

(approved January 12, 2001)

**BOARD OF BEHAVIORAL SCIENCES
FULL BOARD
MEETING MINUTES**

NOVEMBER 10, 2000

**AIRTEL PLAZA AND CONFERENCE CENTER
7277 VALJEAN AVENUE
VAN NUYS, CA**

MEMBERS PRESENT

Selma Fields, MFT Member, Board Chair
Christina Chen, Public Member
Virginia Laurence, LCSW Member
Karen Pines, MFT Member
Howard Stein, Public Member

MEMBERS ABSENT

STAFF PRESENT

Sherry Mehl, Executive Officer
LaVonne Powell, Legal Counsel
Julie McAuliffe, Administrative Analyst

GUEST LIST ON FILE

The meeting was called to order at 9:30 a.m.

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. McAuliffe called the roll and a quorum was not established.

**2. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126(C)(3) TO
DELIBERATE ON DISCIPLINARY DECISIONS**

The Board did not meet in closed session.

3. APPROVAL OF MINUTES

Due to lack of a quorum, the Board could not approve the minutes of August 24-25, 2000. These minutes were deferred to the January meeting.

4. CHAIRPERSON'S REPORT

Ms. Fields stated that the public's presence was very meaningful to the Board. She then expressed her regret at the loss of Board member Marsena Buck and stated how much she had contributed to the Board.

5. EXECUTIVE OFFICER'S REPORT

a. Budget Update

The most current budget information was included in the meeting materials. Ms. Mehl stated that the budget is sufficient so far this year. There had been an increase in the attorney generals costs from \$98.00 to \$106.00 per hour. The Budget Change Proposal (BCP) for next year's occupational analysis for the marriage and family therapist examinations passed through the Department of Consumer Affairs and the Department of Finance. This BCP will go to the Legislature in the spring for final approval. Our fund balance is still doing very well. We have projected that, even with the lowered license renewal fees, we will still have a substantial balance. The fund balance will be reassessed in a year to determine if the renewal fees need to remain at a reduced rate for another two years.

b. Miscellaneous Matters

1. Continuing Education Program Report Submitted to the Legislature

The report on the status of the Continuing Education Program, as required by the Legislature, was submitted to the Chief Clerk's office in September.

2. Update on Website/Technology Projects

The website statistics continue to grow. There have been almost 500,000 hits to our website so far this year. The breakdown of categories visited most often was included in the meeting materials. For the month of September the laws and regulations received 6,380 hits, online verifications received 4,154 hits, forms and publications received 2,405 hits, and the license requirements received 1,986 hits. Even though we received the amount of hits on the online verification feature, there is still a full time staff person who prepares verifications that are received by mail or by fax. This feature on the website has been a great benefit to consumers who are looking to ensure that their therapist is licensed and for verification by insurance companies. The forms and applications are continuing to be downloaded as well as being sent from the office. The fax on demand will be operational soon and will allow people to receive forms twenty-four hours a day.

E-Commerce/Government technology projects currently being researched include projects that will allow licensees to renew their license on line, on line surveys which may include the occupational analysis and would allow people to e-mail their survey responses directly to the Board, and enhancing all Adobe PDF forms to allow people to complete the form directly on line and to either print out or send directly to the Board via e-mail. Telecom is researching a new phone system for possible use in the Board office. We are continuing to meet the Department's mandate regarding E-Government by making it as convenient as possible for the public to access all of the Board information. Ms. Mehl stated that

although all of these features are available on the website, this convenience has not diminished the workload of staff.

Ms. Mehl stated that she attended the American Association of Marriage and Family Therapist Regulatory Boards (AAMFTRB) conference in Denver Colorado in November. She indicated that it was very interesting to attend a conference with all of the regulatory boards in the country and realize how massive California is in comparison to the other states licensing populations. For example, the state of Texas only has 4,000 Marriage and Family Therapist licensees and we currently have 24, 563. Many of the states have fewer than 250 licensees. We have more in our state than an accumulation of all other states. The other states are so very impressed with the growth of California and it was very interesting to hear the differences in the profession and realize there really is no comparison to California.

6. 2001 LEGISLATION PROPOSALS

The draft 2001 legislation proposals were included in the meeting packet. Ms. Mehl stated that the majority of the proposals are clean up legislation. The proposals were separated into categories. These categories were legislation that is in need of an author and legislation that was submitted to the Department for possible inclusion in their 2001 Omnibus bill. Ms. Powell, Legal Counsel for the Board, suggested that the proposal to change the license title from marriage, family, and child counselor to marriage and family therapist throughout all California laws be submitted to Legislative Counsel for inclusion in their clean up bill.

Ms. Mehl stated that the concepts, which initiated these law changes, had been discussed at prior meetings.

Dr. Laurence suggested that the Board approach legislators who are licensees to inquire if they are interested in carrying our legislation proposals.

HOWARD STEIN MOVED, CHRISTINA CHEN SECONDED, AND THE BOARD CONCURRED TO DIRECT STAFF TO BRING THE DRAFT PROPOSALS BACK TO THE FULL BOARD AT THE JANUARY 2001 MEETING.

7. APPROVAL OF RECORD RETENTION POLICY

Due to lack of a quorum, the Board could not approve the draft Record Retention Policy. This policy will be brought back to the full Board for a vote at the January 2001 meeting.

8. DISCUSSION AND POSSIBLE ACTION REGARDING PSYCHOTHERAPY OVER THE INTERNET

Ms. Mehl stated that the Board had directed staff to begin compiling information that could be given to consumers regarding receiving psychotherapy over the Internet and the issues consumers should verify before commencing psychotherapy through this mode. The meeting materials included a rough draft that identified some of the Board's concerns regarding psychotherapy over the Internet.

Ms. Mehl stated that the conversation at the AAMFTRB conference regarding this issue was one of confusion and misinformation. She indicated to the state representatives that California's law indicates

that a therapist must be licensed in the state where the client resides. She suggested that each state inquire with their Attorney General's office regarding this issue. She stated that some of the conference representatives have a real fear of therapy on the Internet.

Ms. Powell suggested that the draft be written more consumer friendly. She offered to re-write the material and bring it back to the full Board at the January 2001 meeting.

Dr. Stein stated that if the Board comes to a conclusion that this is not a good way to receive therapy, the Board should tell the public that in specific terms.

Ms. Fields stated that at this point, the Board is at a state of information gathering and the Board's mandate is consumer safety.

Ms. Powell suggested that we research if any complaints have been filed from people who have received therapy through this mode and that would be evidence that a particular delivery system is flawed.

Eric Lyden, a Marriage and Family Therapist representing myTHERAPYnet.com stated that he also attended the AAMFTRB conference and found that a lot of people were excited about therapy over the Internet. Some representatives from other states were very knowledgeable and had a lot of information on encryption in terms of confidentiality over the Internet and were aware of video conferencing and audio conferencing. They had many questions and this was the number one priority of discussion. He thought that the rough draft could be negative to the consumer and could indicate that there is something wrong with Internet therapy. To the best of his knowledge, he is not aware of any materials warning consumers about telephone therapy or therapy at all. He is not aware of any studies that indicate that Internet therapy is dangerous nor is he aware of a single case of unprofessional conduct by a licensee who has performed Internet therapy.

He referenced the second paragraph, which refers to people who claim to be psychotherapists, suggested that there are people who are not licensed psychotherapist, and while he believes in protection of the welfare of consumers, the consumer needs to be able to make an unbiased decision in a free immerging market. By suggesting that there are psychotherapists who are claiming to be psychotherapists who aren't, leads back to the fact that psychotherapists are responsible for themselves and that is why there are laws regarding the scope of competency, experience, training, and education and the scope of practice which includes maintaining confidentiality. The second paragraph also indicated that individuals who provide psychotherapy should be licensed to legally practice in the state where the consumer resides, and Mr. Lyden indicated this is an issue of debate. He stated that at the AAMFTRB conference many states did say that they believed that therapy takes place wherever the therapist is and not where the consumer is. He understood that this is not the position of the Board but indicated that this is the position of many other states and he did not think that the statement in the draft was accurate.

He stated that the third paragraph of the draft was negative and should include some of the possible benefits of Internet therapy such as accessing a therapist twenty-four hours a day seven days a week, if you live in a rural area you can access a therapist, or if you have a disability or phobia which prevents you from obtaining traditional therapy you can access a therapist through the Internet. Also, consumers have a greater choice in terms of choosing a therapist.

Board member Karen Pines arrived at 10:00 a.m.

Mr. Lyden continued his comments on the draft materials. He stated paragraph four suggested that consumers verify a minimum amount of information regarding identification of the person providing psychotherapy, qualifications, disclosure of ownership of the Internet site, privacy policies, confidentiality and encryption methods, quality of health information content, payment arrangements, and referral fees and accountability. He is not aware of any warnings to consumers before they receive traditional psychotherapy. For example, he is not aware that he must disclose to his client's whom he rents office space from and this draft suggests that consumers find out who owns the website. He indicated that myTHERAPYnet.com is a virtual landlord who rents space, time, and technology to therapists who want to carry out their private practice over the Internet. Regarding the privacy and encryption method information on the draft, Mr. Lyden thought that the Board was getting into an area that the Internet have already taken care of. Sites are required to be certified by the Better Business Bureau Online, by Trustee, an independent agency, and by Health on the Internet. They are required to have an extensive privacy policy and a full disclosure for all clients that are posted on the site. It is the therapist's responsibility to obtain informed consent from their client. Lastly, Mr. Lyden referred to the draft information regarding referral fees and accountability. He thought that this information was misleading to the consumer. In particular, the last paragraph in this section referenced that several issues may determine fee splitting. He indicated that he had seen the Board reference fee splitting and in the law it is called payment for referral. He stated that this is misleading because it asks if the business collects fees and there are certainly collection capabilities that people can engage in but if people are splitting a fee for a referral that is what is unethical. He then stated that he was not aware again that he is required to notify his clients who he pays for office rental space and didn't think it was required that an online therapist notify a client if they pay the owner of the website a fee for use of the site. In closing, he thought that some of the warnings in the draft would instill fear in the consumer before they have had a chance to make a conscious choice regarding online therapy.

Ms. Fields thanked Mr. Lyden for his comments and input. The Board has not made any decisions regarding this issue and indicated that the Board's charge is for the protection of the consumer and not to promote anyone's business.

Ms. Pines stated that it is the Board's duty to establish a minimum standard for this practice even though some may have already instituted a standard for carrying out this type of business. The Board must set these standards and as we are breaking new ground it is our duty to protect consumers and leave professional expansion where it is appropriate and not ignore the needs of reaching people. The Board must say something that allows the consumer to evaluate the service they are buying. There may be many variations of this service and it is necessary for the Board to determine the appropriate minimum standards for this practice.

Dr. Stein stated that the Board needs to give the consumer all the information we are aware of in order to warn them of any problems that may arise.

Dr. Laurence stated that the Board needs to get all of the facts prior to making any decisions regarding this issue. She is concerned that this delivery of psychotherapy loses all of the face to face nuances and subtleties that are part of therapy. She also had concerns regarding payment and the impossibility to regulate the practice. She then stated that she is willing to open up to the use of modern technology.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapist (CAMFT), stated that she appreciated the staff's effort in attempting to create the draft but she did have a lot of changes. She indicated that the draft needed to be directed more toward the consumer and offered to submit changes to the Board. She suggested that the once the Board created and approved a final draft, language could be added to the law or regulation that indicated the requirement of a disclosure and a reference to our website for specific information.

Geraldine Esposito, Executive Director of the California Society of Clinical Social Work, congratulated the Board on the draft. She addressed the idea of Caveat emptor. Anyone who is familiar with the Internet is aware of all of the many operations that happen and she does not think that it is inappropriate for a consumer protection Board to use the term or to emphasize to the consumer the specific things that were emphasized in the draft. Privacy is one of the major issues within the state and federal levels regarding operations on the Internet. Suggesting that consumers ask and check on the privacy of their personal information is certainly within the purview of this Board and within the State of California. She is concerned that qualified therapists in one state may not be considered qualified therapists in California. She firmly believes that the protection of the consumer should rule any decisions and information the Board may offer regarding this issue. She has heard the argument numerous times that there are clients who would not normally receive face to face therapy for whatever reason and those are exactly the vulnerable people who need all of the information the Board can offer. She does think that this can be an excellent service but there are a lot of issues that have yet to be resolved. She again congratulated the Board on being the leader on this issue.

Jose Luis Flores, Marriage and Family Therapist, stated that this is an emerging service and appreciated the Board for opening the discussion of this issue. He is a member of the Ethics Committee for CAMFT and they are currently in the process of reviewing massive amounts of literature in the hopes of creating some type of ethical guideline for Internet therapy. He thought the draft materials were negative and could be written in a less offensive manner.

Ms. Fields stated that the Board is interested in receiving all suggested changes to the draft and asked that all suggestions be submitted to the Board office prior to the January 2001 meeting.

Ms. Pines asked Mr. Flores if the CAMFT Ethics Committee is addressing standards for referral when therapists must decide that the client is no longer appropriate to be treated over the Internet for a variety of reasons such as the risk for suicide. Mr. Flores stated that ethical standards of professional associations fit and are applicable to several means of delivery and the need for referral is addressed in these standards. Ms. Pines stated that this is a real concern for her because a therapist might not have the same standards as to what is appropriate and what is potentially harmful about non-traditional therapy and when to refer.

Carol Bender from the University of Southern California questioned how referrals for medication, medical workup, and social services will be dealt with through Internet therapy. Also, she questioned how the treatment of children would be addressed.

Jan Lee Wong, Executive Director of the National Association of Social Workers, thanked the Board for addressing this issue and indicated that the Board is the pioneer of this issue. He questioned if the Board is prepared to prosecute a non-California licensee for providing therapy to a California consumer and if the Board is prepared to review California licensees who perform services to other states consumers. He

suggested the Board might want to find some way to meet with other state licensing agencies to discuss state boundary issues.

Dr. Stein stated that the Board needs to determine if there is an identifiable problem before going full force with this issue.

Ms. Fields asked that Ms. Powell review this issue from a legal standpoint and report back to the Board at the January meeting. She then asked that the draft included in this meeting materials be included in the January materials.

9. DISCUSSION AND POSSIBLE ACTION REGARDING LIMITING THE NUMBER OF TIMES TO PARTICIPATE IN AN EXAMINATION

Ms. Fields informed Ms. Pines that an audience member who could not attend the meeting today commented at the Committee meeting on November 9, 2000 regarding examination issues. Her comments related to people who thought in their native language but were required to respond to the examination in English. The audience member did indicate that these people eventually passed the examinations but took several times to do so. She asked the Board to not limit the number of times a person can participate in the examination for this reason.

Ms. Mehl stated that this issue had been discussed at prior meetings and at the August meeting it was questioned whether there was actually a problem with the current allowance of endless testing. The meeting materials included a pie chart that indicated, of the candidates who failed the marriage and family therapist oral examination five or more times, seventy-nine out of one hundred and twelve obtained a rating of unqualified or very unqualified in at least one or more of the content areas. These seventy-nine people were actually answering one or more content areas that would directly be harmful to the client. The other materials included the examination content areas and examples of unqualified or very unqualified behavioral anchor responses to these areas, and a sample vignette.

Dr. Stein asked if Ms. Mehl knew the ethnic make up of these one hundred and twelve people. Ms. Mehl stated that it is not legal to collect this type of information. Ms. Powell explained that, in order for the Board to compel the collection of this information as opposed to voluntary disclosure, it would need to be a direct mandate from the Legislature.

Ms. Mehl indicated that another result of this study that was not included in the meeting materials was that the category of the examination most failed by the one hundred and twelve people was ethics.

Ms. Pines thanked Ms. Mehl for the information and thought that it was very useful in furthering the dialogue and making a decision. Ms. Mehl stated that there are thousands of candidates who take and pass the examination and there is this small amount of people who cannot pass the examination and are potentially harmful to the public.

Dr. Laurence suggested that a study be performed to identify the underlying variables that are causing these people to fail the examination numerous times. Ms. Mehl clarified that staff prepared these statistics and a graduate student may be willing to take on this larger study.

Eileen Kelly, Marriage and Family Therapist, expressed her concerns about limiting the number of times to take the examination. She assists English as a second language people prepare for the oral examination and they do struggle. She asked if it was possible to offer the oral examination in another language.

Mary Riemersma spoke to the English as a second language issue and questioned why the Board requires that a candidate be in the country for less than ten years in order to qualify for the time and one half accommodation offered. Ms. Mehl explained that this has always been Board policy and clarified that if someone applies for this accommodation they continue to receive this accommodation throughout their examination process.

Ms. Fields identified two issues that may need to be discussed by the Board in the future. These issues included possibly offering the examinations in other languages and not placing a time limit of the number of years a candidate is in this country in order to determine if they qualify for the time and a half examination accommodation.

Ms. Pines spoke of one of her students and stated that he had difficulty transferring his thoughts from his native language to English.

Ms. Mehl stated that examiners are trained to listen to the content of a candidate's answers and not the monosyllabic language.

Ms. Fields commented that it also may be difficult for a person from another country who does not speak English as their first language to translate their cultural beliefs. Ms. Pines stated that her student was able to think from his native culture as well as American culture. She stated that anyone who is trained in our graduate schools must be able to think dually and did not think it was too much to ask of foreign candidates to be knowledgeable in American culture and be able to understand it both in written and oral form.

Ms. Fields asked that the issue of foreign candidates be an issue of discussion in the future.

Ms. Pines suggested that the Board not limit the number of times one can participate in an examination but require that, after a certain number of times, maybe three or four, the Board withhold the registration until the person completes some units of education and two-hundred and fifty hours of supervision with the ten to one ratio requirement. She indicated that she thought the Board needs to take some responsibility in protecting the public and by revoking the registration until the person receives additional education and supervision would be one way of doing so.

Dr. Stein stated that he agreed that the Board should not prohibit a person from continuing to take the examination and thought that there should be scientific evidence to back up the choice to require that a person completes a number of units and supervision hours after failing the examination a certain number of times. He then stated that first the Board needs to make sure that the courses are available before mandating them.

Ms. Fields agreed that the Board not limit the number of times one can participate in an examination and indicated that the statistics provided in the meeting materials reflected a major decline after participating

in the examination five times. She thought that after five times people needed additional study but did not know if she was ready to agree to require additional supervised experience.

Ms. Mehl stated that most people in the examination cycle continue to be supervised because they are not licensed but this supervision is not required to include the ten to one ratio of supervision.

Ms. Pines thought that the Board could use the categories in which people fail within the examination to determine which courses they need to complete.

Ms. Mehl suggested that academic institutions provide the Board with information on the courses and number of units that are offered and if these courses can be easily obtained.

Ms. Riemersma stated that CAMFT supported the choice of the Board to not limit the number of times one can participate in an examination and wanted the Board to ensure that the courses they are mandating are available within the educational institutions. She stated that content areas, such as Treatment Planning, is not a course and therefore using the content areas to determine the courses that are needed may not work in all situations.

Mr. Lyden pointed out that the candidate handbook is an exceptional tool and when he took the examination ten years ago this in-depth information of the examination process and content was not available. He stated that he was not surprised to see the statistics that reflected the number of candidates who fail the examination and stated that ethics seems to be the most ambiguous area. He thought that when law and ethics was divided it created some of the ambiguity. He thought that legal issues are much more clear and thought that the content areas identified in the candidate handbook would be perfect for the law and ethics continuing education mandate that was discussed on November 9, 2000 at the Consumer Services/Consumer Protection Committee meeting. With ethics there are five content areas that are highlighted in the candidate handbook that he thought were less clear.

Ms. Mehl explained that those people who pass the oral examination within five times do very well in the law and ethics categories.

Foojan Zeine, Marriage and Family Therapist, stated that her personal experience working with interns whose first language is not English is that the written examination is as difficult for them as the oral examination. She thought that if the Board did require additional supervision, it might want to be designated to settings in which people can gain experience in areas that had not been gained in prior experience. Ms. Zeine then asked to comment on the issue of Psychotherapy over the Internet.

The Board agreed to again discuss the issue of limiting the number of times one can participate in the examination at the next meeting in January 2001.

Dr. Stein asked that staff research whether the examination categories are available in course form and, if so, identify which ones.

HOWARD STEIN MOVED, CHRISTINA CHEN SECONDED, AND THE BOARD CONCURRED TO RE-OPEN THE DISCUSSION OF PSYCHOTHERAPY OVER THE INTERNET.

Ms. Zeine then addressed the prior issue of Psychotherapy over the Internet. She represents myTHERAPYnet.com and indicated that she and her colleagues attend the Board meetings to hear what the Board has to say and to create a safe environment for both the consumer and the therapist on the Internet. She asked if protection of the consumer is best served by some states that do not have the money to litigate complaints against therapists who provide therapy on the Internet.

10. APPROVE / NOT APPROVE COMMITTEE RECOMMENDATIONS

Due to lack of a quorum, the Committee recommendation reports were deferred to the January 2001 meeting.

11. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

The Board did not receive any public comments.

CHRISTINA CHEN MOVED, KAREN PINES SECONDED, AND THE BOARD MOVED TO CLOSE THE MEETING.

The meeting adjourned at 11:30 a.m.