

(approved February 21, 2003)

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

NOVEMBER 15, 2002

**COUNTRY SUITES BY AYRES
1945 EAST HOLT BOULEVARD
ONTARIO, CA**

MEMBERS PRESENT

Karen Pines, MFT Member, Board Chair
Mark Burdick, LEP Member, Vice Chair
Catherine Kay, Public Member
Peter Manoleas, LCSW Member
Glynis Morrow, Public Member
Jane Nathanson, MFT Member
Roberto Quiroz, Public Member
Howard Stein, Public Member
Susan Ulevitch, LCSW Member

MEMBERS ABSENT

STAFF PRESENT

Sherry Mehl, Executive Officer
Mary-Alice Coleman, Legal Counsel
Julie McAuliffe, Administrative Analyst

GUEST LIST ON FILE

The meeting was called to order at approximately 9:10 a.m.

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. McAuliffe called the roll and a quorum was 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.

Ms. Pines announced that due to lack of time yesterday, the Board would take public comments on the oral examination presentation at the end of this meeting.

3. APPROVAL OF JULY 25, 2002 MINUTES

HOWARD STEIN MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE MINUTES OF JULY 25, 2002.

4. APPROVAL OF JULY 26, 2002 MINUTES

HOWARD STEIN MOVED, ROBERTO QUIROZ SECONDED, AND THE BOARD CONCURRED TO APPROVE THE MINUTES OF JULY 26, 2002.

5. APPROVAL OF OCTOBER 9, 2002 MINUTES

GLYNIS MORROW MOVED, MARK BURDICK SECONDED, AND THE BOARD CONCURRED TO APPROVE THE MINUTES OF OCTOBER 9, 2002.

Catherine Kay abstained from the vote.

6. EXECUTIVE OFFICER'S REPORT

a. Budget Update

Ms. Mehl indicated that the current budget materials were included in the meeting materials. The Board has been asked to voluntarily reduce their budget by 20%. This request could become mandatory in the future.

Ms. Mehl informed the Board about the specifics of the line items of the Budget. There are certain line items that cannot be transferred from one program to another. These include Personnel and Enforcement. In the past the Board has used monies from other areas to fund the examination but is not longer able to. Therefore, Ms. Mehl suggested that the Board reduce the number of times the oral examinations are offered to twice a year. She then recommended that the Board continue to offer the written examinations as is, administer the February 2003 oral examinations, cancel the June oral examinations, administer the October 2003 oral examinations, and continue offering the orals twice a year.

Ms. Mehl stated that initially the Board had agreed to offer the oral examinations three times a year. Upon review of this proposal, Board staff realized that some candidates would have to wait eight months before they could participate in an examination. By reducing the examination to twice a year, candidates will only have to wait six months before they can participate. This will also address the budget constraints the Board is currently facing.

Ms. Mehl indicated that she has completed numerous surveys from the Department of Finance and the Department of Consumer Affairs. These surveys have asked about mandatory financial requirements and she thought that the agencies are compiling the information in order to determine which areas can be reduced from budgets.

Ms. Ulevitch stated that the oral examinations are a major expense.

Another issue Ms. Mehl discussed was the fact that candidates are required by regulation to participate in an examination at least once a year or their application would become abandoned. She indicated that those candidates whose year will expire in June would be allowed to participate in the October examination.

Ms. Mehl stated that candidates will be notified by mail of this change and this information will also be posted on the Website.

David Fox, Licensed Marriage and Family Therapist, indicated that he is aware of a candidate who was unable to participate in a scheduled oral examination due to illness. The candidate will now have to wait eight months before she can participate again. Ms. Mehl stated that generally the Board does not allow people access into the next scheduled examination since the final filing date has passed. She then indicated that these situations are reviewed on a case-by-case basis and the candidate should provide a written explanation to the Board.

Ms. Ulevitch stated she supports review on a case-by-case basis for candidates who have missed an examination due to extreme circumstances.

Mr. Fox then stated that the Board is a special funded Board by licensee fees and the Board should not be penalized for the budget downfalls.

b. Miscellaneous Matters
1. Website Statistics

The current website information was included in the meeting materials. Our website is a great source of information and is an effective tool. We now have a technical portion completed that assists hearing-impaired persons.

Ms. Pines commended Ms. Mehl on her budgetary skills and the ways in which she has found to reduce expenses without affecting consumers.

7. CHAIRPERSON'S REPORT

Ms. Pines stated that she attended the American Association of Marriage and Family Therapists Regulatory Boards Annual Conference. California is the largest state board in the nation and other states use us as a resource. Our website has been an effective tool is assisting other states on a multitude of issues and has assisted in solving key problems. One issue that was discussed at the conference was disciplinary concerns. A panel of the conference is in the process of compiling information from all states on managing disciplinary issues. Eventually there will be a summary of their findings posted on their website.

Ms. Mehl mentioned that the Social Work Network has a national disciplinary action report that is now available on line.

8. REVIEW AND APPROVAL OF MAIL BALLOT PROCESS AND EXECUTIVE SESSION POLICY

At the July meeting the Board suggested that a policy be drafted outlining the Mail Ballot process and Executive Session Policy. The draft was included in the meeting materials.

As staff was drafting the language, Ms. Mehl realized that it might not be necessary to have this in a policy format.

Ms. Ulevitch stated that she thought there should be something that emphasizes the important of confidentiality and individual voting.

Ms. Nathanson stated that she thought it was a helpful document and it clarified the processes.

Ms. Kay stated that she did not think it was necessary to have this in a policy format. There are several statutes and regulations that address confidentiality requirements and thought this issue could be discussed in detail within the Board member training process.

Mary-Alice Coleman, Legal Counsel for the Board, stated that although the Department of Consumer Affairs provides a New Board Member Orientation, the trainings may not be convenient for all individuals and they may be not be aware of all the confidentiality issues before they become a functioning board member.

Ms. Kay indicated that she and other Board members had met with Ms. Mehl before attending their first meeting and she also viewed the required Ethics Training tape.

Ms. Coleman indicated that the Board should decide if they want a policy, and if so, the language could be modified and reviewed at the February meeting.

Ms. Kay again stated that she was uncomfortable with adding a policy on a procedure that is already addressed in statute. She then indicated that if this were to be adopted into policy, someone who was the subject of a mail ballot could challenge that decision because they could think that the Board members were discussing the case.

Ms. Coleman stated that she agreed with Ms. Kay's concerns. She then stated there is a problem with individuals not understanding the meaning of a sentence and where there are constraints. Something that is helpful to Board members is probably something that is helpful in assisting them to comply. A policy may not be the best way to achieve that goal.

The Board discussed this issue at length and decided to not adopt this in policy but rather include information on these procedures in the New Board Member Orientation Binder that is provided to all new members. The Board then asked that this information also be included in the legal memorandum that is included with Mail Ballot cases.

9. DISCUSSION REGARDING PROCESS OF CRIMINAL CONVICTIONS OF APPLICANTS AND LICENSEES

Board member Catherine Kay had requested that this information be included to familiarize members on how the Board addresses applicants who have a criminal conviction or licensees who have had a subsequent arrest since their last renewal. A graph included in the meeting

materials included the amount of applications approved and denied due to criminal convictions. The majority of the convictions are driving under the influence, are single incidents, and have occurred several years ago. If an applicant is denied licensure, the license may be issued with probationary conditions, which may include fluid testing. Very few are denied, but there have been cases where the crime is so severe that the Board has denied the application and the Administrative Law Judge had upheld the denial.

10. REVIEW AND DISCUSSION OF THE CURRENT SCOPES OF PRACTICE FOR MARRIAGE AND FAMILY THERAPISTS AND LICENSED CLINICAL SOCIAL WORKERS

Board member Peter Manoleas had requested that the scopes of practice for Marriage and Family Therapy and Licensed Clinical Social Work be included on the agenda since a large amount of discussions regarding settings and experience revolve around the scopes of practice.

Geraldine Esposito, Executive Director of the California Society for Clinical Social Work, indicated that she has discussed the issue of the scope of practice for Licensed Clinical Social Workers (LCSW) with the National Association of Social Workers and they agree that the scope needs to be updated to include diagnosis and treatment of mental emotional disorders. She recently received correspondence from the head of the insurance agency that is the third party administrator for Medicare. The gentleman had informed Ms. Esposito that he had decided to exclude LCSWs from utilizing CPT Codes 90801 and 90802 by virtue of the current scope of practice. These codes are the primary diagnostic codes for Medicare. Ms. Esposito then complimented Ms. Mehl and Ms. McAuliffe for their assistance in responding to this correspondence. The three professional associations, the California Society for Clinical Social Work, the National Association of Social Workers, and the American Board of Examiners, crafted a response, with the assistance of Ms. Mehl. Ms. Esposito had received a response back indicating that, after review of the materials submitted, they agreed that LCSWs are practicing within their scope of practice when performing diagnostic psychiatric interviews. She indicated that this is a market issue. The attempts over the years to include diagnosis and treatment of mental emotional disorders within the scope of practice for LCSWs and MFTs have been unsuccessful for no other reason than the fact that the private and public marketplace are corralled by clinical psychologists and psychiatrists, and they would like to keep it that way. The LCSW license is an influential license and the scope is not adequate for the full services performed. Also, she would like the archaic term “psychotherapy of a non medical nature” removed. The scope is in need of amendments and the associations are at a point where they are willing to assist in the change.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, supported Ms. Esposito statements and agreed that the scopes of practice are very obscurely written and in some cases, incomprehensible. She agreed that it is time to pursue the change.

Jan Lee Wong, Executive Director of the National Association of Social Workers (NASW), thanked Mr. Manoleas for putting this issue on the agenda and thanked Ms. Mehl and Ms. McAuliffe for their assistance to the Association. The NASW is very energized about making this change. He asked that the Board keep in mind the differences in language regarding practice and payment for reimbursement. Any change in the scope of practice can have a drastic, cascading effect on services, reimbursement, and employment.

HOWARD STEIN MOVED, GLYNIS MOVED SECONDED, AND THE BOARD CONCURRED TO HAVE STAFF CORDINATE EFFORTS WITH PROFESSIONAL ASSOCIATIONS TO DRAFT LANGUAGE FOR POSSIBLE CHANGES TO THE SCOPES OF PRACTICE.

The draft language will be brought back to the Board at the February meeting for review and approval.

The Board then discussed strategizing efforts. Ms. Pines indicated that pursuing this change could bring out very powerful forces and the Board is unable to pursue this alone. She suggested addressing the California Medical Association and the California Psychological Association to inform them of these proposed changes before it is introduced in legislative language.

Ms. Kay suggested that information on this issue be placed on the Website in order to receive public input.

Ms. Coleman stated that she was legislative counsel for the Department of Consumer Affairs and has experience in this arena. Strategy is an important part of the process and strategy does not start once language is drafted, it must start before then. She then went on to say that the provision of these services and the extent of the issues at the Federal level in reducing availability is a consumer issue. This is a primary, legitimate, high priority concern of the Board.

The Board recessed at 10:35 a.m. and reconvened at 10:45 a.m.

11. APPROVED 2002 LEGISLATION

Ms. Mehl reviewed the legislation that will become effective January 2003, 2004, and 2005. Legislation effective January 2003 included Assembly Bill 255 which further clarifies mandated reporters of elder abuse, Senate Bill 2019 which authorizes the Board to issue a citation and fine to licensees who are in default of their student loans issued by certain institutions, and Senate Bill 2026 which changed the license title from Marriage, Family, and Child Counselor to Marriage and Family Therapist throughout the law.

Legislation effective January 2004 and January 2005 requires pre licensed and post licensed training in domestic violence and aging.

12. REVIEW AND APPROVAL OF 2003 LEGISLATION PROPOSALS

The Board reviewed the following legislation proposals:

Section 4982.2 – This amendment is necessary to include all the violations included in Penal Code Section 290 wherein someone is required to register.

CATHERINE KAY MOVED, MARK BURDICK SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED AMENDMENT.

4984.8 – Current law now requires that, in order for a licensee to activate their license from inactive status in the middle of a renewal cycle, they must complete all 36 hours of required continuing education, even if it is three months before they are due for renewal, and an

additional 36 hours for the renewal for the subsequent renewal period. This is because a licensee cannot apply the same continuing education twice in one renewal. This proposal will allow someone who wishes to activate their license within one year from their renewal to only complete 18 hours of required continuing education for that renewal and then an additional 36 for the subsequent renewal.

MARK BURDICK MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED AMENDMENT.

4996.18 – This amendment is necessary to add new Section 4996.23, which became effective January 1, 2002 to subsection (g).

HOWARD STEIN MOVED, ROBERTO QUIROZ SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED AMENDMENT.

4997 – This is the same change that is in 4984.8 to the LCSW law.

ROBERTO QUIROZ MOVED, MARK BURDICK SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED AMENDMENT.

13. APPROVE/ NOT APPROVE COMMITTEE RECOMMENDATIONS

a. Licensing Committee

Ms. Mehl stated that the minutes were adopted, proposed changes to the sections of law that relate to experience and settings were reviewed and suggested changes were made. Ms. Mehl will be working with Ms. Ulevitch and Ms. Kay to draft language that will be reviewed at the next meeting in February.

b. Education Committee

Dr. Burdick reported that the Committee approved their minutes and reviewed their Strategic Plan.

c. Consumer Services / Consumer Protection Committee

Dr. Stein reported that the Committee approved their minutes, reviewed the Enforcement Statistics, adopted proposed changes to the Unprofessional Conduct sections of regulation, and suggested that an ad hoc committee be formed to review the current Disciplinary Guidelines.

HOWARD STEIN MOVED, KAREN PINES SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED CHANGES TO THE CALIFORNIA CODE OF REGULATIONS SECTIONS 1845, 1858, AND 1881.

Dr. Stein asked that definitions and use of titles such as doctor and initials such as Ph.D. be discussed at the February meeting. Ms. Mehl stated that the Legal Office has provided interpretations on these issues and these will be included in the materials for the February meeting.

d. Examination Committee

The Committee reviewed the current examination statistics.

14. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

As announced at the beginning of the meeting, the Board accepted comments on the Office of Examination Presentation given November 14, 2002.

Jan Lee Wong, Executive Director of the National Association of Social Workers, stated that the Social Work associations and the California Association of Deans and Directors would be pursuing title protection legislation. This is an important consumer protection initiative and he has been informed that due to the severe social work shortage, agencies are hiring individuals who do not have a social work background. This is very distressing to the profession and consumers deserve the best care from an experienced professional. Mr. Wong then stated he will submit draft title protection language to the Board for review and discussion at the February meeting.

David Fox, Licensed Marriage and Family Therapist, commented on the examination administered by the Board and the clinical simulations that are currently tested within the Marriage and Family Therapist written examination. He quoted some excerpts for the Board's Strategic Plan and from a letter by Dr. Norman Hertz, former Chief of the Office of Examination Resources. He then briefly talked about validating an examination and defining validity. Mr. Fox then praised the Board and Ms. Mehl for their wisdom, experience, and commitment.

The meeting adjourned at approximately 11:30 a.m.