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POLICY AND ADVOCACY COMMITTEE MEETING NOTICE
September 18, 2014
9:00 a.m.

Department of Consumer Affairs
2450 Del Paso Rd., Room #109
Sacramento, CA 95834

- I. Call to Order and Establishment of Quorum
- II. Introductions*
- III. Approval of the August 6, 2014 Committee Meeting Minutes
- IV. Discussion and Recommendations for Possible Rulemaking Action Regarding Proposed 2015 Omnibus Bill Amending Business and Professions Code Sections 4980.43, 4984.01, 4996.2, 4996.28, 4999.45, 4999.46, and 4999.100
- V. Discussion and Recommendations for Possible Action Regarding Legislative Amendments to Support Board's Continuing Education Program
- VI. Discussion and Recommendations for Possible Action to Sponsor Legislation to Support the Board's Enforcement Process
- VII. Discussion and Recommendations for Possible Action Regarding the Use of Telehealth to Provide Psychotherapy
- VIII. Legislative Update
- IX. Regulation Update
- X. Suggestions for Future Agenda Items
- XI. Public Comment for Items not on the Agenda
- XII. Adjournment

**Introductions are voluntary for members of the public*

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



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

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

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



Policy and Advocacy Committee Minutes - *DRAFT*
August 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
Deborah Brown, Public Member
Christina Wong, LCSW Member

Staff Present

Steve Sodergren, Asst. Executive Officer
Marc Mason, Administrative Manager
Christy Berger, Regulatory Analyst
Dianne Dobbs, Legal Counsel
Christina Kitamura, Administrative Analyst

Members Absent

Dr. Christine Wietlisbach, Public Member

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 8:38 a.m. Christina Kitamura took roll, and a quorum was established.

II. Introductions

Ms. Lonner introduced Deborah Brown as a new member to the Committee.

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

III. Approval of the April 3, 2014 Committee Meeting Minutes

The following edits were suggested:

- Page 1 line 26: add a period at end of the sentence.
- Page 4 line 40: Ms. Wong expressed that 45 days to review license applications and issue licenses is impossible.
- Page 8 line 11: Ms. Wong expressed that when looking at the needs of a child who has experienced a crisis or traumatic experience *from the removal*, treatment for that child can be stabilizing.
- Page 13 line 24: remove "must."

Renee Lonner moved to approve the Policy and Advocacy Committee minutes as amended. Christina Wong seconded. The Committee voted (2 yea, 1 abstention) to pass the motion.

1 **IV. Discussion and Recommendations for Possible Rulemaking Action to Implement**
2 **Senate Bill 704, Statutes of 2011, Chapter 387 – Examination Restructure**

3 Christy Berger presented SB 704 regarding Examination Restructure.

4
5 Effective January 1, 2016, the Board’s examination process will be changing. Licensed
6 Clinical Social Worker (LCSW) and Licensed Marriage and Family Therapist (LMFT)
7 applicants will be required to pass two new exams that replace the existing exams.
8 Additionally, for LCSW, LMFT and Licensed Professional Clinical Counselors (LPCC)
9 applicants, the timing of when examinations must be taken will change.

10
11 The Board approved the examination restructure in 2010 and sponsored legislation that allows
12 for those changes. In order to fully implement the restructured program, the Board needs to
13 revise its regulations to incorporate the new requirements and to ensure that the regulations
14 are consistent with the examination process authorized by the new law.

15
16 Currently, the Board requires applicants for licensure to pass two examinations upon
17 completion of all other licensure requirements. Once an applicant passes a standard written
18 examination, they are eligible to take a clinical vignette examination.

19
20 In February 2008, the Board initiated an extensive analysis of its examination program and
21 conducted a holistic review of the Board’s examination program. The recommendations that
22 resulted in the legislation are making changes to the timing and type of exams.

23
24 **The Exam Types:**

- 25
26
- A California Law and Ethics exam
 - A Clinical exam
- 27

28 These new exams replace the Standard Written and the Clinical Vignette exams currently in
29 place for the LCSW and LMFT licensing programs. The LPCC program already uses a law
30 and ethics exam.

31
32 A national exam is already in place for the LPCC program, and will be implemented for the
33 LCSW program.

34
35 **Timing of Exams for Registrants:**

36 Currently, applicants take both exams upon completion of all other requirements for licensure.
37 Under the new exam sequence, registered interns and associates will be required to take the
38 law and ethics exam until passed; and if not passed the first time, to take the exam a minimum
39 of once per one-year renewal cycle until passed. The clinical exam will be taken after passing
40 the law and ethics exam and completion of all other licensure requirements.

41
42 **Impact on Registrant Renewals and Issuance of Subsequent Registration Numbers:**

43 A registrant will not be permitted to renew his or her registration without having taken the law
44 and ethics exam during the prior renewal period unless the registrant has already passed.
45 Subsequent intern or associate registration numbers will no longer be issued unless the
46 applicant has passed the exam.

47
48 **Law and Ethics Course for Registrants:**

49 Registrants who did not take and pass the law and ethics exam will be required to take a 12-
50 hour continuing education course on law and ethics in order to continue to be eligible to take
51 the law and ethics exam.

52

1 **Differences for Registrants vs. Applicants who are Not Registrants:**A “registrant” means
2 an individual who holds a current or delinquent registration. The requirements under the
3 exam restructure are different for a registrant than for an applicant who is not a registrant.
4

5 The Board’s 2014 Omnibus Bill, SB 1466 would provide the following grace periods:

- 6 • Permits those with an intern or associate registration that expires prior to 06/30/2016, to
7 renew between 01/01/2016 and 06/30/2016 without first taking the law and ethics exam.
- 8 • Permits those who apply for a second (or third, etc.) intern or associate registration,
9 between 01/01/2016 and 12/31/2016, to obtain that registration without first passing the
10 law and ethics exam. These applicants may be issued a new registration, but must pass
11 the exam before that registration may be renewed.

12
13 Regulations are necessary in order to implement the examination restructure. The Board
14 approved earlier versions of the regulatory proposal at its November 2011 and February 2013
15 meetings. However, since that time, the restructure’s effective date was delayed to 2016.
16 Additionally, staff has been meeting regularly to work out potential implementation issues that
17 could arise, as well as needed technical changes. Therefore, staff is requesting
18 reconsideration of this updated proposal.

19
20 Ms. Berger reviewed the proposed regulatory changes that are needed for consistency and
21 clarity. The proposed changes would:

- 22 • Change the names of the exams and describe what the new examinations are designed to
23 assess.
- 24 • Clarify the criteria for eligibility to take the law and ethics exam to indicate that the
25 applicant must either:
 - 26 ○ Hold a current, delinquent or cancelled intern registration,
 - 27 ○ Have an approved examination eligibility (licensure) application.
- 28 • Clarify the time frames during which a registrant or applicant must take the California Law
29 and Ethics examination.
- 30 • Clarify the waiting periods between exam attempts.
- 31 • Change application abandonment criteria to fit the new application process.
- 32 • Incorporate language allowing the Board to accept the national examinations for LMFT
33 and LCSW licensure, if the examinations are determined to be acceptable by the Board.
- 34 • Make technical amendments such as removing obsolete language.

35
36 Ms. Brown suggested creating a flow chart of this process.

37
38 Mr. Sodergren added that online videos are another tool that Board staff is considering.

39
40 ***Christina Wong moved to direct staff to make any discussed changes, and any non-***
41 ***substantive changes to the amendments, and submit to the Board for approval as a***
42 ***regulatory proposal. Renee Lonner seconded. The Committee voted unanimously (3-0)***
43 ***to pass the motion.***

44
45 **V. Legislation Update**

46 Marc Mason gave a brief update on legislation:

- 47 • AB 2213, LMFT and LPCC Out-of-State Applicant Requirements, has been referred to the
48 Senate Appropriations Committee.

- 1 • SB 1466, Omnibus Bill, has been referred to the Assembly Appropriations Committee.
- 2 • AB 1843, Child Custody Evaluations, has been referred to the Senate Appropriations
- 3 Committee.
- 4 • SB 570, Advanced Alcohol and Drug Licensing Act, is currently being heard in the Senate
- 5 Appropriations Committee.
- 6 • AB 2396, Expungement, went on suspense.
- 7

8 **VI. Suggestions for Future Agenda Items**

9 Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA),
10 suggested a discussion regarding the requirement for applicants to provide sealed transcripts
11 after conferring their Master’s Degree. It takes the schools at least a few months to produce a
12 sealed transcript after an applicant earns their degree. This delays the application process for
13 the applicant. NASW-CA would like to see this process changed so that the Board could
14 accept a “non-sealed” transcript or a letter from the school. The current requirement (sealed
15 transcript) delays the application process.

16

17 **VII. Public Comment for Items not on the Agenda**

18 There were no public comments.

19

20 **VIII. Adjournment**

21 The meeting was adjourned at 9:12 a.m.

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To: Committee Members
Date: August 27, 2014
From: Rosanne Helms
Legislative Analyst
Telephone: (916) 574-7897
Subject: Proposed 2015 Omnibus Legislation

Each year, the Board sponsors an omnibus bill, which makes minor, technical, or noncontroversial changes to Board licensing laws. These changes must be unopposed, and are meant to correct such things as spelling/grammar errors, or inconsistent or confusing language.

Staff is suggesting amendments to the following sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences (**Attachment A**):

1. Amend BPC Sections 4984.01, 4996.28, 4999.45, and 4999.100 – Prohibited Work Settings for a Subsequent Registration Number

Background: Staff has relayed that sometimes registrants with a subsequent registration number are confused about the section in the law that prohibits them from working in a private practice.

Recommendation: Clarify these sections by stating the prohibition more directly, as follows:

An applicant who is issued a subsequent intern registration pursuant to this subdivision ~~may be employed or volunteer in any allowable work setting except private practice.~~ shall not be employed or volunteer in a private practice.

2. Amend BPC Section 4996.2 – Qualifications for a License

Background: Section 4996.2 lists the requirements for an applicant, including being at least 21 years old, having earned a master's degree from an accredited school of social work, and having 2 years of supervised post-master's degree experience. However, the section does not specifically state whether these requirements are for an applicant for licensure, or if they are for an applicant for registration.

Recommendation: One of the requirements listed in this section is having 2 years of supervised post-master's degree experience. Therefore, it is clear that these requirements are intended for applicants for a license. Therefore, staff recommends that the section be amended as follows:

"Each applicant for a license shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:..."

3. Amend BPC Sections 4980.43 and 4999.46 – 90-Day Rule for Intern Applicants

Background: BPC Section 4999.46(d) allows an applicant for a PCI Intern registration to credit postdegree hours of experience toward licensure experience requirements, as long as the applicant applies for the intern registration within 90 days of the granting of the qualifying degree.

A stakeholder has pointed out that the current language is confusing. Currently, the language allows the counting of the hours as long as the applicant applies for intern registration “within 90 days of the granting of the qualifying degree and is registered as an intern by the board.”

By definition, an applicant applying within 90 days of his or her degree being granted is not yet going to be registered as an intern by the board. Staff recommends clarifying this language so that it is similar to the language for MFT Interns in Section 4980.43(g).

Section 4980.43(g) has also been amended to make it clearer that applicants who do not yet have an intern registration are not permitted to work in a private practice.

Recommendation: Make clarifying amendments to Sections 4980.43(g) and 4999.46(d). Amend Section 4999.46(d) as follows:

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is ~~registered as an intern by the board, thereafter granted the intern registration by the board.~~ However, an applicant shall not be employed or volunteer in a private practice until registered as an intern by the board.

Recommendation

Direct staff to make any discussed changes, as well as any non-substantive changes to the proposed language and recommend that the Board sponsor legislation to make the proposed changes.

Attachments

Attachment A: Proposed Language

**ATTACHMENT A
2015 BOARD OMNIBUS BILL
PROPOSED AMENDMENTS**

AMEND §4980.43.

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

- (1) A minimum of 3,000 hours completed during a period of at least 104 weeks.
- (2) Not more than 40 hours in any seven consecutive days.
- (3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctoral degree.
- (4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral degree.

The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master's or doctoral degree.

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

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

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

(A) Direct supervisor contact.

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

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

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

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

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

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

(B) Client centered advocacy.

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

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

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

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

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

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

(c) Except for experience gained pursuant to subparagraph (B) of paragraph (7) of subdivision (a), supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

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

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client

contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) ~~Except when employed in a private practice setting, all p~~Postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctoral degree and is thereafter granted the intern registration by the board. However, an applicant shall not be employed or volunteer in a private practice until registered as an intern by the board.

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

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

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

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate.

Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

AMEND §4984.01.

(a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Participate in the California law and ethics examination pursuant to Section 4980.399 each year until successful completion of this examination.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.

(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4980.399. An applicant who is issued a subsequent intern registration pursuant to this subdivision ~~may be employed or volunteer in any allowable work setting except private practice.~~ shall not be employed or volunteer in a private practice.

(d) This section shall become operative on January 1, 2016.

AMEND §4996.2.

Each applicant for a license shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves

sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

AMEND §4996.28.

(a) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. To renew a registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state, subsequent to the last renewal of the registration.

(4) On and after January 1, 2016, obtain a passing score on the California law and ethics examination pursuant to Section 4992.09.

(b) A registration as an associate clinical social worker may be renewed a maximum of five times. When no further renewals are possible, an applicant may apply for and obtain a new associate clinical social worker registration if the applicant meets all requirements for registration in effect at the time of his or her application for a new associate clinical social worker registration. An applicant issued a subsequent associate registration pursuant to this

subdivision ~~may be employed or volunteer in any allowable work setting except private practice.~~ shall not be employed or volunteer in a private practice.

AMEND §4999.45.

(a) An intern employed under this chapter shall:

(1) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(2) Not be employed or volunteer in a private practice until registered as an intern.

(3) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(4) Renew annually for a maximum of five years after initial registration with the board.

(b) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant issued a subsequent intern registration pursuant to this subdivision ~~may be employed or volunteer in any allowable work setting except private practice.~~ shall not be employed or volunteer in a private practice.

(c) This section shall become operative on January 1, 2016.

AMEND §4999.46.

(a) To qualify for the licensure examination specified by paragraph (2) of subdivision (a) of Section 4999.53, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks), which shall include:

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

(2) Not less than 1,750 hours of direct counseling with individuals, groups, couples, or families in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

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

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

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting, as defined in Section 1820 of Title 16 of the California Code of Regulations.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, seminars, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board, thereafter granted the intern registration by the board. However, an applicant shall not be employed or volunteer in a private practice until registered as an intern by the board.

(e) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Except for experience gained pursuant to subparagraph (D) of paragraph (6) of subdivision (b), supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

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

(h) This section shall become operative on January 1, 2016.

AMEND §4999.100.

(a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

(4) Participate in the California law and ethics examination pursuant to Section 4999.53 each year until successful completion of this examination.

(c) The intern registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration and has passed the California law and ethics examination described in Section 4999.53. An applicant who is issued a subsequent intern registration pursuant to this subdivision ~~may be employed or volunteer in any allowable work setting except private practice.~~ shall not be employed or volunteer in a private practice.

(d) This section shall become operative on January 1, 2016.

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To: Committee Members

Date: August 20, 2014

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: 2015 Omnibus Bill: Continuing Education

Background

In 2012 and 2013, the Board underwent an extensive committee process to revise its regulations related to continuing education (CE).

The resulting proposed regulations removed the Board's authority to directly approve and license CE providers. Instead, the Board proposes recognizing "approval agencies" that have already established stringent requirements for CE providers. The regulations also recognize a limited number of entities as CE providers, allowing these named entities to offer CE courses directly to Board licensees without approval from an approval agency.

The Continuing Education regulations are currently under consideration by the Office of Administrative Law (OAL). If approved, the effective dates will be as follows:

- **October 1, 2014:** The proposed regulations officially become part of the regulations outlining the Board's authority.
- **January 1, 2015:** An entity wishing to become recognized by the Board as an approval agency may submit documentation demonstrating compliance with Section 1887.4.1; the board will cease accepting applications for board-approved continuing education providers.
- **July 1, 2015:** All Board-approved continuing education providers will no longer be renewed. Board-approved providers with a current Board-approved continuing education provider number may continue to offer CE courses until their provider number expires. This means that the number of providers with Board approval will phase-out gradually, until the last expire on June 30, 2017.

Need for Legislative Changes

The Board's licensing law contains several references to the Board "approving" continuing education providers. However, under the new continuing education regulations, the Board will no longer be approving CE providers. Therefore, this language is obsolete.

Staff is proposing the following amendments to update the Board's licensing law so it is consistent with the CE regulations. As these amendments are technical in nature, they can likely be made in the 2015 omnibus bill, which is reserved for minor technical and non-controversial legislative changes:

1. Amend BPC Section 28: Training for Child and Elder and Dependent Adult Abuse Assessment.

Background: This section discusses a need for the BBS and the Psychology Board (BOP) to establish training in child and elder and dependent adult abuse assessment. The section states a course is acceptable if it is from a CE provider approved by the BBS or BOP.

Recommendation: Both BBS and BOP no longer approve CE providers, and therefore staff suggests the language be amended for consistency. Staff is in the process of confirming that BOP finds these amendments acceptable.

2. Amend BPC Section 4980.399, 4980.54, 4989.34, 4992.09, 4996.22, 4999.55, and 4999.76: Miscellaneous References to Approving CE Providers.

Background: This sections make several references to the Board approving CE providers.

Recommendation: Change the references as appropriate, to state that CE providers specified by the Board in regulation are acceptable. Also change a requirement stating that the Board must establish a procedure for approving CE providers, to instead require the Board to establish a procedure to identify acceptable CE providers.

Recommendation

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal.

Attachments

Attachment: Proposed Continuing Education Legislative Amendments

**ATTACHMENT A
2015 BOARD OMNIBUS BILL
PROPOSED CONTINUING EDUCATION LEGISLATIVE AMENDMENTS**

§28. TRAINING FOR CHILD, ELDER AND DEPENDENT ADULT ABUSE ASSESSMENT AND REPORTING; LICENSING PREREQUISITES

The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse which will ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal.

All persons applying for initial licensure or renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting that meets the requirements of this section, including detailed knowledge of the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The training shall meet all of the following requirements:

(a) Be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, 4996.18, and 4999.12, including extension courses offered by those institutions.

(2) A continuing education provider ~~approved as specified~~ by the responsible board [in regulation](#).

(3) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved ~~or accepted~~ by the responsible board.

(b) Have a minimum of seven contact hours.

(c) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral

indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(d) An applicant shall provide the appropriate board with documentation of completion of the required child abuse training.

The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the board that there would be no need for the training in his or her practice because of the nature of that practice.

It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist have minimal but appropriate training in the areas of child, elder, and dependent adult abuse assessment and reporting. It is not intended that by solely complying with the requirements of this section, a practitioner is fully trained in the subject of treatment of child, elder, and dependent adult abuse victims and abusers.

The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.

§4980.399. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

(a) Except as provided in subdivision (a) of Section 4980.398, each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a [board-approved](#) continuing education provider [as specified by the board in regulation](#), a county, state or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative on January 1, 2016.

§4980.54. CONTINUING EDUCATION

(a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

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

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

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

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

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.36 or 4980.37. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, ~~including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, or a mental health professional association, approved by the board.~~ as specified by the board in regulation.

(g) The board shall establish, by regulation, a procedure for ~~approving~~ identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (f), shall adhere to procedures established by

the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

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

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(i) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

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

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

§4989.34. CONTINUING EDUCATION REQUIREMENTS

(a) To renew his or her license, a licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 36 hours of approved continuing education in, or relevant to, educational psychology.

(b) (1) The continuing education shall be obtained from either an accredited university or a continuing education provider [approved by the board as specified by the board in regulation](#).

(2) The board shall establish, by regulation, a procedure for [approving identifying acceptable](#) providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

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

- (1) Aspects of the discipline that are fundamental to the understanding or the practice of educational psychology.
- (2) Aspects of the discipline of educational psychology in which significant recent developments have occurred.
- (3) Aspects of other disciplines that enhance the understanding or the practice of educational psychology.
- (d) The board may audit the records of a licensee to verify completion of the continuing education requirement. A licensee shall maintain records of the completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon its request.
- (e) The board may establish exceptions from the continuing education requirements of this section for good cause, as determined by the board.
- (f) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The amount of the fees shall be sufficient to meet, but shall not exceed, the costs of administering this section.
- (g) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

§4992.09. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

- (a) Except as provided in subdivision (a) of Section 4992.07, an applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.
- (b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.
- (c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except for as provided in subdivision (d).
- (d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a ~~board-approved~~ continuing education provider as specified by the board in regulation, a county, state or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative on January 1, 2016.

§4996.22. CONTINUING EDUCATION EFFECTIVE JANUARY 1, 2004

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

(2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

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

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

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

(1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, ~~including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four year institution of higher learning, and a mental health professional association, approved by the board as specified by the board in regulation.~~

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

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

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

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

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

(i) The board may adopt regulations as necessary to implement this section.

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

§4999.55. CALIFORNIA LAW AND ETHICS EXAMINATION; EFFECTIVE JANUARY 1, 2016

(a) Each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application, except as provided in subdivision (d).

(d) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her first renewal period on or after the operative date of this section, he or she shall complete, at minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a ~~board-approved~~ continuing education provider as specified by the board in regulation, a county, state, or governmental entity, or a college or university.

(e) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(f) This section shall become operative January 1, 2016.

§4999.76. LICENSE RENEWAL; CONTINUING EDUCATION REQUIREMENT

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

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

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

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

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

(2) Other continuing education providers, ~~including, but not limited to, a professional clinical counseling association, a licensed health facility, a governmental entity, a continuing education unit of a four-year institution of higher learning that is accredited or approved, or a mental health professional association, approved by the board.~~ as specified by the board in regulation.

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

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

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

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

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

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

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

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

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To: Committee Members

Date: September 2, 2014

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed Enforcement Legislation

Staff is recommending consideration of two legislative amendments related to the Board's enforcement process, as follows:

1. Amendments to the requirements to petition for a reinstatement or modification of penalty; and
2. Amendments to clarify the Board's jurisdiction in cases of a license or registration status change.

1. REQUIREMENTS TO PETITION FOR REINSTATEMENT OR MODIFICATION OF PENALTY

Background: Business and Professions Code (BPC) Section 4990.30 sets the process by which a Board licensee or registrant may petition for reinstatement or modification of penalty if his or her license or registration has been revoked, suspended, or placed on probation.

As the Board's licensing population increases, the Board's Enforcement Unit is receiving an increasing number of requests to petition for termination of probation or modify penalty from licensees and registrants who are not in compliance with the terms of their probation. These requests utilize the valuable time and resources of staff, attorneys, and Board members, even though they will ultimately be rejected for noncompliance.

Proposed Amendments: Add BPC §4990.31, which outlines criteria under which the Board may deny a request to petition to terminate probation or modify penalty. These include the following:

- Failure to comply with the terms/conditions of the disciplinary order;
- Board receipt of additional credible complaints against the petitioner while on probation;
- A subsequent arrest or conviction while on probation; and/or
- The petitioner's probation is currently tolled.

This section is in the Board's general provision statutes, and therefore would apply to the Board's LMFT, LEP, LCSW, and LPCC licensees and registrants.

In addition, staff recommends increasing waiting times to file a petition request, as follows:

- Currently, a licensee/registrant must wait two years to petition to terminate any probation period of three years or more. (BPC §4999.30(b)(2)) For a probation of less than three years, a licensee/registrant must wait one year to petition to terminate.(BPC §4999.30(b)(3))

Under the proposed amendments, the licensee/registrant must wait two years to petition to terminate any probation period, regardless of its length.

- Currently, a licensee/registrant must wait one year to petition to modify a condition of probation. (BPC §4999.30(b)(3))

Under the proposed amendments, the licensee/registrant must instead wait two years to petition to modify a condition of probation.

2. LICENSE OR REGISTRATION STATUS CHANGE (Add BPC §4990.33)

Background: A new section is proposed to clarify that the Board has jurisdiction to investigate and/or take disciplinary action even if the status of a license or registration changes or the license or registration expires. This is being proposed for two reasons:

- a) **Medical Board Case Ruling:** The California Medical Board lost a court of appeal case where it was attempting to take disciplinary action against a licensee who held a retired license. The court ruled that a retired license status is not considered a licensee under the Medical Board's jurisdiction, and that the disciplinary authority is valid "only if and when the retired licensee seeks to return to the practice of medicine and files an application" with the Medical Board.

Because of this ruling, in 2012 the Medical Board sought an amendment to one of its statutes related to enforcement via the omnibus bill. The amendment added retired and inactive license statuses within that board's authority to investigate and take disciplinary action.

- b) **Deficiencies in BPC Section 118:** BPC Section 118 is the statute that provides the Board with authority to continue a disciplinary proceeding or take disciplinary action even if a license is expired, suspended, or forfeited. However, there is a loophole in Section 118 that only allows this authority during the period of time during which the license is able to be renewed, restored, reissued, or reinstated.

The Board's enforcement division is running into a problem with taking disciplinary action on registrants with an expired or expiring registration number. Under the law, a registration number is only valid for six years. After six years the registration expires and cannot be renewed, so the applicant must obtain a new registration number. Technically, the registrant is continuing their registration, but since they must do this by getting a new registration number, instead of renewing the old one, Section 118 does not apply.

This is creating a situation where the Board cannot proceed with any disciplinary action once a registrant needs a new registration number. The registrant can then wait for the statute of limitations to run out on his or her violation, and then apply for a new number.

Proposed Amendment: Add section 4990.33 so that the Board may take disciplinary action on its licensees and registrants regardless of the status of a license or registration. This section is in the Board's general provision statutes, and therefore would apply to the Board's LMFT, LEP, LCSW, and LPCC licensees and registrants.

In November 2013, the Board approved this provision for inclusion in the 2014 omnibus bill. However, there was an objection to this amendment, forcing its removal from that bill. (The omnibus bill may only contain non-substantive or non-controversial amendments).

Recommendation

Conduct an open discussion about the proposed language. Direct staff to make any discussed changes, as well as any non-substantive changes to the proposed language and recommend that the Board sponsor legislation to make the proposed changes.

Attachments

Attachment A: Proposed Language

Attachment B: BPC Section 118

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ATTACHMENT A
2015 ENFORCEMENT BILL
PROPOSED LANGUAGE

AMEND §4990.30.

(a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, professional clinical counselor intern, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.

(2) Two years for modification of a condition or early termination of any probation. ~~period of three years or more.~~

(3) One year for ~~modification of a condition,~~ reinstatement of a license or registration revoked for mental or physical illness. ~~or termination of probation of less than three years.~~

(c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.

(d) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.

(f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license or registration was

in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.

(j) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(l) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

ADD §4990.31

The board may deny a request to petition for termination of probation or modification of penalty for any of the following reasons:

- a) The petitioner has failed to comply with the terms and conditions of the disciplinary order;
- b) The board has received additional credible complaints against the petitioner while on probation;

- c) The petitioner has a subsequent arrest which occurred while on probation; or
- d) The petitioner has a subsequent conviction which occurred while on probation.
- e) The petitioner's probation is currently tolled.

ADD §4990.33

Notwithstanding any other law, the expiration, cancellation, forfeiture, or suspension of a license, registration, practice privilege, or other authority to practice by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license or registration by a licensee or registrant, of any license or registration within the board's authority, shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee or registrant, or to render a decision suspending or revoking the license or registration.

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ATTACHMENT B

Business and Professions Code §118.

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

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BPC §2290.5 is in the process of being amended by AB 809 (Logue). Previously, there was an unintended consequence in the way the law was written, that required the therapist obtain consent at the site of the patient prior to each telehealth session, which would defeat the purpose of telehealth. This bill would correct this, and instead simply requires verbal or written consent of the patient to be obtained. The Governor is expected to sign this bill by the end of September. **Attachment B** shows the amended language for BPC §2290.5 as proposed by AB 809.

Laws, Regulations and Policies of Other Jurisdictions and Professional Associations

Staff has conducted research to examine the laws, regulations, and policies of several other jurisdictions.

There is a large volume of research regarding best practices of telehealth, and many states have adopted policies or rules, or are working on them, in order to regulate its practice. In addition, many professional associations have developed telehealth guidelines for their members.

Each set of rules or professional guidelines is quite different; however, there are some common themes that run through them. The chart in **Attachment C** summarizes some of these themes and compares them across states and professional associations.

Below are some highlights from the States of Massachusetts, Arkansas, and Ohio, which have well-defined telehealth regulations or policies compared to many other states. Also included are some points of interest from codes of ethics or best practice guidelines from the professional associations of the Board's license types:

State of Massachusetts Policy No. 07-03 (Policy on Distance, Online, and Other Electronic Assisted Counseling) (Attachment D)

- Therapy with patients located within the state fall under the jurisdiction of the Board, regardless of the location of the provider.
- Board licensees wishing to provide services to a client in another jurisdiction are urged to ensure they meet the requirements to practice in the jurisdiction where the client is located.
- Suggests licensees carefully consider confidentiality and its limitations
- Expects licensees to be prepared to refer for clients for whom electronic service is not appropriate.

State of Arkansas (Rules for Arkansas Code Annotated 17-27-101 Et Seq) (Attachment E)

- Requires licensees to hold a "Technology-assisted Distance Counseling" or "Marriage and Family Therapy Specialization License" to provide telehealth.
- States that any counseling via telehealth that occurs in that state is deemed to have occurred in Arkansas, and the provider must hold an Arkansas license.
- Incorporates the National Board for Certified Counselors (NBCC) document titled "The Practice of Internet Counseling" (2005) into their rules to extend and clarify telehealth standards for counselors and marriage and family therapists.

State of Ohio (Ohio Administrative Code; Chapter 4757-3-01 and 4757-5-13) (Attachment F)

- Requires practitioners providing therapy via telehealth to Ohio citizens to be licensed in Ohio. If providing services to clients outside the state, they must comply with the laws and rules of that jurisdiction.
- Requires an initial meeting to verify the client's identity and to take steps to establish ways to identify the client in the future. This initial meeting may be via video or audio.
- Requires licensees to identify an appropriately trained professional who can provide local assistance and crisis intervention. In addition, the licensee must give the client the local crisis hotline number and the local emergency mental health number.
- Requires the licensee to use encryption methods.

National Board for Certified Counselors (NBCC) "Policy Regarding the Provision of Distance Professional Services" (Approved July 31, 2012) (Attachment G)

- Requires practitioners to review legal regulations for both the counselor's state and the recipient's location prior to providing telehealth services.
- Requires practitioners to use encryption security and to inform clients of potential hazards of distance communications.
- Requires practitioners to screen potential telehealth clients for appropriateness of the service.
- Requires practitioners to provide telehealth patients with specific written emergency procedures.
- Requires practitioners to have procedures for verifying the identity of the patient.

California Association of Marriage and Family Therapists (CAMFT) Code of Ethics (May 2002, March 2011) (Attachment H)

- Requires LMFTs to consider the appropriateness to telehealth to the patient's needs.
- Requires LMFTs to inform patients of potential risks such as confidentiality, clinical limitations, and response to emergencies.
- Requires LMFTs to provide telehealth services in only in jurisdictions where they are permitted to by law.
- Requires LMFTs to be aware of limitations regarding confidentiality and to take care when transmitting or receiving confidential information.

American Association for Marriage and Family Therapy (July 1, 2012) (Attachment H)

- Prior to performing telehealth, requires LMFTs to ensure they are compliant with all relevant laws for performance of telehealth services.

- Requires LMFTs to determine whether therapy via telehealth is appropriate for each client based on his or her needs.
- Requires LMFTs to inform clients of the risks and benefits of telehealth.
- Requires LMFTs to ensure the security of their communications.

National Association of Social Workers and Association of Social Work Boards “NASW & ASWB Standards for Technology and Social Work Practice” (2005) (Attachment I)

- Requires social workers utilizing telehealth to abide by the regulations in both his or her jurisdiction as well as those of the jurisdiction in which the client is located.
- Requires social workers utilizing telehealth to make efforts to verify client identity and contact information.
- Requires social workers using telehealth to be aware of privacy risks of telehealth and take steps to protect client privacy.
- Requires social workers to fully evaluate potential clients for appropriateness of using telehealth.

Items for Discussion

Draft regulations are provided in **Attachment A**. These regulations are modeled after regulations recently adopted by the Board of Occupational Therapy (**Attachment J**). Staff made modifications to address specific issues related to the practice of therapy where the law is unclear, or to address issues which are commonly addressed in other states or associations’ guidelines.

Specific items that need further discussion are as follows:

1. How does the Board wish to define the location of the patient or client? Is it where the patient is physically located, or where he or she is a resident?
2. Is it appropriate for interns and associates to provide services via telehealth? Current law (BPC §§4980.43 and 4999.46) allow LMFT and LPCC applicants to count up to 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth. The law does not specify if LCSW applicants may perform or count telehealth hours.
3. Is it appropriate for trainees to provide services via telehealth? Current law allows LMFT applicants to count some hours of experience earned as a trainee. A concern has been raised to Board staff that BPC §2290.5 is written only for licensed individuals (a definition which includes interns/associates, but not trainees, who are not yet under the jurisdiction of the Board.)
4. Should supervision via telehealth be permitted? Currently, the law allows supervision via telehealth if the intern or associate is working in an exempt setting (BPC §§4980.43, 4996.23, and 4999.46). However, staff has been asked why supervision via telehealth is not permitted for interns and associates who are in rural settings where it is difficult to

find a supervisor. In addition, questions about supervision during military or charitable service in another jurisdiction are not uncommon.

Recommendation

Conduct an open discussion regarding the issues related to telehealth for Board licensees, as well the draft regulations and the items for discussion listed above.

Attachments

Attachment A: Draft Telehealth Regulations

Attachment B: California Business and Professions Code Section 2290.5: Definition of Telehealth (***As proposed by AB 809 and awaiting signature by the Governor***)

Attachment C: Chart of Key Provisions and Common Themes of Telehealth Law or Policy

Attachment D: State of Massachusetts Policy No. 07-03: Policy on Distance, Online, and Other Electronic-Assisted Counseling

Attachment E: State of Arkansas Code – Technology-Assisted Distance Counseling

Attachment F: State of Ohio Administrative Code – Electronic Service Delivery Provisions

Attachment G: National Board for Certified Counselors (NBCC) “Policy Regarding the Provision of Distance Professional Services” (Approved July 31, 2012)

Attachment H: Excerpts from CAMFT and AAMFT Codes of Ethics Related to Telehealth

Attachment I: National Association of Social Workers and Association of Social Work Boards “NASW & ASWB Standards for Technology and Social Work Practice” (2005)

Attachment J: Regulations Recently Adopted by the California Board of Occupational Therapy

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Attachment A
Draft Telehealth Regulations
Title 16, Division 18, California Code of Regulations

ARTICLE 1. GENERAL PROVISIONS

ADD §1815.5. Standards of Practice for Telehealth

- (a) All persons engaging in the practice of marriage and family therapy, educational psychology, clinical social work, or professional clinical counseling via telehealth, as defined in Section 2290.5 of the Code, with a patient or client who is physically located in this State must have a valid and current license (or registration?) issued by the Board.
- (b) A licensee (or registrant?) providing services via telehealth shall exercise the same standard of care when providing services via telehealth as with any other mode of delivery of services.
- (c) A licensee (or registrant?) shall obtain informed consent from the patient or client prior to the delivery of services via telehealth consistent with Section 2290.5 of the Code.
- (d) Prior to the delivery of services via telehealth, the licensee (or registrant?) shall do the following:
 - a. Determine whether an in-person evaluation is necessary. If it is determined that an in-person evaluation is necessary, an on-site licensee (or registrant) shall provide an evaluation.
 - b. Determine whether in-person interventions are necessary. If it is determined that in-person interventions are necessary, an on-site licensee (or registrant) shall provide the appropriate interventions.
- (e) In making a determination whether an in-person evaluation or in-person interventions are necessary, a licensee (or registrant?) shall consider the following:
 - a. The complexity of the patient or client's condition;
 - b. His or her own knowledge, skills, and abilities;
 - c. The nature and complexity of the intervention;
 - d. The patient or client's context and environment.

(f) A licensee (or registrant) shall take steps to ensure the confidentiality of all telehealth services provided to the patient or client. This includes, but is not limited to, utilizing encryption security for the delivery of services.

(g) When performing services via telehealth, a licensee (or registrant?) shall inform the patient or client of the potential risks , including the following:

- a. Issues of confidentiality;
- b. Clinical limitations;
- c. Transmission difficulties; and
- d. Ability to respond to emergencies.

(h) A licensee (or registrant?) providing services via telehealth shall provide the patient or client with the board's online license verification site, as well as his or her license (or registration?) number.

(i) A licensee (or registrant?) providing services via telehealth shall provide the patient or client with specific written procedures to follow in an emergency situation. This shall include contact information for emergency services near the patient or client's home location.

(j) A licensee (or registrant?) shall develop and follow written procedures for verifying the identity of the patient or client prior to beginning each telehealth session. Examples of verification may include the use of code words or phrases.

(k) Failure to comply with these regulations shall be considered unprofessional conduct.

ADD §1815.6. Service in Another Jurisdiction.

A licensee (or registrant) of this state may only provide telehealth services to patients or clients located in another jurisdiction if they meet the requirements to lawfully provide services in that jurisdiction.

Attachment B
Business and Professions Code Section 2290.5 – Telehealth
(As Proposed by AB 809; Currently Awaiting Signature by the Governor)

SECTION 1.

Section 2290.5 of the Business and Professions Code is amended to read:

2290.5.

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

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

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

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

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

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

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

(b) Prior to the delivery of health care via telehealth, the health care provider ~~at the originating site shall verbally initiating the use of telehealth shall~~ inform the patient ~~that telehealth may be used about the use of telehealth~~ and obtain verbal ~~or written~~ consent from the patient for ~~this use. The verbal consent shall be documented in the patient’s medical record. the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.~~

~~(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.~~

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

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

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

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

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

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

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

SEC. 2.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health and safety of the public due to a lack of access to health care providers in rural and urban medically underserved areas of California, the increasing strain on existing providers that occurred with the implementation of the federal Patient Protection and Affordable Care Act, and the assistance that further implementation of telehealth can provide to help relieve these burdens, it is necessary for this act to take effect immediately.

Attachment C
Key Provisions and Common Themes of Telehealth Law or Policy

Provision	Proposed State of California (Rules)	State of Massachusetts (Policy)	State of Ohio (Rules)	State of Arkansas (Rules)	NBCC	CAMFT	AAMFT	NASW/ASWB
1) Awareness of and following the law in the location of the practitioner and the location of the client	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X	X	X	X
2) Consideration of confidentiality and its limitations in telehealth	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X	X	X	X
3) Require utilization of encryption methods	X		X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X			
4) Require practitioner to inform client of risks and benefits of telehealth	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X	X	X	
5) Evaluation of clients to determine if telehealth is appropriate	X	X		<i>Incorporates NBCC guidelines (2005) by reference</i>	X	X	X	X
6) Requirement of a specialized license in order to practice telehealth				X				
7) Requirement to have a process in place to verify the client's identity	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X			X
8) Requirement of an initial meeting to establish client identity (may be via video/audio)			X					
9) Requirement that the licensee provide the client with the means to verify his or her license	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X			X
10) Requirement to provide the client with local resources/crisis hotlines for emergency situations.	X	X	X	<i>Incorporates NBCC guidelines (2005) by reference</i>	X			

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Attachment D
State of Massachusetts
Policy on Distance, Online, and Other Electronic-Assisted Counseling

The Board of Registration of Allied Mental Health and Human Services Professionals ("the Board") voted at its meeting on November 16, 2007 to adopt the following Policy Guideline. This policy guideline is intended as a recommended protocol for the profession to follow. The guideline set forth below does not have the full force and effect of law, as would a Massachusetts General Law or a Board rule or regulation. However, the Board uses policy guidelines as an internal management tool in formulating decisions that relate to issues in the practice of allied mental health and human services.

Policy No. 07-03

Purpose:

The Board acknowledges that therapy and counseling are increasingly being provided at a distance, making use of the internet, telephone and other electronic means of communication. The emergence of new clinical procedures is necessarily accompanied by uncertainty about legal and ethical obligations. The purpose of this policy statement is to offer guidance to Licensees regarding the ethical obligations and standards of conduct in the use of distance, on-line, and other electronic assisted counseling.

Policy:

The Board's policy with regard to all distance or electronic-assisted provision of clinical services is as follows:

1. The services offered by licensees of this Board across a distance by electronic means, fall within the jurisdiction of the Board just as traditional, face-to-face services do. Therefore all Board policies and regulations will apply to these services.
2. Distance delivery of counseling and therapy is considered to occur in two locations: where the client is located and where the clinician is located.
3. Therefore, the provision of counseling and/or therapy to individuals located within Massachusetts at the time services are occurring, are considered to fall under the jurisdiction of the Board, regardless of the location of the provider.

4. Mental health professionals licensed by any jurisdiction other than Massachusetts, and not licensed by any Massachusetts Board or not eligible for an exception to Massachusetts licensure, are considered unlicensed by this Board for practice in Massachusetts.

5. Mental health professionals licensed by other jurisdictions who wish to provide services to clients within Massachusetts, are encouraged to apply for Massachusetts licensure. Some, licensees may find the following helpful:

a. Mental Health Counselors: 262CMR 2.03, (1) Licensure for CCMHC's in good standing with NBCC

b. MFT's: 262 CMR 3.04 Licensure by Reciprocity for MFT's.

6. Board licensees who wish to provide services via electronic means to clients located outside of Massachusetts are urged to ensure that they meet the requirements for practice within the jurisdiction where the client is located.

7. Licensees are encouraged to carefully review the way in which the structure of their relationships with clients will be impacted by distance-therapy or counseling to ensure **compliance with** Board regulations and standards of practice.

8. The following are some areas of practice that **licensees should carefully consider**:

- a. Informed consent
- b. Confidentiality
- c. Basis for making clinical judgments
- d. Areas of competence
- e. Avoiding harm
- f. Fees and financial arrangements
- g. Advertising
- h. Abandonment of clients
- i. Handling requests for obtaining clinical records

9. The Board expects licensees to understand and overcome the significant challenges inherent in providing counseling and therapy without face-to-face contact with the client.

10. Some of the challenges **that licensees are expected to manage include, but are not limited to:**

- a. Full disclosure with regard to potential risks to confidentiality, including computer hacking and/or archiving of communications.
 - b. Full disclosure of the limits to confidentiality in the jurisdictions where the client, and where the clinician are located.
 - c. Full disclosure of mandated reporting requirements in the jurisdictions where the client, and where the clinician are located.
 - d. Full disclosure with regard to the potential disadvantages or limitations of electronic-assisted clinical services.
 - e. Redirection and/or referral of clients for whom electronic services will not be adequate or appropriate.
 - f. Full disclosure with regard to fees and billing practices.
 - g. Full disclosure with regard to licensing, credentials and areas of expertise.
 - h. Screening and local referral for critical and urgent problems.
 - i. Verification of the identity and age of the client.
 - j. Obtaining consent to provide services by a guardian for minors or other vulnerable clients.
 - k. Management of any misunderstanding or compensation for any missing information, resulting from the lack of visual or auditory cues.
 - l. Managing the problem of incomplete or inaccurate diagnoses that may result from electronic-assisted services.
 - m. Managing the potential for technology failure
 - n. Procedures for contacting the clinician when he/she is offline
11. The Board expects that licensees providing any form of distance counseling will comply with all of the guidelines of ethical practice that apply to traditional, face-to-face counseling.
12. The Board expects that licensees will practice distance counseling in a manner that is consistent with any existing guidelines provided by their professional associations.

13. The Board expects that licensees providing any form of distance counseling will ensure that they are properly trained to manage the specific challenges of this form of counseling and will regularly participate in sufficient continuing education activities that maintain and update the required skills.

14. Unlicensed providers of electronic-assisted counseling will be **treated** by the Board in the same manner as providers of unlicensed counseling in traditional settings.

Authority:

M.G.L. Chapter 13, Section 90; and 262 CMR 8.00 et seq

Attachment E
Arkansas Board of Examiners in Counseling
Rules for Arkansas Code Annotated 17-27-101 Et Seq

Section 1.9 (t) “Technology-Assisted Distance Counseling” (Electronic Counseling, Cyber Counseling) for Counseling or Marriage and Family Therapy means any form of services offered or rendered by electronic or technology-assisted approaches when the Counselor or Marriage and Family Therapist and the client are not located in the same place.

Technology-Assisted Distance Counseling may be synchronous or asynchronous. Only Counselors and Marriage and Family Therapists, licensed by the Arkansas Board of Examiners in Counseling, who also hold the Technology-assisted Distance Counseling or Marriage and Family Therapy Specialization License, may provide Technology Assisted Distance Counseling or Marriage and Family services.

Section 1.9 (w) “Technology” means electronically based hardware, software, video and related systems and telephone systems to deliver knowledge, skills, and tools for learning and communication processes. Technology for Counseling or Marriage and Family Therapy encompasses distance learning and distance counseling by any form of technology system /telephone system delivers of services. See section XII for the Technology-Assisted Distance Counseling definitions.

Section 3.5 (9) Technology-Assisted Distance Counseling or Marriage and Family Therapy Specialization license standards for issue for Counseling or Marriage and Family Therapy or Supervision being:

(A) A licensed LPC/LAC or LMFT/LAMFT in good standing with the Board must apply for the Technology-assisted Distance Counseling or Marriage Family Therapy specialization license and submit documentation of training for approval by the Board. As training sources are developed, the responsibility for seeking Board endorsement for the training rests with the provider of the training. The provider must submit a written request with materials documenting the training content for Board review and approval prior to endorsement of the training.

(B) The written submission of a detailed plan that delineates how the applicant will meet provisions of the 2005 American Counseling Association Code of Ethics and the Standards in Section XII regulating Technology-Assisted Distance Counseling or Marriage and Family Therapy for Board approval.

(C) Revised Statement of Intent (scope of practice) that includes a description of the Technology-Assisted Distance Counseling or Marriage and Family Therapy.

(D) The Board may require an oral examination if there are unresolved questions about requirements (9) (A-F).

(E) The submitted materials must be approved by the Board prior to the Technology-Assisted Distance Counseling or Marriage and Family Therapy Specialization license being issued.

(F) Any Technology-Assisted Distance Counseling or Marriage and Family Therapy that occurs within the State of Arkansas, whether by an Arkansas counselor or by an out of state Counselor or Marriage and Family Therapist, is deemed to have occurred in Arkansas. All

providers of services whether traditional or Technology-Assisted who may offer or provide Counseling or Marriage and Family Therapy services to individuals or groups must hold a valid Arkansas license to provide such services.

(e) Specialization requests not already specified will be reviewed by the Board and standards established as needed.

(f) Licensed Counselors or Therapist who apply for a specialization license will be issued such license upon completion of the application for a specialization, documentation of a valid national or required credential (certificate, registry, or license), Pass on the oral examination (if required), payment of the specialization fee and approval by majority vote of the Board.+

SECTION XII. THE PRACTICE OF INTERNET OR TELEPHONE SERVICES

The Board adopts the National Board for Certified Counselors (NBCC) document titled The Practice of Internet Counseling, published in 2005. The NBCC document is adopted as part of Arkansas Rules to further extend and clarify Technology-Assisted Distance Counseling Ethics, Definitions and Standards for Counselors and Marriage and Family Therapist licensed in the state of Arkansas. The adoption of the document is to support and extend the American Counseling Code of Ethics, 2005 edition for the practice of Internet Counseling. *(Attachment Next Page)*

Attachment F Ohio Administrative Code (OAC)

Chapter 4757-3-01 (EE) “Electronic service delivery” (electronic therapy, cyber therapy, e-therapy, etc.) means counseling, social work or marriage and family therapy in any form offered or rendered primarily by electronic or technology-assisted approaches when the counselor, social worker or marriage and family therapist and the client are not located in the same place during delivery of services.

[4757-5-13 Standards of practice and professional conduct: electronic service delivery \(internet, email, teleconference, etc.\).](#)

Electronic service delivery is defined in paragraph (EE) of rule [4757-3-01](#) of the Administrative Code. Licensees are reminded that standards of ethical practice and professional conduct rules [4757-5-01](#) to [4757-5-12](#) of the Administrative Code apply to electronic service delivery.

(A) These standards govern the practice of electronic service delivery and address practices that are unique to electronic service delivery and electronic service delivery practitioners.

(1) All practitioners providing counseling, social work or marriage and family therapy via electronic service delivery to Ohio citizens shall be licensed in Ohio.

(2) All licensees of this board providing services to clients outside the state of Ohio shall comply with the laws and rules of that jurisdiction.

(3) Electronic service delivery shall require an initial face-to-face meeting, which may be via video/audio electronically, to verify the identity of the electronic service delivery client. At that meeting steps shall be taken to address impostor concerns, such as by using passwords to identify the client in future electronic contacts.

(4) Informed consent shall include information defining electronic service delivery as practiced by the licensee and the potential risks and ethical considerations per paragraph (B) of rule [4757-5-02](#) of the Administrative Code.

(a) Licensees shall obtain written informed consent.

(b) Licensees shall not provide services without client signed informed consent.

(5) Licensees shall provide links to websites for all of their certification bodies and licensure boards to facilitate consumer protection.

(6) Licensees shall identify an appropriately trained professional who can provide local assistance, including crisis intervention, if needed. Licensees shall provide electronic service delivery clients the local crisis hotline telephone number and the local emergency mental health telephone number.

(7) Licensees shall provide a link to the board's online license verification site on their web page. They shall also have a copy of the professional disclosure statement available on their web site per rule [4757-5-12](#) of the Administrative Code.

(B) Confidentiality in electronic service delivery shall be maintained by the licensee:

(1) Licensees shall use encryption methods for electronic service delivery; and

(2) Shall inform electronic service delivery clients details of data record storage.

Effective: 10/18/2009

R.C. [119.032](#) review dates: 09/20/2012

Promulgated Under: [119.03](#)

Statutory Authority: 4757.11

Rule Amplifies: 4757.11



NATIONAL BOARD FOR CERTIFIED COUNSELORS (NBCC) POLICY REGARDING THE PROVISION OF DISTANCE PROFESSIONAL SERVICES

INTRODUCTION

The National Board for Certified Counselors (NBCC) is a not-for-profit organization dedicated to the identification of counselors who have voluntarily met national standards based on research in the profession. NBCC's mission also includes the promotion of quality assurance and professionalism in counseling practice.

In connection with the mission to promote quality assurance, NBCC recognized the potential impact of computers on the counseling profession decades ago. After conducting research with experts in the field, NBCC adopted the *Standards for the Ethical Practice of WebCounseling* in 1997, the first of such standards in the mental health profession. Given the evolution of the technology in this area, the NBCC Board of Directors has regularly reviewed these standards and adopted revised policies such as *The Practice of Internet Counseling*.

The most recent review of the practice of Internet counseling supports a revision in the standards, and the resulting information demonstrated the following fundamental concepts:

1. Counseling through distance means presents unique ethical dilemmas to professional counselors.
2. Related technology continues to advance and be used more by increasing numbers of professional counselors.
3. Use of technology by counselors continues to evolve.

In light of this information, the policy regarding Internet counseling has been revised, and this document, the *NBCC Policy Regarding the Provision of Distance Professional Services*, replaces previous editions.

One of the most recognizable differences in this policy is the use of the term "distance professional services." Rather than focusing only on the provision of "Internet counseling," this policy expands the terminology to include other types of professional services that are starting to be used more in distance formats.

Other key terms with regard to this policy include:

Face-to-face refers to services that involve the synchronous interaction between an individual or groups of people using what is seen and heard in person to communicate.

Distance professional services involve the use of electronic or other means (e.g., telephones or computers) to provide services such as counseling, supervision, consultation or education.

Counseling is a professional relationship that empowers diverse individuals, families and groups to accomplish mental health, wellness, education and career goals.

Supervision is a contracted, hierarchical relationship between two or more professionals. The intended focus of supervision is on the augmentation of a supervisee's professional services.

Consultation is a deliberate agreement between two or more professionals to work together to increase the effectiveness of professional services in relation to a specific individual (client, student or supervisee).

Common methods for the provision of distance professional services include the following:

- *Telephone-based* refers to the synchronous distance interaction in which information is received only through audio means.
- *E-mail-based* refers to the asynchronous distance interaction in which information is received through written text messages or e-mail.
- *Chat-based* refers to the synchronous distance interaction in which information is received through written messages.
- *Video-based* refers to the synchronous distance interaction in which information is received via video and audio mechanisms.
- *Social network-based* refers to the synchronous or asynchronous distance interaction in which information is exchanged through social networking mechanisms.

All of the above-mentioned examples of distance professional services may be conducted with individuals, couples, families or group members.

The NBCC Policy Regarding the Provision of Distance Professional Services identifies specific actions National Certified Counselors (NCCs) must take when providing distance services. NBCC recognizes that some counselors provide a combination of face-to-face and distance services even in the context of one particular client or supervisee; therefore, the standards described in this policy supplement the directives identified in the National Board for Certified Counselors (NBCC) *Code of Ethics*.

STANDARDS FOR DISTANCE PROFESSIONAL SERVICES

1. NCCs shall adhere to all NBCC policies and procedures, including the *Code of Ethics*.
2. NCCs shall provide only those services for which they are qualified by education and experience. NCCs shall also consider their qualifications to offer such service via distance means.
3. NCCs shall carefully adhere to legal regulations before providing distance services. This review shall include legal regulations from the state in which the counselor is located as well as those from the recipient's location. Given that NCCs may be offering distance services to individuals in different states at any one time, the NCC shall document relevant state regulations in the respective record(s).
4. NCCs shall ensure that any electronic means used in distance service provision are in compliance with current regulatory standards.
5. NCCs shall use encryption security for all digital technology communications of a therapeutic type. Information regarding security should be communicated to individuals who receive distance services. Despite the use of precautions, distance service recipients shall be informed of the potential hazards of distance communications. Not the least of these considerations is the warning about entering private information when using a public access or computer that is on a shared network. NCCs shall caution recipients of distance services against using "auto-remember" user names and passwords. NCCs shall also inform recipients of distance services to consider employers' policies relating to the use of work computers for personal communications.
6. To prevent the loss of digital communications or records, NCCs who provide distance services shall maintain secure backup systems. If the backup system is also a digital mechanism, this too shall offer encryption-level security. This information shall be provided to the recipient of professional services.

7. NCCs shall screen potential distance service recipients for appropriateness to receive services via distance methods. These considerations shall be documented in the records.
8. During the screening or intake process, NCCs shall provide potential recipients with a detailed written description of the distance counseling process and service provision. This information shall be specific to the identified service delivery type and include considerations for that particular individual. These considerations shall include the appropriateness of distance counseling in relation to the specific goal, the format of service delivery, the associated needs (i.e., computer with certain capabilities, etc.), the limitations of confidentiality, the possibility of technological failure, anticipated response time to electronic communication, and any additional considerations necessary to assist the potential recipient in reaching a determination about the appropriateness of this service delivery format for their need(s).
9. Because of the ease in which digital communications can inadvertently be sent to other individuals, NCCs shall adopt behaviors to prevent the distribution of confidential information to unauthorized individuals. NCCs shall discuss actions the recipient may take to reduce the possibility that they will send information to other individuals by mistake.
10. NCCs shall provide recipients of distance professional services with information concerning their professional credentials and links to the respective credentialing organization Web sites.
11. NCCs, either prior to or during the initial session, shall inform recipients of the purposes, goals, procedures, limitations, potential risks, and benefits of services and techniques. NCCs also shall provide information about rights and responsibilities as appropriate to the counseling setting. As a part of this type of service provision, NCCs shall discuss with recipients the associated challenges that may occur when communicating through distance means.
12. In the event that the recipient of distance services is a minor or is unable to provide legal consent, the NCC shall obtain a legal guardian's consent prior to the provision of distance services. Furthermore, NCCs shall retain copies of documentation indicating the legal guardian's identity in the recipient's file.
13. NCCs shall avoid the use of public social media sources (e.g., tweets, blogs, etc.) to provide confidential information. To facilitate the secure provision of information, NCCs shall provide in writing the appropriate ways to contact them.
14. NCCs shall provide recipients of distance services with specific written procedures regarding emergency situations. This information shall include emergency responders near the recipient's home location. Given the increased dangers intrinsic to providing certain distance professional services, NCCs shall take reasonable steps to secure reasonable referrals for recipients when needed.
15. NCCs shall develop written procedures for verifying the identity of the recipient at each instance of receiving distance services. Examples of verification means include the use of code words or phrases.
16. NCCs shall limit use of information obtained through social media sources (e.g., Facebook, LinkedIn, Twitter, etc.) in accordance with established practice procedures provided to the recipient at the initiation of services.
17. NCCs shall provide information concerning locations where members of the public may access the internet free of charge or provide information regarding the location of complimentary Web communication services.
18. NCCs shall retain copies of all written communications with distance service recipients. Examples of written communications include e-mail/text messages, instant messages and histories of chat-based discussions even if they are related to housekeeping issues such as change of contact information or scheduling appointments.

19. At a minimum, NCCs shall retain distance service records for a minimum of five years unless state laws require additional time. Due to the nature of most distance services, it may be convenient for NCCs to retain records for longer durations, and thus may be considered useful for research or other professional activities. NCCs shall limit the use of records to those permitted by law, professional standards and as specified by the agreement with the respective recipient of distance services.
20. In recognition of the inherent ethical implications which may arise, NCCs shall develop written procedures for the use of social media and other related digital technology with current and former recipients. These written procedures shall, at a minimum, provide appropriate protections against the disclosure of confidential information and the creation of multiple relationships. These procedures shall also stipulate that personal accounts be distinct from any used for professional purposes.

Approved by the NBCC Board of Directors: July 31, 2012
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Attachment H

Excerpts from CAMFT and AAMFT Codes of Ethics Related to Telehealth

California Association of Marriage and Family Therapists (CAMFT) Code of Ethics (May 2002, March 2011)

1.4.2 ELECTRONIC THERAPY: When patients are not physically present (e.g., therapy by telephone or Internet) during the provision of therapy, marriage and family therapists take extra precautions to meet their responsibilities to patients. Prior to utilizing electronic therapy, marriage and family therapists consider the appropriateness and suitability of this therapeutic modality to the patient's needs. When therapy occurs by electronic means, marriage and family therapists inform patients of the potential risks, consequences, and benefits, including but not limited to, issues of confidentiality, clinical limitations, transmission difficulties, and ability to respond to emergencies. Marriage and family therapists ensure that such therapy complies with the informed consent requirements of the California Telemedicine Act.

2.3 ELECTRONIC MEDIA: Marriage and family therapists are aware of the possible adverse effects of technological changes with respect to the dissemination of patient information, and take care when disclosing such information. Marriage and family therapists are also aware of the limitations regarding confidential transmission by Internet or electronic media and take care when transmitting or receiving such information via these mediums.

3.11 ELECTRONIC SERVICES: Marriage and family therapists provide services by Internet or other electronic media to patients located only in jurisdictions where the therapist may lawfully provide such services.

American Association for Marriage and Family Therapy (July 1, 2012)

1.14 ELECTRONIC THERAPY: Prior to commencing therapy services through electronic means (including but not limited to phone and Internet), marriage and family therapists ensure that they are compliant with all relevant laws for the delivery of such services. Additionally, marriage and family therapists must: (a) determine that electronic therapy is appropriate for clients, taking into account the clients' intellectual, emotional, and physical needs; (b) inform clients of the potential risks and benefits associated with electronic therapy; (c) ensure the security of their communication medium; and (d) only commence electronic therapy after appropriate education, training, or supervised experience using the relevant technology.

2.7 PROTECTION OF ELECTRONIC INFORMATION: When using electronic methods for communication, billing, recordkeeping, or other elements of client care, marriage and family therapists ensure that their electronic data storage and communications are privacy protected consistent with all applicable law.

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NATIONAL ASSOCIATION OF SOCIAL WORKERS
ASSOCIATION OF SOCIAL WORK BOARDS

NASW & ASWB Standards for

Technology

and Social Work Practice



2005

NASW & ASWB Standards for

Technology

and Social Work Practice

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About the Associations

The **National Association of Social Workers (NASW)** is the largest membership organization of professional social workers in the world. Membership in NASW includes over 150,000 social workers from 50 states, the District of Columbia, New York City, the U.S. Virgin Islands, Guam, Puerto Rico, and U.S. social workers practicing abroad. The mission of NASW is to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies.

The **Association of Social Work Boards (ASWB)** is the association of jurisdictional boards that regulate social work. Membership in ASWB includes 49 states, the District of Columbia, the U.S. Virgin Islands, and the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec, and Saskatchewan. The mission of ASWB is to assist social work regulatory bodies in carrying out their legislated mandates and to encourage jurisdictional efforts to protect a diverse public served by social workers who are regulated through common values, ethics, and practice standards.

Preface

The **National Association of Social Workers (NASW)** and **Association of Social Work Boards (ASWB)** have developed *Standards for Technology and Social Work Practice* to create a uniform document for the profession. Technology has changed social work practice offering new ways to perform services and obtain information. The challenges that it brings require a special set of skills and knowledge to provide the best practice available.

The standards apply to the use of technology as an adjunct to practice, as well as practice that is exclusively conducted with technology. The *NASW Code of Ethics* and the *ASWB Model Social Work Practice Act* served as foundation documents in developing these standards, along with a variety of other sources. The standards use a humanistic values framework to ensure that ethical social work practice can be enhanced by the appropriate use of technology.

The specific goals of the standards are:

- to maintain and improve the quality of technology-related services provided by social workers
- to serve as a guide to social workers incorporating technology into their services
- to help social workers monitor and evaluate the ways technology is used in their services
- to inform clients, government regulatory bodies, insurance carriers, and others about the professional standards for the use of technology in the provision of social work services.

Special Note: The order in which the standards appear does NOT reflect their order of importance.

Contents

3	Introduction
4	Ethics and Values
5	Access
6	Cultural Competence and Vulnerable Populations
7	Technical Competencies
8	Regulatory Competencies
9	Identification and Verification
9	Privacy, Confidentiality, Documentation, and Security
10	Risk Management
11	Practice Competencies
11	Advocacy and Social Action
12	Community Practice
13	Administrative Practice
14	Clinical Competencies
15	Research
16	Supervision
17	Continuing Education
18	Glossary of Terms
21	References

Technology and social work practice, when used in these standards, is defined as any electronically mediated activity used in the conduct of competent and ethical delivery of social work services.

The past two decades have witnessed an immense expansion of the use of information technology in social work practice. This expansion has affected nearly every area of the profession: At the individual practitioner level, e-mail and the Web make Internet-mediated direct practice possible on a global scale; social workers and clients can uncover vast Web-based sources for information that can enhance the likelihood of effective interventions; support groups for people at risk can be easily created and moderated. At the agency level, case management programs can generate reports, track personnel, automate billing, forecast budgets, and greatly assist service planning and delivery; global-level consultation and conference abilities are at hand; emerging geographic information systems can pinpoint community assets and needs. The future promises even more changes: automated interventions that do not require the direct involvement of the worker are emerging, and wireless technologies are facilitating social work in the field. These current and near-future technologies are changing the nature of professional social work practice in countless ways.

As a result, the roles for social workers are changing and they may need to adjust to the new demands for practice in the information

age. Social workers should acquire adequate skills that use technology appropriately, and adapt traditional practice protocols to ensure competent and ethical practice.

Several critical issues need to be addressed: many technologies are powerful but fragile; crucial information can be lost or intercepted; not all Web sites providing information are reliable; service providers can easily misrepresent themselves and their credentials online; confidentiality in an electronic medium can quickly evaporate; jurisdiction, liability and malpractice issues blur when state lines and national boundaries are crossed electronically; numerous digital divides can thwart access and success; and clients and social workers alike may have unrealistic expectations for what a technology can actually provide.

Standards for Professional Practice

Standard 1. Ethics and Values

Social workers providing services via the telephone or other electronic means shall act ethically, ensure professional competence, protect clients, and uphold the values of the profession.

Interpretation

Social workers should ensure that services conform to all practice and regulatory standards addressing ethical conduct and protection of the public. The NASW *Code of Ethics*, licensing laws, and regulations from licensing boards set forth principles and standards to guide the conduct of social

workers, establish basic competencies, and allow for the evaluation of both. The NASW *Code of Ethics* also sets forth explicit standards for social work conduct in all practice arenas. Social workers providing services through electronic means should know about the codes, standards, practices, and values and incorporate them into their practices.

The potential for harm or abuse of vulnerable people can be increased because of the lack of a face-to-face relationship with the social worker. Therefore, the social worker should make every effort to ensure that the use of technology conforms to all practice and regulatory standards addressing ethical conduct and protection of the public.

Standard 2. Access

Social workers shall have access to technology and appropriate support systems to ensure competent practice, and shall take action to ensure client access to technology.

Interpretation

Many “digital divides” can limit access for social workers and clients. Unavailable or obsolete equipment or software can make access difficult, while use of policies, privacy and security features, language issues, and the reading comprehension levels required may thwart access entirely. Even when such issues are adequately addressed, people with disabilities often have additional support needs. Social workers should advocate for both themselves and for clients to resolve access problems.

Social workers should ensure that adequate risk-reducing precautions are in place that will protect clients. All communications directed toward clients need to be written at a level and in a manner that is culturally competent and easily understood. Access for people with disabilities should conform to standards.

Standard 3. Cultural Competence and Vulnerable Populations

Social workers shall select and develop appropriate online methods, skills, and techniques that are attuned to their clients' cultural, bicultural, or marginalized experiences in their environments. In striving for cultural competence, social workers shall have the skills to work with a wide range of people who are culturally different or who may be considered a member of a vulnerable population, such as people with disabilities and racial, ethnic, and sexual minority status, and those whose primary language may not be English.

Interpretation

The social work profession has espoused a commitment to diversity, inclusion, and affirmative action. Social workers possess specialized knowledge regarding the influence of social and cultural discrimination for people of racial, ethnic, religious, sexual minority status, and people with physical and mental disabilities. Electronic communication can provide access to information, referral, advocacy services, and interpersonal communication; however, social workers should be aware of the cultural contexts of global social work services. This requires the continuous development of specialized

knowledge and understanding of the history, traditions, values, family systems, and artistic expressions of major client groups served through technology. Geographical barriers are inherently absent on the Internet. Client perspectives of therapy and service delivery via technology may differ. Because of the social isolation often experienced by people in vulnerable populations, social workers should be aware of the potential for exploitation and misuse of electronic methods with these individuals and families. In addition, culturally competent social workers should know the strengths and limitations of current electronic modalities, process and practice models, to provide services that are applicable and relevant to the needs of culturally and geographically diverse clients and members of vulnerable populations.

Standard 4. Technical Competencies

Social workers shall be responsible for becoming proficient in the technological skills and tools required for competent and ethical practice and for seeking appropriate training and consultation to stay current with emerging technologies.

Interpretation

Numerous technologies are available to social workers to establish, enhance, and deliver services; conduct research; and circulate information. They represent a new method of agency administration and service delivery. Computer-based software helps social workers track client services and outcomes. Technical systems are increasingly available to support ongoing routines and standard operating procedures vital for agency functioning and

efficiency. These technologies include tools such as budget planning, assessment, client record keeping, reimbursement, delivery of information to the community, research, and service delivery.

Standard 5. Regulatory Competencies

Social workers who use telephonic or other electronic means to provide services shall abide by all regulation of their professional practice with the understanding that their practice may be subject to regulation in both the jurisdiction in which the client receives services as well as the jurisdiction in which the social worker provides services.

Interpretation

The practice of professional social work is regulated in some manner in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and other countries. Social workers should be aware of the laws, rules or other regulations that govern their work. They should comply with applicable regulation in all jurisdictions in which they practice. Social workers should understand that in some jurisdictions, the delivery of social work services is deemed to take place at the location of the client. It is the social worker's responsibility to contact the regulatory board(s) of intent to provide services and find out what requirements are necessary to provide services legally in those jurisdictions.

Standard 6. Identification and Verification

Social workers who use electronic means to provide services shall represent themselves to the public with accuracy and make efforts to verify client identity and contact information.

Interpretation

Social workers should advertise and perform only those services they are licensed, certified, and trained to provide. The anonymity of electronic communication makes misrepresentation possible for both social workers and consumers of social work services. Because of the potential misuse by unqualified individuals, it is essential that information be readily verifiable to ensure client protection. Web sites should provide links to all appropriate certification bodies and licensing boards to facilitate verification. Social workers need to provide their full name, credentials, licensure information, office address and phone number, and e-mail address. In addition, each party should plan for technology failures by providing alternate ways of making contact.

Standard 7. Privacy, Confidentiality, Documentation, and Security

Social workers shall protect client privacy when using technology in their practice and document all services, taking special safeguards to protect client information in the electronic record.

Interpretation

During the initial session, social workers should provide clients with information on the use of technology in service delivery. Social workers should obtain client confirmation of

notice of privacy practices and any authorizations for information disclosure and consents for treatment or services. Social workers should be aware of privacy risks involved when using wireless devices and other future technological innovations and take proper steps to protect client privacy.

Social workers should adhere to the privacy and security standards of applicable laws such as the Health Insurance Portability and Accountability Act (HIPAA) and other jurisdictional laws when performing services electronically. These laws address electronic transactions, patient rights, and allowable disclosure and include requirements regarding data protection, firewalls, password protection, and audit trails.

Social workers should give special attention to documenting services performed via the Internet and other technologies. They should be familiar with applicable laws that may dictate documentation standards in addition to licensure boards, third-party payers, and accreditation bodies. All practice activities should be documented and maintained in a safe, secure file with safeguards for electronic records.

Standard 8. Risk Management

Social workers providing services through the use of the telephone or other electronic means shall ensure high-quality practices and procedures that are legally sound and ethical to protect clients and safeguard against litigation.

Interpretation

Social workers shall provide a standard of care that is consistent with the NASW *Code of Ethics*, licensing laws, applicable organization policies and procedures, relevant criminal laws, and regulations for businesses and the practice of fair trade. Records should be accurate and reflect the standard of care provided. It is particularly important when providing services using electronic means to document client authorization for disclosure and informed consent. Key issues such as communication guidelines (timing and length of e-mails), security mechanisms (encryption, firewalls and pass codes), and actions to ensure fair and equitable fees should be addressed.

Adequate technical and policy supports including privacy and security procedures, protocols, and technologies should be in place to ensure protection of the clients, social workers, and the organization.

Standard 9. Practice Competencies

9-1. Advocacy and Social Action

Social workers shall use technology to inform and mobilize communities about policies that will benefit individuals and groups and seek to provide tools, opportunities, and information so that clients are able to advocate directly for their own interests.

Interpretation

Social work has a rich tradition of both collective advocacy for social change and case advocacy to improve the services provided to an individual, family, group, organization, or community. Various technologies are increasingly being used to monitor legislative

and regulatory activities, to communicate political messages, and to mobilize citizens to take action. The Internet has become a powerful tool to access information about public policy and to communicate quickly to large numbers of coalition partners and individual activists. Citizens can communicate instantaneously with elected officials through e-mail and FAX. Voter registration is now offered on many Web sites, including NASW's, to promote civic participation. On an individual case advocacy level, a social worker, using Internet resources, can more easily assist clients in navigating systems of care. In addition to informational resources, social workers can assist clients by using online application processes and services, and by providing access to support networks.

9-2. Community Practice

Social workers shall advocate for the adoption and use of relevant technologies that will enhance the well-being of communities.

Interpretation

Social workers are in a unique position to ensure that technological innovations are culturally sensitive and attuned to the characteristics and needs of the specific community. Technologies such as e-mail groups, resource-rich Web sites, databases, and geographic information systems can assist practice within real and virtual communities. It is the social worker's responsibility to be aware of technology that may facilitate community well-being and to advocate for adoption of innovative systems when appropriate. If resources are not available, the social worker should advocate for securing

them. When technical support is not forthcoming, the social worker should work to see that this support is made available and that there are systems in place that will foster consistency and permanency. Social workers should strive to ensure access to technology and the benefits of technology for all members of the community.

9-3. Administrative Practice

Social workers shall keep themselves informed about technology that will advance quality program operations and service delivery, invest in and maintain such systems, and establish policies to ensure access, appropriate security, and privacy in agency information systems.

Interpretation

Technology is the backbone of agency administration. Electronic systems are essential for routine operations as well as applications designed to enhance forecasting, long-range planning, and project management. Major tasks, vital routines, ongoing communications, and agency outreach can be facilitated and enhanced through the use of databases, the Internet, and other technologies. When used appropriately, technology can help an agency accomplish its mission in a cost-effective way.

Access to adequate technology can be problematic for underfunded organizations, yet it is important that appropriate use of technology be an integral part of short- and long-term organizational goals. Although the costs of hardware, software, personnel, and training can be daunting, technical systems

planning and maintenance should be a routine part of the regular budgeting process.

The agency administrator should be attentive to related issues of information security and confidentiality. The provision of ethical and safe practice should be the driving force behind security and confidentiality policies that carefully address elements ranging from information exchange with third parties, to collaboration, fiscal transactions, and even the physical layout of workstations and other office equipment.

A risk-management plan is highly recommended, and should include protocols and policies for all technologies used by the agency for all administrative, managerial, and social worker–related purposes.

9-4. Clinical Competencies

Social workers shall strive to become and remain knowledgeable about the dynamics of online relationships, the advantages and drawbacks of non-face-to-face interactions, and the ways in which technology-based social work practice can be safely and appropriately conducted.

Interpretation

The Internet has become a means for providing individual, group, and family therapy. Social workers should be aware, however, that the possibility of a client suffering harm or loss remains present in any therapeutic encounter. Social workers should fully evaluate potential clients for appropriateness for online social work interventions, and if it is determined that such

methods would be appropriate, the social worker should provide the best online assessments and interventions possible.

The process of assessment for online therapy may be similar to assessment for in-person therapy. It is critical to obtain client background, history of presenting problem and previous records if necessary (with confirmation of the client's consent). Social workers should take responsibility for keeping current with emerging knowledge, review professional literature, and participate in continuing education relevant to technology-based clinical practice. The social worker should provide a contingency plan for clinical emergencies or technology failures.

Assessment is the key to appropriate intervention in all social work areas. Information technology allows assessments to be more complex and informed. Social workers should use only assessment instruments that are valid, reliable, and free from cultural bias.

Social workers should be aware of the special protection given to psychotherapy notes by HIPAA.

9-5. Research

Social workers conducting, evaluating, disseminating, or implementing research using technological approaches shall do so in a manner that ensures ethical credibility and ensures the informed consent of the participant.

Interpretation

The NASW *Code of Ethics* is a statement of values and guidelines for conducting, evaluating, disseminating and implementing research in practice. When engaging in electronically mediated research such as survey research on the Web or other electronic inquiries, participant-related safeguards should be applied. Human subjects review procedures should be followed rigorously to protect participants from harm and to monitor informed consent protocols.

When using research gained from electronic sources, the social worker has the obligation to evaluate the credibility and limitations of the research. This includes establishing and verifying authorship and sponsorship; the credentials and competencies of the researchers; the reliability, validity, and limitations of the research; and the accuracy of the reported findings or results. Social workers should carefully consider research based on these dimensions, and if doubt arises on any of them, then the social worker should use the information with caution, if at all.

9-6. Supervision

When using or providing supervision and consultation by technological means, social work supervisors and supervisees shall follow the standards that would be applied to a face-to-face supervisory relationship and shall be competent in the technologies used.

Interpretation

Social workers should follow applicable laws regarding direct services, case, or clinical supervision requirements and the use of

technology for the purposes of licensure. Supervision for purposes of licensure is governed by regulatory boards that may have specific definitions and requirements pertaining to the use of technology in supervision. Social workers receiving supervision for the purposes of licensure have a responsibility to become familiar with these definitions and meet the requirements. Third-party payers and professional entities may have additional requirements that need to be followed.

Social workers should retain a qualified supervisor or consultant for technology concerns that may arise. When using technology for client services, proper training should be obtained to become familiar with the technologies being used. As with all supervisor–supervisee relationships, the supervisor may share the responsibility for services provided and may be held liable for negligent or inadequate practice by a supervisee.

Standard 10. Continuing Education

Social workers shall adhere to the NASW *Standards for Continuing Professional Education* and follow applicable licensing laws regarding continuing education delivered via electronic means.

Interpretation

Continuing education represents learning opportunities beyond the entry-level degree to enable social workers to increase their skill proficiency and level of knowledge. Typically, social work continuing education is a self-directed process in which social workers

should assume responsibility for their own professional development. Examples of technology-based continuing education can include any courses, lectures, seminars, etc., mediated by technology, including, but not limited to computer-based training, online courses, Web-based or satellite televised workshops/seminars. In taking or instructing continuing education programs via technology, access issues demand particular attention: Participants should be able to access technical support services as well as social work professionals who can answer content questions. Online scoring systems should provide feedback to the participant. It is also essential to maintain course records as a backup in case of technology failure. Providers should develop a method to authenticate users with professional license number or NASW membership number.

Glossary of Terms

Client

The individual, group, family, organization, or community that seeks or is provided with professional social work services.

Confidentiality

A basic principle of social work intervention and counseling. It ensures the client system that the social worker client–relationship and information provided by the client will remain private unless the client gives written authorization to the social worker for its release.

Electronic

A mode of communication and information acquisition, transmission, and storage, such as used in computers, telephones, cell phones, personal digital assistants, facsimile machines, etc.

HIPAA (Health Insurance Portability and Accountability Act of 1996)

A set of standards that protects electronic health information through the implementation of privacy and security rules and the establishment of electronic transactions and code sets. It also ensures the continuity of health insurance coverage and increases federal and state governments' enforcement authority over protected health information.

Information Technology (IT)

The overarching term to describe technologies that process information, most often in electronic form.

Internet

A worldwide network of computer networks that share information.

Online

A mode of communication where the user is in direct contact with the computer network to the extent that the network responds rapidly to user commands.

Privacy

The right of an individual to withhold her/his information from public scrutiny or unwanted publicity.

Risk Management

The practice of competent social work services and accurate documentation of practice decisions and interventions to avoid litigation.

Security

The protection of hardware, software, and data by locks, doors, and other electronic barriers such as passwords, firewalls, and encryption.

Technology

A set of prescribed events that are embedded in hardware, software, or telecommunications and that direct activities, decisions, or choices. Sometimes technology is divided into hard technologies, such as switches and electronics, and soft technology such as the processes and procedures associated with accounting or risk assessment.

World Wide Web (WWW or Web)

A subset of the Internet that allows access using a standard graphical protocol.

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ATTACHMENT J
Board of Occupational Therapy Telehealth Regulations

California Board of Occupational Therapy
Department of Consumer Affairs

Title 16, Division 39, California Code of Regulations

ORDER OF ADOPTION

Proposed new text is underlined.

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth consistent with Section 2290.5 of the Code.

(c) Prior to providing occupational therapy services via telehealth:

(1) an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a therapist must be available if an onsite visit is required and;

(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined that in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

(d) In making the determination whether an in-person evaluation or in-person interventions are necessary, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

(e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

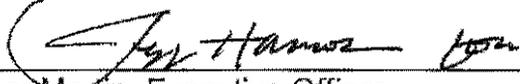
(2) Provide services consistent with section 2570.2(k) of the Code; and

(3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

(f) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

DATE: December 30, 2013



Heather Martin, Executive Officer
California Occupational Therapy Board

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To: Committee Members **Date:** September 11,
2014

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

Subject: Review of Board Sponsored and Monitored Legislation

BOARD-SPONSORED LEGISLATION

Board staff is currently sponsoring 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.

Status: This bill is enrolled and is awaiting consideration by the Governor.

2. **SB 1466: Omnibus Legislation (Senate Business, Professions, and Economic Development Committee)**

This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

Status: This bill was signed by the Governor (Chapter 316, Statutes of 2014).

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.

Status: This bill was signed by the Governor (Chapter 283, Statutes of 2014).

BOARD-SUPPORTED LEGISLATION

AB 809 (Logue): Healing Arts: Telehealth

This bill would correct some deficiencies and make some clarifying amendments to the existing telehealth law.

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill is enrolled and is awaiting consideration by the Governor.

AB 1775 (Melendez): Child Abuse and Neglect Reporting Act: Sexual Abuse

This bill would make downloading, streaming, or accessing through electronic or digital media, material in which a child is engaged in an obscene sexual act a mandated report under the Child Abuse and Neglect Reporting Act (CANRA).

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill was signed by the Governor (Chapter 264, Statutes of 2014).

AB 2058 (Wilk): Open Meetings

This bill would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if the body is a standing committee with a continuing subject matter jurisdiction, or if the body has a meeting schedule fixed by formal action of a state body.

At its May 22, 2014 meeting, the Board took a “support” position on this bill.

Status: This bill is enrolled and is awaiting consideration by the Governor.

SB 909 (Pavley): Dependent Children: Health Screenings

This bill clarifies that a social worker may authorize a noninvasive initial medical, dental, and mental health screening for a child taken into temporary custody by a county welfare agency due to an immediate danger.

At its May 22, 2014 meeting, the Board adopted a “support” position on this bill.

Status: This bill is dead.

SB 578 (Wyland): Marriage and Family Therapists: Records Retention

This bill would require a licensed marriage and family therapist to retain patient records for a minimum of seven years from the date therapy is terminated.

At its May 22, 2014 meeting, the Board adopted a “support if amended” position on this bill, requesting that it be amended to include the Board’s other license types. The bill has since been amended to satisfy this request.

Status: This bill was signed by the Governor (Chapter 312, Statutes of 2014)

SB 1012 (Wyland): Marriage and Family Therapists: Trainees

This bill would increase the hours of supervised experience that a marriage and family therapist intern (MFT intern) may count toward licensure, from five hours per week to six hours per week.

At its May 22, 2014 meeting, the Board adopted a “support if amended” position on this bill, requesting the following additional amendments:

1. An amendment to the law for licensed professional clinical counselor interns (LPCC interns) to allow them to count six hours per week of supervised experience as well;
2. An amendment to clarify that the amendments apply to interns, not trainees as referenced in the bill; and
3. An amendment stating that the changes made by this bill apply to supervision hours gained on or after January 1, 2009. Making the bill apply to hours gained retroactively six years back ensures that Board evaluators will not have to evaluate hours differently based on when they were gained.

The bill has since been amended to satisfy this request.

Status: This bill is enrolled and is awaiting consideration by the Governor.

THE BOARD IS MONITORING THE FOLLOWING LEGISLATION:

AB 186 (Maienschein): Military Spouses: Temporary Licenses

This bill requires a Board within DCA to issue a temporary license to an applicant who is a spouse of a military member stationed in California and who is already eligible for an expedited license.

At its meeting on June 26, 2014, the Board took an “oppose unless amended” position on this legislation, asking that the Board be removed from the requirements of this bill.

Per the Board’s request, this bill was amended on August 20, 2014 to remove the Board from its requirements.

Status: This bill is enrolled and is awaiting consideration by the Governor.

AB 1505 (Garcia): Child Abuse: Mandated Reporters

This bill specifies that consensual acts of sodomy and oral copulation are not acts of sexual assault that must be reported by a mandated reporter, unless it involves either a person over 21 or a minor under 16.

This bill died just before the Board was able to take a position at its May 22, 2014 meeting. However, the bill was discussed at the meeting as its content affects mandated reporting requirements for Board licensees. The author’s office has indicated they are interested in future legislation regarding this topic. Therefore, the Board directed staff to participate in the stakeholder process if there are future legislative efforts.

Status: This bill is dead.

AB 1702 (Maienschein): Professions and Vocations: Incarceration

This bill would prohibit a board under DCA from denying or delaying an application solely on the grounds that some or all of the licensure requirements were completed while the individual was incarcerated.

At its May 22, 2014 meeting, the Board took a “support if amended” position on this bill, and asked that the Board be removed from the bill.

Status: This bill is enrolled and is awaiting consideration by the Governor.

AB 2198 (Levine): Mental Health Professionals: Suicide Prevention Training

This bill would require Board licensees to complete a six-hour training course in suicide assessment, treatment, and management. It would also require new applicants who began graduate study after January 1, 2016 to take a 15-hour course in this subject area.

At its May 22, 2014 meeting, the Board took a “oppose unless amended” position on this bill. The Board requested the bill be amended to form a task force to include members of this Board, its stakeholders, the Board of Psychology, county mental health officials, and university educators.

Status: This bill is enrolled and is awaiting consideration by the Governor.

AB 2396 (Bonta): Expungement: Licenses

This bill would prohibit the Board from denying a license solely based on the applicant having certain types of convictions that have been expunged.

At its May 22, 2014 meeting, the Board took an “oppose” position on this bill.

Status: This bill is enrolled and is awaiting consideration by the Governor.

SB 570 (DeSaulnier): Advanced Alcohol and Drug Licensing Act

This bill establishes the Advanced Alcohol and Drug Counselor Licensing Board within DCA for the purposes of licensing and regulating Advanced Alcohol and Drug Counselor Interns and Licensed Advanced Alcohol and Drug Counselors.

The Board held a meeting on July 11, 2014, where the Board adopted a “support if amended” position on this bill. The Board identified several concerns which it requested the author’s office consider in order to ensure public protection:

- Require a master’s degree for a license, even in the grandparenting period.
- Establish a secondary licensing designation, possibly requiring supervision, for an individual who does not possess a master’s degree; and
- Clarify that the license types established in the bill are subject to SB 1441 (Ridley-Thomas, Statutes of 2008), which establishes uniform standards for substance abusing licensees that all healing arts boards under DCA must abide by.

At the July 11, 2014 meeting, the Board also voted to take an “oppose” position on this bill if it were amended to place this licensing program under the Board of Behavioral Sciences.

Status: This bill is dead.

Updated: September 11, 2014.

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To: Committee Members

Date: September 11, 2014

From: Christy Berger
Regulatory Analyst

Telephone: (916) 574-7817

Subject: Rulemaking Update

CURRENT REGULATORY PROPOSALS

Continuing Education: Amend Title 16, California Code of Regulations (CCR) Sections 1887, 1887.1, 1887.3, 1887.4, 1887.11; Add Sections 1887.41, 1887.42, 1887.43; Delete Sections 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.13, 1887.14

This proposal would make a number of changes to the Board's continuing education program. These proposed changes are based on the recommendations of the Board's Continuing Education Committee, which was formed in 2011 in response to a number of concerns raised about continuing education.

This proposal was approved by the Board at its meeting on February 28, 2013. The Notice was filed with the Office of Administrative Law (OAL) for publication, and the 45-day public comment period ended on October 22, 2013. The proposal was sent through the typical regulatory review process, which includes the Department of Consumer Affairs (DCA), the Business, Consumer Services and Housing Agency, and the Department of Finance.

After approval by those entities, the final proposal was submitted to OAL, who required several changes to the proposed text. The 15-day public comment period for these changes ended on July 18, 2014. The revised proposal is now awaiting final consideration by OAL.

Disciplinary Guidelines and SB 1441: Uniform Standards for Substance Abuse: Amend Title 16, CCR Section 1888

This is a regulatory proposal that the DCA and the Legislature have asked all healing arts licensing boards to pursue. It creates uniform standards for discipline that the boards must follow in cases of licensee or registrant substance abuse. This proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for handling cases that involve licensees or registrants who abuse drugs or alcohol.

This proposal was initially approved by the Board at its meeting in November 2012. A revised proposal was approved by the Board at its meeting in March 2014.

The Notice was filed with OAL for publication, and the 45-day public comment period ended on July 8, 2014. After the close of the public comment period, the proposal was submitted to DCA for review. DCA requested some changes to the proposal, which were approved by the Board at its August 2014 meeting. A 15-day public comment period is required due to these changes, which will end on September 17, 2014.

Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families: Amend Title 16, CCR Sections 1820.5 and 1822; Add Sections 1820.6 and 1820.7

This proposal clarifies requirements for LPCCs to treat couples and families, and outlines a process by which LPCCs and PCC Interns would receive Board confirmation that they have met the requirements to treat couples and families.

The final proposal was approved by the Board at its meeting in May 2014. Staff is developing materials that are required for submission of the proposal to OAL for publication, which will begin the 45-day public comment period.

Implementation of SB 704 (Examination Restructure): Amend Title 16, CCR Sections 1805, 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Sections 1805.01, 1822.5, 1822.6, 1830, 1878

This proposal would revise Board regulations for consistency with statutory changes made by SB 704¹, which restructures the examination process for LMFT, LCSW, and LPCC applicants effective January 1, 2016.

This proposal was originally approved by the Board at its meeting in February 2013, and published in its California Regulatory Notice Register on March 15, 2013. However, the proposal was withdrawn in May 2013, as staff learned of implementation conflicts with the new BreEZe database system. For this reason, the effective date of the restructure was delayed until 2016².

The final proposal was approved by the Board at its meeting in August 2014. Staff is developing materials that are required for submission of the proposal to OAL for publication, which will begin the 45-day public comment period.

¹ Chapter 387, Statutes of 2011

² SB 821 (Chapter 473, Statutes of 2013)