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BOARD MEETING NOTICE **August 22-23, 2012**

Department of Consumer Affairs
1625 North Market Blvd., 1st Floor Hearing Room
Sacramento, CA 95834

Wednesday, August 22
10:00 a.m.

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

- I. Introductions
- II. Approval of the May 16-17, 2011 Board Meeting Minutes
- III. Approval of the July 19, 2012 Board Meeting Minutes
- IV. Chair Report
 - a. Committee Assignments
 - b. November Board Meeting Date
- V. Executive Officer's Report
 - a. Budget Report
 - b. Operations Report
 - c. Personnel Update
 - d. BreEZe Update
- VI. Update on the Continuing Education Committee
- VII. Update on the Department of Managed Health Care Autism Task Force Meetings
- VIII. Update on the Licensed Professional Clinical Counselor Program
- IX. Policy and Advocacy Committee Report
 - a. Discussion and Possible Action regarding Revisions to the Retired License Statute
 - b. Discussion and Possible Regulatory Action to Require All Applicants to Submit a National Data Bank Inquiry Result
 - c. Legislative Update
 - d. Rulemaking Update



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

X. Discussion and Possible Action Regarding Revisions to Regulations to Implement SB 1111 (Negrete McLeod)

XI. Discussion and Possible Action Regarding AB 1588 (Atkins)

XII. Suggestions for Future Agenda Items

XIII. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment session that is not included on this agenda, except to decide to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a)]

XIV. Adjournment

Thursday, August 23
8:30 a.m.

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

- XV. Introductions
- XVI. Petition for Early Termination of Probation for Engedaw Berhanu, LCS 15980
- XVII. Petition for Modification of Probation for Graham Danzer, ASW 29082
- XVIII. Petition for Early Termination of Probation for Balvinder Lallian, IMF 63646
- XIX. Suggestions for Future Agenda Items
- XX. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment session that is not included on this agenda, except to decide to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).

FULL BOARD CLOSED SESSION

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

FULL BOARD OPEN SESSION

- XXII. Adjournment

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

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

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

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BOARD MEETING MINUTES - *DRAFT* **May 16-17, 2012**

Department of Consumer Affairs
Hearing Room
1747 North Market Blvd., 1st Floor
Sacramento, CA 95834

Wednesday, May 16th

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Marc Mason, Administration/Exam Manager
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel
Dianne Dobbs, Legal Counsel

Members Absent

Patricia Lock-Dawson, Vice Chair, Public Member
Sarita Kohli, LMFT Member

Guest List

On file

FULL BOARD OPEN SESSION

I. Introductions

Dr. Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 9:12 a.m. Christina Kitamura called roll. A quorum was established. Board members, Board staff, and meeting attendees introduced themselves.

Dr. Wietlisbach informed the audience that agenda item VI. f., regarding AB 1864, failed in committee and will not be discussed. She also informed the audience that agenda item XIII, regarding a two-member executive committee, is tabled.

II. Approval of the February 29 - March 1, 2012, Board Meeting Minutes

Karen Pines moved to adopt the Board meeting minutes. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

III. Executive Officer's Report

a. Budget Report

Kim Madsen provided an update on the Board's budget. The Board's 2011/2012 budget is \$7,779,000. Expenditures as of March 31, 2012 total \$5,605,217. Of these

expenditures, 26% are directly related to personnel expenses and 14% are related to enforcement activities. The remaining expenses are related to operating and equipment costs.

The Board is on target in finishing the fiscal year with an encumbered balance of about \$100,000. Ms. Madsen expects this figure to go up due to the end of the year adjustments.

Projected expenses through the end of the fiscal year, which include the additional BreEZe expenses, are estimated to be close to \$7.6 million. Total revenue as of March 31, 2012 is about \$6.8 million which represents 88% of the total budget.

The Board's current fund condition remains at a reserve balance of 3.1 months.

The Board has loaned a total of \$12.3 million dollars to the General Fund. The Board was recently notified that it is scheduled to receive a repayment, however, it is not clear what the amount will be. Department of Finance typically prefers to see the reserve below 3 months.

The proposed 2012/2013 budget for the Board is \$8,153,000. The May revise was released, which is an adjustment based on revenue collections and a forecast for the upcoming year. The Governor is proposing cuts, which will depend on the tax initiatives. The proposal to cut state employees' compensation by 5% will affect the Board and its operations. The proposal is to move to 4-day work week at 9.5 hours per day, a total of 38 hours per week, closing the office one day a week. Although this proposal must be negotiated with the unions, it is clear that the reduction in compensation will take place. A reduced work week will go into effect on July 1st, but it is unclear what the time reduction will look like.

Other proposals are to eliminate or reduce the number of external contractors, eliminate non-essential hiring of retired annuitants, and permanently reduce the state workforce. Last week, vacant positions were eliminated. The Board lost two of its vacant positions, leaving it with 44 staff instead of 46. Those positions were the evaluator position in the licensing unit and an analyst position in the enforcement unit. Delays in processing times are anticipated.

The Little Hoover Commission has been meeting regarding the reorganization plan. The portion of the plan that would affect the Department of Consumer Affairs (DCA) would see the Department of Real Estate, the Board of Chiropractic Examiners, the Office of Real Estate Appraisers, and the Structural Pest Control Board all come under DCA. The Director of DCA and the State and Agency Secretary both testified in support of this plan.

Dr. Judy Johnson suggested putting a notice on the website regarding the anticipated delays due to the reduced work schedules taking effect in July.

b. Operations Report

Ms. Madsen provided an update on operations. Two positions were eliminated by the Governor. In the Licensing Program, there was an overall increase in application volume. There was a slight decrease in the volume of social work applications. Processing times for marriage and family therapy examination applications have improved from a 6-month delay to a 4-month delay. Staff is making plans for the social

work desk so that it does not experience a long backlog due to the elimination of the vacant position.

Ms. Madsen reported on the Licensed Professional Clinical Counselor (LPCC) Program. The Board has received 91 intern applications, 39 LPCC applications, and 3433 LPCC grandparent applications.

Due to the complexity of the LPCC Program and limited resources, the process to approve applications is significantly delayed. One challenge is the inability to get information from schools relating to curriculum that meets requirements for licensure in California.

Recently, the Board redirected a vacant position from another unit to the Licensing Unit in an effort to add another licensing analyst to the LPCC Unit. Currently, there are two evaluators in the LPCC Unit.

As of March 31, 2012, the Board has issued 15 LPCC licenses and 14 Professional Clinical Counselor (PCC) Intern registrations.

Dr. Johnson asked, in regards to employment, how many of people actually have positions that they cannot access because they are waiting to be licensed. Some of these people are teaching at universities and doing other duties that does not require licensure. Are folks not accessing services to be able to work because of this "bottleneck?"

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that many of the grandparent applicants have been working; some of them are either under employed or working in other fields. Those who have been licensed in another state and relocate to California may not be working. Ms. Porter expressed that she hopes the interns will be a priority because they need the registration to continue. Ms. Porter asked how long it will take the Board to process these applications so that she can relay the information to the LPCC population.

Ms. Madsen replied that it is not possible to provide a time frame because there are so many variables to each individual application. This is a new program, and staff is still trying to obtain information from schools in order to evaluate applications.

Paula Gershon, Program Manager, estimated that it may take 1 ½ years, for those applications already received, from the date it was received. This is worst case scenario.

Michael Brooks, Center for Clinical Social Work, expressed that those who already have a license to practice in another field and have jobs should be low priority. He also suggested sending a letter of explanation to those people in order to cut down on phone calls.

Dr. Harry Douglas suggested setting up benchmarks based upon the receipt of all required information necessary to evaluate the application.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA) commended Board staff on their work in evaluating the numerous amounts of applications that they are receiving. She stated that the associations can

communicate the complexities, details and specifics related to the delay in processing the applications to its members.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), warned against sending unrealistic expectations. Applicants may submit everything that is required; however, the Board must determine if it is sufficient.

Dr. Wietlisbach thanked the staff for its hard work.

Ms. Madsen reported on the Examination Program and Administration Program. A total of 1895 examinations were administered in the first quarter. The Cashiering Unit is currently processing renewal applications within 7 days of receipt. All other applications are processed within 3 days.

Ms. Madsen reported on the Enforcement Program. Enforcement staff continues to meet or exceed the established performance measures (PM) with the exception of PM 4, Formal Discipline. This is the part of the process that Board staff does not have control over, because the Board must rely on the Attorney General's Office and the Office of Administrative Hearings.

Ms. Madsen reported on the BreEZe project. Board staff continues to work with the BreEZe team and vendor to ensure that our business processes and needs are accurately reflected in our new database system. Significant Board resources are involved in reviewing and testing the design.

Ms. Madsen reported on the Customer Service Satisfaction Survey, citing the improvement in overall satisfaction since last quarter.

c. Personnel Update

Ms. Madsen announced that Steve Sodergren accepted the Assistant Executive Officer position effective May 1, 2012. He previously served as the Board's Licensing Manager and Enforcement Manager from 2006 to 2008.

d. Sunset Review Update

On March 19, 2012, Dr. Christine Wietlisbach, Renee Lonner, and Kim Madsen attended the Senate Business Professions and Economic Development Committee (Committee) Sunset Review hearing. The purpose of the hearing was to address the questions from the Committee following its review of the Board of Behavioral Sciences' Sunset Review report.

As requested by the Committee, the Board discussed four of the fifteen questions raised in the Committee's background paper. A written response to all fifteen questions was provided to the Committee on April 19, 2012. Several professional associations also attended the hearing and provided testimony in support of extending the Board. Two licensees also attended and provided their perspective.

The Sunset Bill to extend the Board is moving through the legislative process, and the proposal is to extend the Board until January 1, 2017.

IV. Continuing Education Committee Report

Marina Karzag reported on the Continuing Education Committee's (Committee) work. The two-member Committee was established with Dr. Douglas and Dr. Johnson as its members.

This Committee was created to address a number of issues that came to the attention of staff this past year related to continuing education (CE) provider requirements. These issues were presented and discussed at the October 2011 Policy and Advocacy Committee meeting and at the November 2011 Board meeting. At its November 2011 meeting, the Board voted to create a two-member committee to review and discuss the Board's current CE provider requirements and other models of continuing education.

The Committee held its first public meeting on April 18, 2012. The meeting focused on the issues that were identified regarding the Board's current CE provider requirements. The Committee also compared the Board's requirements with other DCA healing arts boards and licensing boards in other states. The Committee received valuable input from stakeholders that attended the meeting.

The next meeting is scheduled on May 31, 2012. The Committee will focus on the role of the CE provider accrediting agencies and how this model may address some of the issues identified by staff.

Dr. Douglas commended Ms. Karzag on her research and information provided to the Committee. He listed some of the issues that came up at the April 2012 meeting:

- Accreditation,
- Lack of oversight and accountability,
- Renewal process,
- Instructor qualifications,
- Provider approval, and
- Financial burden on the individual, the provider, and the stakeholder.

Ms. Pines expressed her concerns regarding self study courses that grant 6 hours of CE credit for taking a 2-hour course. Ms. Karzag responded that the Committee will be taking a look at the issues regarding self study and remote/internet courses.

Dr. Johnson stated that it is important to find the balance of percentage of self study versus interface. Some people only have access to online and self study courses; but the interface is important because of the nature of this field.

Dr. Douglas outlined the plan for the four Committee meetings:

- 1st meeting (April 18th) discussed continuing education,
- 2nd meeting to discuss accreditation,
- 3rd meeting to discuss the continuing competency model, and
- 4th meeting to discuss recommendations

Dr. Wietlisbach suggested, in light of Senate Bill (SB) 1183, moving up the schedule of the meetings to get the work done faster.

V. Update on the California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Boards

Dr. Tracy Montez, Applied Measurement Services (AMS), provided an update on the California marriage and family therapy occupational analysis and collaboration with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

Dr. Montez received and reviewed documents and reports from AMFTRB as requested by AMS. AMS then submitted a list of follow-up questions to AMFTRB. Responses to the

questions were received from AMFTRB within two weeks of submission. Dr. Montez is generating another list of questions.

Currently, Dr. Montez is looking at how AMFTRB develops their exam, how they administer it, and their security procedures. During this time, AMFTRB is developing a practice analysis to update their scope of practice. The Board is also developing a practice analysis.

All of this information, including the two updated scopes of practice, will be compiled and included in a report at the end of the year.

Ms. Madsen added that two California Subject Matter Experts (SME) are participating in AMFTRB's practice analysis.

The Board took a break at 10:12 a.m. and reconvened at 10:34 a.m.

VI. Policy and Advocacy Committee Report

a. Recommendation #1 - Support, Assembly Bill 40 (Yamada) if amended

Rosanne Helms reported on AB 40, Elder and Dependent Adult Abuse Reporting.

Current law specifies that certain individuals, including Licensed Marriage Family Therapists (LMFT), Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), and Licensed Professional Clinical Counselors (LPCC) are mandated reporters of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility by calling either the local ombudsperson or the local law enforcement agency immediately or as soon as possible.

The law requires a mandated reporter to make a report via telephone to local law enforcement to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility. The written report must be made to both the local ombudsperson and the local law enforcement agency.

According to the author's office, the local ombudsman's limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation and resolution of certain elder and dependent adult abuse reports.

At the April 2012 Policy and Advocacy Committee (Committee) meeting, a proposed amendment was suggested. The suggestion was to amend the Welfare and Institutions Code to require a report by telephone to local law enforcement be made in the case of alleged physical and/or sexual abuse. This change was suggested because in other areas of the law that reference physical abuse, sexual abuse is often specified in the reference.

The Committee recommended the Board take a support position on this bill if it is amended to reference "physical abuse and/or sexual abuse."

Dr. Wietlisbach stated that at the Committee meeting, the question was whether the definition of "physical abuse" included sexual abuse. Now that the definition has been provided, it seems that this would be redundant to propose this amendment.

Christina Wong agreed with Dr. Wietlisbach, stating that it is not necessary to list sexual abuse since it is defined under physical abuse.

Ms. Pines asked if this bill included financial abuse. Ms. Helms responded that it does not include financial abuse, explaining that when this bill was first introduced, it included financial abuse. Concerns were raised regarding the dual mandated report for all situations of elder abuse. The bill was amended so that the dual mandated report would be required in all suspected physical abuse cases.

Michael Brooks stated that both terms (physical and sexual abuse) should be outlined in the bill, even if it's redundant, because it makes it very clear. Ms. Lonner agreed with Mr. Brooks.

Dr. Judy Johnson agreed that there is a distinction between physical and sexual abuse, and supports an amendment to include "sexual abuse."

Dr. Judy Johnson moved to support the AB 40 and to recommend an amendment to include "sexual abuse." Karen Pines seconded. The Board voted unanimously (7-0) to pass the motion.

b. Recommendation #2 - Support, Assembly Bill 171 (Beall)

Ms. Helms reported on AB 171, Pervasive Development Disorder or Autism.

Current law requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, by no later than July 1, 2012.

AB 171 expands on current law by requiring every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2013, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism (PDD/A).

The intent of AB 171 is to close loopholes in current law that allowed for denial of coverage to those with PDD/A. This bill would prohibit coverage for PDD/A from being denied on the basis of the location of delivery of the treatment, or because the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

At its meeting in April 2012, the Committee recommended that the Board take a support position on this bill and asked that staff work with the author's office to address some minor technical concerns. The bill specifically defines "diagnosis of pervasive developmental disorder or autism" and "treatment for pervasive developmental disorder or autism," citing specific care that these entail. However, there is no definition of "screening of pervasive developmental disorder or autism." It is suggested that "screening of autism spectrum disorders" also be specifically defined.

Christine Wong moved to support AB 171. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

c. Recommendation #3 - Support Assembly Bill 367 (Smyth) if amended

Ms. Helms reported on AB 367, Board of Behavioral Sciences Reporting.

Current law requires certain boards to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive to the State Department of Health Care Services within ten working days.

Specified boards are subject to these reporting requirements. This bill would add the Board of Behavioral Sciences to this list.

At its meeting in April 2012, the Committee recommended that the Board support this bill if its implementation is delayed until January 1, 2015 in order to accommodate the BreZE system implementation.

Ms. Epstein commented that this is a CAMFT-sponsored bill, and this amendment will be introduced at the Senate Business and Professions Committee. The author is in support of the amendment.

Renee Lonner moved to support his bill if its implementation is delayed until January 1, 2015 in order to accommodate the BreZE system. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.

d. Recommendation #4 - Support Assembly Bill 1588 (Atkins) if amended

Ms. Helms reported on AB 1588, Professions and Vocations Reservists Licensees, Fees and Continuing Education.

Current law allows a licensee or registrant of any board, commission, or bureau within the DCA to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces. The following conditions must be met:

- a. The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces.
- b. The application for reinstatement must be made while actively serving, or no later than one year from the date of discharge from active service or return to inactive military status; and
- c. The applicant must submit an affidavit stating the date of entrance into the service, whether still in the service or the date of discharge, and he or she must also submit the renewal fee for the current renewal period.

This bill is intended to prevent members of the military from being penalized if they allow their professional license to fall into delinquency during their service period.

The Board does not currently waive renewal fees if a licensee is called to active military duty. A licensee called to active military duty may choose to renew their license to an inactive status. An inactive status is valid for two years and requires payment of an inactive license fee that is approximately one-half of the standard license renewal fee.

The Board may waive a licensee's continuing education requirement if he or she was absent from the state of California due to active military service for at least one year during the previous renewal period. The licensee must request the exemption on a form prescribed by the Board at least 60 days before his or her license expires.

The Board of Psychology's licensing law allows for a waiver of the renewal fee when a licensee is in full-time active service in the Army, Navy, Air Force, Marines, United States Public Health Service, the Peace Corps, or Vista.

Staff suggests an amendment setting a time limit by which the renewal fee must be paid once the licensee or registrant completes active service. The Medical Board currently

has a renewal fee exemption for its licensees if they are engaging in active military status.

At its April 2012 meeting, the Committee recommended that the Board take a “support if amended” position on this bill, requesting the bill be amended to include a time limit to pay the renewal fee once active service is complete, and replacing the term “written notice” with “affidavit.” The Committee also directed staff to do further research regarding the current policy of the Board of Psychology, as well as research regarding whether this bill would require additional costs to modify the new BreEZe database system.

The BreEZe team indicated that no additional costs would incur due to this change.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that when a reservist holds a professional license, they usually serve in that capacity in the military. This bill is a “blanket” bill, with the stereotype that the reservist is going to be called to engage in combat and cannot serve in their license capacity.

Ms. Pines inquired if the issue is access to continuing education. Dr. Johnson replied that technology allows for access to online courses. Ms. Pines inquired if the reservist is allowed the time to take the courses. Dr. Johnson replied that is the assumption for anyone engaged in an active service. Unless they are actually engaging in that practice, there is no reason for it to be waived.

Ms. Wong stated that if the language could specify the conditions that they cannot be practicing and they have a time limit, there should be no problems.

Ms. Helms stated that there is already a process to waive the CE requirement. Furthermore, the Board of Psychology and the Medical Board state that the licensee shall not engage in private practice. Working for the military is a government entity, not a private practice.

Mr. Brooks stated that active duty licensees are usually practicing in the military. However, there are some service members that are in the military but not serving in that capacity. The federal government does not require a license to practice; however, the military requires a license.

Marc Mason reminded the Board, and Michael Santiago confirmed, that the bill is limited to reservists.

Mr. Mason suggested that the Board take into consideration those reservists who are affected are in extreme situations, and historically, this affects only a small population.

Dr. Judy Johnson moved to support this bill if amended to include a time limit to pay the renewal fee and to replace the term “written notice” with “affidavit.” Samara Ashley seconded. The Board voted unanimously (7-0) to approve the motion.

e. Recommendation #5 - Support Assembly Bill 1785 (Lowenthal, B.)

Ms. Helms reported on AB 1785, Medi-Cal Federally Qualified Health Centers and Rural Health Clinics.

Current law establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits and lists the health care providers that are reimbursed on a per-visit basis.

This bill would add a marriage and family therapist to the list of health care professionals included in the definition of a visit to a FQHC or RHC. This amendment leaves out the Board's newest license type, LPCCs. CAMFT has indicated willingness to consider this amendment.

Staff suggested an amendment be made to include the word "licensed" in front of the term "marriage and family therapist" in the Welfare and Institutions Code. This will clarify that the marriage and family therapist must be licensed by the Board, and it is consistent with the use of the term "licensed clinical social worker" in that code section.

At its April 2012 meeting, the Committee recommended that the Board take a support position on this bill.

Rebecca Gonzales, NASW-CA, expressed that NASW-CA opposes this bill. NASW-CA feels that there is an adequate supply of social workers to fulfill these jobs. Social workers' training is ideally suited to serve the low income populations that frequent FQHCs and RHCs. NASW-CA also feels that this bill can have the unintended consequence of suppressing wages.

Ms. Epstein stated that this is in the Appropriations Committee and is in suspense right now because it has a fiscal impact of \$3 million. Ms. Helms added that any bill that has a financial impact sits in suspense.

Renee Lonner moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

f. Recommendation #6 - Oppose Assembly Bill 1864 (Wagner)

AB 1864 died in committee, therefore, no discussion took place.

g. Recommendation #7 - Support Assembly Bill 1904 (Block)

Ms. Helms reported on AB 1904, Military Spouses Temporary Licenses.

This bill allows a board within DCA to issue a temporary license to an applicant who can prove that he or she is married to or in a domestic partnership or other legal union with, an active duty member of the U.S. Armed Forces who is assigned to duty in California under official active duty military orders if specific conditions are met.

The bill provides discretion to the Board on whether to implement this. If the Board decides to implement this process, the Board is required to expedite the issuance of the license.

As written, this bill requires that the military spouse hold a current license in another state that the Board determines has substantially equivalent licensing requirements. It says nothing about passage of required Board administered examinations.

At its April 2012 meeting, the Committee recommended the Board take a support position on this bill.

Mr. Wong stated that this bill expands the idea of reciprocity based on individuals associated with a specific population of people.

Ms. Madsen emphasized that this bill gives the discretion to the Board on whether or not to implement this process.

Christina Wong moved to support this bill. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

h. Recommendation #8 - Consider Assembly Bill 1932 (Cook)

Ms. Helms reported on AB 1932, United States Armed Services Healing Arts Boards.

Current law requires healing arts boards under DCA to provide methods of evaluating education, training, and experience obtained in military service if the training is applicable to the requirements of the profession.

This bill requires, beginning January 1, 2014, each healing arts board to annually issue a written report to the Department of Veterans Affairs and to the Legislature that details the board's method of evaluating education, training, and experience obtained in military service. The report must also state whether the military education, training, and experience can be applied toward the board's licensing requirements.

The author's office would like to require state agencies to identify which requirements are satisfied by military training and what additional training is required. The goal is to reduce the amount of time and money wasted forcing veterans to repeat their medical training from scratch.

The Board has very specific requirements for education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board conducts a review to determine whether or not it was substantially equivalent to current licensing requirements. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience.

The Board is not aware of specific circumstances in which an individual had military education or experience. This is not tracked by the Board and there is not a common provider of military education or experience that the Board sees cited on incoming applications. Occasionally, the Board sees supervised experience that was obtained out of the country. This experience may be accepted by the Board if the Board can determine that the supervision was substantially equivalent, and upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years in his or her current jurisdiction and is in good standing.

Military education and experience is evaluated by the Board on a case-by-case basis if a military applicant applies for licensure or registration. The case-by-case evaluation is needed in order to protect the public by ensuring qualified licensees. The Board would be able to provide the Department of Veterans Affairs and the Legislature with information about findings from past evaluations of military schools and military experience settings, and would also be able to provide information about Board licensing requirements. However, it is not possible for the Board to evaluate all possible scenarios of military education and experience if the Board is not aware of them.

At its April 2012 meeting, the Committee did not recommend a position to the Board for this bill, but requested that the Board further discuss the policy implications of this legislation.

Erica Eisenlauer, Analyst for DCA Legislative and Policy Review Division, explained that as a result of the May 1st hearing, the Assembly Budget Committee presented DCA with supplemental reporting language requiring DCA to prepare a report detailing its implementation of Business and Professions Code Section 35. AB 1932 requires the same of DCA; however, this supplemental reporting requirement is due to the Assembly Budget Committee no later than October 1, 2012. If AB 1932 were to become enacted, the supplemental reporting requirement would be submitted before this legislation was to take effect. The supplemental reporting requirement would require the same information that AB 1932 would require; however, AB 1932 is an annual requirement whereas the supplemental reporting requirement is a one-time requirement. DCA is requesting this information by October 1, 2012.

Ms. Helms stated that the Board can take a position on this bill and it will not affect the matter going on with the Legislature.

Mr. Mason stated that Board staff does not have the expertise or the resources to identify every program out there. It is incumbent for the military to provide this information to the Board. The Board will evaluate anybody's application to determine if the Board's requirements are met; but to do this annually is not wise since it would take up a lot of the Board's resources; and it is unclear what the benefit will come of this.

Ms. Helms emphasized that it would not be effective for the Board to attempt to identify every possible program, especially when getting into the wide variety of military experience and education that could be out there.

Dr. Johnson stated that this is very cumbersome, and there is already a vehicle in place. Dr. Johnson proposed no action.

Ms. Madsen stated that this comes in light of Governor Brown's recent directive to identify non-essential reporting and eliminating those reports.

Samara Ashley moved to oppose the bill and provide explanation that references lack of staffing and resources, duplicative process, and refers to the Governor's directive to eliminate non-essential reports. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

i. Recommendation #9 - Support Assembly Bill 2570 (Hill)

Ms. Helms reported on AB 2570, Licensee Settlement Agreements.

This bill prohibits a licensee regulated by DCA from including or allowing inclusion of the following provisions in a settlement agreement of a civil dispute:

- a. A provision prohibiting the other party in the dispute from contacting, filing a complaint with, or cooperating with DCA or a board, bureau or program; and
- b. A provision that requires the other party in the dispute to withdraw a complaint from DCA or a board, bureau or program.

The intent of this bill is to close a loophole in current law that allows a licensee or registrant regulated by DCA to prohibit a consumer that settles a civil suit with that

licensee or registrant from filing a complaint or cooperating in an investigation with the licensee or registrant's regulatory board.

These regulatory gag clauses may prevent a regulatory board from taking disciplinary action against a negligent licensee or registrant.

On March 16, 2012, the Board filed a notice with the Office of Administrative Law to proceed with a regulation package. One of the provisions of this regulation package proposes amending Board regulations to include a provision that would make it unprofessional conduct for a Board licensee to include, or permit inclusion, of a provision in a civil settlement agreement that prohibits another party from contacting, cooperating, or filing a complaint with the Board, or a provision that requires another party to withdraw or attempt to withdraw a complaint that has been filed with the Board. The public hearing for this proposal was held on May 1, 2012.

At its April 2012 meeting, the Committee recommended that the Board take a support position on this bill.

Ms. Epstein expressed that CAMFT supports this bill, and added that this is the appropriate vehicle for this provision as opposed to regulations.

Renee Lonner moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

j. Recommendation #10 - Consider Senate Bill 1134 (Yee)

Ms. Helms reported on SB 1134, Persons of Unsound Mind and Psychotherapist Duty to Protect.

Existing law allows no monetary liability or cause of action to arise against a psychotherapist who fails to warn of and protect from a patient's threatened violent behavior, or who fails to predict and warn of and protect from a patient's violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim(s).

This bill renames the duty of a psychotherapist from "duty to warn and protect" to "duty to protect." If this change is made, it will make the law consistent with changes made in 2007 to the Judicial Council of California Civil Jury Instructions, Section 503A, which renamed the therapist's duty a "duty to protect" and eliminated the reference of "duty to warn."

According to the author's office, this clarification is intended to make the law as clear as possible about the duty of a psychotherapist with respect to Civil Code Section 43.92.

This bill was amended on May 8, 2012 to specify that the changes made by this bill are not to be interpreted by the courts to be a substantive change.

At its April 2012 meeting, the Committee decided not to take a position on this bill, but instead wait for further clarification.

Ms. Epstein stated that this is a technical clean-up bill. The Legislature was comfortable with this bill and its intent. It is not changing any duty; it is clarifying and making jury instructions and statute consistent.

Mr. Wong stated that NASW-CA has concerns with this bill. This bill states that the psychotherapist does not have to contact the victim. The psychotherapist may do so, if he/she chooses, but the psychotherapist is not required to. The issue is that there are some instances that it is dangerous for the licensee to contact the victim. Mr. Wong expressed that the victim should be contacted. His interpretation of the language is the duty to protect means that the psychotherapist contacts law enforcement to protect the victim; the duty to warn means that the psychotherapist must contact the victim.

Ms. Epstein explained that the language in Tarasoff never stated “duty to warn.” Tarasoff language states “duty to protect.” In order to get full immunity, the therapist must contact the victim and law enforcement. The proposed changes do not alter the full immunity. The proposed changes state that the duty to protect might be another form of action instead of contacting the victim.

Ms. Lonner expressed that Tarasoff is a good law and this proposal “tinkers” with that law in a way that will make the law unnecessarily complicated. The burden will fall on the trainers and educators who teach law and ethics courses and who teach in graduate schools.

Ms. Wong stated that the duty to warn is an action that is required; it is very specific and clear. The duty to protect is not clear; it is very passive.

Mr. Mason asked how the disconnect between the civil code and the jury instructions came about. Ms. Epstein replied that she does not know how that happened; however, the jury is instructed to determine if the duty to protect was carried out, not the duty to warn.

Dianne Dobbs stated that there were two Tarasoff cases. It was second Tarasoff case (1976) that made it law for a duty to protect. The first Tarasoff case (1974) made it law for a duty to warn.

Ms. Madsen asked legal counsel if supporting this bill is supporting what is in existing law. Ms. Dobbs replied yes.

Mr. Santiago explained that this bill does not change case law or other statute; it does not change anything on a substantive level.

Mr. Brooks stated that if the Board is not clear on the law, then the licensees will not be clear on the law. He added that the Board should look into ways to better educate the licensees regarding the duty to protect.

Dr. Johnson suggested to not take a position on SB 1134. Ms. Lonner agreed.

k. Recommendation #11 - Consider Senate Bill 1183 (Lieu)

Ms. Helms reported on SB 1183, Continuing Education.

This bill amends the law for LMFTs, LEPs, LCSWs, and LPCCs to require that continuing education (CE) must be obtained from either an accredited educational institution, or a CE provider that is approved by an accrediting organization, including, but not limited to, a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution.

This bill removes the Board’s authority to approve providers of CE courses.

Over the past year, questions have been raised concerning the nature of the Board's CE course content requirements. Board staff has identified a number of issues related to its CE program, and the Board has committed to taking action to address these problems. At its November 2011 meeting, the Board voted to form a CE committee and mandated this committee to work with stakeholders and interested parties to develop legislation and regulations to address specified areas of concern.

The first public meeting of the Continuing Education Provider Review Committee (Committee) was held in April 2012, with a number of stakeholders in attendance providing valuable input. Additional public meetings of the Committee are set for May 31st and July 19th.

Staff has a concern about a potential unintended effect that SB 1183 may have on the Board's licensees and registrants. Currently, this bill proposes that CE may either be obtained from an accredited educational institution, or other CE providers "that are approved by accrediting organizations, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a CE unit of an accredited four-year institution of higher learning, or a mental health professional association."

This bill does not specifically define "accrediting organizations". If standards for an accrediting organization remain unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an accrediting organization.

The lack of a definition and standards required of an accrediting entity could have one of two unintended consequences if this bill is implemented as written. It could allow for a broader variety of CE providers to claim they are accredited, resulting in a greater number of unqualified providers offering CE coursework. Conversely, if there are no entities to accredit qualified providers this bill could eliminate qualified providers if they cannot become accredited.

In April 2012, staff sent a letter to the author's office detailing concerns with the current version of this bill and explaining the success the Board has had utilizing the committee process in the past to address complex issues. At a subsequent meeting, the author's office indicated they recognize these concerns and would like to incorporate the findings from the Board's committee into a future version of the bill. They asked that staff assist them in drafting amendments that would achieve this.

At its April 2012 meeting, the Policy and Advocacy Committee did not recommend a position on this bill, but requested that the Board further discuss the policy implications of this legislation

Dr. Wietlisbach expressed her concern about the Legislature interfering with the Board's authority. This bill could have potential consequences for other boards as well. Dr. Wietlisbach feels that the Board's CE Provider Review Committee can address the issues without having this bill.

Ms. Eisenlauer stated that DCA feels that this is excessive. DCA does not have an official position on this bill, but has issues with the bill.

Christina Wong moved to oppose this bill. Dr. Harry Douglas seconded.

Mr. Wong stated that the Board does not have a structure to regulate course content. Dr. Wietlisbach responded that the Board is aware of that, and the Board is working on these issues.

Rebecca Gonzales, NASW-CA, stated that NASW-CA wrote to the author and took a position of support if amended. Their requested amendments reflected the Board's requested amendments.

Ms. Epstein stated that CAMFT testified and wrote the same letter to the author.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that AAMFT-CA also wrote a letter to the author requesting an extension and to allow the Board to continue its committee process.

The Board voted unanimously (7-0) to pass the motion.

I. Recommendation #12 - Support Senate Bill 1238 (Price)

Ms. Helms presented SB 1238, the Board's Sunset Review.

This bill extends the operation of the Board until January 1, 2017, and specifies that the Board is subject to review by the appropriate policy committees of the Legislature.

At its meeting in April 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill.

Samara Ashley moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

Dr. Wietlisbach called for a lunch break at 12:29 p.m. The Board reconvened at 1:49 p.m.

m. Legislative Update

Ms. Helms referred to legislative update in the meeting materials for the audience to peruse. No action was needed for this summary.

n. Rulemaking Update

Ms. Helms briefly reported on the rulemaking update. The enforcement regulations were submitted to the Office of Administrative Law. The Board is also pursuing several other regulatory proposals. No action was needed for this summary.

VII. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines

Ms. Helms presented the proposed amendments of the disciplinary guidelines.

At its November 2011 meeting, the Board approved several amendments to the Disciplinary Guidelines. The Disciplinary Guidelines are incorporated by reference into Board regulations. The proposed amendments were based on suggestions from the Board's enforcement unit. Staff is now in the process of preparing a regulatory package to make the proposed amendments.

The enforcement unit has proposed two additional amendments to the Disciplinary Guidelines. The additional amendments are:

1. Recommended Language for Tolling of Probation, and
2. Recommended Language for Disciplinary Orders.

Recommended Language for Tolling of Probation

The Board's Disciplinary Guidelines contain specific language for standard terms and conditions of probation. Two of the standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident."

The "Residing or Practicing Out of State" condition includes language which allows the Board to cancel a license or registration after two years if the respondent does not return to California and resume practice.

The "Failure to Practice – California Resident" condition allows probationers to toll their probation indefinitely.

Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing other than their notification to the Board. Therefore, the amendments proposed combining "Residing or Practicing Out of State" and "Failure to Practice – California Resident," standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of their in-state or out-of-state residency.

Recommended Language for Disciplinary Orders

The "Board Policies and Guidelines" section of the current Disciplinary Guidelines contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders. Staff proposes adding language to address the granting of other registrations or licenses by the Board and the application of probation for those other registrations and licenses.

At its April 2012 meeting, the Policy and Advocacy Committee recommended that the Board direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011.

Samara Ashley moved to direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.

VIII. Discussion of Possible Action Regarding Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts

Ms. Madsen presented the history, procedure, and issues regarding complaints against licensees who provide confidential child custody evaluations to the courts.

For many years, Board licensees have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role, a Board licensee may serve as

a child custody recommending counselor, formerly known as mediators, as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

A child custody recommending counselor may be a member of the professional staff of the family court, probation department, or mental health services agency or any other person or agency designated by the court. The child custody recommending counselor is not required to possess a license with the Board. However, they must meet specific educational and training requirements.

The role of the child custody recommending counselor is to assist parents in resolving their differences and to develop a plan agreeable to both parties. In situations in which the parties cannot agree, the child custody recommending counselor prepares a plan or recommendation to the court. The time appropriated for this service is not extensive and does not require an in depth assessment of the situation.

A court-connected child custody evaluator or a private child custody evaluator has a more extensive role and must be licensed as a LMFT, LCSW, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry. The evaluator conducts a comprehensive assessment, or evaluation, to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation requires a significant amount of time. Upon the conclusion of the evaluator's work, the evaluator prepares a written report that is submitted to the court. The court will base their decision regarding custody and visitation on this report.

Pursuant to the California Family Code, the report submitted by the evaluator is considered confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney;
- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator;
- Counsel appointed for the child pursuant to Family Code Section 3150;
- Any other person upon order of the court for good cause.

An individual releasing this report may be subject to sanctions by the Court.

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Further, the individual may express their complaint to the judge at the time of their hearing.

The Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a mediator due their limited role. The Board will investigate complaints involving evaluators.

In all complaints, the source of the complaint alleges the licensee's conduct/recommendation is unprofessional or is unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board's statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator's report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board

will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of an SME and at times, assistance from the Division of Investigation (DOI).

Board staff observes significant challenges associated with these cases. The inability to obtain all of the relevant documentation requires the Board to close an investigation. This outcome increases the individual's frustration not only with the courts, but also the Board.

Moreover, the Board has learned that its investigation of these cases is a concern for the courts in that licensees are alarmed that their reports may be subject to a Board investigation. Many licensees expressed an unwillingness to continue their role as an evaluator. Consequently, the courts are concerned about decreasing resources to perform this service.

In 2011, Board staff initiated discussions with the Administrative Office of the Courts (AOC) to exchange information on each entity's process and to explore possible solutions to resolve the current issues. The Board was informed that current law did not allow the Board access to the evaluator's report. The AOC explained that the report is confidential and could only be released to the Board by the court. To obtain the report, the Board is required to file a petition or subpoena with the court.

Ms. Madsen provided history in one particular case, where the Board received complaints involving a licensee who served as a private child custody evaluator. In these complaints, the licensee was accused of engaging in unprofessional conduct and ethical violations. In these complaints, the Board received documentation to investigate the allegations, including the confidential evaluation report provided the parents as well as the licensee.

The Board's investigation revealed potential violations, and the investigation was forwarded to an SME for review and opinion, and then to the Attorney General for disciplinary action.

The Deputy Attorney General determined it was in the Board's best interest to seek formal release of the report from the court to the Board. A motion was filed in Superior Court seeking the release of the report to the Board for the upcoming administrative hearing. The judge denied the Board's request. Since this report served as the basis for the Board's action against the licensee, the Board had to withdraw its action against the licensee because the report would be inadmissible in the hearing.

The Board met with the AOC to discuss this case and the inability to fully investigate allegations of licensee misconduct if the Board cannot obtain the relevant documentation to use in an administrative hearing. Both the Board and the AOC agreed that it is essential that the courts receive accurate information from the child custody evaluator in order to determine the best interest of the child. Further, the AOC and the Board agreed that a solution to this issue requires a legislative proposal to revise existing law.

At its April 2012 meeting, the Policy and Advocacy Committee (Committee) discussed the Board's role in the investigation of complaints involving child custody evaluators. A question was raised regarding the Board's jurisdiction in these matters. A previous opinion from a former Deputy Attorney General stated that the Board does not have jurisdiction based upon the fact that the setting nor the services provided are clinical or psychotherapeutic for which a license is required. The Committee considered this comment.

The Committee recommended that staff draft a legislative proposal that allows the Board access to the confidential report for investigative purposes and if necessary, the jurisdiction to conduct the investigations.

Ms. Pines expressed that some complaints are a result of an angry parent who loses custody of their child, and the parent wants revenge on the evaluator. Therefore, it is very important to have the report right away.

Ms. Epstein stated that CAMFT does not feel it is necessary to seek legislation in this matter. The Deputy Attorney General (DAG) must prove to the judge that confidentiality must be breached for the particular case. In the case where the judge denied the request, the DAG did not convince the judge. The decision to grant the report to the Board should be decided on a case-by-case basis.

Mr. Brooks expressed that the courts want licensed professionals to conduct these evaluations, but the courts do not want the Board to have control over the evaluators. If the courts want licensed clinicians to conduct these evaluations and not be held to the standards of the licensing laws, then there must be a disclaimer that the licensed clinician is not working under their license in this capacity, and that it is clear in the court record that they are not operating under the scope of their license.

Mr. Wong stated that ruling against a licensee could be a strong cause for an attorney to go back to court and have a decision overturned.

Dr. Johnson expressed that there is an elite sense that these evaluators are “above the law” and “untouchable” yet they serve a very significant function. They need to be held accountable. They are dealing with the most vulnerable population. The current process is not working.

Ms. Wong stated that the conversation is really about the Board’s jurisdiction and what to monitor, since the evaluators are not providing psychotherapy.

Ms. Lonner stated that education needs to be provided - it is not psychotherapy, but it is the assessment, interviewing, and intervention which are the highest level of clinical skills. Also, it is not a fact that the resources will decrease if the Board begins to investigate these cases. The group of court evaluators is a tight organization, closed to newcomers in a corrupt system, and is high-fee and money-driven. Establishing jurisdiction and oversight might open the doors to qualified professionals.

Christina Wong moved direct staff to seek clarification of Family Code Section 3110.5(e) regarding the jurisdiction of Board licensees who provide evaluation services to the court. If it is determined the Board has jurisdiction, direct staff to draft a legislative proposal that allows the Board access to the confidential report for investigative purposes. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

IX. Discussion of Possible Action Regarding Research Related to the 90 Day Rule and Enforcement Actions

Ms. Helms presented the 90-day rule legislative proposal.

Under current law, an applicant for marriage and family therapy (MFT) or professional clinical counselor (PCC) intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised

experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern. This is referred to as “the 90-day rule.”

There are concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board’s enforcement process.

Under the 90-day rule, an applicant who has a previous conviction can submit an application for intern registration within 90 days of the degree being granted. They then have up to one year to submit their conviction records, considered a deficiency, to the Board for review. Although most submit the information quickly, an applicant with a serious conviction will occasionally try to delay, taking their one-year period to submit the requested information.

If a consumer or the supervisor were to file a complaint against such a practitioner during this time, the Board would have no jurisdiction to investigate the complaint and take action, as they are not yet a registered intern.

Due to concerns cited by stakeholders, the Board agreed to revisit the 90-day rule proposal at its February 2012 Board meeting. At this meeting, stakeholders noted that there are no statistics available to show how often an applicant who followed the 90-day rule and is gaining hours is referred to the Board’s enforcement unit and, upon further investigation, is denied the registration or issued a restricted registration.

Board staff approached several legislative offices about authoring the 90-day rule proposal. Although several offices were interested and stated that they may be interested in running this bill in 2013, this same concern about lack of statistics was cited by several legislative staff members.

The Board has not kept statistics on this particular scenario in the past. The amendments to eliminate the 90-day rule were proposed after the Board’s enforcement unit raised concerns.

At its February 2012 Board meeting, the Board decided to send this proposal back to the Policy and Advocacy Committee (Committee) for further discussion of available options

At the April 2012 Committee meeting, staff recommended that the enforcement unit gather data over a one-year time period in order to allow the Board to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule. Data on the following instances should be gathered:

1. Number of applicants with a criminal conviction who, while gaining hours, wait until the end of their one-year deficiency period (defined as the last two months) to submit any information requested by the Board’s enforcement unit.
2. Number of instances in which an applicant follows the 90-day rule and begins gaining hours, only to have their registration denied due to the findings of the enforcement unit.
3. Number of instances in which a denial of an application, due to enforcement unit findings, is appealed and the applicant subsequently is granted a registration with restrictions.
4. In cases where a registration was denied or restricted due to enforcement unit findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

Based on the staff recommendation, the Committee recommended that the Board do the following:

- Rescind the November 9, 20011 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule; and
- Direct staff to collect data on the four instances outlined above, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting.

Karen Pines moved to rescind the November 9, 20011 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

Karen Pines moved to direct staff to collect data on the four instances outlined, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

X. Other Legislation

a. Discussion and Possible Action Regarding Senate Bill 1172

Ms. Helms presented SB 1172, Sexual Orientation Change Efforts (SOCE). She stated that this bill was not available for analysis by the Policy and Advocacy Committee's (Committee) deadline, and therefore, not considered by the Committee.

This bill prohibits a psychotherapist from engaging in sexual orientation change efforts without first obtaining the patient's informed consent, prohibits a patient under 18 from undergoing sexual orientation change efforts, and allows a cause of action to be brought against a psychotherapist if sexual orientation change efforts were performed under the certain circumstances outlined in the bill.

Ms. Epstein stated that CAMFT opposes this bill unless amended. CAMFT states that the definition of "sexual orientation change efforts" is overbroad. The bill as written would have unintended consequences. CAMFT's concern is not with intent, but with the language and definitions. CAMFT continues to work with the author's office.

Mr. Wong stated that NASW-CA is concerned with unintended consequences of defining psychotherapists as interns and trainees.

Ms. Gonzales stated that NASW-CA wrote a letter to the author, taking a position of oppose unless amended. There is a concern with the informed consent because it gives this therapy some legitimacy. NASW-CA is also working with the author's office.

Ms. Epstein informed the Board and audience that this bill is getting a lot of national media attention.

Dr. Judy Johnson moved to oppose this bill. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

b. Discussion and Possible Action Regarding Assembly Bill 1976

Ms. Helms presented AB 1976, Military Experience for Licensure and Certification Requirements.

This bill requires a board to accept education, training, and experience gained in the military toward licensing requirements unless the board determines that the education, training, and experience is not substantially equivalent to those licensing requirements.

This bill as of July 1, 2014, requires a board that accredits or approves schools offering education course credits toward licensing requirements to require schools seeking accreditation or approval to have procedures in place to fully accept an applicant's military education, training and experience toward completion of an educational program designed to qualify a person for licensure.

This bill requires a board to determine whether or not it is necessary to adopt regulations to implement this new requirement.

This bill is part of a larger federal effort to improve the lives of military families. The bill's author notes that lack of health care providers is a significant barrier to access to health care services in underserved areas. Post 9/11 veterans of the military have an unemployment rate of 13.3 percent, but have often gained education, training, and experience in their military service that can be transferred to a licensed profession.

The Board does not accredit or approve schools offering education course credit. Instead, it relies on the accreditations and approvals of other specified entities. Therefore, the main provisions of this bill, as written, would not apply to the Board. However, the Board would need to submit a report to the Governor and the Legislature explaining why the regulations required by this bill are not necessary.

Christina Wong moved to oppose this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

The Board took a short break at 2:58 p.m. and reconvened at 3:15 p.m. Upon return from break, the Board returned to SB 1172.

a. Discussion and Possible Action Regarding Senate Bill 1172

Dr. Judy Johnson moved to rescind the motion on SB 1172. Renee Lonner seconded.

Dr. Johnson explained that she does not want it interpreted that the Board is insensitive to this issue. She expressed that amendments should be suggested.

The Board voted unanimously (7-0) to pass the motion.

Ms. Loewy, AAMFT-CA, opposed this bill unless amended. AAMFT-CA is also working with the author's office. They do not have proposed language at this point.

Dean Porter, CALPCC, is concerned about the language and definitions also. She provided suggested language:

“SOCE is defined as any therapeutic intervention that is based on a belief that homosexuality is a mental disorder or pathology.”

Ms. Porter also suggested adding the following language:

“Nothing in this chapter applies to transgender individuals.”

Ms. Epstein stated that CAMFT is suggesting language that is closer to the DSM-IV language.

Ms. Helms stated that staff can respond with “oppose unless amended to address the following concerns.” Those concerns can be listed and provided with explanations/definitions.

Further discussion took place over informed consent.

Mr. Mason stated that it must be decided if the Board wants to remove informed consent from the bill and then further define SOCE.

Ms. Epstein clarified that CAMFT is not stating that this therapy is unethical. Ethical practitioners would not provide this type of therapy; however, the therapy is not unethical. Until SOCE is defined, CAMFT opposes the bill unless amended.

Mr. Mason stated that the Board may not want to take a position at this time. Instead, the Board can direct staff to work out the technical issues and revisit the matter in August.

Ms. Pines stated that she is not comfortable with not taking a position. She suggested opposing the bill.

Dr. Johnson moved to oppose unless amended with a clarification of the definition of Sexual Orientation Change Efforts. Renee Lonner seconded.

Ms. Wong stated that it is more than just the definition; it’s about the therapy and the potential harm to the consumer.

Dr. Douglas stated that this is not only about ethics; this is also about efficacy.

The Board voted unanimously (7-0) to pass the motion.

c. Discussion and Possible Action Regarding the Board’s Examination Restructure

Ms. Helms presented the Board’s examination restructure timing. SB 704 restructures the examination process for the Board’s LMFT, LPCC, and LCSW licensees effective January 1, 2013.

The Board will be transitioning to BreEZe, a new database system which will replace the current CAS and ATS database systems. All units of the Board, including licensing, enforcement, examinations, and administration, will be affected. DCA is currently working to implement the database system and will roll out the new system once it ensures it will run smoothly. It is estimated that this will happen in early fall 2012.

The implementation of the BreEZe database system will have a positive impact on Board operations. It will allow Board licensees and registrants to renew online and pay their renewal fees online via credit card. It will also streamline and simplify many tasks for Board staff. However, its successful implementation will require a significant amount of staff resources. Staff has already been continuously involved in the initial testing and design of the system. As the implementation date nears, staff will need to complete extensive training as well as provide feedback to the design team. There will be a learning curve for staff as they transition from the old system to the new system.

Although the roll-out of BreEZe appears to be on schedule, any unforeseen problems could delay the implementation date, and consequently, Board operations.

The examination restructure will also be a complicated and time-intensive transition for staff. The timing of the examinations will change, and there will be new requirements that registrants must meet. In addition, staff will need to undertake a large outreach effort to ensure that applicants are aware of and understand the new process, and to explain to those already in the exam process how the restructure affects them.

Board staff is still trying to overcome backlogs left over from last year's hiring freeze and the implementation of the LPCC program. New staff was recently hired in order to fill vacancies and are in the process of being trained. Staff is concerned that if the BreEZe system needs to be delayed until late fall or beyond, it would coincide too closely with the exam restructure date of January 1, 2013. This could cripple Board operations if staff must learn both a new database system and the complexities of the exam restructure at the same time.

Additionally, if BreEZe is not operational on January 1, 2013, the exam restructure cannot be implemented. The exam restructure changes are being programmed into the BreEZe system. Changes to the current CAS and ATS systems are no longer allowed under any circumstances, as programming changes are very costly, and these systems are about to become obsolete. The department is therefore focusing all of its programming efforts on the implementation of BreEZe.

If BreEZe is not operational on January 1, 2013, the Board cannot continue to administer the current clinical vignette and standard written exams. The code sections granting the authority for the Board to administer these exams expire on January 1, 2013 in order to allow the Board the authority to administer the new exams.

In order to avoid a situation in which the exam restructure cannot be implemented properly due to the implementation of the BreEZe system, staff suggests that the implementation date of the exam restructure be extended from January 1, 2013 to January 1, 2014.

Christina Wong moved to direct staff to pursue legislation to change the implementation date of the exam restructure from January 1, 2013 to January 1, 2014. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

XI. Update Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008 and SB 1172, Chapter 517, Statutes of 2010

Ms. Madsen presented an update regarding implementation of SB 1441, Uniform Standards for Substance Abusing Licensees.

At the November 2011 Board meeting, the Board considered proposed regulations to implement the Uniform Standards. Board counsel, Michael Santiago, reported on the legal opinion on SB 1441 provided by the Legislative Counsel. This legal opinion addressed two issues:

1. Was the Substance Abuse Coordination Committee (SACC) required to adopt the Uniform Standards pursuant to the rulemaking procedures under the Administrative Procedure Act? According to the Legislative Counsel, the SACC should have gone

through the regulatory process, rather than directing each individual board to draft its own regulations.

2. Are the healing arts boards required to implement the Uniform Standards? According to the Legislative Counsel, it is mandatory for the healing arts boards to implement the standards that the SACC set forth.

At the November 2011 Board meeting, Board members voted to direct staff to seek guidance from DCA.

On April 5, 2012, the Board received a memo from the DCA Legal Affairs office addressed to all healing arts boards regarding the rulemaking process to implement the Uniform Standards. DCA acknowledged that questions have been raised concerning the Board's discretion to implement the Uniform Standards, and concerning whether or not the SACC was the entity with the rulemaking authority over the Uniform Standards.

DCA requested the Office of the Attorney General to review the Legislative Counsel's opinion. On February 29, 2012 an informal legal opinion was rendered by the Government Law Section of the Office of the Attorney General which addresses the discretion of the boards in adopting the Uniform Standards. According to DCA, both the Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions that make up the Uniform Standards, nor do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case. DCA concurred with these opinions.

The Legislative Counsel and the Attorney General offer differing opinions as to whether or not the SACC has the authority to promulgate regulations to implement the Uniform Standards. The Legislative Counsel concluded the SACC has the authority to promulgate regulations mandating that the boards implement the Uniform Standards.

However, the Attorney General disagreed with the Legislative Counsel, stating that the SACC was not vested with the authority to implement the Uniform Standards. This authority lies with the individual boards. DCA shares the opinion of the Attorney General. DCA recommended that healing arts boards move forward as soon as possible to implement the Uniform Standards.

DCA suggested that the boards work with their assigned legal counsel to determine how best to implement the Uniform Standards. Each Board should determine the following:

1. If the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; and
2. A definition or criteria to determine what constitutes a "substance-abusing licensee", which should be included in the proposed regulations.

Board staff drafted proposed regulations which were presented at the November 2011 Board meeting. Currently, 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. Additionally, the regulations do not define the term "substance-abusing licensee."

Karen Pines moved to direct staff to do the following:

- **Work with Board counsel to review the proposed regulations and determine if appropriate standards are included;**
- **Work with Board counsel to develop a definition or criteria determining what constitutes a “substance-abusing licensee;”**
- **Submit the proposed regulations to DCA Legal Division for review; and**
- **Make any changes required by DCA Legal Division and submit to the Board for review.**

Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

XII. Discussion Regarding the Department of Managed Health Care Autism Advisory Task Force

Ms. Madsen presented information regarding the Autism Advisory Task Force.

Senate Bill 946 required the Department of Managed Health Care in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012. The purpose of the task force is to provide assistance to the Department of Managed Health Care on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the State of California. The task force must submit a report to the Governor and the Legislature by December 31, 2012.

The bill directs the task force to address the following:

- Interventions that have been scientifically validated and have demonstrated clinical efficacy,
- Interventions that have measurable treatment outcomes,
- Patient selection, monitoring and duration of the therapy,
- Qualifications, training and supervision of providers,
- Adequate network of providers, and
- Recommendations regarding the education, training and experience requirements those unlicensed individuals providing autism services shall meet in order to secure a license from the state.

The task force is comprised of 18 members and is a group of researchers, providers, advocates and experts charged with developing recommendations. A total of eight public meetings are scheduled to complete the work of the task force.

To date the task force has had four public meetings. Thus far the task force discussions have focused on the developing an overall scope of work, defining parameters, criteria, and processes for assuring effective treatment, and the roles and qualifications of the various providers. Beginning in July the task force will discuss the requirements that unlicensed individuals providing autism services shall meet for licensure in California.

Board staff has been following this very closely because several bills in the past have attempted to license practitioners providing this type of treatment, and the bills have proposed the Board as the regulatory agency to provide oversight.

It is not the role of the task force to determine which agency will provide the regulatory oversight. However, considering previous efforts, Board staff is attending these meetings to monitor the discussions and provide public comment as appropriate.

XIII. Discussion Regarding Establishing a Two Member Executive Committee

Dr. Wietlisbach tabled this agenda item.

XIV. Election of Board Officers 2012-2013

Renee Lonner nominated Dr. Christine Wietlisbach as Board Chair. Dr. Judy Johnson seconded. Dr. Wietlisbach accepted the nomination.

The Board voted unanimously (7-0) to elect Christine Wietlisbach as Board Chair.

Dr. Christine Wietlisbach nominated Karen Pines as Board Vice-Chair. Renee Lonner seconded. Karen Pines accepted the nomination.

The Board voted unanimously (7-0) to elect Karen Pines as Board Vice-Chair.

XV. Suggestions for Future Agenda Items

No suggestions were made for future agenda items.

XVI. Public Comment for Items Not on the Agenda

No public comments were made.

Dr. Johnson's term on the Board expires on June 1, 2012; however, she may continue to serve on the Board until the end of her grace period which is August 1, 2012. She has served on the Board since 2005. Ms. Madsen presented Dr. Johnson with a Resolution for her service to the Board. Dr. Wietlisbach expressed her gratitude to Dr. Johnson.

XVII. Adjournment

The meeting was adjourned at 4:21 p.m.

Thursday, May 17th
8:30 a.m.

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Renee Lonner, LCSW Member
Karen Pines, Vice-Chair, LMFT Member
Christina Wong, LCSW Member

Members Absent

Patricia Lock-Dawson, Public Member
Sarita Kohli, LMFT Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Christina Kitamura, Administrative Analyst
Julie McAuliffe, Probation Monitor
Dianne Dobbs, Legal Counsel

Guest List

On file

FULL BOARD OPEN SESSION

XVIII. Introductions

Dr. Christine Wietlisbach, Board Chair, called the meeting to order at 8:41 a.m. Christina Kitamura called roll, and a quorum was established. Board members and Board staff introduced themselves.

XIX. Petition for Early Termination of Probation for Cassandra Kendall, ASW 21095

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, Deputy Attorney General (DAG), represented the State of California. Cassandra Kendall represented herself.

Judge Frink opened the hearing at 8:42 a.m. DAG Crawford presented the matter. Ms. Kendall presented her request to terminate her probation early and information to support her request. DAG Crawford cross-examined Ms. Kendall. Board members also posed questions to Ms. Kendall. After answering all questions, Ms. Kendall presented closing remarks.

Judge Frink called for a recess at 9:25 a.m. The hearing reconvened at 9:37 a.m.

Judge Frink closed the hearing at 9:41 a.m.

XX. Petition for Early Termination of Probation for John McGinnis, MFC 47040

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, Deputy Attorney General (DAG), represented the State of California. John McGinnis represented himself.

Judge Frink opened the hearing at 9:42 a.m. DAG Crawford presented the matter. Mr. McGinnis presented his request to terminate his probation early and information to support his request. DAG Crawford cross-examined Mr. McGinnis. Board members also posed questions to Mr. McGinnis. After answering all questions, Mr. McGinnis presented closing remarks.

Judge Frink closed the hearing at 10:49 a.m.

Dr. Wietlisbach took suggestions for future agenda items (agenda item XXIII) and public comment (agenda item XXIV) before closing the meeting to the public.

The Board took a break at 10:50 a.m. and reconvened in closed session at 11:03 a.m.

FULL BOARD CLOSED SESSION

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

XXII. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board's Executive Officer

FULL BOARD OPEN SESSION

XXIII. Suggestions for Future Agenda Items

Dr. Wietlisbach took this item was taken out of order, before closed session. No suggestions for future agenda items were made.

XXIV. Public Comment for Items Not on the Agenda

Dr. Wietlisbach took this item was taken out of order, before closed session. No public comment was made.

XXV. Adjournment

After the Board met in closed session, the meeting was adjourned.

BOARD MEETING MINUTES - *DRAFT* **July 19, 2012**

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

Participating via Teleconference:

2400 Moorpark Ave., #300
San Jose, CA 95128

5060 Castille Way
Riverside, CA 92507

10800 E. Benavon St.
Whittier, CA 90606

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Sarita Kohli, LMFT Member
Patricia Lock-Dawson, Public Member
Renee Lonner, Chair, LCSW Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Marc Mason, Administrative Manager
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst
Laura Freedman, Legal Counsel

Members Absent

Karen Pine, Vice Chair, LMFT Member
Samara Ashley, Public Member

Guest List

On file

FULL BOARD OPEN SESSION

I. Call to Order and Establishment of a Quorum

Dr. Christine Wietlisbach, Board Chair, called the meeting to order at approximately 12:09 p.m. Christina Kitamura took roll, and a quorum was established.

Dr. Wietlisbach took items II and III out of order. Item III, SB 1172, was discussed first.

II. Discussion and Possible Action on AB 1904 (Block)

Rosanne Helms presented AB 1904, Expedited Licensure for Military Spouses.

At its May 2012 meeting, the Board took a “support” position on a previous version of this bill. The previous version would have allowed the Board to issue a temporary license to a military spouse under certain conditions; however, it was left to the discretion of the Board whether or not to do so.

This bill has been amended substantially since the May Board meeting. The bill now requires a board within the Department of Consumer Affairs to expedite the licensing process for an applicant meeting both of the following criteria:

1. Can provide the board with satisfactory evidence that he or she is married, in a domestic partnership, or in a legal union with an active duty member of the U.S. Armed Forces who is assigned to duty in California, and
2. Holds a current license for the same profession in another state.

The bill also allows a board to adopt regulations in order to execute this law.

The author’s office notes that the process of obtaining a state license can cause re-employment delays for military spouses moving between states, and that because of these delays and the expense involved in re-licensure, many of these spouses decide not to practice their profession.

Board staff concerns are:

- The Board does not currently expedite licenses for any of its applicants.
- It is unknown how many Board licensees are spouses of military members stationed in California.
- The Board’s licensing applications would need to be revised so that staff could easily identify which applicants were military spouses, and thus in need of expedition.

Ms. Madsen stated that staff does not receive a great number of applicants that identify themselves as military and/or military spouses. An idea would be to create an application that is assigned a specific color to easily identify those applicants and to track the number of applications received. Ms. Madsen expects to receive about 10 applications a year.

Ms. Madsen added that the parameters of this expedited process can be adopted through regulations.

Christina Wong moved to support AB 1904. Dr. Judy Johnson seconded.

Mr. Caldwell stated that AAMFT-CA took a position of support if amended on the original version of AB 1904, supporting the idea of a temporary license. AAMFT-CA has concerns with the amended version of this bill and is now considering changing their position. Mr. Caldwell explained that the issue is not the processing time of the application; the issue is the deficiencies that the applicant will have in coursework and state standards. If this bill passes, their application process may speed up by several weeks, however, the applicant will still have courses to complete and exams to pass. This can take up to a year or longer. This could become an administrative burden on the Board. Mr. Caldwell asked the Board to consider whether this bill is worth supporting or not.

Ms. Lonner stated that there is no indication that staff could receive hundreds of these applications. Fewer than 10 applications per year is not a lot.

Janlee Wong, NASW-CA, agreed with Ms. Lonner. Statistics show that mental health clinicians did not make the top 20 occupations of military spouses in the labor force.

A roll call vote was taken. ***The Board voted unanimously (7-0) to pass the motion.***

III. Discussion and Possible Action on SB 1172 (Lieu)

Ms. Helms presented SB 1172, Sexual Orientation Change Efforts.

At its meeting in May 2012, the Board took an “oppose unless amended” position on the version of this legislation that was amended on April 30, 2012. The Board indicated that an amendment was needed to clarify the definition of sexual orientation change efforts (SOCE).

Since the May Board meeting, the author’s office has amended the bill to clarify the definition of SOCE.

This bill defines “sexual orientation change efforts” as follows:

Any practices by mental health providers that seek to change an individual’s sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

“Sexual orientation change efforts” does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

This bill also prohibits a mental health provider from engaging in sexual orientation change efforts with a patient under 18 years of age, and considers any sexual orientation change efforts performed by a mental health provider on a patient under 18 to be unprofessional conduct, and would subject the provider to disciplinary action by their licensing entity.

Ms. Helms noted that although this bill would make it unprofessional conduct for a therapist to perform sexual orientation change efforts on a client under 18, the bill does not place this provision in the unprofessional conduct code sections for each of the Board’s four license types.

Ms. Helms also noted that the support and opposition listed in the analysis is from the May 2012 analysis. A current listing of support and opposition was not available for the July analysis.

Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA), stated that the California Psychological Association is considering changing their position to support.

Ms. Lonner acknowledged that the bill was amended exactly as the Board had requested.

Renee Lonner moved to support SB 1172. Dr. Harry Douglas seconded.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that AAMFT-CA supports SB 1172.

Ms. Gonzales stated that NASW-CA supports SB 1172.

Dr. Judy Johnson stated that she supports SB 1172, and that this is a good step for California.

Luisa Mardones, California Society for Clinical Social Work (CSCSW), stated that CSCSW is also in support of this bill.

A roll call vote was taken. ***The Board voted unanimously (7-0) to pass the motion.***

IV. Public Comment for Items Not on the Agenda

No public comments were made.

V. Suggestions for Future Agenda Items

No suggestions for future agenda items were made.

FULL BOARD CLOSED SESSION

VI. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session to Deliberate and Take Action on Disciplinary Matters

FULL BOARD OPEN SESSION

VII. Adjournment

The meeting was adjourned after the Board met in closed session.

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: August 13, 2012

From: Christina Kitamura
Board of Behavioral Sciences

Telephone: (916) 574-7830

Subject: Budget Report

The Budget Report will be provided under separate cover.

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1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: August 13, 2012

From: Christina Kitamura
Board of Behavioral Sciences

Telephone: (916) 574-7830

Subject: Operations Report

The Operations Report will be provided under separate cover.

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Board of Behavioral Sciences Quarterly Statistical Report - as of June 30, 2012

Introduction

This report provides statistical information relating to various aspects of the Board's business processes. Statistics are grouped by unit. The report relies predominantly on tables with accompanying "sparkbars," which are small graphs displaying trend over time.

Reading the Report

Items on the report are aggregated by quarter. The top of the column indicates the quarter and the year (Q111 = 1/2011-3/2011; Q211 = 4/2011-6/2011). Common abbreviations for licensees and registrants: LCSW = Licensed Clinical Social Worker; LEP = Licensed Educational Psychologist; LMFT = Licensed Marriage and Family Therapist; LPCC = Licensed Professional Clinical Counselor; ASW = Associate Clinical Social Worker; PCE = Continuing Education Provider. Other common abbreviations: Proc = Process; Def = Deficiency; CV= Clinical Vignette; AG = Attorney General.

Cashiering Unit

The Board's Cashiering Unit processes license renewals and applications. Approximately 85% of renewal processing occurs in the Department of Consumer Affairs Central Cashiering Unit.

Renewals Processed In-House

Sparkbars (Current Val) (Low/High)		Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
1735 [1581 2401]	Processed	1898	1587	1581	2267	1892	2401	2047	1735	15408
1939 [1124 2015]	Received	1665	1487	1124	2015	1814	1197	1822	1939	13063
7 [7 29]	Proc Time	8	10	22	23	18	29	9	7	16

ATS Cashiering Items (e.g. exam eligibility apps, registration apps, etc)

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg	
5864 [4279 7618]	Processed	5864	4696	4279	5650	5143	7618	7562	5864	46676
5922 [4512 6814]	Received	5742	4611	4512	5315	5399	6543	6814	5922	44858
3 [3 12]	Proc Time	6	10	12	9	12	11	8	3	9

Initial Licenses Issued*

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total	
317 [173 319]	LCS	191	209	173	319	216	262	260	317	1947
23 [12 36]	LEP	36	12	13	20	28	18	12	23	162
442 [221 456]	MFT	342	409	221	456	267	315	411	442	2863
86 [35 86]	PCE	66	38	59	42	35	51	77	86	454
52 [9 52]	LPC							9	52	61

*For MFT Intern and ASW registration statistics, please reference the Licensing Unit portion of the report

Enforcement Unit

The Board's Enforcement Unit investigates consumer complaints and reviews prior and subsequent arrest reports for registrants and licensees. The pending total is a snapshot of all pending items at the close of a quarter.

Complaint Intake *

Complaints	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
Received	247	261	242	210	259	237	222	174	253	2105
Closed without Assignment for Investigation	0	0	0	0	0	0	0	0	0	0
Assigned for Investigation	247	261	242	210	259	237	222	274	216	2168
Average Days to Close or Assigned for Investigation	6	7	6	5	4	4	3	5	6	+
Pending	0	0	0	0	0	0	0	0	37	37

Convictions/Arrest Reports	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
Received	289	315	258	228	207	190	219	234	323	2263
Closed / Assigned for Investigation	290	315	258	228	208	190	219	234	323	2265
Average Days to Close	4	4	2	4	4	4	3	2	1	+
Pending	0	0	0	0	0	0	0	0	0	0

Investigation**

Desk Investigation	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
Assigned	537	576	500	438	467	428	441	508	539	4434
Closed	549	433	394	495	580	489	416	461	562	4379
Average Days to Close	91	115	124	135	140	163	125	126	122	+
Pending	583	707	813	752	634	568	590	641	622	590

Field Investigation (Non-Sworn)	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
Assigned	10	11	3	8	1	2	3	7	2	47
Closed	11	24	14	10	14	4	3	11	4	95
Average Days to Close	424	371	372	386	416	481	332	474	331	+
Pending	53	42	30	28	17	12	12	9	7	12

Field Investigation (Sworn)	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
Assigned	3	9	6	2	12	5	6	4	3	50
Closed	6	4	6	4	6	8	6	7	7	54
Average Days to Close	591	927	518	362	450	582	294	407	388	+
Pending	17	22	20	18	24	21	20	16	12	20

All Investigations	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
First Assignments	537	576	500	438	467	428	441	508	539	4434
Closed	566	461	414	509	600	501	425	479	573	4528
Average Days to Close	103	135	138	142	149	172	129	138	127	+
Pending	653	771	863	798	675	601	622	666	641	622

Enforcement Actions

This section does not include subsequent discipline on a license.

	Q210	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	YTD
AG Cases Initiated	29	35	19	22	41	37	16	34	32	265
AG Cases Pending	147	153	155	138	157	163	160	167	169	160
SOIs Filed										
SOIs Filed	6	4	3	8	2	7	6	3	10	49
Accusations Filed										
Accusations Filed	26	27	17	18	14	24	18	21	20	185
Proposed/Default Decisions Adopted										
Proposed/Default Decisions Adopted	5	11	11	12	5	11	2	9	10	76
Stipulations Adopted										
Stipulations Adopted	18	12	11	12	14	16	15	11	11	120
Disciplinary Orders										
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)										
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	23	23	22	24	19	27	17	20	21	196
Average Days to Complete***										
Average Days to Complete***	743	792	729	911	776	855	960	973	858	+
Citations										
Final Citations										
Final Citations	75	20	18	9	15	14	11	8	49	219
Average Days to Complete****										
Average Days to Complete****	89	294	293	306	269	288	262	362	97	+

Complaint Intake *

Complaints Received by the Program. Measured from date received to assignment for investigation or closure without action.

Investigations **

Complaints investigated by the program whether by desk investigation or by field investigation. Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action. If a complaint is never referred for Field Investigation, it will be counted as 'Closed' under Desk Investigation. If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.

Disciplinary Orders Average Days to Complete ***

Measured by the date the complaint is received to the date the order became effective.

Citations ****

Measured by the date the complaint is received to the date the citation was issued.

+ unable to capture average data for more than a 12 month cycle

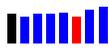
Licensing Unit

The Board's Licensing Unit evaluates applications for registration and examination eligibility. This involves verifying educational and experience qualifications to ensure they meet requirements defined in statute and regulation.

LCSW Examination Eligibility Applications

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
 409 [298 409]	298	301	329	406	346	309	385	409	2783
 276 [229 450]	249	268	272	311	276	229	450	276	2331
 95 [53 103]	53	66	68	75	88	103	85	95	79
 52 [15 71]	15	30	35	40	54	71	61	52	45

LMFT Examination Eligibility Applications

 622 [450|622]

 765 [301|765]

 139 [83|179]

 130 [56|168]

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received	504	455	502	500	525	450	575	622	4133
Approved	341	301	341	367	489	436	548	765	3588
Proc Time	83	116	149	161	170	176	179	139	147
Proc Time Less Def Lapse	56	87	117	137	155	158	168	130	126

LPCC Examination Eligibility Applications (Traditional Path)

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received						17	23	16	56
Approved						0	1	4	5
Proc Time									
Proc Time Less Def Lapse									

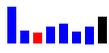
LPCC Grandparenting Applications

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
LMFT Received**						1171	868		2039
LMFT Approved*						0	195	234	429
LCSW Received**						86	72		158
LCSW Approved*						0	16	22	38
LMFT and LCSW Received**						1257	943		2200
LMFT and LCSW Approved*						0	212	256	468
Non-BBS- Licensee Received**						627	608		1235
Non-BBS- Licensee Approved*						0	88	102	190

*Applications evaluated and sent a deficiency notice/made exam eligible

**No LPCC Grandparenting applications were received after Q112 because the application deadline had passed.

LEP Examination Eligibility Applications

 39 [15|53]

 25 [12|33]

 63 [26|127]

 28 [14|49]

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received	53	18	15	24	29	17	25	39	220
Approved	33	28	20	12	12	25	26	25	181
Proc Time	26	63	97	127	125	91	86	63	85
Proc Time Less Def Lapse	14	26	29	28	22	49	39	28	29

ASW Registration Applications

 852 [409|973]

 529 [389|861]

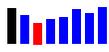
 43 [21|69]

 36 [15|63]

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received	875	452	409	689	973	556	507	852	5313
Approved	861	459	389	433	757	729	678	529	4835
Proc Time	21	40	46	46	55	62	69	43	48
Proc Time Less Def Lapse	15	34	35	40	51	59	63	36	42

MFT Intern Registration Applications

 1003 [756|1462]

 1162 [677|1162]

 34 [26|83]

 29 [21|78]

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received	1255	756	756	884	1462	816	851	1003	7783
Approved	1142	919	677	789	856	1101	980	1162	7626
Proc Time	26	33	37	32	47	83	68	34	45
Proc Time Less Def Lapse	21	27	30	28	43	78	64	29	40

LPC Intern Registration Applications

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total/ Avg
Received						43	49	75	167
Approved						0	11	30	41
Proc Time							136	125	131
Proc Time Less Def Lapse							124	102	113

Examination Unit

The Board's Examination Unit processes complaints and performs other administrative functions relating to the Board's examination processes.

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Total
Total Exams Administered	1988	2057	1887	2162	1809	2059	1895	2473	16330
LCSW Written	401	475	506	526	427	466	515	603	3919
LCSW CV	332	384	370	415	332	392	316	402	2943
LMFT Written	621	517	541	606	557	598	575	748	4763
LMFT CV	568	650	441	575	446	578	480	580	4318
LPCG GAP (LMFT)						2	34	46	82
LPCG GAP (LCSW)						0	1	1	2
LPCG GP L&E						0	25	49	74
LEP	66	31	29	40	47	27	21	41	302

Customer Satisfaction Survey

The Board maintains a Web based customer satisfaction survey.

	Q310	Q410	Q111	Q211	Q311	Q411	Q112	Q212	Avg
Overall Satisfaction ^a	3.6	2.4	2.9	2.9	2.5	2.6	3.0	2.8	2.8
Courtesy ^a	4.1	3.5	3.9	3.6	3.5	3.5	3.8	3.7	3.7
Accessibility ^a	3.5	2.0	2.6	2.7	2.1	2.3	2.8	2.6	2.6
Successful Service ^b	71	35	50	54	42	41	47	49	49
Total Respondents	176	132	172	118	134	115	91	72	126

^a Average rating based on 1-5 scale (1=Unacceptable, 5=Excellent)

^b Percent answered "Yes"

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To: Board Members

Date: August 2, 2012

From: Laurie Williams
Personnel Liaison

Telephone: (916) 574-7850

Subject: Personnel Update

New Employee

Terri Maloy was promoted to a Staff Services Analyst within the Licensing Unit effective, May 14, 2012. Terri is responsible for the evaluation process of the intern and the out-of-state exam eligibility applications for Licensed Professional Clinical Counselors.

Departures

No departures to report at this time.

Vacancies

No vacancies to report at this time.

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To: Board Members

Date: August 6, 2012

From: Kim Madsen
Executive Officer

Telephone: 916-574-7841

Subject: BreEZe Update

Since the May Board meeting, the release date for the first phase of the BreEZe system has been revised from September 2012 to October 15, 2012. The participation of Board staff has increased significantly. In addition to the Board's two subject matter experts, Lynne Stiles and Marina O'Connor, additional staff from the licensing, cashiering, examination, and enforcement units have been added to assist with data verification and business process testing. All staff training is scheduled to begin September 4, 2012.

The online features such as renewals and the submission of applications will be phased over a period of time following the Board's initial "go live" date. This delayed implementation will provide Board staff time to become familiar with the new database and its features before assisting stakeholders through the new processes.

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To: Board Members **Date:** August 14, 2012
From: Steve Sodergren **Telephone:** (916) 574-7847
Assistant Executive Officer
Subject: Continuing Education Provider Review Committee Report

Background

In order to address a number of concerns related to the Board's Continuing Education Provider requirements, the Board voted at its November 2011 meeting to create a two-member committee, the CE Provider Review Committee (Committee), to review and discuss the Board's current CE provider requirements and other models of continuing education. Professional organizations that represent the Board's licensees have been actively participating in the discussions that have taken place during three separate meetings held this year.

On April 18, 2012 the Committee focused on comparing the Board's current CE provider requirements to the CE provider requirements of other DCA healing arts boards as well as licensing boards in other states. Subsequently, on May 31, 2012 the Committee's discussion focused on various professional organization's policies and procedures for approving and/or accrediting CE providers. discussion centered around the following six professional organizations: National Association of Social Workers, Association of Social Work Boards, National Association of Certified Counselors, National Association of School Psychologists, American Psychological Association, and American General Dentistry Program Approval for Continuing Education.

The last Committee meeting, held on July 19, 2012, focused on the key components of a continuing education provider approval program. This discussion centered on the following:

- Recognition and acceptance of continuing education units from professional associations with existing continuing education provider programs,
- Recognition and acceptance of continuing education units from educational institutions,
- Recognition and acceptance of additional methods to obtain continuing education units,
- Criteria that future or new professional associations continuing education provider must satisfy to be recognized and accepted by the Board.

At the next meeting, tentatively planned for September, the Committee will focus on further defining the requirements for each of the components discussed in July. There will also be a discussion around additional professional organizations that should be accepted by the Board as CE provider approver. Lastly, the concept of establishing a continuing competency model for BBS professionals, instead of or in addition to a continuing education model, will be explored.

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To: Board Members

Date: August 6, 2012

From: Kim Madsen
Executive Officer

Telephone: 916-574-7841

Subject: Department of Managed Health Care Task Force

Background

Senate Bill 946 (Steinberg, Chapter 650, Statutes of 2011) required the Department of Managed Health Care (Department) in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012. The purpose of the task force is to provide assistance to the Department on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the State of California.

The task force must submit a report to the Governor and specified members of the Legislature by December 31, 2012.

The bill directs the task force to address the following:

- Interventions that have been scientifically validated and have demonstrated clinical efficacy
- Interventions that have measurable treatment outcomes
- Patient selection, monitoring and duration of the therapy
- Qualifications, training and supervision of providers
- Adequate network of providers
- Recommendations regarding the education, training and experience requirements those unlicensed individuals providing autism services shall meet in order to secure a license from the state.

Current Status of the Task Force

The 18 member task force has considered numerous issues such as consumer protection, professional competence, licensure requirements, and ensuring that an adequate number of providers are available to consumers. On July 13 and 22, 2012, the task force has convened two panels of experts to discuss licensure requirements and the current practice of experts in the field who do not possess the Board of Certified Behavioral Analyst (BCBA) certification.

These discussions entailed consideration of possible grand parenting provisions as well as consumer protection components requiring criminal background checks and efficient methods to identify and remove unsafe practitioners. In addition, the task force members listened to testimony from current

practitioners in the field regarding training of staff, coordination of care, and established models of best practices.

BBS Participation

Board staff has attended all task force meetings since March. On two occasions, Board Chair Dr. Christine Wietlisbach and former board member Dr. Judy Johnson each attended a task force meeting. During the meetings Board staff has provided comment regarding the process of licensure, examination, and regulatory oversight. Additionally, staff and board members noted that many of the Board's current licensees are actively providing similar services under the scope of their current license.

Task Force Report

The last public meeting is August 24, 2012. In the months following this meeting, the task force will prepare the final report to submit to the Governor and specified members of the Legislature by December 31, 2012. The report will include the findings of the task force as well as recommendations for a pathway to licensure.

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To: Board Members

Date: August 13, 2012

From: Paula Gershon
Licensing Manager

Telephone: (916) 574-7830

Subject: Licensed Professional Clinical Counselor (LPCC) Program Update

LPCC INTERN PROGRAM (PCI)

On May 14, 2012, the Board welcomed Terri Maloy to the unit as an LPCC evaluator. Terri evaluates PCI applications and Traditional Out-of-State applications.

It is taking approximately 6 weeks to evaluate a PCI Intern Applications received at the Board. Terri is currently evaluating applications received in early July.

To date the Board has issued 63 PCI registrations.

LPCC OUT-OF-STATE TRADITIONAL APPLICATIONS

It is taking approximately 90 days to evaluate out-of-state traditional applications. The Board is currently evaluating applications received in May 2012.

LPCC GRANDPARENT APPLICATIONS

The LPCC Grandparent period ended on December 31, 2012. The applications postmarked by December 31st were accepted by the Board as meeting the filing requirement. The Board received 3,433 applications for the two grandparent programs. The majority of these applications were received in the final two days of December. Once the application has been evaluated, the applicant has one-year from the date on the "Notice" from the Board to remediate all deficiencies.

The Board has two evaluators evaluating the LPCC grandparent applications. Joanna Huynh is evaluating the MFC/LCS Grandparent applications and Christy Berger is evaluating the Non-BBS Licensed Grandparent applications.

See attached information sheet regarding the current status of the two LPCC Grandparent Programs.

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LPCCC GRANDPARENT APPLICATIONS

MFT/LCSW GRANDPARENT APPLICATIONS

- 2,196 applications received
- To date 28% of the applications have been evaluated.
- 525 applicants have been made eligible to take the GAP exam.
- 115 applicants have taken the GAP exam.
- It is estimated that evaluations of these applications will be completed within the next 18 months.

NON-BBS LICENSED GRANDPARENT APPLICATIONS

- 1,236 applications received
- To date 20% of the applications have been evaluated.
- 162 applicants have been made eligible to take the Law & Ethics Exam.
- 84 applicants have taken the Law & Ethics Exam.
- 232 applicants have been made eligible to take NCMHCE & NCE national exams.
- Exam data is not available on the number of applicants who have completed these exams.
- It is estimated that evaluations of these applications will be completed with the next 24 months.

THE BOARD HAS ISSUED THE FOLLOWING:

- **PCI REGISTRATIONS – 63**
- **LPCCC LICENSES - 90**

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To: Board Members

Date: August 9, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Restoring a Retired License to Active Status

AB 2190 (Chapter 548, Statutes of 2010) gave the Board the authority to issue retired licenses effective January 1, 2011. As of June 2012, the Board had issued 561 retired licenses.

Requirements for a Retired License

Licensees may request a retired license if they complete the required application, pay the required fee, if the license is current and active or capable of being renewed, and if the license is not under any type of disciplinary action by the Board.

The use of the term “current and active or capable of being renewed” has been a source of confusion for Board staff and licensees since the retired license law went into effect. For example, a suspended license is capable of being renewed; however, the disciplinary action would make the licensee ineligible for a retired license.

The intent of the phrase “capable of being renewed” was to allow a licensee on inactive status to apply for a retired license without having to first renew their license to active status. An inactive license is capable of being renewed. Furthermore, it would be burdensome to require an inactive licensee to complete continuing education and pay a renewal fee for an active license, simply in order to immediately request a retired license.

Due to this confusion, staff recommends consideration of the following amendment:

The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a marriage and family therapist/licensed educational psychologist/licensed clinical social worker/professional clinical counselor who holds either a license that is current and active or capable of being renewed a license that is inactive, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter. (Business and Professions Code (BPC) §§4984.41(a), 4989.45(a), 4997.1(a), 4999.113(a))

Proposed amendments for each code section can be found in Attachment A.

Timeline to Restore to Active Status

Current law allows a holder of a retired licensee to apply to restore his or her license to active status if he or she was issued the retired license less than five years ago.

This law is inconsistent with the law regarding renewal of an expired license. An expired license may only be renewed within three years of its expiration.

Staff recommends consideration of an amendment to reduce the timeline to restore a retired license from retired to active status from five years to three (Attachment A).

Policy and Advocacy Committee Position

At its July 19, 2012 meeting, the Policy and Advocacy Committee recommended that the Board consider adopting the amendments proposed by staff.

Recommendation

Conduct an open discussion to consider replacing the phrase “capable of being renewed,” and to consider narrowing the timeline to restore a retired license to active status from five years to three. If this language is acceptable, direct staff to make any non-substantive changes and pursue legislation to make the proposed changes.

Attachments

Attachment A: Proposed Amendments - Retired License Statute

Attachment B: General Information about the Retired License

Attachment A
Proposed Amendments
Retired License Statute

LMFTs

Business and Professions Code (BPC) §4984.41

(a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a marriage and family therapist who holds either a license that is current and active or ~~capable of being renewed~~ a license that is inactive, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active marriage and family therapist license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued less than five three years prior to the application date, and the applicant meets all of the following requirements:

(1) Has not committed an act or crime constituting grounds for denial of licensure.

(2) Pays the renewal fee required by this chapter.

(3) Completes the required continuing education as specified in Section 4980.54.

(4) Complies with the fingerprint submission requirements established by the board in regulation.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4980.54.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4980.54.

(g) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued five three or more years prior to the application date, and the applicant meets all of the following requirements:

(1) Has not committed an act or crime constituting grounds for denial of licensure.

(2) Applies for licensure and pays the fee required by this chapter.

- (3) Passes the examinations required for licensure.
- (4) Complies with the fingerprint submission requirements established by the board in regulation.

LEPs

BPC §4989.45.

- (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed educational psychologist who holds either a license that is current and active or capable of being renewed a license that is inactive, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.
- (b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active educational psychologist license is required.
- (c) The holder of a retired license shall not be required to renew that license.
- (d) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued less than five three years prior to the application date, and the applicant meets all of the following requirements:
 - (1) Has not committed an act or crime constituting grounds for denial of licensure.
 - (2) Pays the renewal fee fixed by this chapter.
 - (3) Completes the required continuing education as specified in Section 4989.34.
 - (4) Complies with the fingerprint submission requirements established by the board in regulation.
- (e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4989.34.
- (f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of application, shall complete 36 hours of continuing education as specified in Section 4989.34.
- (g) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued five three or more years prior to the application date, and the applicant meets all of the following requirements:
 - (1) Has not committed an act or crime constituting grounds for denial of licensure.
 - (2) Applies for licensure and pays the required fee.

- (3) Passes the examinations required for licensure.
- (4) Complies with the fingerprint submission requirements established by the board in regulation.

LCSWs

BPC §4997.1

- (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed clinical social worker who holds either a license that is current and active or capable of being renewed a license that is inactive, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.
- (b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active clinical social worker license is required.
- (c) The holder of a retired license shall not be required to renew that license.
- (d) The holder of a retired license may apply to restore to active status his or her license to practice clinical social work if that retired license was issued less than five three years prior to the application date, and the applicant meets all of the following requirements:
 - (1) Has not committed an act or crime constituting grounds for denial of licensure.
 - (2) Pays the required renewal fee.
 - (3) Completes the required continuing education as specified in Section 4996.22.
 - (4) Complies with the fingerprint submission requirements established by the board in regulation.
- (e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4996.22.
- (f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of application, shall complete 36 hours of continuing education as specified in Section 4996.22.
- (g) The holder of a retired license may apply to restore to active status his or her license to practice clinical social work if that retired license was issued five three or more years prior to the application date, and the applicant meets all of the following requirements:
 - (1) Has not committed an act or crime constituting grounds for denial of licensure.
 - (2) Applies for licensure and pays the required fees.

(3) Passes the examinations required for licensure.

(4) Complies with the fingerprint submission requirements established by the board in regulation.

LPCCs

BPC §4999.113

(a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a professional clinical counselor who holds either a license that is current and active or capable of being renewed a license that is inactive, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active professional clinical counselor license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued less than five three years prior to the application date, and the applicant meets all of the following requirements:

(1) Has not committed an act or crime constituting grounds for denial of licensure.

(2) Pays the required renewal fee.

(3) Completes the required continuing education as specified in Section 4999.76.

(4) Complies with the fingerprint submission requirements established by the board in regulation.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4999.76.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of application, shall complete 36 hours of continuing education as specified in Section 4999.76.

(g) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued five three or more years prior to the application date, and the applicant meets all of the following requirements:

(1) Has not committed an act or crime constituting grounds for denial of licensure.

(2) Applies for licensure and pays the required fees.

(3) Passes the examinations required for licensure.

(4) Complies with the fingerprint submission requirements established by the board in regulation.

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Attachment B

General Information about the Retired License

Who May Obtain a Retired License?

Effective January 1, 2011, a person who is a licensee of the Board of Behavioral Sciences (Board) may now obtain a retired license if the following conditions are met:

1. The license is current and active, or capable of being renewed;
2. The license is not suspended, revoked, or otherwise punitively restricted by the Board or subject to disciplinary action.

What are the Restrictions on a Retired Licensee?

A person holding a retired license may not engage in any activity for which an active license issued by the Board is required.

How do I apply for a Retired License?

You must submit an application form to the Board and pay a fee.

When can I apply for a Retired License?

The Board will begin accepting applications for a retired license on January 1, 2011.

What is the Fee for a Retired License?

The fee for issuance of a retired license is \$40.

Do I Need to Renew my Retired License?

A retired license does not need to be renewed.

How Will I Receive Proof of my Retired License Status?

If the application for a retired license is approved, a retired license certificate will be mailed to the retired licensee as proof of their status.

What if my License is Inactive?

Licensees with an inactive license may apply for retired license status if the license is eligible for renewal. If an individual's license is delinquent, all outstanding requirements for renewal must be met before application for retired status.

What are the Differences Between an Inactive License and a Retired License?

The main differences between an inactive license and a retired license are as follows:

1. An inactive licensee pays a biennial fee equal to one-half of the standard renewal fee. A retired licensee pays a one-time fee of \$40.
2. An inactive licensee may restore his or her license to active status upon request, including payment of the renewal fee and completion of continuing education as required by law.
3. A retired licensee may restore his or her license to active status if they meet specified requirements based on how long their license has been in retired status. These requirements are described below.
4. Neither an inactive licensee nor a retired licensee is permitted to engage in any activity for which an active license issued by the Board is required.

How do I Restore my Retired License to Active Status? (If Retired License was Issued Less than 5 Years Ago)

A person requesting to restore his or her retired license to active status whose retired license was issued less than 5 years ago must meet the following requirements:

1. No crime constituting grounds for license denial has been committed.
2. The prescribed renewal fee is paid.
3. All required continuing education is completed.
4. Fingerprints are submitted as required by the Board.

A person requesting to restore his or her retired license to active status whose retired license was issued less than 1 year ago must complete 18 hours of continuing education as required by their licensing law.

A person requesting to restore his or her retired license to active status whose retired license was issued 1 or more years ago must complete 36 hours of continuing education as required by their licensing law.

How do I Restore my Retired License to Active Status? (If Retired License Issued 5 or More Years Ago)

A person requesting to restore his or her retired license to active status whose retired license was issued less than 5 years ago must meet the following requirements:

1. No crime constituting grounds for license denial has been committed.
2. Licensure must be applied for and the prescribed renewal fee paid.
3. The required licensing examinations are passed.
4. Fingerprints are submitted as required by the Board.

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To: Board Members **Date:** August 13, 2012

From: Steve Sodergren **Telephone:** (916) 574-7847
Assistant Executive Officer

Subject: **Discussion and Possible Rulemaking Action to Require All Applicants to Submit a National Data Bank Inquiry Result**

Background

The Board has a statutory mandate to enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners. In order to comply with this mandate the Board requires both a Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure. Currently, the Board does not conduct a review of the applicant's employment background and disciplinary history. During the 2012 Sunset Review process, the Senate Business, Professions and Economic Development Committee, requested an explanation from the Board as to why the Board was not currently using the National Data Bank to conduct background checks on applicants. The Board indicated that it has an interest in using this resource as another tool to conduct background checks and was exploring options to best incorporate its use.

One option for the Board would be to require applicants to submit a Self Query Report. The requirement for applicants to submit a Self Query Report would further assist the Board in determining if an applicant has been the subject of discipline in another state prior to making a license decision to grant or deny a license. This would give the Board an additional tool to assist in meeting its mandate to protect the public.

Analysis

The Data Bank, consisting of the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB), is a confidential information clearinghouse created by Congress to improve health care quality. This clearinghouse was established to receive and disclose certain final adverse actions against health care practitioners, providers, and suppliers.

The HIPDB and NPDB statutes require State licensing authorities to submit, generally within 30 days, adverse licensing and certification actions, as well as negative actions and findings, taken against health care entities, providers, suppliers, and practitioners. These reportable actions or findings include both final actions and those taken as a result of formal proceedings. The Health Resources and Services Administration (HRSA) has developed a list of current State Agencies and Licensing Boards responsible for licensing or certifying health care professionals and is actively monitoring those

agencies and boards reporting compliance. The Data Bank will add the status of Behavioral Health professions to the Reporting Compliance Status review on July 1, 2012.

While the Board has the ability to query individuals, this may not be feasible because (1) it would increase the time it would take the board to process an application for licensure and (2) licensure could be delayed and additional deficiencies could be generated if the applicant did not provide the board with the exact name under which any discipline had been reported to the NPDB-HIPDB. Also, the current fee for each query is \$4.75 per practitioner for each Data Bank: the NPDB or the HIPDB. This fee is assessed even if the query is improperly submitted or lacks information.

The NPDB-HIPDB Web site guides a practitioner on how to request a Self-Query. According to the NPDB-HIPDB main Web page, a person would select services for a "Practitioner" or for an "Organization." The practitioner must print the self-query request, sign and date it in the presence of a notary public, and mail the notarized self-query to the address specified by the NPDB-HIPDB. Upon receipt of the notarized self-query request, the NPDB-HIPDB would then process, in approximately two business days, the self-query and electronically alert the practitioner via e-mail that the self-query is available for on-line viewing. Also, if so elected, the NPDB-HIPDB would issue a paper copy of the self-query to the practitioner. The current fee for each Self-Query is \$8.00 per practitioner for each Data Bank: the NPDB or the HIPDB.

Because the NPDB and HIPDB retain different information (see attached "Data Bank at a Glance") the Board would require the applicant to submit both Self-Queries. It is not expected that this process would extend the application processing time unless the applicant is deficient in submitting the form with their application paperwork.

At the July 19, 2012 Policy and Advocacy Committee decided that it would be beneficial to require applicants to submit a Data Bank Self-Query to the Board when applying for a license. Concern was voiced as to whether this regulation would apply retroactively to current licensees.

Recommendation

The Board should conduct an open discussion and finalize a recommendation concerning the adoption of a regulation to require all applicants for licensure to submit a National Data Bank Self Query to the Board.

Attachments

- A. NPDB and HIDB Comparison Chart
- B. Fact Sheet Section 1921



National Practitioner Data Bank Healthcare Integrity and Protection Data Bank



FACT SHEET ON SECTION 1921

Background of Section 1921

Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, as amended, established the National Practitioner Data Bank (NPDB) as an information clearinghouse to collect and release certain information related to the professional competence and conduct of physicians, dentists, and, in some cases, other health care practitioners. Originally the operations of the NPDB were directed only toward collecting and releasing information under Title IV. However, in 1987 Congress passed Public Law 100-93, Section 5 of the *Medicare and Medicaid Patient and Program Protection Act of 1987* (Section 1921 of the *Social Security Act*), authorizing the Government to collect information concerning sanctions taken by State licensing authorities against all health care practitioners and entities.

Section 1921 was enacted to provide protection from unfit health care practitioners to beneficiaries participating in the *Social Security Act's* health care programs and to improve the anti-fraud provisions of these programs. Congress later amended Section 1921 with the *Omnibus Budget Reconciliation Act of 1990*, Public Law 101-508, to add "any negative action or finding by such authority, organization, or entity regarding the practitioner or entity."

The U.S. Department of Health and Human Services (HHS) issued a Notice of Proposed Rulemaking for Section 1921 on March 21, 2006 and issued the Final Rule for Section 1921 of the *Social Security Act* as published in the *Federal Register* on January 28, 2010. The Data Bank opened Section 1921 for reporting and querying on March 1, 2010.

Section 1921 expands the information collected and disseminated through the NPDB to include reports on licensure actions taken against all health care practitioners, not just physicians and dentists, as well as health care entities. In addition, negative actions or findings taken by a state licensing authority, peer review organization, or private accreditation organization against a health care practitioner or entity must be reported under Section 1921. Organizations that are authorized to query the NPDB under Title IV may receive Section 1921 information. Section 1921 also authorizes entities new to the NPDB to access Section 1921 information through the NPDB.

Confidentiality of Section 1921 Information

Information reported to the NPDB, including information reported under Section 1921, is considered confidential and shall not be disclosed, except as specified in the NPDB regulations. The Office of Inspector General (OIG), HHS, has been delegated the authority to impose civil money penalties on those who violate the confidentiality provisions of NPDB information.

Persons or organizations who receive information from the NPDB, either directly or indirectly, are subject to the confidentiality provisions and the imposition of a civil money penalty if they violate those provisions.

The *Privacy Act*, 5 USC §552a, protects the contents of Federal systems of records on individuals, like those contained in the NPDB, from disclosure without the individual's consent, unless the disclosure is for a routine use of the system of records as published annually in the *Federal Register*. The published routine uses of NPDB information do not allow disclosure to the general public. The limited access provision of the *Health Care Quality Improvement Act of 1986*, as amended, supersedes the disclosure requirements of the *Freedom of Information Act* (FOIA), 5 USC §552, as amended.

Eligible Entities

Entities required to report and entitled to query under Section 1921 are defined in the provisions of Public Law 100-93, the *Medicare and Medicaid Patient and Program Protection Act of 1987*, as amended. Each eligible entity must certify its eligibility to the NPDB in order to report and/or query Section 1921 data.

Section 1921 requires each state to adopt a system of reporting to the Secretary of HHS certain adverse licensure actions taken against all health care practitioners and health care entities by any authority of the state that is responsible for the licensing of such practitioners or entities. Section 1921 also requires the reporting of any negative action or finding that a state licensing authority, peer review organization, or private accreditation entity has concluded against a health care practitioner or entity.

Entities that are only authorized to obtain state licensure actions and negative actions or findings concluded against licensed health care practitioners and entities reported to the NPDB under Section 1921 are not authorized to receive Title IV-only information, including information

regarding medical malpractice payments or adverse clinical privileges and professional society membership actions on practitioners. The following group of queriers have access to information reported to the NPDB under Section 1921 only:

- Agencies administering Federal health care programs, including private sector entities administering such programs under contract.
- State agencies administering or supervising the administration of state health care programs.
- Authorities of a state or its political subdivisions responsible for licensing health care entities.
- State Medicaid Fraud Control Units.
- U.S. Attorney General and other law enforcement officials.
- U.S. Comptroller General.
- Utilization and Quality Control Peer Review Organizations (now known as Quality Improvement Organizations).

Organizations that are eligible to receive original NPDB information reported under Title IV are also eligible to receive Section 1921 data.

Section 1921 data is not available to the general public. However, persons or organizations are permitted to request information in a form that does not identify any particular practitioner or entity.

Fees

Fees are charged for all queries to the NPDB and are announced in the *Federal Register*. Query fees are based on the cost of processing requests and providing information to eligible entities. The NPDB only accepts payments for query fees by pre-authorized Electronic Funds Transfer (EFT) or credit card (VISA, MasterCard, Discover, or American Express). For information on Data Bank querying fees and acceptable payment methods, go to <http://www.npdb-hipdb.hrsa.gov/hcorg/billingAndFees.jsp>.

Self-Queries

A health care practitioner or entity may self-query the Data Bank at any time by visiting the Data Bank website at <http://www.npdb-hipdb.hrsa.gov>. All self-query fees must be paid by credit card. For detailed instructions about how to find out if a report has been filed on you, go to <http://www.npdb-hipdb.hrsa.gov/pract/hasAReportBeenFiledOnYou.jsp>.

NPDB-HIPDB Assistance

For additional information, visit the Data Bank website at <http://www.npdb-hipdb.hrsa.gov>. If you need assistance, contact the Data Bank Customer Service Center by email at help@npdb-hipdb.hrsa.gov or by phone at 1-800-767-6732 (TDD 703-802-9395). Information Specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p.m. (5:30 p.m. on Fridays) Eastern Time. The Data Bank Customer Service Center is closed on all Federal holidays.

NPDB and HIPDB Comparison

NPDB (HCQIA and Section 1921)	HIPDB (Section 1128E)
<p>Who Reports?</p> <ul style="list-style-type: none"> ▪ Medical malpractice payers ▪ State health care practitioner licensing and certification authorities (including medical and dental boards) ▪ Hospitals ▪ Other health care entities with formal peer review (HMOs, group practices, managed care organizations) ▪ Professional societies with formal peer review ▪ State entity licensing and certification authorities ▪ Peer review organizations ▪ Private accreditation organizations ▪ DEA ▪ HHS OIG <p>What Information is Available?</p> <ul style="list-style-type: none"> ▪ Medical malpractice payments (all health care practitioners) ▪ Any adverse licensure actions (all practitioners or entities) <ul style="list-style-type: none"> - revocation, reprimand, censure, suspension, probation - any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction - any other loss of license ▪ Adverse clinical privileging actions ▪ Adverse professional society membership actions ▪ Any negative action or finding by a State licensing or certification authority ▪ Peer review organization negative actions or finding against health care practitioners ▪ Private accreditation organization negative actions or findings against health care entities ▪ Adverse Actions against DEA Certification ▪ Medicare/Medicaid Exclusions <p>Who Can Query?</p> <ul style="list-style-type: none"> ▪ Hospitals ▪ Other health care entities, with formal peer review ▪ Professional societies with formal peer review ▪ State health care practitioner licensing and certification authorities (including medical and dental boards) ▪ State entity licensing and certification authorities* ▪ Agencies or contractors administering Federal health care programs* ▪ State agencies administering State health care programs* ▪ State Medicaid Fraud Units* ▪ U.S. Comptroller General* ▪ U.S. Attorney General and other law enforcement* ▪ Health care practitioners and entities (self query) ▪ Plaintiff's attorney/<i>pro se</i> plaintiffs (under limited circumstances)** ▪ Quality Improvement Organizations* ▪ Researchers (statistical data only) <p><i>* Eligible to receive only those reports authorized by Section 1921.</i> <i>** Eligible to receive only those reports authorized by HCQIA.</i></p>	<p>Who Reports?</p> <ul style="list-style-type: none"> ▪ Federal and State Government Agencies ▪ Health Plans <p>What Information is Available?</p> <ul style="list-style-type: none"> ▪ Licensing and certification actions (practitioners, providers, and suppliers) – revocation, reprimand, suspension (including length), censure, probation, any other loss of license, and any other negative action or finding by a Federal or State licensing or certification agency that is publicly available information ▪ Health care-related civil judgments (practitioners, providers, and suppliers) ▪ Health care-related criminal convictions (practitioners, providers and suppliers) ▪ Exclusions from Federal or State health care programs (practitioners, providers, and suppliers) ▪ Other adjudicated actions or decisions (practitioners, providers, and suppliers) <p>Who Can Query?</p> <ul style="list-style-type: none"> ▪ Federal and State Government Agencies ▪ Health Plans ▪ Health care practitioners/providers/suppliers (self-query) ▪ Researchers (statistical data only)

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To: Board Members **Date:** August 13, 2012
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Review of Board Sponsored and Monitored Legislation

BOARD-SPONSORED LEGISLATION

SB 632 (Emmerson) Marriage and Family Therapist Trainee Practicum

Board-sponsored SB 363 (Chapter 384, Statutes of 2011) became law on January 1, 2012. It allows a trainee to counsel clients while not enrolled in practicum only if the lapse in enrollment is less than 90 days and is immediately preceded and immediately followed by enrollment in practicum.

Because the requirement to be enrolled in practicum to counsel clients only applies to specified MFT trainees, (individuals that begin graduate study after August 1, 2012; individuals that begin graduate study before August 1, 2012 but do not complete that study before December 31, 2018; and, individuals that attend a graduate program that meets the enhanced requirements required by Business and Professions Code Section 4980.36) an exception from the requirement should have only applied to those specific MFT trainees. However, the effect of the language signed into law with SB 363 instead requires all trainees to be enrolled in practicum to counsel clients regardless of when the trainee began graduate study.

This bill is an urgency measure which will amend this section of licensing law and restore the original intent of requiring only specified MFT trainees to enroll in practicum to counsel clients.

Status: This bill was signed by the Governor on July 3, 2012 and became effective immediately (Chapter 50, Statutes of 2012).

SB 1527 (Negrete McLeod) Social Workers: Licensing

As part of the Board's examination restructure, each associate social worker (ASW) will be required to take and pass a California law and ethics examination. This bill adds a requirement, similar to the ones in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics.

This bill would also clarify the acceptability of older licensing exam scores. Under the examination restructure, the Board may use national examinations as the clinical examinations, if the Board

determines that they meet California standards. However, SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained. In order to address the question about the acceptability of older exam scores, this bill does the following:

- For applicants who do not hold an out of state license, it allows a passing score on the clinical exam to be accepted by the Board for seven years.
- For applicants who already hold a valid license in good standing in another state, who had passed the exam this Board is requiring as part of their requirements for licensure in that other state, this Board may accept that exam score regardless of age.

Status: This bill is currently on third reading in the Assembly.

SB 1575 (Senate Business, Professions, and Economic Development Committee) Omnibus Legislation

This bill makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law. It would also extend the effective date of the examination restructure from January 1, 2013 to January 1, 2014.

Status: This bill is currently on third reading in the Assembly.

BOARD-SUPPORTED LEGISLATION

AB 40 (Yamada) Elder and Dependent Adult Abuse: Reporting

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

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

The Board has one suggested amendment that could increase the clarity of the reporting requirements for mandated reporters. The Board suggests that the proposed reporting requirement in the case of elder or dependent adult “physical abuse” be changed to reference “physical abuse and/or sexual abuse.”

The Board is aware that the bill references a definition of physical abuse in Welfare and Institutions code section 15610.63, and that the referenced definition includes types of sexual abuse. However, the Board is concerned that a mandated reporter in the field will not have access to this definition, and that the term “physical and/or sexual abuse” will eliminate any confusion whether sexual abuse is to be included. This suggested amendment is consistent with other areas of law which reference physical and/or sexual abuse.

The Board adopted a “Support” position on this legislation at its May 16, 2012 meeting.

Update: This bill was amended on June 18, 2012, to specify that if suspected abuse in a long term care facility results in serious bodily injury, a mandated reporter must make a telephone report to the local law enforcement agency within 2 hours. A written report must then be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours.

Status: This bill is currently in the Senate Appropriations Committee.

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

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

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

Status: This bill failed passage in the Senate Health Committee, and is now dead.

AB 171 (Beall) Pervasive Development Disorder or Autism

This bill would require a health care service plan that provides hospital, medical, or surgical coverage to provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism. The Board believes this bill would help to close several loopholes that insurers currently use in order to deny coverage to those with pervasive developmental disorder or autism.

The Board adopted a "support" position on this legislation at its meeting on May 16, 2012.

Status: This bill is now dead.

AB 367 (Smyth) Board of Behavioral Sciences: Reporting

This bill would add the Board of Behavioral Sciences to the list of boards that are required to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive, to the State Department of Health Care Services within ten working days.

The Board supports the intent of this legislation to prevent providers who are no longer licensed from submitting for and receiving Medi-Cal reimbursement. However, the Department of Consumer Affairs (DCA) is in the process of implementing a new database system. As this change will require a costly change to the Board's database system, the Board requests a delayed implementation date to January 1, 2015. At this time, the new system will be fully implemented, and DCA staff will be able to make the required changes at a substantially reduced cost to the Board.

At its May 16, 2012 meeting, the Board adopted a "support if amended" position on this bill, requesting that it be amended to have a January 1, 2015 implementation date.

Update: The requested amendment to change the implementation date to January 1, 2015 was made on May 21, 2012. Therefore, the Board now has a "support" position on this bill.

Status: This bill was signed by the Governor (Chapter 154, Statutes of 2012).

AB 1785 (B. Lowenthal) Medi-Cal Reimbursement for Federally Qualified Health Centers and Rural Health Clinics

This bill would add licensed marriage and family therapists to the list of health care professionals whose services are reimbursed through Medi-Cal on a per visit basis to federally qualified health centers and rural health clinics. The Board agrees that its licensed marriage and family therapists have the qualifications to be included in this group of professionals.

The Board adopted a “support” position on this legislation at its meeting on May 16, 2012.

Status: This bill died in the Assembly Appropriations Committee.

AB 1904 (Block, Butler & Cook) Military Spouses: Temporary Licenses

This bill would allow the Board to issue a temporary license to an applicant who can prove that he or she is married to or in a domestic partnership or other legal union with an active duty member of the U.S. Armed Forces who is assigned to active military duty in California. This bill would also allow the Board to adopt regulations to administer this temporary license program. The Board is supportive of this bill because it allows the Board, through regulations, to maintain consumer protection by specifying standards that a temporary licensee must meet, while at the same time assisting military families by allowing them to obtain a professional license in this state more quickly.

The Board adopted a “support” position on this legislation at its meeting on May 16, 2012.

Update: This bill was amended on June 12, 2012 to require the Board to expedite the licensing process of an applicant who is a spouse of a military member assigned to active duty in California, if they hold a current license for the same profession in another state. The Board re-considered this bill at its meeting on July 19, 2012 and maintained its “support” position.

Status: This bill is currently on third reading in the Senate.

AB 2570 (Hill) Licensees: Settlement Agreements

This bill would close a loophole in current law that allows a Board licensee or registrant to prohibit a consumer who settles a civil suit with that licensee or registrant from filing a complaint with or cooperating in an investigation of the Board. This bill protects consumers by disallowing “gag clauses” that hamper the ability of a regulatory board to take disciplinary action against a negligent practitioner.

The Board adopted a “support” position on this legislation at its meeting on May 16, 2012.

Status: This bill is currently on third reading in the Senate

SB 1238 (Price) Professions: Board of Psychology: Board of Behavioral Sciences

This bill will extend the Board’s sunset date until January 1, 2017.

The Board adopted a “support” position on this legislation at its meeting on May 16, 2012.
Status: This bill is currently in the Assembly Appropriations Committee.

SB 1172 (Lieu) Sexual Orientation Change Efforts

This bill, as amended July 5, 2012, prohibits a mental health provider from engaging in sexual orientation change efforts with a patient under 18. The bill specifically defines the term “sexual orientation change efforts,” and makes any such efforts on a patient under 18 unprofessional conduct, for which the mental health provider would be subject to disciplinary action by his or her licensing entity.

At its meeting on July 19, 2012, the Board adopted a “support” position on this legislation.

Status: This bill has passed the Assembly and the Senate.

THE BOARD IS MONITORING THE FOLLOWING LEGISLATION:

AB 1588 (Atkins) Reservist Licensees: Fees and Continuing Education

This bill would require the Board to waive continuing education requirements and renewal fees for a licensee or registrant while he or she is called to active duty as a member of the United States Military Reserve or the California National Guard if he or she meets certain requirements.

The Board supports the intent of this bill to assist military members while they are actively serving. At its meeting on May 16, 2012, the Board took a “support if amended” position on this bill, requesting the following amendments:

- 1) Time Limit to Pay Renewal Fee After Active Status Complete.** The Board requests an amendment setting a time limit to clarify when the renewal fee must be paid once the licensee or registrant completes active service.
- 2) Affidavit Substantiating Active Duty Service.** Currently, this bill only requires the active duty reservist, or his or her spouse or domestic partner, to provide written notice to the Board substantiating the active duty service. The Board requests an amendment specifying that the term “written notice” be replaced by the term “affidavit.”

Status: This bill is currently on third reading in the Senate.

AB 1932 (Gorell) United States Armed Services: Healing Arts Boards

AB 1932 would require the Board to annually issue a written report to the Department of Veterans Affairs and to the Legislature that details the Board’s method of evaluating education, training, and experience obtained in military service. The report must also state whether the military education, training, and experience can be applied to the Board’s licensing requirements.

The Board is supportive of allowing military education, training, and experience to be used toward licensing requirements if it is equivalent to the Board's current licensing requirements. The Board has very specific requirements for evaluating education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board would conduct a review to determine if that experience is substantially equivalent to current licensing requirements.

The Board already has a procedure in place to evaluate an applicant's education, training and experience, and would perform such an evaluation and maintain records of such a military program if this type of application were received. In addition, it would be very time consuming for the Board's already limited staff to be required to seek out and evaluate scenarios where someone might gain military education or experience toward licensure, before the Board receives an application from such an individual. Therefore, at its May 16, 2012 meeting, the Board adopted an "oppose" position on this bill.

Status: This bill is now dead.

AB 1976 (Logue) Acceptance of Military Education and Experience Toward Licensing Requirements

AB 1976 would require the Board to accept education, training, and experience gained in the military toward licensing requirements unless the Board determines that this education, training, and experience is not substantially equivalent to licensing requirements. It would also require the Board, if it accredits or approves schools offering education course credits toward licensing requirements, to require schools seeking accreditation or approval to have procedures in place to fully accept an applicant's military education, training and experience toward an educational program which leads to licensure.

The Board believes it should be excluded from this bill, as it does not accredit or approve schools and it already has a procedure in place to evaluate an applicant's education, training and experience. Such an evaluation would be performed, and records of such a military program maintained for future use, if this type of application were received.

At its meeting on May 16, 2012, the Board took an "oppose" position on this legislation.

Status: This bill died in the Assembly Appropriations Committee.

SB 1134 (Yee) Persons of Unsound Mind: Psychotherapist Duty to Protect

Current law allows no monetary liability or cause of action to arise against a psychotherapist who fails to warn of and protect from a patient's threatened violent behavior, or who fails to predict and warn of and protect from a patient's violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

This bill would rename the duty of a psychotherapist, defined in Section 43.92 of the Civil Code, from "duty to warn and protect" to "duty to protect."

At its meeting on May 16, 2012, the Board opted to take no position on this bill.

Status: This bill was signed by the Governor (Chapter 149, Statutes of 2012).

SB 1183 (Lieu) Board of Behavioral Sciences: Continuing Education

SB 1183 would remove the Board's authority to approve continuing education (CE) providers, and instead require that Board licensees obtain their required CE from an accredited educational institution, or a CE provider that is approved by an accrediting organization, such as a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution.

The Board is concerned that this bill removes its authority to set CE standards and requirements. The Board is the sole regulating entity for licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers, and licensed professional clinical counselors. Therefore, it possesses the experience and knowledge necessary to best set CE standards.

In addition, this bill does not specifically define "accrediting organizations". If standards for an accrediting organization remain unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an "accrediting organization."

The Board has identified a number of issues regarding its CE program, and has formed a CE committee to address these issues. The committee is in the process of working with stakeholders and interested parties to develop regulatory changes to address specified areas of concern.

For these reasons, at its meeting on May 16, 2012, the Board took an "oppose" position on this legislation.

Status: Although this bill is currently in the Assembly Appropriations Committee, Senator Lieu's office has assured both the Board chair and Board staff that this bill will not move forward as written. It is expected to be amended for another purpose before the end of this legislative session.

Updated: August 10, 2012

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To: Board Members

Date: August 6, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Rulemaking Update

SUBMITTED REGULATORY PROPOSALS

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, which failed passage in 2011, was 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 was submitted to the Office of Administrative Law (OAL), and published in its California Regulatory Notice Register on March 16, 2012. The proposal is now through the 45-day public comment period, and the public hearing was held on May 1, 2012. Board staff has reviewed comments that were received at the public hearing and is preparing modified text for a 15-day public comment period.

Title 16, CCR Sections 1811, 1870, 1887.3 – Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs), and HIV/AIDS Continuing Education Course for LPCCs

This proposal makes three types of revisions to current Board regulations:

1. 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 for a revised version of this rulemaking proposal at the August 18, 2011 Board meeting.

2. 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.
3. This proposed change, approved by the Board in June 2007, requires supervisors of ASWs to be licensed for two years prior to commencing any supervision.

This rulemaking proposal was submitted to OAL and published in its California Regulatory Notice Register on June 29, 2012. The public hearing was held on August 14, 2012.

Title 16, CCR Section 1833, Regulations to Implement SB 363 (Marriage and Family Therapist Intern Experience)

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 amendment was approved by the Board at its meeting on November 9, 2011. This proposal also deletes an outdated provision in Section 1833 regarding crisis counseling on the telephone, which directly conflicts with telehealth provisions in LMFT licensing law. This amendment was approved by the Board at its meeting on February 29, 2012.

This rulemaking proposal was submitted to OAL and published in its California Regulatory Notice Register on June 29, 2012. The public hearing was held on August 14, 2012.

PENDING REGULATORY PROPOSALS

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 additional changes were approved by the Board at its meeting on May 16, 2012. The proposal will be submitted to OAL for initial notice this month.

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 (Examination Restructure)

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. It is currently on hold, as the Board is pursuing legislation to extend the implementation date of the exam restructure from January 1, 2013 to January 1, 2014.

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 Fall 2012.

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To: Board Members **Date:** August 13, 2012
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Proposed Regulations to Implement SB 1111 (Negrete McLeod)

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

Legislative Efforts

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

In 2011-2012, the Senate Business, Professions, and Economic Development Committee sponsored SB 544. This bill contained many of the same provisions as SB 1111, with the intent of improving efficiency and increasing accountability for boards within DCA. SB 544 also failed passage.

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

Proposed Regulatory Items

The DCA legal office identified several components of SB 1111 and SB 544 that may be established through regulations. DCA has asked its healing arts boards to pursue these components through the rulemaking process. The regulatory proposal considered by the Board can be grouped into three categories:

1. Delegation of Certain Functions

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

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

2. Required Actions Against Registered Sex Offenders

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

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

3. Unprofessional Conduct

Proposed Action: Add the following acts to the definition of unprofessional conduct:

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

Recent Action

At its meeting on August 18, 2011, the Board approved the regulatory proposal. The proposal was then submitted to the Office of Administrative Law (OAL), and opened to public comment for a 45-day period. A public hearing was held on May 1, 2012.

The Board received a public comment letter from the California Association of Marriage and Family Therapists (CAMFT). After reviewing these comments, staff is proposing a number of technical and clarifying amendments to the originally proposed language.

Attachment A shows modifications to the regulations that staff is proposing. The newly proposed changes are identified by double underline (for additions) and double strikeout (for deletions).

Attachment B is the Final Statement of Reasons, which explains the changes that were made, and responds to each of CAMFT's public comments.

Attachment C is the letter CAMFT submitted during the 45-day public comment period outlining its concerns.

Recommended Action

Conduct an open discussion regarding the inclusion of the proposed amendments in the regulations. If the amendments are found acceptable, direct staff to take all steps necessary to finalize the rulemaking process, including modifying the text as approved, submitting modified text for a 15-day public comment period, making any non-substantive changes to the rulemaking package, and submitting the final package to OAL.

Attachments

Attachment A: Proposed Text Modifications

Attachment B: Final Statement of Reasons

Attachment C: CAMFT letter received during 45-day public comment period

Attachment D: Originally Submitted Regulatory Proposal

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**ATTACHMENT A
PROPOSED MODIFIED TEXT OF REGULATIONS**

Single underline indicates originally proposed new language.

Double underline indicates proposed modified new language, and double ~~strikeout~~ indicates proposed modified deleted language.

§1803. DELEGATION OF CERTAIN FUNCTIONS

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

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

§1823. UNPROFESSIONAL CONDUCT

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

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

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

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

(b) Failure to provide to the board, ~~as directed~~ authorized by law, ~~lawfully requested~~ copies of ~~documents~~ records within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the ~~documents~~

records within this time period for good cause. Good cause includes, including but is not limited to, physical inability to access the records in the time allowed due to illness or travel, or inability to obtain the necessary patient release authorization, if applicable. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

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

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

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

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

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

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

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

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

§1845. UNPROFESSIONAL CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§1858. UNPROFESSIONAL CONDUCT

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

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

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

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

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

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

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

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

registrant of any constitutional or statutory rights or privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

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

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

~~(2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~

~~(3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

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

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

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

§1881. UNPROFESSIONAL CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2)(1) A conviction, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.~~

~~(3)(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.~~

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

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

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

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

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

- 1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- 2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.
- 3) Deny any petition to reinstate or reissue the individual's license or registration.

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

- 1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
- 2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license or registration under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.
- 3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

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

**ATTACHMENT B
BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS**

Hearing Date: May 1, 2012

Subject Matter of Proposed Regulations: Enforcement

Section(s) Affected: Amend Sections 1803, 1845, 1858, and 1881 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1823 and 1888.1 to Division 18 of Title 16 of the California Code of Regulations.

Updated Information

The Initial Statement of Reasons is included in the file (Tab III). The information contained therein is updated as follows:

1. A technical change was made to Sections 1823(a)(1), 1845(e)(1), 1858(c)(1), and 1881(q)(1). The change was identical for each section and is as follows (change shown in double underline and double strikeout):

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

This change is based on a comment during the 45 day comment period from the Department of Consumer Affairs Division of Legislative and Policy Review.

2. An amendment was made to the Unprofessional Conduct sections for each of the Board's license types in order to address a concern from the California Association of Marriage and Family Therapists (CAMFT) that some of the terms used in these sections were vague and unclear. The amendment affected Sections 1823(b), 1845(f), 1858(d), and 1881(r) and is as follows:

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

3. An amendment was made to the Unprofessional Conduct sections for each of the Board's license types in order to address a concern from CAMFT that making it unprofessional conduct for a licensee to fail to report to the Board within 30 days the bringing of an indictment or information charging a felony against a licensee violates due process. The Board struck subsection (1) in Sections 1823(d), 1845(h), 1858(f), and 1881(t). Subsections (2) and (3) beneath (1) were re-numbered (1) and (2), respectively.
4. A technical, clarifying amendment was made to the Unprofessional Conduct sections for each of the Board's license types. These sections make it unprofessional conduct to fail to provide within 30 days of a request, documentation to the Board regarding the arrest of the licensee or registrant. An additional amendment was also made to include registrants in this provision. The amendment affected Sections 1823(e), 1845(i), 1858(g), and 1881(u) and is as follows:

Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant.

5. A technical, clarifying amendment was made to the first sentence of Section 1888.1(a). The amendment is as follows:

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

6. A clarifying amendment was made to all references of the terms “license”, “licensee”, or “licensee’s” in all sections with proposed amendments in this regulatory proposal (Sections 1803, 1823, 1845, 1858, 1881, and 1888.1). Board staff found that a reference to registrants is also needed when licensees are referenced, in order to ensure it is clear that it is the intent of the Board to apply the proposed amendments not only to Board licensees but to registrants as well.

Objections or Recommendations/Responses to Comments:

The Board received a written comment from Katherine Demos of the Department of Consumer Affairs Division of Legislative and Policy Review. She noted that at the end of the first line under Sections 1823(a)(1), 1845(e)(1), 1858(c)(1), and 1881(q)(1), the word “of” needed to be changed to “or”. This change was accepted and the necessary changes were made.

The Board received a written letter jointly signed by Jill Epstein, Executive Director, and Catherine Atkins, Deputy Executive Director of CAMFT. The comments in the letter, and the Board's responses, are as follows:

1. **COMMENT NO. 1: Demonstrate the Need for New Provisions:** The ISOR states that “many Boards take an average of three years to investigate and prosecute,” however no evidence is offered that indicates this statistic applies to the Board. If the statistic does apply to the Board, it is unclear if the delays are due to unavailable or evasive licenses or a lack of resources on the part of the Board’s enforcement unit. In addition, it is stated that proposed changes would allow quicker resolution of disciplinary issues. CAMFT argues, however, that quick is not necessarily the best result if the resolution is not fair or effective. CAMFT points out that very few disciplinary actions are taken by the Board each year, and that the proposed changes will not make much difference in enforcement delays.

RESPONSE: The Board rejects this comment. The Board currently takes an average of two years to investigate and prosecute violations of the law. While this is under the three year average cited for all DCA boards, the Board acknowledges that decreasing this timeframe while maintaining proper procedures is necessary for public protection. The most effective way to do this would be to increase the number of enforcement staff, however, that is not an option in the current economic environment. This proposal provides the Board with some additional tools to expedite the enforcement process in some cases, while maintaining due process.

2. **COMMENT NO. 2: Lack of Authority:** CAMFT raised concerns with Section 1845, regarding unprofessional conduct. CAMFT states that the Board lacks the authority to add the additional unprofessional conduct provisions that are proposed in Section 1845. It states that the Board needs to get this authority from the Legislature.

RESPONSE: The Board rejected this comment, and cites Business and Professions Code (BPC) Section 4982, which defines unprofessional conduct and states in part that “Unprofessional conduct includes, but is not limited to, the following:.” Therefore, the list defining unprofessional conduct is not exclusive, and thus the Board is authorized to make the law specific via regulations. This proposal is therefore not outside the scope of the statute.

3. **COMMENT NO. 3: Settlement Agreements:** CAMFT raised concerns with Section 1845(e), stating that adding this provision to unprofessional conduct, which prohibits cooperating or filing a complaint with the Board as a term of a settlement agreement, is premature because AB 2570, which contains a similar provision, is currently under consideration at the Legislature. Therefore, CAMFT argues that it is premature to include this provision in a regulation, and doing so could result in a regulation that is inconsistent and/or duplicative.

RESPONSE: The Board rejected this comment. As noted above, BPC Section 4982 gives the Board authority to add this unprofessional conduct provision to regulation. AB 2570 is still moving through the Legislature and may or may not become law. If it does become law, the Board may consider modifying this regulation accordingly.

4. **COMMENT NO. 4: Failure to Provide Documentation:** CAMFT raised two concerns with Section 1845(f), which adds an unprofessional conduct subsection pertaining to failure to provide lawfully requested copies of documents under certain circumstances. CAMFT's two concerns are as follows:
- a. The subsection is vague and unclear, in violation of Government Code Section 11349(c), because the terms "documents", "as directed," "lawfully requested document", and "good cause" are not clear ; and
 - b. The subsection does not demonstrate necessity, as required by Government Code Section 11349(a). CAMFT states it has seen no evidence from the Board that failure to provide requested documents is a cause for or related to any delays in the enforcement process.

RESPONSE: Regarding CAMFT's first concern, (outlined in (a) above), the Board accepted this portion of the comment and made modifications to clarify the terms that CAMFT identified as vague and unclear. These changes were made in Sections 1845(f), (licensed marriage and family therapists), 1823(b) (licensed professional clinical counselors), 1858(d) (licensed educational psychologists), and 1881(r) (licensed clinical social workers).

The Board rejected CAMFT's second concern (outlined in (b) above). The Board has had cases in which it had difficulty obtaining lawfully requested records. If the information is not obtained in the three year timeframe allowed by law, then the case must be closed, and this has happened occasionally. Making it unprofessional conduct for failure to provide records gives the Board an additional tool to obtain the records, as the licensee or registrant now has an incentive to provide the records in order to avoid an unprofessional conduct finding.

5. **COMMENT NO. 5: Failure to Cooperate:** CAMFT raised concerns with Section 1845(g), which makes a licensee's or registrant's failure to cooperate and participate in an investigation against that licensee or registrant unprofessional conduct. CAMFT argues that this subsection is vague, unclear, and does not demonstrate necessity, violating Government Code Section 11349(a) and (c). CAMFT cites concern that the Board is granted too much latitude in this provision, and that the terms "cooperation" and "participation" are not defined clearly.

CAMFT also notes that the BBS has provided no evidence that failure to cooperate or participate in investigations has delayed the enforcement process. CAMFT also argues that this provision would best be done legislatively.

RESPONSE: The Board rejected this comment. As established in the response to Comment Number 2 above, the Board does have the authority to establish this unprofessional conduct provision through regulations.

As written, the amendment allows the Board to assess all reasonable circumstances in determining the legitimacy of any excuses provided for not cooperating or participating in an investigation.

This language is designed to improve the way healing arts boards conduct investigations. Not receiving records in a timely manner can be an obstacle to a board's completion of investigations. If an unprofessional conduct finding is made for "failure to cooperate and participate," as referenced in this amendment, then an accusation would be filed. The matter would then come before the Board and it would assess how staff arrived at that decision. The Board believes that to prove "willful noncompliance" it would have to show that the respondent acted with intent, which is difficult to prove.

6. **COMMENT NO. 6: Failure to Report Convictions:** CAMFT raised concerns with this subsection, asserting it does not demonstrate necessity. Specifically, it has concerns with Section 1845(h)(1) and (2), as follows:

- a. 1845(h)(1): CAMFT believes this provision, requiring a licensee to report to the Board within 30 days the bringing of an indictment or information charging a felony against a licensee, violates due process. They state the Board has no legal authority to require reporting prior to a conviction,
- b. 1845(h)(2): This provision requires a conviction to be reported to the Board by the licensee or registrant within 30 days. CAMFT asserts that because the Board currently has the ability to obtain this information on its own, it does not make sense to shift the reporting burden to the licensee or registrant. They argue that a licensee or registrant would have greater difficulty obtaining this information than the Board would. Additionally, they believe any deficiencies in communication between the Board and law enforcement agencies should be fixed at that level and not burden the licensee or registrant.

RESPONSE: The Board accepted CAMFT's comment regarding 1845(h)(1), requiring a licensee or registrant to report within 30 days the bringing of an indictment or information charging them with a felony. Therefore, this provision was struck from the proposed language and the subsections below it were renumbered.

The Board rejected CAMFT's comment regarding 1845(h)(2), which requires a conviction to be reported to the Board by the licensee or registrant within 30 days. The Board currently receives this information from licensees on their renewal notices. However, renewal is only every two years. The Board does not have the resources to research convictions on every licensee and registrant as they happen. By requiring a conviction to be self-reported within 30 days, the Board can take quicker action than it can by waiting up to two years to find out on the next renewal notice, and therefore the public will be better protected.

7. **COMMENT NO. 7: Failure to Report Arrest:** CAMFT expressed concerns regarding subsection 1845(i), which makes it unprofessional conduct for a licensee or registrant to fail to provide within 30 days of a request, documentation requested by the Board regarding the arrest of the licensee or registrant. CAMFT states that this is a violation of due process and unreasonable given that BBS already has difficulty obtaining this documentation.

RESPONSE: The Board made one technical clarifying amendment to this subsection, as follows:

Failure to provide, within 30 days of a request, documentation requested by to the Board regarding the arrest of the licensee or registrant.

However, the Board rejected this comment. The Board maintains that requiring the licensee or registrant to provide the arrest records does not violate due process, because the Board will already know of the arrest, as the fingerprint records are on file with the Board and therefore the Department of Justice reports the arrest to the Board. Once the Board knows of an arrest, it is part of its investigative authority to obtain the arrest records. The licensee or registrant is in a better position than the Board to obtain arrest records, because many arresting agencies require the consent of the arrested person before release. There is no violation of due process while the Board investigates the matter, as no action is taken against the licensee or registrant during the investigation. Post-investigation, if warranted, the Board would file an accusation and the resulting administrative hearing is then designed to ensure due process.

8. **COMMENT NO. 8: Delegation to Executive Officer:** CAMFT made a comment regarding the amendments to Section 1803, which propose delegating to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license or registration.

CAMFT believes that this proposal would bypass the checks and balance system of Board approval of the Executive Officer's settlement negotiations, and would not significantly expedite the enforcement process.

RESPONSE: The Board rejects this comment. The proposed language is limited to settlement agreements where an action to revoke the license or registration has been filed and the licensee or registrant agrees to surrender the license or registration or has agreed to an interim suspension. In these stipulations, cease practice is the only relevant term. The Board itself will continue to consider all other stipulations.

Comments Received During the 15-Day Period the Modified Text was Available to the Public

The modified text was made available to the public from _____, through _____. Comments received were as follows

Small Business Impact:

This proposal will not have an adverse economic impact on businesses. This proposal would only affect individuals who are disciplined by the Board.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the BBS would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. The alternative, which would be to not adopt the regulations, would leave areas of concern in the Board's enforcement process unaddressed.

Local Mandate

The proposed regulation does not impose any mandate on local agencies or school districts.

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We're here for You!

April 27, 2012

Rosanne Helms
Board of Behavioral Sciences
1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834

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

**RE: Amended §§1803 and 1845; and, Proposed §1881.1
TITLE 16. California Code of Regulations
DIVISION 18. Board of Behavioral Sciences**

Dear Ms. Helms:

On behalf of the 30,000 members of the California Association of Marriage and Family Therapists ("CAMFT") we would like to comment on the amended regulations Title 16 §§1803 and 1845, and proposed regulation Title 16 §1881.1. In the text below, we have identified specific areas in the regulations which lack clarity, necessity, authority, consistency, and are not aligned with community standards of care.

General Concerns:

The Initial Statement of Reasons ("ISOR") states that "many Boards take more than three years to investigate and prosecute." We have not seen a report or a compilation that indicates this statistic applies to the BBS. If this statistic does apply to the BBS, we are not clear whether the delays are due to unavailable or evasive licensees or whether they delays are the outcome of a lack of resources and Enforcement staff. Moreover, throughout the ISOR, it is stated that the change would allow for a quicker resolution of complaints and disciplinary actions. We assert that "quick" is not necessarily the best result if it is at the expense of fair and effective procedures. Given the numbers of licensees and the number of actual complaints filed, very few disciplinary actions are taken each year—generally between half of one percent and one percent of the complaints filed. These regulations appear as an effort to make sweeping changes when, relatively speaking, very few persons are actually disciplined and the effect of these changes will likely make very little difference in the current delays experienced by the Boards.

Section 1845:

Lack of Authority

The purpose of regulation is to help implement or interpret the provisions of a statute. (Government Code §11342.2) However, regulation implementation is limited in that no regulation is valid if it would alter or amend the statute or would

California Association
of Marriage and
Family Therapists

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www.camft.org

enlarge the agency's or department's statutory power. *Harris v. Alcoholic Beverage Control Appeals Board* (1964) 228 Cal.App.2d 1, 6, 39 Cal.Rptr. 192.) The Harris court went on to state that: "In the absence of valid statutory authority, an administrative agency may not, under the guise of a regulation, substitute its judgment for that of the Legislature." (Id.) The various subsections of proposed regulation section 1845, all attempt to expand the current authority of the Board of Behavioral Sciences ("BBS") rather than to interpret or implement what the legislature has already put forward. In fact, in a memorandum from the BBS's Legislative Analyst to the Board (dated July 28, 2011) the Analyst states that the goal of SB 1111 was to "*provide healing arts boards under DCA with additional authority*" and resources to make the enforcement process more efficient. In referring to SB 544, she says that if SB 544 passed, it would provide the healing arts boards "*with additional regulatory tools and authority*" for investigating and prosecuting violations of law. The majority of the proposed definitions of unprofessional conduct were taken directly from those proposed bills and inserted into this proposed regulation. The Analyst's statements present clear evidence that the BBS is seeking new authority. The BBS needs to get that authority from the Legislature for each of the following subsections. These proposals, therefore, should be rejected.

Subsection (e): Settlement Agreements

This section is premature given Assembly Bill 2570, which has recently been introduced. AB 2570 prohibits a licensee regulated by the BBS from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the BBS or that requires the other party to withdraw a complaint to the BBS. As articulated above, this addition to the definition of unprofessional conduct, should be put forward through legislation and not regulation. As it is currently being vetted at the Legislature, it is premature to also include in regulation. Moreover, if chaptered, the final language of AB 2570 may be inconsistent and/or duplicative of the proposed regulations, violating Gov. Code section 11349(d) and (f).

Subsection (f): Failure to Provide Documentation

This subsection is vague and unclear, in violation of Gov. Code section 11349(c). The term "documents" is never clarified. One place in the regulation refers to "copies of documents," and then it refers to "the records," and then it refers to the "medical records." Additionally, the term "as directed" in the first sentence is unclear: does the Board request records or do they direct that records be submitted? There are also issues with the term "lawfully requested" document. It would not be uncommon or incorrect for a licensee to contend that the document is not lawfully requested – in other words - the Board is not entitled to the document or perhaps the Board may need to subpoena the document. Finally, the term "good cause" is not defined and it is not clear how "good cause" will be determined.

This subsection does not demonstrate necessity, as required by Gov. Code section 11349(a). There has been no evidence presented, and nothing has been discussed at a BBS public meeting, that indicates that failure to provide requested documents is even a minor cause for the BBS's delays in the enforcement process. Furthermore, there is no documentation that shows these two issues are related.

Subsection (g): Failure to Cooperate

This subsection is vague and unclear, in violation of Gov. Code section 11349(c). This subsection is fraught with problems and provides too much latitude to licensing boards generally. We are concerned with the intent and definition of the terms "cooperation" and "participation". There could be instances, for example, where the questioning becomes abusive or excessive or the licensee is advised by counsel to leave or not answer questions raised and it is not clear whether that action would be considered "failure to cooperate."

This subsection does not demonstrate necessity, as required by Gov. Code section 111349(a). The BBS has made no showing, by evidence or otherwise, that a failure to cooperate or participate has in any significant way delayed enforcement. In fact, it is very common for members of CAMFT to inquire with CAMFT attorneys what they should do after they have not heard back from the Board after two or three months have passed following an investigation. These members have cooperated and participated, but yet no determination has been made by the BBS, indicating a delay on the administrative end, versus any act on the part of the licensee.

Lastly, in ISOR, the BBS states that the anticipated benefit of this regulation is that it will enable the BBS to take action against licensees who refuse to cooperate in Board investigations or licensees who "actively subvert Board investigations." If the law (through legislation) was amended to make it unprofessional conduct to "actively subvert" a BBS investigation, as the BBS apparently desires, we could support such a change in law. But to try to do this by regulation, and to require "cooperation and participation," which remains unclear, is objectionable.

Subsection (h): Failure to Report Convictions

This subsection does not demonstrate necessity, as required by Gov. Code section 111349(a). As to subsection (h)(2), the BBS is currently able to obtain this documentation on their own, and it therefore unclear as to why they are shifting the burden to the licensee. In fact, if the BBS has experienced difficulties obtaining this documentation, certainly a licensee would have at least as much difficulty, if not more in attempting to garner documents from the government. Moreover, if there are any deficiencies in the current communication system between the BBS and the law enforcement agencies,, any deficiency needs to be fixed at that level and the burden not be placed upon the licensee.

Subsection (h)(1) is objectionable as to violates due process. While we have no objection to the prompt self-reporting of a conviction of a felony or misdemeanor, there is no legal authority to require a report prior to a conviction. This is not consistent with the presumption of innocence in criminal cases and principles of due process and fundamental fairness. The Board of Psychology has removed this provision from its similar regulatory proposals, which parallel these proposals.

Subsection (i): Failure to Report Arrest

As mentioned above as to (h)(1), we have similar concerns as to this requirement being a violation of due process, as well as an unreasonable request given the existing difficulties the BBS already seems to be having in obtaining this documentation.

Section 1803:

Section 1803 is being amended to delegate to the Executive Officer of the BBS the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license instead of requiring Board approval.

Government Code §11349(a) states that a proposed amendment to a regulation must be necessary and demonstrate by substantial evidence the “need” for that regulation. The rationale for this amendment is to “shorten the timeframe” of the enforcement process. However, bypassing the check-and-balance of the Board’s approval of the Executive Officer’s settlement negotiations does not significantly expedite the enforcement process. The causes for the Board’s exorbitant delays do not hinge on this settlement approval process since most proposed settlements can be reviewed at the next regularly scheduled meeting of the Board, if not sooner. Therefore, removing the Board’s ability to oversee the settlement process and the negotiations of the Executive Officer, simply vacates the oversight but does not remediate the existing problem.

We understand and support the need to protect the public and expeditiously investigate complaints and impose discipline. However, we also believe that licensees’ due process rights should not and cannot be diminished in order to expedite the handling of complaints. Much could be done in the interest of patient protection if improvements were made in the investigation, staffing, and handling of consumer complaints.

Sincerely,



Catherine L. Atkins, J.D.
Deputy Executive Director



Jill Epstein, J.D.
Executive Director

cc: Shannon Government Relations

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**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
August 14, 2012
1:00pm-2:00pm

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **August 13, 2012** or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.60, and 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4980, 4980.44, 4996.18, 4996.23, 4999.45, and 4999.76 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Amend Section 1811 – Use of License Number in Directories and Advertisements

Section 1811 provides general requirements regarding advertisements for Licensed Marriage and Family Therapists (LMFTs), Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs).

AB 956 (Chapter 166, Statutes of 2011) changed the law relating to advertisements for marriage and family therapy services. AB 956 became effective on January 1, 2012, and any advertisement by or on behalf of a marriage and family therapist registered intern must now include, at a minimum, all of the following (BPC §4980.44(d)):

1. That he or she is a marriage and family therapist registered intern;
2. The intern's registration number;
3. The name of his or her employer; and
4. That he or she is supervised by a licensed person.

In addition, AB 956 prohibits the use of the abbreviation “MFTI” in an advertisement unless the title “marriage and family therapist registered intern” appears in the advertisement. (BPC §4980.44(d)(2)).

The Board is proposing amendments to Section 1811 that would clarify the law related to advertising, and would make the regulations consistent with the requirements of AB 956. Specific changes that would apply to all licensees include the following:

1. Requires an advertisement to contain the complete title of a license or registration, or an acceptable abbreviation. The amendments also spell out acceptable titles and abbreviations.
2. Prohibits the use of “MFTI” or “PCCI” in an advertisement unless the titles “marriage and family therapist registered intern” or “professional clinical counselor registered intern” are used, respectively.
3. Requires an advertisement to contain the practitioner’s license or registration number.
4. Requires a registrant to include the name of his or her employer, or the entity for which he or she volunteers, in any advertisement.
5. Allows use of the words “psychotherapy” or “psychotherapist” in an advertisement as long as all of the other requirements listed in the section are met.

Policy Statement Overview: Adoption of these proposed amendments will protect the public by further clarifying what information can and cannot be contained in an advertisement by a licensee or registrant. It also increases public protection by requiring the practitioner to include their license number in the advertisement, making it easier for the public to look up a practitioner’s license or file a complaint with the Board if necessary.

Amend Section 1870 – Requirements for Associate Clinical Social Worker Supervisors

Section 1870 specifies the requirements for supervisors of associate clinical social workers (ASWs). These requirements currently include a valid California license in good standing, as well as specific education and experience requirements.

The Board is proposing an amendment to this section that would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision. This proposed change would make the requirements for supervisors of ASWs consistent with Section 1833.1, which requires that supervisors of MFT interns be licensed for at least two years prior to performing any supervision.

Policy Statement Overview: Adoption of these proposed amendments would enhance public protection by ensuring that supervisors of ASWs have adequate experience as licensees before they are able to supervise.

Amend Section 1887.3 – Continuing Education Course Requirements

Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to complete thirty-six (36) hours of CE coursework every two years.

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code of Regulation (CCR) Title 16 Section 1887.3(c)).

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS, even though LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing an amendment that would also require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

Policy Statement Overview: Adoption of these proposed amendments will protect consumers by ensuring that all LPCC practitioners have education in the subject of patients who are living with HIV and AIDS.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This proposal is consistent and compatible with existing state regulations. It modifies existing state regulations related to advertising so that they are consistent and compatible with last year's statutory changes to LMFT advertising requirements (AB 965, Chapter 166, Statutes of 2011).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

- The proposed regulation changes to Section 1811 would not result in an economic or fiscal impact. The proposal would only refine the regulations by specifying certain information that must be disclosed in an advertisement.
- The proposed amendments to Section 1887.3 require LPCC licensees to take a one time, 7-hour CE course covering the assessment and treatment of people living with HIV and AIDS. However, because this course can be counted as part of the 36 hours of CE that is already required for license renewal, it does not represent an additional cost to the licensee.

- The proposed amendments to Section 1870 would have minimal if any impact on individuals and businesses as licensees who supervise MFT Interns and trainees frequently supervise ASWs. Newly licensed individuals and private therapy practices rarely have a large enough client base to employ and take on a supervisee.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following:

- The proposed regulatory amendments to the advertising requirements in Section 1811 specify that certain information must be disclosed in an advertisement. Providing this information would not have an economic impact on licensees.
- The proposed regulatory amendments to Section 1870 requiring supervisors of ASWs to have held a license for at least two years would affect only a small number of individuals, as newly licensed individuals rarely supervise.
- The proposed regulatory amendments to Section 1887.3 requiring LPCC licensees to take a one-time CE course covering assessment and treatment of people living with HIV and AIDS would not have an economic impact on licensees, because the course can be taken as part of the 36 hours of CE that is already required for license renewal. Therefore, there is no additional cost to the licensee above and beyond what they would already pay to take their required CE.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by doing the following:

- Increasing and clarifying the information that must be provided in a licensee or registrant's advertisements;
- Ensuring that supervisors of ASW's have been licensed for two years and therefore have experience as a licensee; and
- Requiring that LPCC practitioners have education relating to patients living with HIV and AIDS.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:

"Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

The public will benefit from the increased protections this proposal provides, as described above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the this Notice under Contact Person listed below, or by accessing the Board's website, www.bbs.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rosanne Helms
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7897
Fax: 916-574-8626
Email: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Marc Mason
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7828
Fax: 916-574-8626
Email: Marc.Mason@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: August 14, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Requirements for advertising by licensees and registrants, requirements for supervisors of associate clinical social workers (ASWs), and continuing education course requirements.

SECTIONS AFFECTED: Sections 1811, 1870, and 1887.3 of Division 18 of Title 16 of the California Code of Regulations.

IDENTIFICATION OF THE PROBLEM

The Board has identified the following problems which this regulatory proposal addresses:

1. **Advertising:** Currently the Board has identified areas of the law related to advertising which are unclear, such as what abbreviations may be used in an advertisement, and whether a licensee can use the term “psychotherapy” when advertising. In addition, AB 956 (Chapter 166, Statutes of 2011) clarified some of these questions for marriage and family therapy (MFT) interns, but did not address the advertising requirements for the Board’s other license types.
2. **Supervision of ASWs:** Supervisors of the Board’s MFT interns are required to be licensed for at least two years before they can become a supervisor. This same requirement does not exist for supervisors of the Board’s ASW registrants, even though supervision requirements are otherwise similar.
3. **LPCC Continuing Education (CE):** The Board’s licensed marriage and family therapist (LMFT) and licensed clinical social worker (LCSW) licensees are required to take a continuing education course covering HIV/AIDS, while this same requirement does not exist for the Board’s licensed professional clinical counselor (LPCC) licensees. However, LPCC licensees are just as likely to treat a patient affected by HIV/AIDS.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

1. Amend Section 1803 – Advertising

Proposed Change: Section 1811 provides general requirements regarding advertisements for LMFTs, LCSWs, Licensed Educational Psychologists (LEPs), and LPCCs.

The proposed amendments would require advertisements by the Board’s licensees and registrants to contain more specific information, including requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation, requiring the advertisement to contain the practitioner’s license or registration number, and requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

Rationale: These proposed regulation changes are needed to refine and clarify what information a licensee or registrant must provide in an advertisement. The Board already has regulations in place that require certain information in an advertisement, this regulation simply modifies and clarifies what information must be provided, and also makes the regulation consistent with the provisions of AB 956 (Chapter 166, Statutes of 2011) which requires certain information be provided in advertising by MFT interns.

Anticipated Benefit: These amendments will protect the public by clarifying what information can and cannot be contained in an advertisement by a licensee or registrant, and also by requiring the practitioner to include the license number in the advertisement. Inclusion of the license number will make it easier for a consumer to look up a practitioner's license or file a complaint with the Board if necessary.

2. Amend Section 1870 – Supervisors of ASWs

Proposed Change: Section 1870 sets forth the requirements for supervisors of ASWs, including possession of a valid California license in good standing, as well as specific education and experience requirements.

The proposed amendment would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision.

Rationale: This proposed change makes the requirements for supervisors of ASWs consistent with Section 1833.1, which already requires supervisors of MFT interns be licensed for at least two years prior to performing any supervision.

The Board found as a matter of industry practice that licensees who supervise MFT interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs.

It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Anticipated Benefit: These amendments would enhance public protection by ensuring that supervisors of ASWs have adequate experience as licensees before they are able to supervise.

3. Amend Section 1887.3 – LPCC CE

Proposed Change: Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to complete thirty-six (36) hours of CE coursework every two years as a condition of license renewal.

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code

of Regulation (CCR) Title 16 Section 1887.3(c)).

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS.

Rationale: LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing this amendment that would require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

This proposed regulation change would not result in an economic impact because LPCC licensees are already required to take 36 hours of CE as a condition of license renewal.

The one time, 7-hour CE course required by this amendment will count toward a licensee's fulfillment of the 36 hour CE requirement. Therefore, there is no additional cost because the licensee is already required to take a total of 36 CE hours.

Anticipated Benefit: Adoption of this amendment will protect consumers by ensuring that LPCC practitioners have education in the subject of patients who are living with HIV and AIDS.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following:

- The proposed regulatory amendments to the advertising requirements in Section 1811 specify that certain information must be disclosed in an advertisement. Providing this information would not have an economic impact on licensees.
- The proposed regulatory amendments to Section 1870 requiring supervisors of ASWs to have held a license for at least two years would affect only a small number of individuals, as newly licensed individuals rarely supervise.
- The proposed regulatory amendments to Section 1887.3 requiring LPCC licensees to take a one-time CE course covering assessment and treatment of people living with HIV and AIDS would not have an economic impact on licensees, because the course can be taken as part of the 36 hours of CE that is already required for license renewal. Therefore, there is no additional cost to the licensee above and beyond what they would already pay to take their required CE.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not

affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by doing the following:

- Increasing and clarifying the information that must be provided in a licensee or registrant's advertisements;
- Ensuring that supervisors of ASW's have been licensed for two years and therefore have experience as a licensee; and
- Requiring that LPCC practitioners have education relating to patients living with HIV and AIDS.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following:

"Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

The public will benefit from the increased protections this proposal provides, as described above.

UNDERLYING DATA

None

BUSINESS IMPACT

Section 1811: None. The proposed regulation changes to advertising requirements will not have an impact as they only affect the content that is required in an advertisement.

Section 1870: None. The Board found as a matter of industry practice that licensees who supervise MFT Interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs. It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Section 1887.3: None. The one-time, 7 hour CE course required by this amendment is

included in, and is not in addition to, the existing requirement of 36 hours of CE for license renewal.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern that these regulations address.
2. Adopt the regulations. The Board has determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.

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PROPOSED REGULATORY AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

(3) The license or registration number.

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

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

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

(b) Registrants must include the name of his or her employer in an advertisement, or if not

employed, the name of the entity for which he or she volunteers.

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

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

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

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

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

§1870. REQUIREMENTS FOR ASSOCIATE CLINICAL SOCIAL WORKER SUPERVISORS

Any person supervising an associate clinical social worker registered with the board (hereinafter called "supervisor") within California shall comply with the requirements set forth below.

(a) Prior to the commencement of any therapy or supervision, the supervisor shall sign under penalty of perjury the “Responsibility Statement for Supervisors of an Associate Clinical Social Worker” (revised 3/10, form #1800 37A-522), hereby incorporated by reference, which requires that:

- (1) The supervisor possesses and will maintain a current valid California license as a licensed clinical social worker or a licensed mental health professional acceptable to the Board as specified in Section 1874.
- (2) The supervisor has been so licensed in California or in any other state for a total of at least two (2) years prior to commencing any supervision.
- ~~(2)~~(3) The supervisor has and will maintain a current license in good standing and will immediately notify the associate of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or any lapse in licensure, that affects the supervisor's ability or right to supervise.
- ~~(3)~~(4) The supervisor has practiced psychotherapy or provided direct supervision of associates, or marriage and family therapist interns or trainees who perform psychotherapy for at least two (2) years within the last five (5) years immediately preceding supervision.
- ~~(4)~~(5) The supervisor has had sufficient experience, training and education in the area of clinical supervision to competently supervise associates.

(A) Persons licensed by the board who provide supervision shall have a minimum of fifteen (15) contact hours in supervision training obtained from a state agency or approved continuing education provider. This training may apply towards the approved continuing education requirements set forth in Sections 4980.54, 4996.22, and 4999.76 of the Code. The content of such training shall include, but not be limited to:

(i) Familiarity with supervision literature through reading assignments specified by course instructors;

(ii) Facilitation of therapist-client and supervisor-therapist relationships;

(iii) Evaluation and identification of problems in therapist-client and supervisor-therapist relationships;

(iv) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(v) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(vi) The practice of clinical social work, including the mandated reporting laws, and knowledge of ethical and legal issues.

~~(5)~~(6) The supervisor knows and understands the laws and regulations pertaining to both supervision of associates and the experience required for licensure as a clinical social worker.

~~(6)~~(7) The supervisor shall do all of the following:

(A) Ensure that the extent, kind and quality of clinical social work performed by the associate is consistent with the training and experience of the person being supervised.

(B) Review client/patient records and monitor and evaluate assessment and treatment decisions of the associate clinical social worker.

(C) Monitor and evaluate the ability of the associate to provide services at the site(s) where he or she will be practicing and to the particular clientele being served.

(D) Ensure compliance with all laws and regulations governing the practice of clinical social work.

~~(7)~~(8) The supervisor and the associate shall develop the "Supervisory Plan" as described in Section 1870.1. The associate shall submit the original signed plan for each supervisor to the board upon application for licensure.

~~(8)~~(9) The supervisor shall provide the associate with the original, signed "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" (revised 3/10, form #1800 37A-522), prior to commencement of any supervision. The associate shall provide the board with the original signed form for each supervisor upon application for licensure.

~~(9)~~(10) A supervisor shall give at least one (1) week's written notice to an associate of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

~~(10)~~(11) The supervisor shall complete an assessment of the ongoing strengths and limitations of the associate. The assessments shall be completed at least once a year and at the completion or termination of supervision. A copy of all assessments shall be provided to the associate by the supervisor.

~~(11)~~(12) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(b) The board shall not deny hours of experience gained toward licensure by any associate due to the failure of his or her supervisor to complete the training requirements specified in subsection (a)(4)(A).

Note: Authority cited: Section 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4980.54, 4996.22 and 4996.23, Business and Professions Code.

§1887.3 CONTINUING EDUCATION COURSE REQUIREMENTS

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

first renewal period after the adoption of these regulations. The course shall be at least seven (7) hours in length and its content shall comply with the requirements of Section 32 of the Code. This is a one-time requirement for all licensees. Equivalent HIV and AIDS courses taken prior to the adoption of these regulations, or proof of equivalent teaching or practice experience, may be submitted to the board upon request in lieu of this requirement; however, this coursework or experience shall not be credited as hours towards the continuing education requirements.

- (d) Any person renewing his or her license on and after January 1, 2004 shall complete a minimum of six (6) hours of continuing education in the subject of law and ethics for each renewal period. The six (6) hours shall be considered part of the thirty-six (36) hour continuing education requirement.
- (e) If a licensee teaches a course, the licensee may claim credit for the course only one time during a single renewal period, receiving the same amount of hours of continuing education credit as a licensee who attended the course.
- (f) A licensee may not claim the same course more than once during a single renewal period for hours of continuing education credit.
- (g) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing education requirement.
- (h) Provisions of this section shall apply to licensed educational psychologists as follows:
 - (1) Beginning January 1, 2012 and through December 31, 2012 licensees shall complete at least eighteen (18) hours of continuing education prior to his or her license renewal, in accordance with subdivision (d) through (g).
 - (2) On and after January 1, 2013, licensees shall meet the requirements of subdivision (a) through (g).

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

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ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 12/2008)

See SAM Sections 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Board of Behavioral Sciences	CONTACT PERSON Rosanne Helms	TELEPHONE NUMBER 916-574-7897
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Enforcement		NOTICE FILE NUMBER

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

 a. Impacts businesses and/or employees e. Imposes reporting requirements b. Impacts small businesses f. Imposes prescriptive instead of performance c. Impacts jobs or occupations g. Impacts individuals d. Impacts California competitiveness h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) _____

(If any box items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: n/a Describe the types of businesses (Include nonprofits): n/aEnter the number or percentage of total businesses impacted that are small businesses: n/a3. Enter the number of businesses that will be created: n/a eliminated: n/aExplain: This proposal only impacts individuals who are already the subject of Board disciplinary action. Therefore there is no significant impact.4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas) _____5. Enter the number of jobs created: 0 or eliminated: 0 Describe the types of jobs or occupations impacted: n/a

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes No

If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)1. What is the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ n/aa. Initial cost for a small business: \$ n/a Annual ongoing cost: \$ n/a Years: n/ab. Initial cost for a typical business: \$ n/a Annual ongoing cost: \$ n/a Years: n/ac. Initial cost for an individual: \$ n/a Annual ongoing cost: \$ n/a Years: n/ad. Describe other economic costs that may occur: This proposal will only impact individuals who are disciplined by our Board. Affected individuals will already be in the disciplinary process, therefore, no additional cost.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: n/a

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements: (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): 0

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: 0
and the number of units: _____

5. Are there comparable Federal Regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: n/a

Enter any additional costs to businesses and/or individuals that may be due to State – Federal differences: \$ n/a

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: This regulation will make the enforcement process more efficient. Streamlining the enforcement process will benefit consumers by offering increased public protection.

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority? Explain: The benefits are based on goals for enforcement set by the Department of Consumer Affairs.

3. What are the total statewide benefits from this regulation over its lifetime? \$ n/a

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: The only available alternative is to not adopt the regulations. The result would be no increase in enforcement case processing times, and no increase in public protection.

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>
Alternative 1:	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>
Alternative 2:	Benefit: \$	<u>n/a</u>	Cost: \$	<u>n/a</u>

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: n/a

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No Explain: n/a

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section)
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
Alternative 1: _____
Alternative 2: _____
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
Regulation: \$ _____ Cost-effectiveness ratio: _____
Alternative 1: \$ _____ Cost-effectiveness ratio: _____
Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
 - a. is provided in (Item _____ Budget Act of _____) or (Chapter _____ Statutes of _____)
 - b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCALYEAR)
2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
 - a. implements the Federal mandate contained in _____
 - b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____
 - c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election;
(DATE)
 - d. is issued only in response to a specific request from the _____ which is/are the local entity(s) affected;
 - e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;
 - f. Provides for savings to each affected unit of local government, which will, at a minimum, offset any additional costs to each unit.
3. Savings of approximately \$ _____ annually.
4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
5. No fiscal impact exists because the regulation does not affect any local entity or program.
6. Other: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

B. FISCAL EFFECT ON STATE GOVERNMENT

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other _____

C. FISCAL EFFECT OF FEDERAL FUNDING OF STATE PROGRAMS

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current Fiscal State Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other _____

SIGNATURE

Kenn Madsen

TITLE

Executive Officer

AGENCY SECRETARY ¹

DATE

APPROVAL/CONCURRENCE

DEPARTMENT OF FINANCE ²

PROGRAM BUDGET MANAGER

DATE

APPROVAL/CONCURRENCE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1588

VERSION: AMENDED JUNE 25, 2012

AUTHOR: ATKINS

SPONSOR: AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: PROFESSIONS AND VOCATIONS: RESERVIST LICENSEES: FEES AND CONTINUING EDUCATION

Existing Law:

- 1) Allows a licensee or registrant of any board, commission, or bureau within the Department of Consumer Affairs (DCA) to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces. The following conditions must be met (Business and Professions Code (BPC §114(a)):
 - a) The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces.
 - b) The application for reinstatement must be made while actively serving, or no later than one year from the date of discharge from active service or return to inactive military status; and
 - c) The applicant must submit an affidavit stating the date of entrance into the service, whether still in the service or the date of discharge, and he or she must also submit the renewal fee for the current renewal period.
- 2) Allows a licensee of the Board to submit a written request for a continuing education exemption if he or she was absent from the state of California due to military service for at least one year during the previous renewal period. The licensee must submit evidence of service and must submit the request for exemption at least 60 days prior to the license expiration date. (Section 1887.2(d) of Title 16 of the California Code of Regulations (CCR))

This Bill:

- 1) Requires boards within DCA to waive continuing education requirements, renewal fees, as well as any other renewal requirements as determined by the Board, for a licensee or registrant while called to active duty as a member of the United States Military Reserve or the California National Guard if the following requirements are met (BPC §114.3(a)):
 - a) The person's license or registration was current and valid at the time they were called to active duty;

- b) The renewal requirements are only waived for the period that they are on active duty; and
 - c) Written documentation is provided to substantiate the active duty service.
- 2) Prohibits the licensee or registrant from engaging in any activities that require a license during the time the waiver is in effect (BPC §114.3(b)).
 - 3) In order to resume activities requiring a license, requires the licensee or registrant to meet all necessary renewal requirements within one year from the date of being discharged from active service (BPC §114.3(b)).

Comments:

- 1) **Author’s Intent.** This bill is intended to prevent members of the military from being penalized if they allow their professional license to fall into delinquency during their service period. According to the author’s office, “military professionals should not be expected to pay to renew an expensive license or fulfill continuing education requirements for a professional license they cannot use while on active duty.”
- 2) **Current Renewal Fee Policy.** The Board does not currently waive renewal fees if a licensee is called to active military duty. A licensee called to active military duty may choose to renew their license to an inactive status. An inactive status is valid for two years and requires payment of an inactive license fee that is approximately one-half of the standard license renewal fee. There is no inactive status option for a registration.
- 3) **Current Continuing Education Policy.** The Board may waive a licensee’s continuing education requirement if he or she was absent from the state of California due to active military service for at least one year during the previous renewal period. The licensee must request the exemption on a form prescribed by the Board at least 60 days before his or her license expires. Under the new proposal, the Board would be required to waive the continuing education requirement, and there would be no 60 day notice requirement, as long as the licensee or registrant provided written documentation of active duty.
- 4) **Number of Licensees Affected:** The Board does not currently track the number of licensees who are members of the military. However, for the past several years, the Board has tracked the number of licensees who have requested a continuing education exemption due to military service. This is typically a very small number, as summarized below:

Year	Number of Licensees Requesting a CE Exemption Due to Military Service
2012	1
2011	0
2010	1
2009	1
2008	0
2007	1
2006	5

- 5) **Board of Psychology.** The Board of Psychology’s licensing law allows for a waiver of the renewal fee when a licensee is in full-time active service in the Army, Navy, Air Force, Marines, United States Public Health Service, the Peace Corps, or Vista. This section of the Board of Psychology licensing law is detailed in **Attachment A**.

6) Previous Board Position. At its May 16, 2012 meeting, the Board took a “support if amended” position on this legislation. The Board requested the following two amendments:

A. **Time Limit To Pay Renewal Fee After Active Status Complete.** The Board requested an amendment setting a time limit to clarify by which the renewal fee must be paid once the licensee or registrant completes active service. For example, the Medical Board currently has a renewal fee exemption for its licensees if they are engaging in active military service, and has a 60 day timeframe after discharge for the licensee to pay the renewal fee before a delinquency fee is charged.

B. **Affidavit Substantiating Active Duty Service.** The previous version of this bill only required the active duty reservist, or his or her spouse or domestic partner, to provide written notice to the Board substantiating the active duty service. The Board requested an amendment specifying that the term “written notice” be replaced by the term “affidavit.” The requested amendment would have read as follows:

(c) The active duty reservist, or the active duty reservist's spouse or registered domestic partner, provides ~~written notice satisfactory~~ an affidavit to the board, commission, or bureau that substantiates the reservist's active duty service.

7) Recent Amendments. Since the Board took a “support if amended” position at the May meeting, the author’s office has reached out to the Board, as well as other affected boards within DCA, in an attempt to amend the bill in a manner that is satisfactory to all parties. The following amendments have been made to accommodate the Board’s requests:

A. The bill now requires the licensee or registrant to meet all necessary renewal requirements within one year from the date of being discharged from active service, in order to resume any activities that require a license.

B. The bill now states that written documentation that substantiates the licensee or registrant’s active duty service must be provided to the Board. While this amendment does not replace the term “written notice” with the term “affidavit”, the bill now allows the board to adopt regulations to carry out the provisions of the bill. Therefore, if this bill passes and the Board wants to require an affidavit substantiating active service, it has the authority to pursue regulations to specify this.

8) Support and Opposition.

Support:

American Federation of State, County and Municipal Employees
American Legion-Department of California
American Nurses Association of California
AMVETS-Department of California
Blood Centers of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
California State Commanders Veterans Council
Department of Defense State Liaison Office
Hearing HealthCare Providers
Los Angeles County Democratic Party
Respiratory Care Board of California

Veterans of Foreign Wars of the United States Department of California
Vietnam Veterans of America-California State Council

Opposition:

None received as of June 27, 2012.

9) History

2012

- July 3 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (July 2). Re-referred to Com. on APPR.
- June 25 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B., P. & E.D.
- June 14 Referred to Com. on B., P. & E.D.
- May 31 In Senate. Read first time. To Com. on RLS. for assignment.
- May 30 Read third time. Passed. Ordered to the Senate. (Ayes 78. Noes 0. Page 5090.)
- May 25 From committee: Do pass. (Ayes 17. Noes 0.) (May 25). Read second time. Ordered to third reading.
- Mar. 28 In committee: Set, first hearing. Referred to APPR. suspense file.
- Mar. 13 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (March 13). Re-referred to Com. on APPR.
- Mar. 6 Re-referred to Com. on B., P. & C.P.
- Mar. 5 From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
- Feb. 17 Referred to Com. on B., P. & C.P.
- Feb. 7 From printer. May be heard in committee March 8.
- Feb. 6 Read first time. To print.

10) Attachments

- **Attachment A:** Business and Professions Code Section 2987.5 (Board of Psychology Renewal Fee Exemption Licensing Law for Certain Service Members)
- **Attachment B:** Business and Professions Code Section 2440 (Medical Board Renewal Fee Exemption Licensing Law for Active Military Service)

Attachment A
Business and Professions Code Section 2987.5
(Board of Psychology – Renewal Fee Exemption for Active Military)

2987.5. Every person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

While engaged in full-time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista.

Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full-time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full-time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

The time spent in that full-time active service or full-time training and active service shall not be included in the computation of the three-year period for renewal of a license provided in Section 2986.

The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full-time service in the Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista.

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Attachment B
Business and Professions Code Section 2440
(Medical Board – Renewal Fee Exemption for Active Military)

2440. (a) Every licensee is exempt from the payment of the renewal fee while engaged in full-time training or active service in the Army, Navy, Air Force, or Marines, or in the United States Public Health Service.

(b) Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for payment of such fee for the current renewal period upon his or her discharge from full-time active service and shall have a period of 60 days after becoming liable within which to pay the renewal fee before the delinquency fee is required. Any person who is discharged from active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

(c) The time spent in full-time active service or training shall not be included in the computation of the five-year period for renewal and reinstatement of licensure provided in Sections 2427 and 2428.

(d) Nothing in this section shall exempt a person, exempt from renewal fees under this section, from meeting the requirements of Article 10 (commencing with Section 2190).

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AMENDED IN SENATE JUNE 25, 2012

AMENDED IN ASSEMBLY MARCH 5, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1588

Introduced by Assembly Member Atkins
(Principal coauthors: Assembly Members Cook and Nielsen)
(Coauthors: Assembly Members *Allen, Bill Berryhill, Block, Butler,*
***Beth Gaines, Pan, V. Manuel Pérez, Williams, and Yamada*)**

February 6, 2012

An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards, ~~commissions, or bureaus~~ within the Department of Consumer Affairs and for the licensure or registration of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards, ~~commissions, or bureaus~~ described above to waive the renewal fees ~~and~~, continuing education requirements, ~~if either is applicable~~ *and other renewal requirements as determined by the board, if any are applicable*, of any licensee or registrant who is a reservist called to active duty as a member of the United States

Military Reserve or the California National Guard if certain requirements are met. *The bill would require a licensee or registrant to meet certain renewal requirements within a specified time period after being discharged from active duty service prior to engaging in any activity requiring a license.*

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

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

1 SECTION 1. Section 114.3 is added to the Business and
 2 Professions Code, to read:
 3 114.3. (a) Notwithstanding any other provision of law, every
 4 board, ~~commission, or bureau~~ *as defined in Section 22*, within the
 5 department shall waive the renewal fees ~~and~~, continuing education
 6 requirements, ~~if either is applicable~~ *and other renewal requirements*
 7 *as determined by the board, if any are applicable*, for any licensee
 8 or registrant who is a reservist called to active duty as a member
 9 of the United States Military Reserve or the California National
 10 Guard if all of the following requirements are met:
 11 (a)
 12 (1) The licensee or registrant ~~was in good standing~~ *possessed*
 13 *a current and valid license* with the board, ~~commission, or bureau~~
 14 ~~at the time the reservist he or she was called to active duty.~~
 15 (b)
 16 (2) The renewal fees ~~or continuing education~~ requirements are
 17 waived only for the period during which the ~~reservist licensee or~~
 18 ~~registrant~~ *is on active duty service.*
 19 (c) ~~The active duty reservist, or the active duty reservist's spouse~~
 20 ~~or registered domestic partner, provides written notice satisfactory~~
 21 ~~to the board, commission, or bureau that substantiates the~~
 22 ~~reservist's active duty service.~~
 23 (3) *Written documentation that substantiates the licensee or*
 24 *registrant's active duty service is provided to the board.*
 25 (b) *The licensee or registrant shall not engage in any activities*
 26 *requiring a license during the period that the waivers provided by*
 27 *this section are in effect. In order to engage in any activities for*
 28 *which he or she is licensed, the licensee or registrant shall meet*
 29 *all necessary renewal requirements as determined by the board*

- 1 *within one year from the reservist's date of discharge from active*
- 2 *duty service.*
- 3 *(c) A board may adopt regulations to carry out the provisions*
- 4 *of this section.*

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