



Policy and Advocacy Committee Minutes - *DRAFT*

February 6, 2014

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

Members Present

Renee Lonner, Chair, LCSW Member
Dr. Christine Wietlisbach, Public Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christy Berger, Regulatory Analyst
Dianne Dobbs, Legal Counsel
Christina Kitamura, Administrative Analyst

Members Absent

None

Guest List

On file

I. Call to Order and Establishment of Quorum

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 10:06 a.m. Christina Kitamura took roll, and a quorum was established.

Ms. Lonner indicated that SB 1441, which was listed on the agenda, will not be discussed.

II. Introductions

The Committee, Board staff, and meeting attendees introduced themselves.

III. Review and Approval of the October 30, 2013 Committee Meeting Minutes

Dr. Christine Wietlisbach moved to approve the Policy and Advocacy Committee minutes. Christina Wong seconded. The Committee voted unanimously (3-0) to pass the motion.

Ms. Lonner took agenda items IV, V, VI, and VII out of order. These items were heard in the following order: VII, VI, V, IV.

1 **IV. Discussion and Recommendations for Possible Action Regarding Proposed Additional**
2 **Items to the Omnibus Bill Amending Business and Professions Code Sections**
3 **4980.399, 4992.09, 4999.55, 4989.16, 4989.22, and 4996.17**

4 Rosanne Helms presented the proposed omnibus bill amendments to the following sections of
5 the Business and Professions Code (BPC):

6 1. Amend BPC Sections 4980.399, 4992.09, and 4999.55 – Law and Ethics Examination
7

8 Beginning January 1, 2016, Licensed Marriage and Family Therapist (LMFT), Licensed
9 Clinical Social Worker (LCSW), and Licensed Professional Clinical Counselor (LPCC)
10 registrants must obtain a passing score on a California law and ethics exam to qualify for
11 licensure. The registrant must participate in this exam each year prior to his or her
12 registration renewal until the exam is passed.

13
14 If the applicant fails the exam during the renewal period, he or she must take a 12-hour
15 course in California law and ethics in order to be able to participate in the exam in his or
16 her next renewal period.

17
18 Currently, the law states that if the registrant fails the exam within his or her first renewal
19 period, he or she must complete the 12-hour course. The language should state that the
20 course must be taken after any renewal period in which the exam is failed, not just the first
21 renewal period.

22
23 Staff recommends amending the BPC sections so they no longer specify that the course
24 must be taken only after the first renewal period in which the exam was failed.

25
26 2. Amend BPC Section 4989.16- Inclusion of LPCCs

27 The Licensed Educational Psychologist (LEP) licensing law states that no part of the LEP
28 licensing law is meant to constrict or limit the practice of medicine, nursing, psychology,
29 LMFTs, or LCSWs. LPCCs are not identified in this list.

30
31 Staff recommends adding LPCCs to this list.

32
33 3. Amend BPC Section 4989.22 – LEP Written Licensing Exam

34 This section mistakenly refers to both the “standard written” exam and the “clinical
35 vignette” exam, which are applicable to the Board’s other three license types, but not
36 applicable to LEPs.

37
38 Staff recommends deleting references to the “standard written” and “clinical vignette”
39 licensing exams, as they are not required exams for LEP licensure.

40
41 4. Amend BPC Section 4996.17 – Law and Ethics Course for Out-of-State LCSW and ASW
42 Applicants

43 The law is unclear about whether or not Associate Social Worker (ASW) applicants from
44 out-of-state must take an 18-hour California law and ethics course. While this was the
45 intent of this section, it currently states that an applicant with experience gained out-of-
46 state must take the 18-hour course. However, it fails to discuss the requirement for an
47 applicant with education gained out of state.

48
49 This omission makes it unclear whether an ASW applicant with education gained out of
50 state would be required to take the 18-hour California law and ethics course described in
51 this section, or the California law and ethics course described in Section 4996.18.

52

1 Staff recommends amending Section 4996.17 so that it states that an applicant with
2 education and/or experience gained outside of California must complete an 18-hour
3 California law and ethics course covering specified topic areas.
4

5 Ben Caldwell, American Association for Marriage and Family Therapy California Division
6 (AAMFT-CA), referred to the law and ethics course for out-of-state LCSW and ASW
7 applicants. Section 4996.17(a)(2) states that an applicant with education and/or experience
8 gained outside of California shall complete an 18-hour course in California law and ethics. Mr.
9 Caldwell states that the applicant who obtained their degree in California would have taken a
10 law and ethics course in his or her degree program.
11

12 Christy Berger recalled a previous discussion regarding this matter. She recalled that the
13 concern was how long ago the education was gained. Ms. Helms stated that staff could take
14 a look at this.
15

16 ***Christina Wong moved to direct staff to make discussed changes, and any non-***
17 ***substantive changes to the proposed language and recommend that the Board***
18 ***consider the amendments for inclusion in the 2014 omnibus bill; and to further explore***
19 ***number 4 and report back to the Board. Dr. Christine Wietlisbach seconded. The***
20 ***Committee voted unanimously (3-0) to pass the motion.***
21

22 **V. Discussion and Recommendations for Possible Action Regarding Proposed Revisions**
23 **to Requirements for Out-of-State Licensed Marriage and Family Therapist Applicants**

24 Ms. Helms presented the proposed revisions to requirements for out-of-state licensed LMFT
25 applicants. The revisions do the following:
26

- 27 • Require either 48 or 60-semester unit degrees for all out-of-state applicants depending on
28 when the Master's degree was obtained. If the applicant is required to have a 60-
29 semester unit degree based on the timing of when the degree was obtained, he or she
30 may remediate up to 12 semester units, if necessary. This remediation may occur while
31 the applicant is registered as an intern.
32
- 33 • For applicants without an out-of-state license: Require 6-semester/nine-quarter units of
34 practicum, 150 hours of face-to-face counseling, and an additional 75 hours of either face-
35 to-face counseling or client-centered advocacy. No remediation of the practicum
36 requirement is permitted.
37

38 For applicants with an out-of-state license: Require 6-semester/9-quarter units of
39 practicum, 150 hours of face-to-face counseling experience, and an additional 75 hours of
40 either face-to-face counseling or client-centered advocacy.

- 41 ➤ Applicants who have been licensed for at least two years in clinical practice, are
42 exempt from this requirement.
- 43 ➤ Applicants who are licensed out-of-state but have held that license less than two years
44 may remediate the entire practicum requirement by obtaining 150 hours of face-to-face
45 counseling, and the additional 75 hours of face-to-face or client-centered advocacy,
46 while registered as an intern. These hours must be in addition to the 3,000 experience
47 hours already required.
48

- 49 • All out-of-state applicants will still be required to have 12-semester or 18-quarter units in
50 the areas of marriage, family and child counseling and marriage and family systems
51 approaches to treatment. This must be part of the degree program and cannot be
52 remediated. This requirement is already in law and no further amendments are being
53 proposed.

- 1 • All out of state applicants must have course content in California law and ethics as follows:
 - 2 1. If the 2-semester unit law and ethics course was completed but does not contain
 - 3 California content, then the applicant must complete an 18-hour California law & ethics
 - 4 course.
 - 5 2. If the applicant is deficient in the law and ethics course, a 2-semester unit course must
 - 6 be taken and must include California law and ethics content.
 - 7

8 The required course content in California law and ethics must be obtained prior to the
9 issuance of a license or intern registration.

- 10
- 11 • Currently, the law states that all out-of-state applicants must complete any course content
- 12 requirements specified in law that they have not already completed. Under the new
- 13 requirements, this must be graduate-level coursework.
- 14

15 At the last Committee meeting, members expressed concern that the specified coursework
16 is just a list – there are no hour or unit requirements. While this is acceptable for in-state
17 students, because their schools have worked with the Board to integrate these topics into
18 the degree programs, it will be more difficult for out-of-state students and Board evaluators
19 to judge whether or not their degree contains sufficient coverage of the listed topic areas.

20

21 For this reason, staff proposes a new section in the BPC. This section attempts to
22 quantify the requirements listed whenever possible. In some cases, topic areas have
23 been removed because they overlapped with other topic areas.

24

25 The amendments allow the coursework to be from an accredited or approved educational
26 institution, or from a Board-accepted continuing education (CE) provider, as long as it is
27 graduate-level coursework. This coursework may be remediated while registered as an
28 intern, which previously was not going to be allowed.

- 29
- 30 • All out-of-state applicants are required to complete instruction in the principles of
- 31 mental health recovery-oriented care, instruction that includes an understanding of the
- 32 various California cultures, and instruction in structured meetings with various
- 33 consumers and family members of mental health services. Current law requires this to
- 34 be credit-level coursework (not CE), taken before registration as an intern is allowed,
- 35 and there is no specification of the amount of coursework required. The new
- 36 amendments require the following:
 - 37 ➤ The instruction in mental health recovery-oriented care must be at least 3-semester
 - 38 units or 45 hours, and must include the structured meetings with consumers/family
 - 39 members training; and
 - 40 ➤ The instruction in understanding of California cultures must be at least one-
 - 41 semester unit or 15 hours.
 - 42

43 Both of these requirements can now be taken from an accredited or approved school or a
44 CE provider, must be graduate-level coursework, and may be taken while registered as an
45 intern.

46

47 This proposal includes an amendment to out-of-state licensee experience requirements for
48 LMFT applicants to count time actively licensed as experience at a rate of 100 hours per
49 month, up to 1,200 hours. Like LCSW applicants, these hours would be applied toward the
50 required direct clinical counseling hours. Per the Committee's request, after January 1, 2016,
51 the applicant can only do this if he or she meets the practicum requirement without
52 exemptions or remediation. This is because Section 4980.79 proposes to allow exemptions or
53 remediation options for the practicum requirement under certain conditions to out-of-state

1 applicants. The Committee did not believe an applicant should be permitted
2 exemptions/remediation for practicum and also be able to count time actively licensed toward
3 experience hours.

4
5 Per the Out-of-State Committee's direction at its November 2013 meeting, the following
6 amendments were made:

- 7 1. An amendment to specify that although the additional education requirements specified by
8 Sections 4980.78(b)(3) and (4) and 4980.79(b)(3) and (4) are permitted to be taken from a
9 CE provider, the content of the coursework must be graduate-level.
- 10 2. An amendment to specify that the instruction in diagnosis, assessment, prognosis, and
11 treatment of mental disorders required by Section 4980.81(a)(1) must be a minimum of 2-
12 semester units. This must include at least one-semester unit of instruction in
13 psychological testing, and one-semester unit in psychopharmacology.
- 14 3. An amendment to modify the requirement for California law and ethics coursework. Under
15 the amendments, if an applicant completed a 2-semester unit law and ethics course, but
16 the course did not contain California law and ethics content, then the applicant must
17 complete an 18-hour course in California law and ethics.

18
19 If the applicant has not taken a 2-semester unit law and ethics course, then the applicant
20 must take the 2-semester unit course, and the course must include content in California
21 law and ethics.

22
23 The coursework in California law and ethics must be completed prior to issuance of a
24 license or intern registration.

25
26 Mr. Caldwell referred to the practicum requirement. He expressed concern regarding the
27 interpretation of "150 hours of face-to-face counseling, and an additional 75 hours of either
28 face-to-face counseling or client-centered advocacy." The term "either" will be construed for
29 75 hours of one category or 75 hours of the other category. He suggested adding "or a
30 combination thereof" to the end of that sentence.

31
32 The Committee will make a recommendation to the Board to add Mr. Caldwell's suggestion to
33 the omnibus bill in March.

34
35 ***Christina Wong moved to direct staff to make discussed changes, as well as any non-***
36 ***substantive changes, and sponsor legislation to make the proposed amendments. Dr.***
37 ***Christine Wietlisbach seconded. The Committee voted unanimously (3-0) to pass the***
38 ***motion.***

39 40 **VI. Discussion and Recommendations for Possible Action Regarding Proposed Revisions** 41 **to Requirements for Out-of-State Licensed Professional Clinical Counselors**

42
43 Ms. Helms presented the proposed revisions to requirements for out-of-state LPCCs.

44
45 The revision would:

- 46 • Require either 48 or 60-semester unit degrees for applicants with an out-of-state degree,
47 depending on when Master's degree was obtained. If the applicant is required to have a
48 60-semester unit degree based on the timing of when the degree was obtained, he or she
49 may remediate up to 12-semester units, if necessary. This remediation may occur while
50 the applicant is registered as an intern.

- 1 • For applicants without an out-of-state license: Require 6-semester/9-quarter units of
2 practicum, including 280 hours of face-to-face counseling. No remediation of the
3 practicum requirement is permitted.
4
- 5 • For applicants with an out-of-state license: Require 6-semester/9-quarter units of
6 practicum, including 280 hours of face-to-face counseling.
- 7 • Applicants who have been licensed for at least two years in clinical practice are
8 exempt from the practicum requirement.
- 9 • Applicants who are licensed out-of-state but have held that license less than two years
10 may remediate the entire practicum requirement by demonstrating completion of 280
11 hours of face-to-face counseling. Any post-degree hours gained to meet this
12 requirement must be in addition to the 3,000 experience hours already required for a
13 license and must be gained while registered as an intern.
14
- 15 • All out-of-state applicants who are deficient in any of the required areas of study must
16 satisfy the deficiencies by completing graduate coursework from an accredited or
17 approved school. The coursework must be 3-semester units or 4.5-quarter units for each
18 content area. If not licensed in another state, this content must be remediated prior to
19 issuance of a license or an intern registration. If the applicant is already licensed in
20 another state, this content may be remediated while registered as an intern
21
- 22 • All out of state applicants must have course content in California law and ethics:
- 23 1. If core content law and ethics course specified the BPC was completed but does not
24 contain the California content, then applicant must complete an 18-hour California law
25 & ethics course.
- 26 2. If the applicant is deficient in the law and ethics core content course, the core content
27 course must be taken, with California law and ethics content, prior to issuance of
28 license/intern registration.
29
- 30 The course content in California law and ethics must be obtained prior to issuance of a
31 license or intern registration.
32
- 33 • All out-of-state applicants who have not already done so must complete 15-semester units
34 or 22.5-quarter units of advanced coursework focusing on specific treatment issues or
35 special populations. This coursework must be in addition to the core content requirements
36 described above. The coursework must be from an accredited or approved school. All
37 applicants may remediate this coursework while registered as an intern.
38
- 39 • The Out-of-State Committee determined that the first six subject areas were now being
40 covered in the principles of mental health recovery-oriented care (45 hours) and California
41 cultures (15 hours) coursework that is proposed to be required of out-of-state applicants.
42
- 43 The remaining topic areas have now been given a required number of hours. The purpose
44 is to make it clearer to applicants and the Board's evaluators whether or not their
45 completed coursework is sufficient. These requirements are:
- 46 ➤ Human sexuality (10 hours)
47 ➤ Spousal/partner abuse (15 hours)
48 ➤ Child abuse assessment (7 hours)
49 ➤ Aging/long term care (10 hours)
50
- 51 • The new amendments would allow the coursework to be from an accredited or approved
52 educational institution, or from a Board-accepted CE provider as long as its content is

1 graduate-level. Also, an amendment has been made to allow this coursework to be
2 remediated while registered as an intern.

- 3
- 4 • All out-of-state applicants are required to complete instruction in the principles of
5 mental health recovery-oriented care, instruction that includes an understanding of the
6 various California cultures, and courses that provide structured meetings with various
7 consumers and family members of mental health services. Current law requires this to
8 be credit level coursework (not CE), taken before registration as an intern was allowed,
9 and there was no specification of the amount of coursework required. The proposed
10 amendments require:

- 11 ➤ The instruction in mental health recovery-oriented care must be at least 3-semester
12 units or 45 hours, and must include the structured meetings with consumers/family
13 members training; and
- 14 ➤ The instruction in understanding of California cultures must be at least one-semester
15 unit or 15 hours.

16
17 Both of these requirements can now be taken from an accredited or approved school or a
18 CE provider, as long as the course content is graduate-level. It may be taken while
19 registered as an intern.

- 20
- 21 • This proposal includes an amendment for out-of-state licensee experience requirements
22 for LPCC applicants to count time actively licensed as experience at a rate of 100 hours
23 per month, up to 1,200 hours. Like LCSW applicants, these hours would be applied
24 toward the required direct clinical counseling hours. Per the Out-of-State Committee's
25 request, after January 1, 2016, the applicant can only do this if he or she meets the
26 practicum requirement without exemptions or remediation. This is because BPC Section
27 4999.63 is proposing to allow exemptions or remediation options for the practicum
28 requirement under certain conditions to licensed out-of-state applicants. The Committee
29 did not believe an applicant should be permitted both an exemption/remediation for
30 practicum and also be able to count time actively licensed toward experience hours.

31
32 Sara Kashing, California Association of Marriage and Family Therapists (CAMFT), expressed
33 concern regarding coursework for out-of-state LMFTs. The phrase indicating that the
34 coursework must be at graduate-level will be confusing for CE providers to determine the
35 definition of "graduate level" and how to satisfy that requirement. Ms. Kashing requested to
36 add language that provides a definition or criteria.

37
38 Ms. Helms stated that the language could be changed to state that the content of the
39 coursework must be comparable to coursework offered in master degree programs.

40
41 Ms. Madsen added that verifying the coursework is comparable to the coursework offered in
42 Master degree programs will be an issue.

43
44 Ms. Kashing stated that a licensee needs some criteria to determine if the course they are
45 paying for will satisfy the requirement. She asked if the phrase that indicates that the
46 coursework must be at graduate level can be removed from the language.

47
48 Ms. Wong recalled the dialog during the Out-of-State Committee meetings. In an effort to
49 strike a compromise, the choices were: 1) taking CE where the course content was at the
50 graduate level, or 2) go back to school. If the CE regulations will be going into effect
51 simultaneously with this proposal, the discretion would be upon the CE approving entities.
52

1 Ms. Madsen asked the Committee members if they were comfortable striking the language
2 that requires coursework to be at graduate level. Ms. Wong responded no. Ms. Lonner
3 responded yes.
4

5 Ms. Madsen reminded the Committee that the new CE regulation takes the Board out of the
6 CE business of approving providers and reviewing course content. If the language states that
7 the coursework should be at graduate level, it would come into conflict with the new CE
8 regulations.
9

10 Ms. Helms stated that CE providers will have to provide documentation to those taking the
11 course. The Board's licensing evaluators will know if the providers are finding a way around
12 the actual intent.
13

14 Mr. Caldwell stated that the term "graduate level" introduces many questions as a CE provider
15 and as a person taking the course. He supports removing that term from the language. Mr.
16 Caldwell also noted that the quality of the CE courses will be much higher with the new CE
17 regulation.
18

19 It was agreed to remove the "graduate level" requirement from the language, and replace it
20 with "Undergraduate courses will not meet this requirement."
21

22 ***Renee Lonner moved to direct staff to make any discussed changes, as well as any***
23 ***non-substantive changes, and submit to the Board for consideration as Board-***
24 ***sponsored legislation. Dr. Christine Wietlisbach seconded. The Committee voted***
25 ***unanimously (3-0) to pass the motion.***
26

27 The Committee took a break at 11:50 a.m. and reconvened at 12:08 p.m.
28

29 **VII. Discussion and Recommendations for Possible Rulemaking Action Regarding**
30 **Revisions to California Code of Regulations, Title 16, Section 1820.5 and 1822; Add**
31 **New Sections 1820.6 and 1820.7 Licensed Professional Clinical Counselors:**
32 **Requirements to Work with Couples and Families and Supervisory Plan**
33

34 Ms. Berger presented proposed rulemaking regarding LPCCs requirements to work with
35 couples and families, and supervisory plan.
36

37 Under current law, LPCCs, interns (PCC interns), and trainees may not treat couples or
38 families unless they complete specified training and education. As individuals attempt to gain
39 the experience and education necessary to treat couples or families, questions have been
40 frequently posed to staff.

41 1) How should the specialized education and experience be documented, and how will the
42 individual know if they are acceptable?

43 Currently, there is no process established for this.
44

45 2) How would a consumer, employer or supervisee verify whether the practitioner meets the
46 requirements to treat couples and families?

47 Currently, the only way the Board may determine whether a licensee or registrant meets
48 the requirements to treat couples or families is to (1) perform random audits of licensees
49 and registrants, (2) request documentation of qualifications if a complaint is filed against
50 the practitioner, or (3) when a licensee has supervised MFT interns or trainees.
51

52 Staff recommends that LPCC licensees be required to submit a form to the Board upon
53 completion of the specialized education and experience. Board staff would evaluate the
54 documentation, and send the practitioner a letter that states he or she is now qualified to

1 treat couples and families. This would allow the practitioner to provide the letter to
2 consumers, employers and supervisees.

3
4 Dr. Wietlisbach stated that the Board of Occupational Therapy has a similar process
5 already in place. Ms. Madsen responded that staff will look into their process.

6
7 Ms. Wong asked why the Board needs to be involved in the approval process, and why, if
8 this is advanced level training, is the trainee required to take this training.

9
10 Ms. Madsen provided some background information regarding the law at the time it was
11 enacted. To keep the mental health professions distinct, it was required that LPCCs
12 obtain an additional 6 units of education and 500 hours of supervised experience above
13 their core education in order to treat couples and families. That was part of the selling
14 point to bring in this additional mental health profession.

15
16 Last year, the Board was asked what it was doing to address these questions, and at the
17 time, the Board did not have the resources to look at the issues. The counties are looking
18 to the Board as a regulatory agency to set the standard so that the counties can hire these
19 individuals. The Board is in a better place now to address this matter and assist the
20 LPCCs in their opportunities for employment in these agencies.

21
22 Dean Porter, California Association for Licensed Professional Clinical Counselor
23 (CALPCC), stated that no other state has this requirement; couples and families
24 counseling is part of the scope of practice.

25
26 Ms. Lonner asked if this is specialized training, or is it part of their core education. Ms.
27 Madsen responded that they get some of the training, but it's not in depth.

28
29 Mr. Caldwell believes that they are not required to get couples and family training in the
30 Master's degree program.

31
32 3) Must the 500 hours supervised experience be obtained from an approved supervisor?

33 Currently, the experience required to treat couples or families must be gained under the
34 supervision of either an LMFT or an LPCC who has already met the requirements to treat
35 couples and families. The code is silent on whether the supervisor must meet the
36 qualifications of an "approved supervisor."

37
38 The law defines an "approved supervisor" as someone who:

- 39
- 40 • Has a current, valid license not under suspension or probation,
 - 41 • Has not provided therapeutic services to the trainee or intern,
 - 42 • Has received professional training in supervision, and
 - 43 • Has documented two years of clinical experience as an LPCC, LMFT, LCSW, licensed
44 Clinical Psychologist, or licensed Physician and Surgeon certified in Psychiatry by the
45 American Board of Psychiatry and Neurology.

46 Although the "approved supervisor" definition was designed for licensing purposes, it
47 makes sense to require the same qualifications for supervision of experience with couples
48 and families to help ensure quality of supervision. If the "approved supervisor" definition is
49 adopted, it would additionally allow LCSWs, licensed Clinical Psychologists, and
50 Psychiatrists to supervise this experience. All of these professions are permitted to treat
51 couples and families, increasing the availability of supervisors.

1 Dr. Wietlisbach, Ms. Lonner, and Ms. Wong all agreed that it is a good idea to expand the
2 pool of supervisors.

3
4 Mr. Caldwell expressed that the LPCC supervisor should be qualified to work with couples
5 and families. In regards to the other professions, Mr. Caldwell would like to ensure that
6 the Supervisor Responsibility Statement includes a statement that indicates the supervisor
7 (who is not an LMFT) is qualified to provide supervision in couples and families.

- 8
9 4) Does an LPCC or PCC Intern need to meet the specialized education and experience
10 requirements in a particular order?

11 The law is structured differently for LPCC licensees versus interns, and the language is
12 unclear. Currently, a LPCC licensee who would like to begin obtaining the experience
13 required to work with couples and families, must first complete the MFT-related 6-
14 semester units of coursework. However, interns are not required to complete the
15 coursework prior to obtaining the experience.

16
17 It seems unwarranted to require a higher standard of licensees than of interns. But
18 beyond that issue, the Board may want to consider requiring both licensees and interns to
19 complete the coursework in MFT prior to, or concurrently with, the supervised experience.

20
21 For interns, current licensing laws require all coursework be completed prior to gaining any
22 hours of experience. For licensees, the picture is less clear.

23
24 Staff has drafted amendments to the California Code of Regulations, and proposes adding
25 new sections for the Committee's consideration that would do the following:

- 26
- Require the 6-semester units of MFT-related education be completed prior to, or
27 concurrently along with the supervised experience for both interns and licensees.
 - Permit the Board to accept supervised experience gained before the proposed
28 regulatory changes take effect, even if it was gained prior to completing the MFT
29 coursework.
30

31
32 Mr. Caldwell recalled that it was not intended to make a different standard for interns
33 versus licensees. He pointed out that the proposed language is drafted to state that the 6
34 units must be taken all at once.

- 35
36 5) How should out-of-state experience treating couples and families be evaluated?

37 The Board frequently receives applications from individuals licensed in another state. It
38 has been reported that most states in the U.S. permit LPCCs to treat couples and families
39 as part of their scope of practice. This raises the question of whether a licensee who has
40 practiced in another state must demonstrate completion of both the supervised experience
41 and education in order to meet California's requirements.

42
43 If an individual has been licensed and in practice for a significant amount of time, it is likely
44 that they have experience treating couples and families. If a state's scope of practice
45 permits treatment of couples and families, it can be assumed that the state also requires
46 education necessary to treat these types of clients. Additionally, the National Clinical
47 Mental Health Counselor's Examination, used by most states, contains content on couples
48 and families.

49
50 Based on this information, staff recommends adding the following language, which would
51 permit the Board to accept the following as evidence of meeting the experience and
52 educational requirements.

- 1 • Be licensed in good standing in another state where the scope of practice permits
2 treatment of couples and families, and have practiced independently for at least two
3 years, at full-time or the equivalent.
- 4 • Continue to require those not licensed in another state for at least two years, or who
5 are unlicensed and have out-of-state experience, to demonstrate meeting the
6 requirements in the same manner as an in-state licensee or intern.
7

8 Mr. Caldwell stated that it is highly questionable to assume that if an individual has been
9 licensed and in practice for a significant amount of time in another state, it is likely that
10 they have experience treating couples and families. Regarding the assumption of the
11 scope of practice, most states fall back on the Council for Accreditation of Counseling and
12 Related Educational Programs (CACREP) content area requirements. CACREP does not
13 require training in couples and families, so most states do not require any education in
14 couples and families in order to qualify for licensure for LPCC in that state. It makes
15 sense to have the standard remain the same for somebody getting licensed in California
16 versus somebody coming to California with an out-of-state license. If an individual wants
17 to work with couples and families in California, he or she needs to demonstrate the
18 qualifications required in California to do so.
19

20 Ms. Madsen stated that if the requirement is the same for both licensees and interns, it
21 would be less paperwork for staff to review, and it would be better for the applicant
22 because it would be clear what they need to do.
23

24 Dr. Wietlisbach stated that this is not just a workload issue; this is about consumer
25 protection.
26

27 The Committee agreed that the standard should be consistent for both licensees and
28 interns.
29

- 30 6) How can an LPCC or intern who does not yet meet the requirements to treat couples and
31 families, treat children but not the child's family?

32 Similar to other Board licensees, all LPCCs may provide psychotherapeutic services to
33 individuals and groups, including children, all of whom may be treated within the scope of
34 practice without any additional training or experience. However, treatment of children
35 nearly always involves the child's family or legal guardian. This may also occur when the
36 therapist is treating an adult but also needs to involve the family.
37

38 If a family requires actual treatment by the LPCC who is also treating the child (or adult),
39 the LPCC must possess the qualifications to treat families. If the LPCC does not meet the
40 requirements, he or she may only provide a non-therapeutic consultation with the family
41 for issues such as treatment planning and coordination, providing resources, monitoring
42 progress, etc.
43

44 At the request of county employers, staff recommends clarifying this issue in regulations.
45

46 Ms. Lonner stated that many child therapists would make the argument that if a therapist is
47 seeing a child in psychotherapy, and the parents need treatment, the therapist should refer
48 the parents to another provider.
49

50 Ms. Wong stated that it is a conflict of interest to treat a child and the parents.
51

52 Ms. Porter recommended consulting with the Department of Health Care Services (DHCS)
53 because the counties were concerned that the DHCS would not approve the billing.
54

1 Mr. Caldwell stated that the new billing code is the same whether it is for an individual
2 session or a family session.

3
4 Ms. Lonner suggested removing the term “non-therapeutic” from “non-therapeutic
5 collateral consultation.”

6
7 Ms. Kashing suggested changing “collateral consultation” to “collateral contact.” Ms.
8 Wong agreed with this suggestion.

9
10 Mr. Caldwell stated that there needs to be an appropriate distinction between treatment
11 and non-treatment. The intention is that collateral consultation is not treatment for the
12 purposes of scope restriction.

13
14 Ms. Lonner stated that the word “collateral” has always implied “non-treatment.”

15
16 Mr. Caldwell stated that in the proposed language, the phrase “discussing concerns” is
17 overly vague. He also agreed with Ms. Porter’s suggestion to contact DHCS and the
18 county directors for their input.

19
20 Ms. Berger presented proposed technical amendments regarding clinical counselor trainees in
21 practicum and the supervisory plan form.

22 Current “couples and families treatment” regulations group clinical counselor trainees in
23 practicum, with licensees and interns. Trainees have not yet completed their degree program,
24 and are not permitted to gain hours of experience toward licensure. They also cannot gain
25 experience toward meeting the couples and families requirement. However, trainees are
26 permitted by law to treat “individuals, families, or groups” during practicum, and are required to
27 work under the supervision of the school at all times.

28
29 Staff proposed an amendment to clarify that trainees may treat couples and families if they are
30 gaining practicum hours, and to clarify that they may not count such hours toward the 500
31 hours of supervised experience.

32
33 Staff proposed an amendment to clarify that the *Supervisory Plan* form is only required for
34 experience gained toward licensure, rather than couples and families experience hours.

35
36 ***Christina Wong moved to direct staff to make discussed changes and non-substantive***
37 ***changes, and submit to the Board for approval to run as a regulatory proposal. Renee***
38 ***Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.***

39
40 **VIII. Discussion and Recommendations for Possible Rulemaking Action to Implement**
41 **Senate Bill 704, Statutes of 2011, Chapter 387 – Examination Restructure**

42
43 Ms. Berger presented several sections of the Board’s regulations that need to be revised for
44 consistency and clarity in accordance to the exam restructure. Additionally, a number of
45 technical amendments have been identified.

46
47 Exam-related amendments identified:

- 48
- 49 • Change the names of the exams.
 - 50 • Clarify the waiting periods between attempts on the exams.
 - 51 • Clarify that those eligible to take the law and ethics exam must be a registered intern or
associate, or must be an active candidate in the exam process.

- 1 • Clarify the scenarios under which failure to take an exam can lead to abandonment of
2 an application.
- 3 • Incorporate language allowing the Board to accept the national examinations for LMFT
4 and LCSW licensure, if the examinations are determined to be acceptable by the
5 Board.

6

7 Technical changes identified:

- 8 • Remove the ASW extension fee, as the authority for the Board to issue extensions was
9 removed from law as of 2008.
- 10 • Minor technical amendments such as deleting obsolete language, adding “licensed” to
11 references to marriage and family therapists, and correcting authority and reference
12 citations.

13

14 ***Christina Wong moved to direct staff to make discussed changes and any non-***
15 ***substantive changes, and submit to the Board for approval to run as a regulatory***
16 ***proposal. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (3-0)***
17 ***to pass the motion.***

18

19 **IX. Legislation Update**

20 Ms. Helms listed the legislative proposals that the Board is currently pursuing:

- 21 • Omnibus Legislation,
22 • LMFT and LPCC Out-of-State Applicant Requirements, and
23 • Child Custody Evaluators

24

25 **X. Regulation Update**

26 Ms. Berger provided a brief update.

27

28 The continuing education regulation is currently under review by the Department of Consumer
29 Affairs.

30

31 Regulations that took effect last year:

- 32 • Implementation of SB 363, Marriage and Family Therapist Intern Experience;
33 • Enforcement Regulations, SB 1111; and
34 • Disciplinary Guidelines

35

36 Pending regulatory proposals:

- 37 • Disciplinary Guidelines and SB 1441: Uniform Standards for Substance Abuse; and
38 • Implementation of SB 704, Examination Restructure.

39

40 **XI. Suggestions for Future Agenda Items**

41

42 Mr. Caldwell stated that AAMFT-CA is taking a look at the difficulties in the profession and
43 with becoming licensed (higher education standards and higher cost of education for student).
44 There are various categories (“buckets”) of hours that have different minimums and
45 maximums that can be combined for licensure. Mr. Caldwell requested the historical context
46 regarding these numbers. He explained that this information will be helpful in AAMFT-CA’s
47 assessment on which policy changes they may want to propose regarding the pathway to
48 licensure.

49

50 Rebecca Gonzales, National Association of Social Workers California Chapter, requested to
51 discuss the history behind the 18-hour law and ethics course, and why it came to be an 18-

1 hour course. She explained that it is difficult structuring an 18-hour course, and that it is
2 difficult for both students and instructors to devote three days to a course. She would like to
3 discuss whether it is necessary to have an 18-hour course, and whether the course could be
4 structured as a 12-15 hour course.

5

6 **XII. Public Comment for Items not on the Agenda**

7 No public comments were presented.

8

9 **XIII. Adjournment**

10 The meeting was adjourned at 12:44 p.m.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1505 **VERSION:** AMENDED MARCH 20, 2014

AUTHOR: GARCIA **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: CHILD ABUSE: MANDATED REPORTERS

Overview:

This bill would specify that consensual acts of sodomy and oral copulation are not acts of sexual assault that must be reported by a mandated reporter, unless one party is over age 21 and the other is under age 16.

Existing Law:

- 1) Establishes the Child Abuse and Neglect Reporting Act (CANRA) which requires a mandated reporter to make a report in instances in which he or she knows or reasonably suspects that a child has been the victim of child abuse or neglect. (Penal Code (PC) 11164 et seq)
- 2) Defines "sexual abuse" as sexual assault or exploitation consisting of any of the following: rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, or child molestation. (PC §11165.1(a))
- 3) Except under certain specified circumstances, declares any person who participates in an act of sodomy or oral copulation with a person under age 18 shall be punished by up to one year in state prison or county jail. (PC §§ 286(b)(1), 288a(b)(1))
- 4) Except under certain specified circumstances, declares any person over age 21 who participates in an act of sodomy or oral copulation with someone under age 16 is guilty of a felony. (PC §§ 286(b)(2), 288a(b)(2))
- 5) States that a person who engages in unlawful sexual intercourse with a minor who is not more than three years older or three years younger, is guilty of a misdemeanor. (PC §261.5(b))
- 6) States that a person who engages in unlawful sexual intercourse with a minor who is more than three years younger is guilty of either a misdemeanor or a felony. (PC §261.5(c))
- 7) States that any person age 21 or older who engages in unlawful sexual intercourse with a minor under age 16 is guilty of either a misdemeanor or a felony. (PC §261.5(d))

This Bill:

- 1) Specifies that sexual assault does not include sodomy or oral copulation with a person under age 18 for the purposes of CANRA, unless a person over age 21 is participating in the act with someone under age 16. (PC §11165.1(a))

Comment:

- 1) **Author's Intent.** The author's office cites complaints from mandated reporters of child abuse that the current reporting requirements are confusing and inconsistent.

They cite current law as stating that consensual sodomy and oral copulation is illegal with anyone under age 18, and that it requires a mandated report under CANRA. However, consensual sexual intercourse is only reportable if one person is 21 or older, and the other is under age 16.

The author is attempting to make the law consistent by ensuring that all types of consensual activities are treated equally for purposes of mandated reporting under CANRA.

- 2) **Background.** The Board examined this issue last year when stakeholders expressed concern that consensual oral copulation and sodomy among minors were mandated reports under CANRA, while other types of consensual sexual activity were not.

However, at the same time, staffers at the Legislature contacted Board staff to caution that there had been past legal opinions stating that this interpretation of CANRA was incorrect, and that amendments could potentially have ramifications for family planning agencies.

The Board was concerned about a potential legal misinterpretation of CANRA, but at the same time saw this as a valid effort. Therefore, it directed staff to obtain a legal opinion from the DCA legal office.

- 3) **DCA Legal Opinion.** In its legal opinion, DCA found that CANRA does not require a mandated reporter to report incidents of consensual sex between minors of a similar age for any actions described in PC Section 11165.1, unless there is reasonable suspicion of force, exploitation, or other abuse. DCA also found the following, based on past court cases:

- Courts have found that the legislative intent of the reporting law is to leave the distinction between abusive and non-abusive sexual relations to the judgment of professionals who deal with children.
- Review of other legal cases has found that the law does not require reporting of consensual sexual activities between similarly-aged minors for any sexual acts unless there is evidence of abuse.

- 4) **Board of Psychology Action.** The Board of Psychology recently reviewed this issue as well, including the DCA legal opinion that was provided to the BBS. The Board of Psychology directed its staff to seek opinion from the Attorney General's (AG's) Office in order to obtain further clarification on the matter. They specifically asked the AG to resolve the following legal questions:

- What instances of non-abusive sexual conduct involving minors must a mandatory reporter report to child protective agencies under CANRA?

- Does CANRA require a distinction be made in reporting sexual conduct depending on the nature of the conduct suspected?

In their request for the AG opinion, the Psychology Board included several continuing education resources and guidelines that provide conflicting information.

5) **Support and Opposition.**

Support:

- None on file.

Opposition:

- None on file.

6) **History**

2014

03/24/14 Re-referred to Com. on PUB. S.

03/20/14 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

03/20/14 Referred to Com. on PUB. S.

01/15/14 From printer. May be heard in committee February 14.

01/14/14 Read first time. To print.

7) **Attachments**

Attachment A: DCA Legal Opinion: Evaluation of CANRA Reform Proposal Related to Reporting of Consensual Sex Between Minors

Attachment B: Relevant Code Sections: Penal Code Sections 261.5, 286, 288, 288a

Attachment C: Board of Psychology Letter: Request to Senator Steinberg's Office for Attorney General Opinion

Attachment D: CAMFT Article: "Reporting Consensual Activity Between Minors: The Confusion Unraveled," by Cathy Atkins, Revised May 2013

Attachment E: Santa Clara County Child Abuse Council "Child Abuse Reporting Guidelines for Sexual Activity Between and with Minors"

Attachment F: Santa Clara County information sheet for mandated reporters: "Mandated Reporters: When Must you Report Consensual Sexual Activity Involving Minors?"

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MEMORANDUM

DATE	April 11, 2013
TO	Kim Madsen Members of the Board of Behavioral Sciences
FROM	DIANNE R. DOBBS Senior Staff Counsel, Legal Affairs
SUBJECT	Evaluation of CANRA Reform Proposal Related to Reporting of Consensual Sex Between Minors

Following presentation by Benjamin E. Caldwell, PsyD of a proposal to amend portions of the Child Abuse and Neglect Reporting Act ("CANRA") at the board meeting on February 28, 2013, the board requested a legal opinion on the proposal. The proposal seeks to amend CANRA to remove sodomy and oral copulation from the definition of sexual abuse, assault or exploitation. The purpose of the modification is to address concerns of mandated reporting in situations of consensual acts falling within these definitions when the actors are minors of like age under the law and the actions do not otherwise suggest other indications of abuse or neglect.

QUESTIONS PRESENTED

1. As written does Penal Code section 11165.1 require practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation?
2. Does the legal interpretation of CANRA warrant support of the proposed amendments?

SHORT ANSWERS

1. No. Court interpretation of CANRA dating back to 1986, and followed as recently as 2005 confirms that minors under and over age 14 can lawfully engage in consensual sexual activities with minors of a like age, and that not all sexual conduct involving a minor necessarily constitutes a violation of the law. That as such, a mandated reporter is required to report only those conditions and situations where the reporter has reason to know or suspects resulted from sexual conduct between the minor and an older adolescent or an adult and those contacts which resulted from undue influence, cohesion, use of force or other indicators of abuse.

2. No. Because practitioners are not required to report any non-abusive consensual sexual activities between minors of like age, amendment of the law is not necessary and should not be supported.

STATEMENT OF FACTS/BACKGROUND

1. Benjamin Caldwell PhD, ("Dr. Caldwell") Legislative and Advocacy Committee Chair of the American Association of Marriage and Family Therapy – California Division seeks to amend CANRA and is seeking the support of the Board of Behavioral Sciences ("Board").
2. Dr. Caldwell claims that CANRA's inclusion of sodomy and oral copulation in the definition of sexual assault found in Penal Code section 11165.1¹ requires mandated reporters to report all homosexual activities meeting these definitions whether or not the acts are consensual and not otherwise suggestive of abuse.
3. The Senior Legislative Assistant of Assembly member Tom Ammiano believes that Dr. Caldwell and others are misinterpreting CANRA.

ANALYSIS

CANRA does not require a mandated reporter to report incidents of consensual sex between minors of similar age, as provided in section 261.5, absent reasonable suspicion of force, exploitation or other indications of abuse. The California Court of Appeal decided this issue in its 1988 ruling in *Planned Parenthood v. Van De Kamp*. *Planned Parenthood v. Van De Kamp* (1988) 181 Cal.App.3e 245. In that case, Planned Parenthood sought to enjoin implementation of CANRA following an opinion of the Attorney General which provided that the inclusion of section 288 in the definition of sexual assault found in section 11165.1 (a) meant that all sexual activities between and with minors under age 14 was reportable. 67 Ops. Cal. Atty. Gen. 235 (1984).

In nullifying the AG's opinion, the court explored the legislative history and intent of CANRA and held that the legislative intent of the reporting law was to leave the distinction between abusive and non-abusive sexual relations to the judgment of those professionals who deal with children and who are by virtue of their training and experience particularly well suited to such judgment. The court reasoned that while the voluntary sexual conduct among minors under the age of 14 may be ill advised, it is not encompassed by section 288, and that the inclusion of that section in the reporting law does not mandate reporting of such activities. Id at 276.

¹ All further citations are to the Penal Code unless otherwise specified.

After the court's ruling in *Planned Parenthood*, the Legislature amended CANRA and did nothing to nullify or change the effect of the court's decision. As such, the Legislature is deemed to have approved the interpretation because where a statute has been construed by judicial decision and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approved of it. See *People v. Stockton* (1988) 203 Cal.App.3d 225, citing *Wilkoff v. Superior Ct.*

Following *Planned Parenthood* several other Court of Appeal cases adopted the reasoning of the court including *People v. Stockton* later in 1988, and most recently with *People v. Davis* in 2005. All these cases discuss the CANRA reporting requirements in the context of section 288 which relates to lewd and lascivious conduct with minors under 14. Though none of the cases discuss any of the other acts which also constitute sexual assault under section 11165.1(a), the same reasoning applies to those acts in that absent other indications of abuse, the law does not require the reporting of consensual sexual activities between minors of similar age for any of these acts. This interpretation is consistent with the well settled legal principle that statutes are to be construed with reference to the entire system of law of which they are a part, including the various codes, and harmonized wherever possible to achieve a reasonable result. *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 732.

Dr. Caldwell claims that section 11165.1(a) requires mandated reporters to report all minors engaged in sodomy and oral copulation even where the conduct is consensual and is devoid of evidence of abuse is not supported by the law. All conduct enumerated in section 11165.1(a) must be treated the same for purposes of reporting. To interpret the law otherwise would be against the intent of the legislature to leave the distinction between abusive and non-abusive sexual relations to the judgment of the professionals. An interpretation that would require the reporting of all sodomy and oral copulation without reasonable suspicion of abuse would lead to an absurd result. The court in *Planned Parenthood* said it best when it stated, "...statutes must be construed in a reasonable and commonsense manner consistent with their apparent purpose and the legislative intent underlying them, practical rather than technical, and promoting a wise policy rather than mischief or absurdity. Even a statute's literal terms will not be given effect if to do so would yield an unreasonable or mischievous result." *Planned Parenthood* at 245. Therefore, sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated as all other sexual conduct noted in section 11165.1(a) and is only reported if the acts are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there is reasonable suspicion of undue influence, coercion, force or other indicators of abuse.

Section 11165.1(b) further outlines limited examples of conduct which qualifies as sexual assault. There is also no evidence that any of the examples in that section would lead to a discriminatory result to justify removal of sodomy or oral copulation from subsection (a).

CONCLUSION

It is our opinion that CANRA does not require mandated reporters to report consensual sex between minors of like age for any of the actions noted in section 11165.1 unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of abuse. Accordingly, it is not necessary to amend the statute to remove sodomy and oral copulation, as those acts are not treated differently from other acts outlined in the code.

DOREATHEA JOHNSON
Deputy Director, Legal Affairs



By: DIANNE R. DOBBS
Senior Staff Counsel
Legal Affairs

Attachment B
Relevant Code Sections

Penal Code (PC):

§261.5.

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into

consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

§286.

(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of

force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

§288.

(a) Except as provided in subdivision (i), any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

- (A) Bathing.
- (B) Dressing.
- (C) Grooming.
- (D) Medication storage.
- (E) Medical dispensation.
- (F) Money management.

(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

(i) (1) Any person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

(3) As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

§288a.

(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful

bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this

subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds

of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

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March 21, 2014

The Honorable Darrell Steinberg,
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

RE: Attorney General Opinion – Child Abuse and Neglect Reporting Act (“CANRA”)

Dear Senator Steinberg:

The Board of Psychology (Board) seeks your assistance in obtaining clarification from the Attorney General’s Office on the mandated reporting requirements under the Child Abuse and Neglect Reporting Act (“CANRA”).

CANRA, Penal Code section 11164 et seq., requires certain enumerated mandated reporters, including psychologists and registered psychological assistants, to report to appropriate authorities suspected child abuse or neglect. “Child abuse” includes sexual abuse as defined in Penal Code section 11165.1, and includes certain acts of sodomy (Penal Code section 286) and oral copulation (Penal Code section 288a), and certain lewd and lascivious acts (Penal Code section 288). Since 1986, the law has been clear that reporters are not required to report consensual sexual intercourse between minors under age 14 as sexual abuse under Penal Code section 288 in the absence of any other signs of abuse. (See *Planned Parenthood Affiliates of California et al., v. John K. Van de Kamp* (1986) 181 Cal.App.3d 245.) Historically, however, the Board of Psychology, as well as several other healing arts boards, has acknowledged different reporting requirements for acts of sodomy and oral copulation between minors than for other sexual acts, like sexual intercourse, that has been discussed and outlined in secondary source materials for psychologists to assist psychologists’ compliance with the law. Specifically, according to these long-standing sources, practitioners do not have to report their knowledge of non-abusive consensual sexual conduct between minors of a like age to authorities except in instances when acts of sodomy or oral copulation have occurred.

On April 11, 2013, the Board of Behavioral Sciences (BBS) received a legal opinion from its counsel that found that a reasonable reading of CANRA does not require the reporting of any consensual sexual activity between minors, and that no amendments to CANRA were necessary to clarify that interpretation. Counsel concluded, “It is not

necessary to amend the statute to remove sodomy and oral copulation, as these acts are not treated differently from other acts outlined in the code." (The opinion has been made public by the Board of Behavioral Sciences, and is attached for your reference.)

While the Board generally agrees with the conclusion of the BBS legal opinion, a significant shift in the interpretation of CANRA after nearly 30 years of a different standard without a change in the statute is cause for confusion for the Board's licensees. The state professional association for psychologists, noting that the BBS opinion described a duty different from what has been described by educators for psychologists, raised the question with the Board as to what standard would the Board be relying upon in reviewing cases where CANRA was relevant. In addition to a long history of psychologists learning a standard for reporting sexual activity between minors of a like age that differentiates between the type of sex act (i.e., sodomy and oral copulation are reportable; intercourse is not), the Board is aware that violations of CANRA are enforced as misdemeanors. Issuing an opinion as the interpretation of a penal statute that may not be accurate carries criminal implications for its licensees even if the Board does not pursue an administrative action because of a different interpretation of the standard. Therefore, the Board is seeking an opinion from the Attorney General's Office on behalf of its licensees to clarify what CANRA requires them to report.

The Board is seeking your help in obtaining an Attorney General's Opinion on this matter because its impact will affect numerous healing arts licensing boards, including the Medical Board of California, BBS, and Board of Registered Nursing.

The specific legal questions to resolve are: What instances of non-abusive sexual conduct involving minors must a mandatory reporter report to child protective agencies under CANRA? Does CANRA require a distinction be made in reporting sexual conduct depending upon the nature of the conduct suspected?

It is the Board's hope that this opinion will clarify how healing arts boards properly educate their licensees as to the state of the law, and discipline their licensees for violations of the reporting requirements outlined in CANRA.

The Board appreciates any assistance your office can provide. If your office has any questions or concerns regarding this request, please feel free to have them contact me at (916) 574-7113.

Sincerely,


ANTONETTE SORRICK
Executive Officer, Board of Psychology

cc: Members, Board of Psychology
Kim Madsen, Executive Officer, Board of Behavioral Sciences

Attachment(s) or Enclosure(s):

- (i) BBS Legal Opinion

Continuing Education Resources and Guidelines that provide contradictory information for Mandated Reporters, or refer to the confusion surrounding this issue.

- (ii) County of Santa Clara information sheet for mandated reporters. Comments on "hopelessly blurred" situation.
- (iii) CAMFT Guide for Mandating Reporting that references the BBS opinion
- (iv) Legal article arguing that oral copulation and sodomy are always mandated reports if they involve a minor
- (v) Guide for Psychologists published by Girls Incorporated of Alameda County that states that oral copulation and sodomy are mandated reporting.
- (vi) Child Abuse Council of Santa Clara County reporting guidelines that indicate that oral copulation and sodomy are mandated reporting.

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Reporting Consensual Activity Between Minors:

The Confusion Unraveled

CATHERINE ATKINS, STAFF ATTORNEY
(Revised May 2013)

Time and time again, there seems to be much confusion with regard to whether an MFT must, or is even permitted to, report consensual sexual activity involving minors. The information below applies only to consensual sexual activity-not incest, date rape or any situation in which the minor did not fully consent to the sexual activity. Involuntary sexual activity involving minors, and incest involving a minor (even when voluntary), is always a mandatory report.

Below is a chart which identifies the various ages of children and consensual sexual activity at issue¹:

"Child" refers to the person that the mandated child abuse reporter is involved with.	Definitions and Comments	Mandatory Report	Not Mandatory Report
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A. Child younger than 14 years old

1. Partner is younger than 14 years old and of similar chronological or maturational age. Sexual behavior is voluntary & consensual. There are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship.	See, <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245 (1986); See also, <i>In re Jerry M.</i> 59 Cal. App. 4th 289.		X
2. Partner is younger than 14 years old, but there is disparity in chronological or maturational age or indications of intimidation, coercion or bribery or other indications of an exploitive relationship.		X	

<i>"Child" refers to the person that the mandated child abuse reporter is involved with.</i>	Definitions and Comments	Mandatory Report	Not Mandatory Report
3. Partner is 14 years or older.		X	
4. Lewd & Lascivious acts committed by a partner of any age.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, "flashing" a minor-exposing one's genitals to a minor.	X	
5. Partner is alleged spouse and over 14 years of age.	The appropriate authority will determine the legality of the marriage.	X	

B. Child 14 or 15 years old

1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 and less than 21 years of age & there is no indication of abuse or evidence of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 21 years of age.		X	

<i>"Child" refers to the person that the mandated child abuse reporter is involved with.</i>	Definitions and Comments	Mandatory Report	Not Mandatory Report
4. Lewd & Lascivious acts committed by a partner more than 10 years older than the child.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, 'flashing' a minor-exposing one's genitals to a minor.	X	
5. Partner is alleged spouse and over 21 years of age.	The appropriate authority will determine the legality of the marriage.	X	

C. Child 16 or 17 years old

1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 & there is no indication of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 14 & there is evidence of an exploitive relationship.		X	
4. Partner is alleged spouse and there is evidence of an exploitive relationship.	The appropriate authority will determine the legality of the marriage.	X	

D. Oral Copulation and Sodomy of Child under the age of 18

Historically most county agencies and professional associations stated that under Penal Code section 11165.1, all sodomy, oral copulation, penetration of a genital or anal opening by a foreign object, even if consensual, with a partner of any age, was a mandatory report.

However, on April 11, 2013, the Board of Behavioral Sciences (BBS) released an evaluation of the Child Abuse and Neglect Reporting Act (CANRA), specifically answering the question: "Did Penal Code 11165.1 require practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation?"

Counsel to the BBS stated, in summary, that court interpretations throughout the years confirmed that minors can lawfully engage in consensual sex with other minors *of like age*, without the necessity of a mandatory report. Counsel further stated that while the cases cited in her analysis did not directly discuss oral copulation and sodomy between minors, the same reasoning applied and as such, practitioners were not required to report all conduct by minors that fell under the definition of sodomy and oral copulation.

So what does this mean? When a provider learns of consensual, non-abusive sexual activity between two minors, the provider would:

1. Utilize the chart above to determine if the ages are "of like ages."
2. If there is a mandatory report, based on the ages above, for intercourse, certainly there would be a mandatory report for oral copulation or sodomy.
3. However, if there is no mandatory report, based on the ages above, according to the BBS, there would be no mandatory report necessary in the case of oral copulation or sodomy either.
4. Forced, coerced, and/or non-consensual sexual activity is always a mandatory report.

NOTE: It is important to note that the recent BBS evaluation is the BBS' interpretation of law. While the BBS evaluation would be a good evidentiary resource in defense of a provider who is challenged in court for not making a mandatory report for consensual oral copulation or sodomy, the laws regarding mandatory reporting have not changed. Since state law regarding reporting of consensual oral copulation and sodomy has not changed and this exact issue has not been examined by the courts, the conservative approach, in order to gain immunity from suit under CANRA, would be to continue to report those types of consensual acts between minors.

This information is intended to provide guidelines for addressing difficult legal dilemmas. It is not intended to address every situation that could potentially arise, nor is it intended to be a substitute for independent legal advice or consultation. When using such information as a guide, be aware that laws, regulations and technical standards change over time, and thus one should verify and update any references or information contained herein. ©

REFERENCES

- 1 This chart was adapted from the Child Abuse Council of Santa Clara County found at www.cacsc.org.



Catherine L. Atkins, JD, is a Staff Attorney and the Deputy Executive Director at CAMFT. Cathy is available to answer members' questions regarding legal, ethical, and licensure issues.

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Child Abuse Reporting Guidelines for Sexual Activity Between and with Minors

Santa Clara County Child Abuse Council

This is a guide for mandated reporters and the information contained in this document is designed to assist those mandated by California Child Abuse Reporting Laws to determine their reporting responsibilities. It is not intended to be and should not be considered legal advice. In the event there are questions regarding reporting responsibilities in a specific case, the advice of legal counsel should be sought. This guide incorporates changes in the Child Abuse Reporting Law, effective January, 1998. For more detailed information refer to Penal Code Section 11164 & 11165.1 et al.

I. INVOLUNTARY SEXUAL ACTIVITY is always reportable.

II. INCEST, even if voluntary is always reportable. Incest is a marriage or act of intercourse between parents and children; ancestors and descendants of every degree; brothers and sisters of half and whole blood and uncles and nieces or aunts and nephews. (Family Code, § 2200.)

III. VOLUNTARY SEXUAL ACTIVITY may or may not be reportable. Even if the behavior is voluntary, there are circumstances where the behavior is abusive, either by Penal Code definition or because of an exploitive relationship and this behavior must be reported. Review **either** section A, B or C **and** section D. In addition, if there is reasonable suspicion of sexual abuse prior to the consensual activity, the abuse must be reported.

"Child" refers to the person that the mandated child abuse reporter is involved with.	Definitions and Comments	Mandatory Report	Not Mandatory Report
A. Child younger than 14 years old			
1. Partner is younger than 14 years old and of similar chronological or maturational age. Sexual behavior is voluntary &	See, <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245		X

consensual. There are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship.	(1986) & <i>In re Jerry M.</i> 59 Cal. App. 4th 289		
2. Partner is younger than 14 years old, but there is disparity in chronological or maturational age or indications of intimidation, coercion or bribery or other indications of an exploitive relationship.		X	
3. Partner is 14 years or older.		X	
4. Lewd & Lascivious acts committed by a partner of any age.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or sexual desires of the perpetrator or the child".?	X	
5. Partner is alleged spouse and over 14 years of age.	The appropriate authority will determine the legality of the marriage.	X	
B. Child 14 or 15 years old			
1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 and less than 21 years of age & there is no indication of abuse or evidence of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 21 years of age.		X	
4. Lewd & Lascivious acts	The perpetrator has the	X	

committed by a partner more than 10 years older than the child.	intent of "Arousing, appealing to or gratifying the lust, passions, or gratifying the lust, passions, or sexual desires of the perpetrator or the child".		
5. Partner is alleged spouse and over 21 years of age.	The appropriate authority will determine the legality of the marriage.	X	
C. Child 16 or 17 years old			
1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 & there is no indication of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 14 & there is evidence of an exploitive relationship.		X	
4. Partner is alleged spouse and there is evidence of an exploitive relationship.	The appropriate authority will determine the legality of the marriage.	X	
D. Child under the age of 18			
1. Sodomy, oral copulation, penetration of a genital or anal opening by a foreign object, even if consensual, with a partner of any age.		X	

Mandated reports of sexual activity must be reported to either The Department of Family & Children's Services (DFCS) or to the appropriate police jurisdiction. This information will then be cross-reported to the other agency. Reporting does not necessarily mean that a civil or criminal proceeding will be initiated against the suspected abuser.

Failure to report known or reasonable suspicion of child abuse, including sexual abuse, is a misdemeanor. Mandated reporters are provided immunity from civil or criminal liability as a result of making a mandated report of child abuse.

Child Abuse Council, Interagency Collaboration Committee (3/12/98). Reviewed February 2008..
Adapted from Orange County Reporting Guidelines

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MANDATED REPORTERS: WHEN MUST YOU REPORT *CONSENSUAL* SEXUAL ACTIVITY INVOLVING MINORS?

The question of whether the Child Abuse and Neglect Reporting Act (CANRA) (Penal Code §§ 11165 - 11174) requires designated professionals to report consensual sexual activity involving minors remains a "hopelessly blurred" area of the law. On the one hand, *Planned Parenthood v. Van de Kamp* (1986) 181 Cal.App.3d 245 holds that laws which require the reporting of voluntary, nonabusive sexual behavior between minors of a similar age violate a minor's right to sexual privacy. On the other hand, *People v. Stockton Pregnancy Control Medical Clinic, Inc.* (1988) 203 Cal.App.3d 225, as well as legislative changes in 1997, affirm that certain types of sexual conduct involving minors still must be reported even if consensual. (See AB 327, Stats. 1997, c. 83.) The following guidelines are designed to synthesize conflicting legal authority and provide mandated reporters with reasonable guidance.

- ☞ **Both children are under age 14? No report is required** unless there is disparate age, intimidation, coercion, exploitation or bribery.

- ☞ **One child is under age 14, the other child is age 14 - 17? Yes, a report is required.** Penal Code sections 11165.1(a) and 288(a) afford special protection to children under age 14.

- ☞ **Both children are ages 14 - 17? No report is required**, unless the sexual activity involves incest (see Penal Code § 285, Family Code 2200) or there is evidence of abuse or an exploitative relationship.

- ☞ **The child is age 14 - 17, the other person 18 or older? No report is required**, unless the sexual activity involves one of the following: 1. Incest (see Penal Code § 285, Family Code 2200); 2. Unlawful Sexual Intercourse (also known as "Statutory Rape") involving a person over age 21 with a child age 14 or 15 (see Penal Code § 261.5(d)); and 3. Lewd and Lascivious Acts involving a child age 14 or 15 and a person who is at least ten years older than the child (see Penal Code § 288(c)(1)).

While consensual sexual intercourse between a child (a person under age 18) and an adult (a person age 18 or older) is still a crime and thus subject to prosecution, California law only requires that it be reported if the child is under age 16 and the adult is over age 21. (See Penal Code § 261.5(a).)

Note: Sodomy (Penal Code § 286); Oral Copulation (Penal Code § 288a) and Penetration by Foreign Object (Penal Code § 289) (which includes a penetration by a finger) are still listed as reportable offenses under Penal Code § 11165.1, but recent cases such as *People v. Hofsheier* (2006) 37 Cal. 4th 1185 and *Lawrence v. Texas* (2003) 539 U.S. 558 cast doubt on the constitutionality of treating these types of consensual sexual activity different from sexual intercourse.

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To: Committee Members

Date: March 21, 2014

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Legislative Update

Board staff is currently pursuing the following legislative proposals:

1. **AB 2213 (Eggman): LMFT and LPCC Out-of-State Applicant Requirements**

Licensing requirements for out-of-state LMFT and LPCC applicants were set to change on January 1, 2014. However, the Board had concerns that the new out-of state requirements may be too stringent, restricting portability of these license types to California.

Last year, the Board sponsored AB 451 (Chapter 551, Statutes of 2013), which extended the change to the out-of-state licensing requirements from January 1, 2014 to January 1, 2016. For the past year, the Board's newly formed Out-of-State Education Committee has been working to formulate new out-of-state requirements that better accommodate license portability, while still maintaining consumer protection.

The resulting proposal makes changes to the practicum requirements for out-of-state applicants, as well as allows them to remediate certain coursework through continuing education, instead of requiring all coursework to be from a graduate program. It also allows certain coursework to be remediated while registered as an intern.

2. **Omnibus Legislation (Senate Business, Professions, and Economic Development Committee) (No Bill Number Assigned at This Time)**

This bill proposal, approved by the Board at its November 21, 2013 and March 6, 2014 meetings, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

3. **AB 1843 (Jones and Gordon): Child Custody Evaluations: Confidentiality**

The Board is seeking statutory authority to access a child custody evaluation report for the purpose of investigating allegations that one of its licensees, while serving as a child custody evaluator, engaged in unprofessional conduct in the creation of the report. Currently, the law does not give the Board direct access to the child custody evaluation report. This leaves the Board unable to investigate allegations of unprofessional conduct of its licensees while they are serving as a custody evaluator, even though the Board is mandated to do so by law.

The Board conducted a series of stakeholder meetings in early March. These meetings consisted of representatives from the Assembly Judiciary Committee, the professional associations of the

Board's licensees, representatives from the Board of Psychology and their professional association, associations representing family law attorneys, and representatives from the Administrative Office of the Courts.

At these meetings, there was general consensus that licensees acting unprofessionally or unethically should be subject to discipline, and that the confidentiality of the child custody evaluation reports is essential. There were differing opinions on the conditions under which the report should be made available.

At the stakeholder meetings, two questions were raised that Board staff is now investigating with the Attorney General's (AG's) office:

1. Family Code section 3025.5(b) states a federal or state law enforcement office is one of the parties the report may be disclosed to. The stakeholders inquired if a Division of Investigation (DOI) investigator could be used to obtain the report for the boards. DOI is a unit within DCA that employs peace officers for investigative purposes. The Board is currently seeking guidance from the AG's office to see if DOI investigators qualify as state law enforcement for purposes of receiving the reports, and if so, if the Board would legally be able use this report for investigative purposes, and in a subsequent disciplinary action.
2. While Board was advised by the Administrative Office of the Courts that it may not legally have access to the report, the Board of Psychology has been advised by their DAG that if a party provides the report, they may use it in their investigation. The Board of Psychology is required to use a different unit within the AG's office, called the Health Quality Enforcement Unit. Board staff has asked the AG's office for a clarification of why this direction is not consistent.

The AG's office is currently looking in to these issues. While staff waits for their answers, the Assembly Judiciary Committee has recommended the bill proceed with two technical clean-up provisions that are needed in Family Code Sections 3111 and 3025.5:

1. Add a cross reference to Section 3111 regarding who may have access to the child custody evaluator's report, so that it is clear that the parties in specified in Section 3025.5 may have access to the report.
2. Amend Section 3025.5 to delete a reference that no longer exists.

If the AG's office advises that DOI investigators may access the report as state law enforcement officers, it is possible that no further amendments are needed, or the AG's office may suggest clarifying amendments. If the AG's office determines DOI investigators may not access the reports, additional meetings with stakeholders and the Assembly Judiciary Committee will be needed to determine how to proceed with gaining access to the reports.

Attachment A shows the current language proposed in AB 1843.

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1843

Introduced by Assembly Members Jones and Gordon

February 18, 2014

An act to amend ~~Section~~ *Sections 3025.5 and 3111* of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as amended, Jones. Child custody evaluations: confidentiality.

~~Under existing law, reports containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child, that are submitted to the court in a proceeding involving child custody or visitation, are required to be kept in the confidential portion of court files, and may be made available only to specified persons.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Existing law authorizes a court, in any contested child custody or visitation rights proceeding, to appoint a child custody evaluator to conduct a child custody evaluation, as specified, if the court determines it is in the best interests of the child. Existing law requires the child custody evaluator, if directed by the court, to file a written confidential report on his or her evaluation at least 10 days before any hearing regarding the custody of the child with the clerk of the court, as specified. Existing law requires this report to be served on the parties or their attorneys, and any other counsel appointed for the child. Existing law otherwise prohibits the disclosure of the report, except in certain probate guardianship proceedings, as specified.

Existing law requires the information from a report containing psychological evaluations of a child or recommendations regarding custody or visitation submitted to the court in any proceeding involving child custody or visitation rights to be contained in a document that is to be placed in the confidential portion of the court file. Existing law applies this requirement to, among other things, the written confidential report described above, child custody or visitation recommendations made to the court pursuant to mediation proceedings, and a written statement of issues and contentions put forth by a child's appointed counsel. Existing law prohibits these reports and recommendations from being disclosed, except to specified persons, including, among others, a party to the proceeding or his or her attorney, a federal or state law enforcement officer, a court employee acting within the scope of his or her duties, a child's appointed counsel, or any other person upon order of the court for good cause.

The bill would make a clarifying change to authorize the child custody evaluator's written confidential report to be disclosed pursuant to the provisions described above. The bill would delete an obsolete provision relating to the written statement of issues and contentions put forth by a child's appointed counsel.

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

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

- 1 SECTION 1. Section 3025.5 of the Family Code is amended
- 2 to read:
- 3 3025.5. In a proceeding involving child custody or visitation
- 4 rights, if a report containing psychological evaluations of a child
- 5 or recommendations regarding custody of, or visitation with, a
- 6 child is submitted to the court, including, but not limited to, a
- 7 report created pursuant to Chapter 6 (commencing with Section
- 8 3110) of this ~~part, part~~ and a recommendation made to the court
- 9 pursuant to Section 3183, ~~and a written statement of issues and~~
- 10 ~~contentions pursuant to subdivision (b) of Section 3151,~~ that
- 11 information shall be contained in a document that shall be placed
- 12 in the confidential portion of the court file of the proceeding, and
- 13 may not be disclosed, except to the following persons:
- 14 (a) A party to the proceeding and his or her attorney.

1 (b) A federal or state law enforcement officer, judicial officer,
2 court employee, or family court facilitator of the superior court of
3 the county in which the action was filed, or an employee or agent
4 of that facilitator, acting within the scope of his or her duties.

5 (c) Counsel appointed for the child pursuant to Section 3150.

6 (d) Any other person upon order of the court for good cause.

7 *SEC. 2. Section 3111 of the Family Code is amended to read:*

8 3111. (a) In any contested proceeding involving child custody
9 or visitation rights, the court may appoint a child custody evaluator
10 to conduct a child custody evaluation in cases where the court
11 determines it is in the best interests of the child. The child custody
12 evaluation shall be conducted in accordance with the standards
13 adopted by the Judicial Council pursuant to Section 3117, and all
14 other standards adopted by the Judicial Council regarding child
15 custody evaluations. If directed by the court, the court-appointed
16 child custody evaluator shall file a written confidential report on
17 his or her evaluation. At least 10 days before any hearing regarding
18 custody of the child, the report shall be filed with the clerk of the
19 court in which the custody hearing will be conducted and served
20 on the parties or their attorneys, and any other counsel appointed
21 for the child pursuant to Section 3150. The report may be
22 considered by the court.

23 (b) The report shall not be made available other than as provided
24 in subdivision (a) or *Section 3025.5*, or as described in Section
25 204 of the Welfare and Institutions Code or Section 1514.5 of the
26 Probate Code. Any information obtained from access to a juvenile
27 court case file, as defined in subdivision (e) of Section 827 of the
28 Welfare and Institutions Code, is confidential and shall only be
29 disseminated as provided by paragraph (4) of subdivision (a) of
30 Section 827 of the Welfare and Institutions Code.

31 (c) The report may be received in evidence on stipulation of all
32 interested parties and is competent evidence as to all matters
33 contained in the report.

34 (d) If the court determines that an unwarranted disclosure of a
35 written confidential report has been made, the court may impose
36 a monetary sanction against the disclosing party. The sanction
37 shall be in an amount sufficient to deter repetition of the conduct,
38 and may include reasonable attorney's fees, costs incurred, or both,
39 unless the court finds that the disclosing party acted with substantial
40 justification or that other circumstances make the imposition of

1 the sanction unjust. The court shall not impose a sanction pursuant
2 to this subdivision that imposes an unreasonable financial burden
3 on the party against whom the sanction is imposed. This
4 subdivision shall become operative on January 1, 2010.

5 (e) The Judicial Council shall, by January 1, 2010, do the
6 following:

7 (1) Adopt a form to be served with every child custody
8 evaluation report that informs the report recipient of the
9 confidentiality of the report and the potential consequences for the
10 unwarranted disclosure of the report.

11 (2) Adopt a rule of court to require that, when a court-ordered
12 child custody evaluation report is served on the parties, the form
13 specified in paragraph (1) shall be included with the report.

14 (f) For purposes of this section, a disclosure is unwarranted if
15 it is done either recklessly or maliciously, and is not in the best
16 interests of the child.