteria in order to renew the application.

Recommendation: Amend Section 4999.45(d) to clarify that a PCC intern must renew annually in order to retain their intern status.

11. Amend BPC Section 4999.45 – Limitation on PCC Intern Employment

Section 4999.45(e) states that a PCC intern must cease employment after six years unless he or she obtains a new intern registration. This is repetitive, as subsections (d) and (f) already cover this requirement.

Recommendation: Delete Section 4999.45(e).

12. Amend BPC Section 4999.46 – Exam Eligibility

Section 4999.46 lists the supervised experience requirements a PCC intern must meet in order to qualify for licensure. However, a PCC intern must also meet these requirements in order to qualify for examination eligibility.

Recommendation: Amend Section 4999.46 to state that an applicant must meet the listed supervised experience requirements to qualify for licensure or examination eligibility.

13. Amend BPC Section 4999.46 – Definitions

Section 4999.46(b)(5) states the requirement of 150 supervised clinical experience hours in a hospital or community mental health setting. LPCC regulations now specifically define the terms “clinical setting” and “community mental health setting.”

Recommendation: Amend Section 4999.46(b)(5) to reference these definitions in regulation.

14. Amend BPC Section 4999.90 – Unprofessional Conduct

Several subdivisions of the LPCC unprofessional conduct section are in need of minor technical amendments to conform to the unprofessional conduct sections for other licensees.

Recommendation: Make technical amendments to Section 4999.90 to conform with existing laws regarding substance abuse, supervision, and inclusion of LPCCs.

15. Amend BPC Section 4999.120 - LPCC Fees

Section 4999.120 sets the various fees charged to LPCCs. SB 274 (Chapter 148, Statutes of 2011) removed the annual renewal requirement for LPCC licenses issued under grandparenting. Therefore, the fee listed in subsection (h) is obsolete.

Recommendation: Amend section 4999.120 of the LPCC code to remove the fee established in subsection (h).

16. Amend HSC Section 124260 – Minors- Consent to Mental Health Treatment

SB 543 (Chapter 503, Statutes of 2010) allows a minor who is 12 years of age or older to consent to mental health services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in those services. This bill added HSC Section 124260, which defines the “professional person” who must make the determination if the minor is mature enough to participate. The list of professional persons currently does not include LPCCs or PCC interns. A minor technical change is also needed to correct a reference to LMFT code.

Ms. Helms stated that this item will be deleted because the proposal amending Health and Safety Code already became law through SB 146.

Mr. Caldwell referred to #3, stating that the proposed language specifically names HIPPA. He explained that if HIPPA is ever renamed or superseded, this law would have to be changed. He requested to use a generic term than to refer to the specific federal law by name. Ms. Rhine agreed.

Mr. Caldwell referred to item 5. He asked if the intent was to capture out of state applicants for licensure, making sure that their passing score on the national exam is recent. Ms. Helms confirmed that was the intent. Mr. Caldwell stated that he would like to discuss this matter with AAMFT about that this looks like across the country and offer feedback.

Ms. Rhine stated that the Board should discuss whether to accept passing scores going back as far as 7 years or not. Looking back one year at the Association of Social Work Boards (ASWB) examination, for example, it did not meet California’s standards.

Ms. Lonner expressed that she would like to have the full Board discuss this.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that the folks who passed the national exam some years ago, have been practicing successfully for years without any disciplinary actions taken against their license. He requested consideration be given to that fact before requiring them retake the exam.

Jill Esptein, California Association of Marriage and Family Therapists (CAMFT), stated that exams are always evolving, and some professions can transfer those scores even though the exam changed. She would like to see what other states have done.

Dr. Johnson reminded the committee and staff to keep “minimal competency” in mind.

Rebecca Gonzalez, NASW-CA, noted the situation of those who took the national exam prior to 1999 in another state. California did accept that exam prior to 1999.

Mr. Caldwell referred to item 14 and the proposed language to change “intern” to “registrant”; however, not all interns gaining experience are registered. Particularly with the item proposed in the omnibus bill that allows interns to gain experience in the first 90 days after graduation. Mr. Caldwell is concerned that by changing intern to registrant, those in the 90-day window, between the period of graduation and registration, are not being captured.

Ms. Rhine explained that the term “intern” is defined as someone who is registered by the Board. The discussion is not the change of terms. During the 90-day window, the individual is not an intern, not a trainee, but can gain hours.

Ms. Lonner suggested changing the term to “applicant.”

A discussion will be held at the full Board meeting.

Since the California Law and Ethics exams differ between professions, Ms. Epstein requested that the exam materials specifically state the profession.

Renee Lonner moved to direct staff to make any non-substantive changes to the proposed language, recommend the Board sponsor legislation to make the suggested changes, and bring discussions to the Board regarding items 3, 5, and 14. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

VI. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of Regulations Title 16, Section 1833

Ms. Helms reported on the proposed regulatory changes resulting from the passage of SB 363. SB 363 limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact, professional enrichment activities, and client centered advocacy together to 1,250 hours. The Board had concerns that this allowed an intern to potentially obtain too many client centered advocacy hours, when they should be gaining the majority of their hours counseling clients in order to adequately prepare them for licensure.

Due to these concerns, SB 363 revised the law to allow up to 500 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes, and client centered advocacy.

A conflict now exists between the revised law and Section 1833(a)(4) of the Board’s regulations. This section of regulations currently only allows up to 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes. This is in direct conflict with the 500 hours allowed with the revisions of SB 363.

Proposed changes are:

1. Strike CCR Section 1833(a)(4), which is the section in regulations limiting experience gained administering and evaluating psychological tests, writing clinical reports, writing

progress notes, or writing process notes to 250 hours. The new requirement from SB 363, which allows up to 500 hours, is already clearly specified in Section 4980.43(a)(9) of the code.

2. Correct reference errors in Section 1833 of the Board's regulations that have occurred due to changes in statute.

Judy Johnson moved to direct staff to make any nonsubstantive changes to the attached amendments and to make the proposed regulatory changes regarding Section 1833(a)(4). Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

VII. Discussion Regarding California Marriage and Family Therapy Occupational Analysis and Collaboration with Association of Marriage and Family Therapy Regulatory Boards

Kim Madsen provided a background and status update regarding the California Marriage and Family Therapy Occupational Analysis and collaboration with the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB).

The Examination Program Review Committee (EPCR) was established in February 2009 to conduct a holistic review of the Board's exam programs and evaluate the issues regarding the exams. Part of the committee's work was to consider the use of national examination for licensure in California.

On May 4, 2009, Lois Paff Bergen, Executive Director for the AMFTRB, presented an overview of AMFTRB's national examination to the EPCR.

Ms. Bergen explained that AMFTRB is a body of states that regulates marriage and family therapists. Although California is a member of AMFTRB, California does not use the AMFTRB national examination for licensure. Ms. Bergen explained that some states accept California's examination as equivalent and some do not.

Ms. Bergen provided information regarding the development of the national examination and noted California practitioners participate in this process. Ms. Bergen stated AMFTRB recognizes the importance of using California practitioners because marriage and family therapists are very well known in California and represent a great number compared to all of the marriage and family therapists in the country.

AMFTRB develops three forms of the examination each year with 200 questions on each exam. The national exam is offered during three windows and is administered in a four hour block. Ms. Bergen stated that the last role delineation study (occupational analysis) was completed in 2004/2005.

On September 29, 2009, the AMFTRB contacted the Board regarding a possible interest in collaborating with AMFTRB on the next occupational analysis.

The Board completed its Marriage and Family Therapist occupational analysis in 2006/2007.

Board staff contacted Ms. Bergen regarding the 2009 letter to determine if the interest in collaborating with the Board on an occupational analysis remained. Ms. Bergen confirmed that AMFTRB's interest had not changed. Ms. Bergen stated that AMFTRB was scheduled to begin their occupational analysis in January 2012.

The process of this joint venture was discussed. The Board or its designee and a California Subject Matter Expert (SME) will participate in the development of the survey which will be used to gather information regarding the practice of marriage and family therapists throughout the country. Upon completion of this survey, item writing and exam construction workshops will occur. Each workshop will include the participation of an SME from California. Although, the Board or its designee will not directly participate in these workshops, access to the process will be granted.

Board staff has initiated the steps to obtain the services of a vendor to assist the Board in this joint venture. The progress and results of this joint venture will be reported at future meetings.

Ms. Esptein asked if it was discussed how the subject matter experts (SME) will be chosen. Ms Madsen responded those details have not yet been discussed, but will most likely be offered to the Board's current SMEs.

VIII. Discussion and Possible Rulemaking Action Regarding Implementation of SB 704 (Negrete McLeod); Examination Restructure

Ms. Helms presented the proposed regulatory changes regarding implementation of SB 704. SB 704 restructures the examination process for applicants who are seeking LMFT, LCSW, and LPCC licensure on or after January 1, 2013.

This bill was sponsored by the Board as a result of extensive analysis of the examination process. The Board's Examination Program Review Committee (EPRC) was appointed in February 2008. The purpose of the EPRC was to conduct a review of the Board's LCSW, LEP, and LMFT examination programs and to evaluate associated issues.

On December 7, 2009, the EPRC made several recommendations relating to modifications of the current licensure exam process for LMFTs and LCSWs. The language in SB 704 was written based on the recommendations of the EPRC.

Several regulatory amendments now need to be made in order to be consistent with the changes in SB 704.

1. Examination Restructure for LMFTs, LPCCs, and LCSWs

Effective January 1, 2013, applicants for LMFT, LPCC, and LCSW licensure shall pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams replace the standard written and the clinical vignette exams currently in place for MFTs and LCSWs, and changes the exam structure for LPCCs as described in the next section.

Law and Ethics Exam

- A new registrant with the Board would be required to take the law and ethics exam. This exam must be taken within the first year of registration with the Board.
- 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 retaken 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.

Clinical Exam

- 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.

2. Examination Restructure for LPCCs

Under SB 704, LPCCs will follow the same examination process as LMFTs and LCSWs for the law and ethics exam, however, the current exam structure for LPCCs differs from LMFTs and LCSWs.

Current law states that once an LPCC registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take a clinical exam administered by the Board, or the national examinations, if the Board finds that one of these examinations meet the prevailing standards for validation and use of the licensing and certification tests in California.

At its meeting in May 2011, the Board accepted the National Clinical Mental Health Counselor Examination (NCMHCE) as meeting California testing standards. This proposed regulation establishes the NCMHCE as the designated examination for LPCCs.

The NCMHCE 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 NCMHCE exam. This is consistent with the structure proposed for LMFTs and LCSWs taking the clinical exam.

3. Proposed Regulatory Changes

Several sections of the Board's regulations need to be revised in order to be consistent with the changes in SB 704 and the Board's recent decision to accept the NCMHCE exam for LPCCs. These changes fall into three categories:

- Incorporation of the NCMHCE and the California Law and Ethics examination into regulation as Board-designated exams required for LPCC licensure candidates.
- Revision of references to examination names in regulations in order to be consistent with the newly required examinations for registrants seeking an LMFT, LCSW, or LPCC license.
- Incorporation of language allowing the Board to accept the national examinations for LMFT and LCSW licensure, if the examinations are determined to be appropriate by

the Board. The Board voted in November 2010 to accept the ASWB's Clinical Level Examination for those seeking licensure with the Board. The Board will be working with the AMFTRB in 2012 to determine the viability of using its exam for LMFT licensure in California.

In addition, the passage of SB 274 deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Grandparented LPCCs will now renew biennially, consistent with all other Board-issued licenses. The proposed regulations incorporate this change as well.

Mr. Caldwell expressed his appreciation for this long, involved process. Ms. Lonner added that staff did a great job.

Ms. Esptein noted an error on Attachment A, Examination Restructure Regulations, Section 1806(d). "Licensed marriage and family therapy" should be "licensed marriage and family therapists."

Judy Johnson moved to authorize staff to make any non-substantive changes and submit a rulemaking package to the Board for consideration. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee adjourned for a short break at 10:42a.m. and reconvened at 11:03 a.m. Upon reconvening, items IX and X were taken out of order.

X. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines and Voluntary License Surrender

Ms. Helms presented the proposed revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. These changes are based on suggested adjustments from the Board's enforcement unit.

1. Update of penalty guideline references: Due to legislative changes, several sections listed as references in the penalty guidelines need to be updated to reference the correct section.
2. Reimbursement of Probation Program: A respondent's reimbursement to the Board of his or her probation program costs is listed in the Disciplinary Guidelines as an optional term and condition of probation. However, it is standard that the Board require a probationer to reimburse the Board for probation costs. Therefore, this condition has been moved to the list of standard terms and conditions of probation.
3. Psychotherapy: If a respondent is required to participate in psychotherapy as one of the terms of probation, the disciplinary guidelines currently require that within 60 days of the effective date of the Board's decision, the respondent must submit to the Board the name and qualifications of the therapist he or she would like to choose. However, once a respondent is notified of an adopted decision, they have 30 days before the decision becomes effective. From this time, under current law, the respondent then has another 60 days to choose a therapist. As a result, respondents are not starting their required psychotherapy for approximately 3 to 4 months. Therefore, staff proposes changing the 60 day period to submit a therapist for approval to 15 days. If this change is implemented, a respondent would know 45 days in advance that they must choose a

therapist and submit the pertinent information about their chosen therapist to the Board.

4. Rehabilitation Program: The Board may require a respondent to participate in a rehabilitation program as one of the terms of probation. Staff recommends an amendment requiring a rehabilitation program to submit to the Board quarterly written reports addressing the respondent's progress in the program.

Although this requirement is currently written in the instructions and the approval letter of the rehabilitation program, staff is requesting its addition to the Disciplinary Guidelines for further clarity.

5. Submission of Biological Fluid Testing and Samples: If a respondent is required to submit to biological fluid testing and samples as a term of probation, the Disciplinary Guidelines state it is currently his or her responsibility to ensure the testing agency submits the results to the Board. However, this is now done automatically through the testing agency. Therefore, staff proposes deleting this requirement.
6. Monitoring of Billing System: Under current law, if a respondent is required to obtain a billing system monitor as a term of probation, the respondent will be notified of the decision and have 30 days before it becomes effective. Once effective, the respondent must then obtain a billing system monitor within 30 days.

Staff proposes an amendment that is more consistent with the Board's requirements for other terms and conditions of probation. A respondent would still be notified of the Board's decision and have 30 days before it becomes effective. Once effective, the respondent would need to submit the name of the billing monitor he or she would like to use for Board approval within 15 days. Once the Board approves a billing monitor, the respondent must obtain the services of the billing monitor within 15 days of the Board's approval.

7. License Surrender: Staff proposes a clarification to the license surrender language in the Disciplinary Guidelines. The modification would add gaining experience to the list of requirements that an applicant would need to meet if he or she decided to reapply for licensure in the future. Gaining experience hours is required for licensure; therefore it should be included in the list.

Mr. Caldwell requested an organized copy of the disciplinary guidelines, as the original is difficult to follow, and the listed changes. In regards to proposing to remove Failure to Comply with Mandated Reporting Requirements from the Table of Contents, Mr. Caldwell stated that it was already omitted from the chart and asked why it was not part of the Disciplinary Guidelines. Ms. Helms responded that it has not been included for some time. Ms. Rhine added that it is under Unprofessional Conduct.

Mr. Wong stated that it is also in the Penal Code, and although it is in the Penal Code, it is still up to the District Attorney to prosecute.

Ms. Madsen confirmed that it is under Unprofessional Conduct Code of the mandated reporting for child abuse and elder abuse.

Ms. Esptein asked if it is reasonable to find a billing monitor and obtain services within 15 days of the Board's approval of the billing monitor. Is a billing monitor an individual or a service? Ms. Madsen responded that she will get these answers from staff.

Renee Lonner moved to direct staff to make any nonsubstantive changes to the proposed language and recommend that the Board direct staff to begin the rulemaking process. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee adjourned for a lunch break at 11:22 a.m. and reconvened at 1:06 p.m. The Committee was joined by Christine Wietlisbach upon reconvening.

IX. Discussion and Possible Action Regarding Continuing Education Provider Approval, California Code of Regulations Title 16, Article 8

Ms. Rhine presented the proposed revisions to the continuing education (CE) provider regulations.

In January 2011, staff began looking at CE provider issues. Relative to reviewing course content, questions arose from some of the associations regarding how the Board looks at course content of approved CE providers.

Current law requires all licensees of the Board, as a condition of licensure renewal, to complete 36 hours of CE in, or relevant to, the licensee's respective field of practice. CE courses must be obtained from:

- An accredited or state-approved school; or,
- A professional association, licensed health facility, governmental entity, educational institution, individual, or other organization approved by the Board.

In order to be approved by the Board, a CE provider must meet the Board's course content and instructor qualification criteria as outlined in statute and regulation. CE course content shall be applicable to the practice of the particular profession, must be related to direct or indirect patient care, and must incorporate one or more of the following:

- Aspects of the discipline that are fundamental to the understanding and practice of the profession;
- Aspects of the discipline in which significant recent developments have occurred; or,
- Aspects of other disciplines that enhance the understanding or the practice of the discipline of the licensee.

Upon application, the Board ensures that the courses meet the requirements of the law. Thereafter, it is up to the CE provider to ensure that the courses being offered meet the requirements of the law. There is no further review of courses offered by CE providers. Though the Board is not given explicit authority to review course content, the Board may audit provider records to ensure compliance with the CE requirements.

Another incident occurred in 2011 with an approved CE provider, questioning the merits of that provider being approved by the Board.

Other issues that the Board has looked at in previous years:

1. Self study versus online courses: In 2008, the Board proposed to delete the regulatory provision which allowed CE credit for courses obtained through self-study. However, through a number of public meetings on the proposed revisions and in response to public

and stakeholder comments, the Board instead maintained the category of self study courses.

There has been much confusion for staff and licensees taking online courses (unlimited amount of hours credited) and how they differ from self-study courses (18-hour limit).

2. Expired provider approval: Providers are prohibited from providing courses to licensees for credit if their approval has expired. However, a conflict of law exists. The law states that upon application for renewal of an expired approval, a provider must submit a letter stating that during the time of expiration no courses were presented *but* if courses were presented during the expired period the letter shall state “that all participants have been notified that the providers approval status at the time of completion of the continuing education was expired and that continuing education hours will not be disallowed by the Board if the provider renews within one year after the expiration.”
3. Continuing competency: The Department of Consumer Affairs (DCA) and the Legislature is trying to move towards a continuing competency model versus the continuing education model for healing arts boards. Last year DCA began the discussion of transitioning healing arts boards to a continuing competency model for licensure renewal. Boards have resisted because it is a huge undertaking. Continuing competency, at its most basic level, is a model that goes beyond imposing mandatory CE courses and requires that the licensee’s knowledge, skills and clinical performance be assessed to determine areas of needed improvement.
4. CE credit for examination development: The Committee may want to consider the merits of allowing CE credit for licensees that participate in examination development.
5. Cite and fine CE providers: Currently, if the Board finds that a CE provider applicant or current CE provider is in violation of the law relating to the provision of CE, the Board has authority to either deny an application or revoke a provider approval; the Board does not have the authority to take less serious action, such as to cite and fine a provider and allow the provider to resolve any issues. The Committee may want to consider the merits of allowing the Board to take other disciplinary action against noncompliant CE providers.
6. CE provider approval through an accrediting body: This takes the Board out of the provider approval piece and puts it on an outside accrediting body. The Board would establish criteria that the accrediting body must meet. The pros to utilizing an accrediting body: 1) experts would make decisions regarding coursework, which is out of the expertise of board staff; 2) there would be oversight over the courses and instructors; and 3) it takes the Board out of the business of the provider approval process.

With so many issues to look at, this deserves an in depth look and requires working groups to address each piece and possible solutions. It is important to include stakeholders and their feedback. The Committee may wish to consider recommending to the Board the creation of a two-member subcommittee to examine the issues and possible solutions to be considered by the Committee.

Ms. Epstein supports a subcommittee or group to work through these issues.

Mr. Caldwell agreed with the idea of a subcommittee. AAMFT used to approve CE courses, but they got out of that business. The impression was that it used a lot of staff time and money, with very little revenue, to approve CE courses.

Mr. Wong agrees with Ms. Epstein and Mr. Caldwell. Mr. Wong listed questions for the subcommittee to answer:

1. What is the definition of competency?
2. How does licensing and regulation work with competency?
3. What is the licensee's responsibility, and how much is governmental regulation?

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that the National Board for Certified Counselors (NBCC) approves providers for courses. Ms. Porter added that approving conferences for CE credit would be difficult to approve ahead of time.

Dr. Johnson commented that the California Association of School Psychologists (CASP) offers CE credit for CASP-sponsored conferences.

Ms. Rhine noted that the American Psychological Association (APA) does not get into the course content.

Ms. Epstein stated that the APA performs audits on their CE providers. The process to become a CE provider through the APA is rigorous, and they are placed on a probationary period. The course content is monitored during the probationary period.

Mr. Wong stated that the ASWB and the Council on Social Work Education (CSWE) provide national accreditation. Dr. Johnson added that the National Association of School Psychologists (NASP) does the same as well.

Renee Lonner moved to recommend to the Board the creation of a two-member subcommittee to examine the issues and possible solutions to be considered by the Committee. Judy Johnson seconded. The Committee voted unanimously (3-0) to pass the motion.

XI. Discussion and Possible Regulatory Action Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008 and SB 1172, Chapter 517, Statutes of 2010

Ms. Helms presented the proposed regulations incorporating uniform standards for substance abusing healing arts licensees.

Senate Bill 1441 was signed in September 2008. The bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA's healing arts boards, was tasked with formulating uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees by January 1, 2010.

The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

SB 1441 outlined 16 separate topic areas for which the SACC formulated standards:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including but not limited to, required qualifications for the providers evaluating the licensee.

2. Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo a clinical diagnostic evaluation and any treatment recommended by the evaluator and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Specific consequences for major violations and minor violations.
11. Criteria that a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

14. If the board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
15. If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.
16. Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

Board staff has incorporated the standards into the Disciplinary Guidelines, as appropriate. Standards 13 through 16 were not incorporated. These standards involve either diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations.

The proposed Uniform Standards Related to Substance Abuse and Disciplinary Guidelines consist of four parts:

1. Uniform Standards Related to Substance Abuse: This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. Penalty Guidelines: This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. Disciplinary Orders: This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new uniform standards related to substance abuse.
4. Board Policies and Guidelines: Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

SB 1172 requires a healing arts board to suspend a license if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. This law allows a board to adopt regulations authorizing it to suspend the license of a licensee on probation or in a diversion program for major violations and when the Board orders a licensee to undergo a clinical diagnostic evaluation.

The Uniform Standards Related to Substance Abuse, which have been added to the Board's Disciplinary Guidelines, include these authorities, and therefore, fulfill the requirements of SB 1172.

Ms. Epstein referred to the supervisor requirements under standard #7, stating there are a lot requirements put on the supervisor. She asked if it is anticipated that probationers will experience challenges in trying to find supervisors who would be willing to comply with this burden. Ms. Madsen replied that finding supervisors for probationers is already a challenge. The Board already requires reporting from those supervisors. This standard is merely specifying the content of the report and the expectations.

Mr. Wong stated that the probationer must pay for the supervision. This is a factor to the availability of supervisors.

Julie McAuliffe, BBS Probation Monitor, stated that there may be some difficulties. Most entities are not paying their supervisors; they have agreed with the probationer to allow another licensee to take on that supervisory role. Ms. McAuliffe expressed that those who may have most difficulty finding supervisors are currently registered interns and associates.

Ms. Epstein referred to standard #5 regarding guidelines required of group meeting facilitators of chemical dependency support or recovery groups. Since the facilitators are not under the Board's jurisdiction, there could be issues if the facilitator does not comply. She asked how the licensee would be impacted if the chemical dependency group does not report any unexcused absences.

Ms. Epstein referred to the drug testing standard, which states that licensees shall be required to make daily contact to determine if testing is necessary. Ms. Epstein asked what for what period of time is the licensee required to make daily contact. Ms. Madsen responded that they must adhere to this requirement for the duration of their probation. This is computer-based or the probationer can call. The Board has already been doing that for about a year. The requirement remains in place until the licensee petitions to have that condition removed.

Denise Russell, Board of Psychology (BOP) Probation Monitor, stated that BOP has always required worksite monitors for its probationers, and it is a good thing to have a place, especially if the probationer is out of the area. She never encountered an issue where a probationer could not find a monitor. The monitor sends periodic reports directly to BOP. Ms. Russell added that she never had a problem with facilitators of chemical dependency groups signing off on attendance.

Ms. Rhine stated that the issue is not the facilitator signing off on attendance; the issue is that the facilitator must report directly to the Board.

Ms. McAuliffe expressed that it is ultimately the responsibility of the licensee to ensure that the network of people are following the guidelines.

Renee Lonner moved to direct staff to make any non-substantive changes and submit to the Board for consideration. Christine Wietlisbach seconded. The Committee voted unanimously (3-0) to pass the motion.

XII. Public Comment for Items Not on the Agenda

There were no public comments made for items not on the agenda.

XIII. Suggestions for Future Agenda Items

No suggestions for future agenda items were made. However, some suggestions for future agenda items were noted throughout the meeting.

The meeting was adjourned at 1:59 p.m.

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To: Policy & Advocacy Committee Members

Date: December 22, 2011

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Additional Items for 2012 Omnibus Bill

Upon review, staff has identified additional amendments to the Business and Professions Code (BPC) which are needed in order to add clarity and consistency to the Board's licensing laws. Although draft language for the 2012 omnibus bill has already been approved by the Board and submitted to the legislature, these additional changes, if approved, would be amended in to the omnibus bill.

1. Amend BPC Sections 4980.44 and 4980.48 – Addition of Licensed Professional Clinical Counselors (LPCCs) to List of Supervisors

Background: SB 363 (Chapter 384, Statutes of 2011), amended the law to allow LPCCs to supervise marriage and family therapist (MFT) interns if they meet specified additional training and education requirements (BPC §4980.03). BPC Sections 4980.44 and 4980.48 list the allowable supervisors of MFT interns and trainees, respectively, but LPCCs are not included in this list.

Recommendation: Amend Sections 4980.44 and 4980.48 to include LPCCs in the list of supervisors of MFT interns and trainees.

2. Amend BPC Sections 4980.78, 4980.80, and 4999.62 – Reference to Health Insurance Portability and Accountability Act

Background: Certain sections of the Board's licensing laws require coursework in California law and ethics that covers, among other topics, the Health Insurance Portability and Accountability Act (HIPPA).

During previous discussions of the 2012 omnibus bill at the October 13, 2011 Policy and Advocacy Committee Meeting and the November 9, 2011 Board Meeting, it was requested that reference to HIPPA in code sections 4999.32, 4999.57, 4999.58 and 4999.59 be removed and replaced with the term "state and federal laws related to confidentiality of patient health information." The reasoning for this is that HIPPA is a federal law which in the future could be repealed or replaced with a different title, therefore making the reference obsolete.

Amendments deleting the reference to HIPPA in Sections 4999.57, 4999.58, and 4999.59 and instead including the new reference term in Section 4999.32 have already been approved by the

Board. However, there are three other code sections in LPCC licensing law that also reference HIPPA.

Recommendation: Amend BPC Sections 4980.78, 4980.80, and 4999.62 to replace the reference to HIPPA with the term “state and federal laws related to confidentiality of patient health information.”

This amendment would be in addition to the amendments to 4980.78 and 4980.80 that have already been approved by the Board and submitted to the Legislature for inclusion in the 2012 omnibus bill.

3. Amend BPC Section 4999.76 – Continuing Education for Grandparented LPCC Licensees

Background: SB 274 (Chapter 148, Statutes of 2011) repealed the requirement that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or LCSW renew the license annually. However, Section 4999.76 still contains an annual continuing education requirement for these licensees, despite the annual renewal requirement being repealed.

Recommendation: Delete the requirement in Section 4999.76 that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or LCSW must complete 18 hours of annual continuing education. If this provision is deleted, these licensees would be required to show completion 36 hours of continuing education every two years upon license renewal, as is required of all other LPCC licensees.

Recommended Action

Conduct an open discussion regarding the proposed amendments. If the amendments are acceptable, direct staff to make any non-substantive changes to the proposed language, and submit to the Board for approval as Board-sponsored legislation.

Attachment

Proposed language

**Board of Behavioral Sciences
Additional Items for 2012 Omnibus Bill**

AMEND §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 professional clinical counselor](#), 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.

AMEND §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 professional clinical counselor](#), 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.

Amend §4980.78

(purple highlight = already Board approved and included in 2012 omnibus bill)

(blue highlight = newly proposed and not yet Board approved)

(a) This section applies to persons who apply for licensure or registration on or after January 1, 2014.

(b) For purposes of Sections 4980.72 and 4980.74, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from a school, college, or university accredited by an accrediting agency recognized by the United States Department of Education and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 150 hours of face-to-face counseling.

(B) Twelve semester or 18 quarter units in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment, as specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 4980.36.

(2) The applicant completes any units and course content requirements under subdivision (d) of Section 4980.36 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (l) of paragraph (2) of subdivision (d) of Section 4980.36.

(4) The applicant completes an 18-hour course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, state and federal laws related to confidentiality of patient health information~~the Health Insurance Portability and Accountability Act~~, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.

(5) The applicant's degree title need not be identical to that required by subdivision (b) of Section 4980.36.

Amend BPC §4980.80.

(purple highlight = already Board approved and included in 2012 omnibus bill)

(blue highlight = newly proposed and not yet Board approved)

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, 2013, inclusive.

(b) The board may issue a license to a person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if all of the following requirements are satisfied:

(1) The person has held that license for at least two years immediately preceding the date of application.

(2) The education and supervised experience requirements are substantially the equivalent of this chapter.

(3) The person complies with Section 4980.76, if applicable.

(4) The person successfully completes the board administered licensing examinations as specified by subdivision (d) of Section 4980.40 and pays the fees specified.

(5) The person completes all of the following coursework or training:

(A) (i) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that does not meet the requirements of included areas of study as specified in Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, state and federal laws related to confidentiality of patient health information requirements of the Health Insurance Portability and Accountability Act of 1996, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.

(ii) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three quarter unit course in California law and professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.

(B) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

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

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

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

(ii) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(F) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(G) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

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

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

AMEND §4999.62.

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, 2014.

(b) For purposes of Sections 4999.60 and 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(2) The applicant completes any units and course content requirements under Section 4999.33 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

(4) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, [state and federal laws related to confidentiality of patient health information](#)~~the Health Insurance Portability and Accountability Act~~, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

AMEND §4999.76.

(a) ~~(1)~~ Except as provided in ~~paragraph (2) and~~ subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding two years, as determined by the board.

~~(2) Except as provided in subdivision (c), the board shall not renew a license issued pursuant to paragraph (1) of subdivision (a) of Section 4999.54 unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding year, as determined by the board. This paragraph shall become inoperative on January 1, 2018.~~

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional clinical counseling association, a licensed health facility, a governmental entity, a continuing

education unit of a four-year institution of higher learning that is accredited or approved, or a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

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

(1) Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.

(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(g) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

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

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To: Policy & Advocacy Committee Members **Date:** January 18, 2012

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

Subject: **Limit on Telehealth Experience for Licensed Marriage and Family Therapist Applicants**

Background

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies. For example, psychotherapy performed via the telephone or over the internet may both be considered telehealth.

Current law limits the number of experience hours that an applicant for licensure as a marriage and family therapist (LMFT) may gain performing services via telehealth as follows:

Business and Professions Code (BPC) Section 4980.43(a)(11)

Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

This statute is in conflict with California Code of Regulation (CCR) Title 16, Section 1833, pertaining to experience needed to qualify for LMFT licensure. Title 16, CCR Section 1833(a)(5) allows no more than 250 hours of experience counseling or crisis counseling on the telephone to count toward the experience required for licensure.

Staff believes that this regulation is outdated, as it only limits counseling via telephone and does not discuss counseling provided over the internet.

Proposed Change

Hours of experience that an applicant may gain via telehealth appears to be adequately addressed in BPC Section 4980.43. Therefore, staff believes the conflicting requirement in regulation is no longer needed, and proposes striking Title 16 CCR Section 1833(a)(5).

Recommendation

Conduct an open discussion of the proposed regulatory amendment. Authorize staff to make any non-substantive changes and recommend to the Board submission of the approved amendment in a rulemaking package.

Attachments

Attachment A: Proposed Regulatory Amendment

Attachment B: Related Code Sections

APPENDIX A

PROPOSED REGULATORY AMENDMENT

§1833. EXPERIENCE

(a) In order for experience to qualify under Section 4980.40(f) of the Code, it must meet the following criteria:

(1) It must have been gained in accordance with Sections 4980.42 through 4980.45 of the Code and the regulations contained in this article.

(2) Experience shall not be credited for more than forty (40) hours in any week.

(3) No more than five hundred (500) hours of experience will be credited for providing group therapy or group counseling.

(4) No more than two hundred fifty (250) hours of experience will be credited for administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes; except that for any person who enrolled in a qualifying degree program prior to January 1, 1990, no more than five hundred (500) hours of experience may be credited for such activities.

~~—(5) For any person who enrolls in a qualifying degree program on or after January 1, 1990, no more than two hundred fifty (250) hours of experience will be credited for actual time spent counseling or crisis counseling on the telephone.~~

~~(6)~~⁽⁵⁾ For any person who enrolls in a qualifying degree program on or after January 1, 1990, not less than five hundred (500) total hours of experience shall have been gained in diagnosing and treating couples, families, and children.

(b) The term "supervision", as used in this article, includes ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised; reviewing client/patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the intern or trainee; monitoring and evaluating the ability of the intern or trainee to provide services at the site(s) where he or she will be practicing and to the particular clientele being served; and ensuring compliance with laws and regulations governing the practice of marriage and family therapy. Supervision shall include that amount of direct observation, or review of audio or video tapes of therapy, as deemed appropriate by the supervisor. Supervision shall be credited only upon the following conditions:

(1) During each week in which experience is claimed and for each work setting in which experience is gained, an applicant shall have at least one (1) hour of one-on-one, individual, face-to-face supervisor contact or two (2) hours of face-to-face supervisor contact in a group of not more than eight (8) persons receiving supervision. No more than five (5) hours of supervision, whether individual or group, shall be credited during any single week.

(2) The applicant shall have received at least one (1) hour of one-on-one, individual, face-to-face supervisor contact per week for a minimum of fifty-two (52) weeks.

(3) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal or business relationship which undermines the authority or effectiveness of the supervisor shall not be credited toward the required hours of supervised experience.

(4) In a setting which is not a private practice, the authorized supervisor may be employed by the applicant's employer on either a paid or a voluntary basis. If such employment is on a voluntary basis, a written agreement must be executed between the supervisor and the organization, prior to commencement of supervision, in which the supervisor agrees to ensure that the extent, kind, and quality of counseling performed by the intern or trainee is consistent with the intern or trainee's training, education, and experience, and is appropriate in extent, kind, and quality. The agreement shall contain an acknowledgment by the employer that the employer:

(A) Is aware of the licensing requirements that must be met by the intern or trainee and agrees not to interfere with the supervisor's legal and ethical obligations to ensure compliance with those requirements; and

(B) Agrees to provide the supervisor access to clinical records of the clients counseled by the intern or trainee.

(c) Professional enrichment activities may be credited toward the experience requirement as specified in this article and by Section 4980.43(d)(1) of the Code.

(1) No more than two hundred fifty (250) hours of verified attendance, with the approval of the applicant's supervisor, at workshops, seminars, training sessions, or conferences directly related to marriage and family therapy will be credited.

(2) No more than one hundred (100) hours of psychotherapy, which will be triple counted, received as specified in Section 4980.43(d)(2) of the Code, will be credited.

(d) Experience gained by interns and trainees shall be subject to the following conditions, as applicable:

(1) When an intern employed in private practice is supervised by someone other than the employer, the supervisor must be employed by and practice at the same site(s) as the intern's employer.

(2) A trainee shall not perform services in a private practice.

(3) Interns and trainees may only perform services as employees or volunteers and not as independent contractors.

(e) Effective January 1, 1991, trainees and interns shall maintain a log of all hours of experience gained toward licensure. The log shall be in the form specified below and shall be signed by the supervisor on a weekly basis. An applicant shall retain all logs until such time as the applicant is licensed by the board. The board shall have the right to require an applicant to submit all or such portions of the log as it deems necessary to verify hours of experience.

[See Barclays Official California Code of Regulations for original illustration]

NOTE: Authority cited: Section 4980.35 and 4980.60, Business and Professions Code. Reference: Sections 4980.35, 4980.40(f), and 4980.42 through 4980.45, Business and Professions Code.

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APPENDIX B

RELATED CODE SECTIONS

Business and Professions Code (BPC) § 2290.5

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

(c) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(d) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(f) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(g) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

BPC §4980.43

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

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

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

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

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master’s or doctoral degree. The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master’s or doctoral degree.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,000 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, “professional enrichment activities” include the following:

(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

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

(9) For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:

(A) Experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(B) Client centered advocacy.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights. This subdivision shall only apply to hours gained on and after January 1, 2010.

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

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

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

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

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

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

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

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

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

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

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

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

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

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

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

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

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

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

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

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

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

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

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

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To: Policy & Advocacy Committee Members

Date: January 19, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Acceptance of Valid Passing Examination Scores

Background

SB 704 (Chapter 387, Statutes of 2011) restructures the examination process for the Board's Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), and Licensed Professional Clinical Counselor (LPCC) licensees beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

For LPCCs, SB 704 specified that a valid passing score on the clinical examination must have been obtained less than seven years prior to the application date (Business and Professions Code (BPC) §4999.63). This was based on current law for LMFTs and LCSWs that require a passing score on the standard written exam be no more than seven years old in order to be eligible to participate in the clinical vignette exam.

LPCC law gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Examination (NCMHCE). Based on an in-depth audit that found the NCMHCE met California examination standards, the Board chose to use the NCMHCE. The law now requires that a passing score on the NCMHCE must be obtained less than seven years from the date of the application, and within seven years of the first attempt.

LCSW and LMFT National Licensing Exams

The Board has accepted the Association of Social Work Boards (ASWB) Clinical Level Examination as the acceptable clinical examination for LCSW licensure. ASWB has committed to making the changes required by the Board. If the changes are made in time, the Board hopes to be able to begin offering the ASWB exam as the clinical exam when the exam-restructure takes effect on January 1, 2013.

The Board is beginning evaluation of the Association of Marital and Family Therapy Regulatory Board's (AMFTRB) national exam to see if it would be suitable for future use as the clinical exam used for LMFT licensure in California. In the meantime, the Board will administer its own clinical exam for LMFT licensure.

SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained for LMFT and LCSW candidates, as long as it is passed within seven years of the initial attempt. It does not cover out of state applicants who passed the exam several years ago. For example, if the Board were to accept a national exam LCSWs, an applicant could, under SB 704, apply using a passing exam score that was 10 years old, despite the fact that the Board has determined previous versions of the exam did not meet California standards.

Previous Acceptance of National Exams

The Board required applicants for LCSW licensure to take the national ASWB written clinical level examination, plus a California state oral examination, from October 19, 1991 until March 30, 1999. At this time, the Board determined the ASWB clinical examination did not meet California standards, and switched to requiring passage of both a State-administered written and a State-administered oral examination.

The Board has never accepted a national examination for LMFT licensure.

Policies in Other States

The Board contacted ASWB and the AMFTRB to determine if other states impose limits on the age of a passing exam score.

Both entities indicated that a majority of states accept their national examinations with no age restrictions. AMFTRB asked the states using its exam if they imposed an age limit, and provided staff with a chart showing the policies of the states that responded. This can be found in Attachment B.

Massachusetts was the only state that responded that they accept the AMFTRB exam and that they impose an age limit (of five years). According to a representative for that state, this limit was agreed upon because it gives applicants a reasonable amount of time to benefit from a passing score, but also ensures the applicant shows familiarity with contemporary issues. However, an applicant with a current license in another state can be offered reciprocity, regardless of how old their passing exam score is, as long as their license from the other state is current. If the license is expired and the exam score is over five years old, they may be required to retake the exam.

Key Points to Consider

The purpose of a licensing examination is to measure a candidate's competency in performing a given profession. Competencies can change over time based on the changing needs of the population. Typically, an occupational analysis is performed every five years to ensure that an examination is still measuring the needed competencies. The Committee may want to consider the following in deciding whether to limit the age of passing exam scores:

- The degree to which the profession has changed over time;
- Whether the exam, at any point in the past, still accurately measures the competency needed to practice in the present environment; and
- The best way to achieve balance between accurate measurement of competency, and fairness to the applicant.

Recommendation

Conduct an open discussion regarding whether Sections 4980.397 and 4992.05 should be amended to limit when the valid passing clinical exam scores of LMFT and LCSW applicants must have been obtained prior to the application date. Direct staff to make the decided-upon amendments and submit to the Board for consideration as a legislative amendment.

Attachments

Attachment A: Proposed Language

Attachment B: Survey of Acceptance of AMFTRB Exam in Other States

Attachment C: Related Code Sections

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ATTACHMENT A
ACCPTANCE OF VALID PASSING EXAMINATION SCORES
PROPOSED AMENDMENTS

Amend §4980.397

(a) Effective January 1, 2013, an applicant for licensure as a marriage and family therapist shall pass the following two examinations as prescribed by the board:

- (1) A California law and ethics examination.
- (2) A clinical examination.

(b) Upon registration with the board, a marriage and family therapist intern shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination only upon meeting all of the following requirements:

- (1) Completion of all required supervised work experience.
- (2) Completion of all education requirements.
- (3) Passage of the California law and ethics examination.

(d) A valid passing score on the examination referenced in paragraph (2) of subdivision (a) above shall have been obtained less than [REDACTED] years prior to the application date.

(d)(e) This section shall become operative on January 1, 2013.

Amend §4992.05

(a) Effective January 1, 2013, an applicant for licensure as a clinical social worker shall pass the following two examinations as prescribed by the board:

- (1) A California law and ethics examination.
- (2) A clinical examination.

(b) Upon registration with the board, an associate social worker registrant shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination only upon meeting all of the following requirements:

- (1) Completion of all education requirements.
- (2) Passage of the California law and ethics examination.
- (3) Completion of all required supervised work experience.

(d) A valid passing score on the examination referenced in paragraph (2) of subdivision (a) shall have been obtained less than [REDACTED] years prior to the application date.

(d)(e) This section shall become operative on January 1, 2013.

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ATTACHMENT B
Age Limit For Passing AMFTRB Exam Scores in Other States

State	How Many Years National Exam Score is Valid
Arizona	No Limit
Delaware	No Limit
Georgia	No Limit
Indiana	No Provision – Requires only that exam taken is equivalent to current exam
Kansas	No Limit
Kentucky	No Provision
Massachusetts	5 years
Michigan	No Limit
New Mexico	No Limit
New York	No Limit
North Carolina	No Limit
Ohio	No Limit
South Carolina	No Provision
Texas	No Provision

Source: Association of Marital and Family Therapy Regulatory Boards (AMFTRB), January 2012.

Note: "No Limit" indicates the state respondent noted the exam score did not expire.

"No Provision" indicates that the state does not have a law regarding the exam score expiration.

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**ATTACHMENT C
RELATED CODE SECTIONS**

Age Limit of Examination for LPCC Applicants

§4999.53

(a) Effective January 1, 2013, a clinical counselor intern applying for licensure as a clinical counselor shall pass the following examinations as prescribed by the board:

(1) A California law and ethics examination.

(2) A clinical examination administered by the board, or the National Clinical Mental Health Counselor Examination if the board finds that this examination meets the prevailing standards for validation and use of the licensing and certification tests in California.

(b) Upon registration with the board, a clinical counselor intern shall, within the first year of registration, take an examination on California law and ethics.

(c) A registrant may take the clinical examination or the National Clinical Mental Health Counselor Examination, as established by the board through regulation, only upon meeting all of the following requirements:

(1) Completion of all required supervised work experience.

(2) Completion of all education requirements.

(3) Passage of the California law and ethics examination.

(d) This section shall become operative on January 1, 2013.

§4999.63

(a) For applicants who submit an application for a license on or before January 1, 2013, a valid passing score on the examination referenced in subdivision (c) of Section 4999.52 shall have been obtained less than seven years prior to the application date.

(b) For applicants who submit an application for a license on and after January 1, 2013, a valid passing score on the examination referenced in paragraph (2) of subdivision (a) of Section 4999.53 shall have been obtained less than seven years prior to the application date.

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To: Policy & Advocacy Committee Members **Date:** January 17, 2012
From: Rosanne Helms
Legislative Analyst **Telephone:** (916) 574-7897
Subject: Rulemaking Update

PENDING REGULATORY PROPOSALS

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 in early 2012.

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 obtained approval to a revised version of this rulemaking proposal at the August 18, 2011 Board meeting. This rulemaking will be submitted to OAL for initial notice in early 2012.

Title 16, CCR Sections 1870, 1874, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs)

This proposal, approved by the Board in June 2007, requires supervisors of ASWs to be licensed for two years prior to commencing any supervision. This rulemaking will be submitted to OAL for initial notice by in early 2012.

Title 16, CCR Sections 1803, 1845, 1858, 1881; Add Sections 1823, 1888.1, SB 1111 Enforcement Regulations

This proposal is part of an effort by DCA for healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 (part of DCA's Consumer Protection Enforcement Initiative) that do not require statutory authority.

The intent of SB 1111, which failed passage in 2010, and SB 544, currently in the legislative process, is to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. These regulations propose delegation of certain

functions to the executive officer, required actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort.

This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking will be submitted to OAL for initial notice in early 2012.

Title 16, CCR Sections 1832.5, 1889.2, Technical and Nonsubstantive Regulatory Changes

This proposal makes technical and non-substantive amendments to current regulations that are needed due to recent statutory changes. This proposal was approved by the Board at its meeting on August 18, 2011 and will be submitted to OAL in early 2012.

Title 16, CCR Sections 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Section 1825, Regulations to Implement SB 704

This proposal revises current Board regulations in order to be consistent with the statutory changes made by SB 704 (Chapter 387, Statutes of 2011), which restructures the examination process for LMFT, LCSW, and LPCC applicants. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in early 2012.

Title 16, CCR Section 1833, Regulations to Implement SB 363

SB 363 (Chapter 384, Statutes of 2011) limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

This proposal deletes a provision of Board regulations which conflicts with SB 363 and that is no longer needed due to the new legislative provisions enacted by SB 363. This proposal was approved by Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in early 2012.

Title 16, CCR Section 1888 and Disciplinary Guidelines, Enforcement Regulations

This proposal makes several revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in early 2012.

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

As a result of AB 2699 (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. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in early 2012.