

(Approved February 18, 2005)

**BOARD OF BEHAVIORAL SCIENCES
CONSUMER SERVICES/CONSUMER PROTECTION COMMITTEE
MEETING MINUTES**

November 18, 2004

**FAIRMONT SAN JOSE
170 SOUTH MARKET STREET
SAN JOSE, CA**

MEMBERS PRESENT

Robert Gerst, Public Member, Committee Chair
Catherine Kay, Public Member
Glynis Morrow, Public Member
Karen Pines, MFT Member
Howard Stein, Public Member

MEMBERS ABSENT

STAFF PRESENT

Paul Riches, Executive Officer
Denise Johnson, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Julie McAuliffe, Administrative Analyst

GUEST LIST ON FILE

The meeting was called to order at approximately 9:25 a.m.

Ms. McAuliffe called the roll and a Committee was established.

1. APPROVAL OF AUGUST 19, 2004 MINUTES

CATHERINE KAY MOVED, GLYNIS MORROW SECONDED, AND THE COMMITTEE CONCURRED TO APPROVE THE MINUTES OF AUGUST 19, 2004.

2. ENFORCEMENT STATISTICS

The current statistics were included in the meeting materials. Mr. Riches provided the Committee with an overview of his observations of enforcement activities since becoming the Executive Officer. He suggested that the Board have an enforcement workshop at the February meeting and discuss enforcement issues.

Mr. Gerst mentioned past discussions regarding the idea of implementing more internal investigations and asked that this be part of the discussion in February.

3. REVIEW AND POSSIBLE APPROVAL OF DRAFT LANGUAGE TO FURTHER DEFINE "DISCOVERS" IN STATUTE OF LIMITATIONS LAW

The current statutes of limitations were included in the meeting materials as well as draft language to address the issue regarding the Board's actual discovery of the alleged act by defining the term "discovery".

Ms. Pines recalled a prior case that affected the Board's timeframe to act on the violation and she expressed her support of further defining the term "discovers".

Ms. Kay questioned the actual process required. Ms. Johnson indicated that a telephone call alleging a violation is not adequate information and the Board must receive a complaint in writing. Therefore, it is necessary for the Board to provide clarity on the point of discovery. Ms. Kay then mentioned the need for a release of information consent form from the complainant in order for the Board to perform a thorough investigation of the allegations.

Mr. Riches suggested that staff re-work the draft language to incorporate the need for a release of information consent.

Ms. Johnson mentioned another issue regarding receiving information from a subsequent therapist regarding knowledge of alleged wrongdoing within a prior therapist-client relationship.

Mr. Riches explained that much of enforcement's work involves the determination that a client-therapist relationship exists. He then indicated that he understood the Committee's concerns regarding abuse of the law as well as a client's non-willingness to file a complaint against a therapist who is potentially a danger to other clients.

After discussion, the Committee asked staff to work further on the language to include the issues discussed and bring the draft back for review at the February meeting.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, mentioned that the Board's knowledge of an alleged violation from another therapist would be a breach of confidentiality.

4. REVIEW AND DISCUSSION OF CURRENT CITABLE OFFENSES (TITLE 16, CALIFORNIA CODE OF REGULATIONS SECTION 1886.40)

Mr. Riches stated that the meeting materials included the current regulation sections that address the fines and citable offences as well as a memorandum from the Department of Consumer Affairs (DCA), which indicates that the citation amount had been increased from \$2,500 up to \$5,000 in the general provisions of law. The State and Consumer Services Agency expressed their concerns about utilizing this fee increase as a fee generating mechanism and provided guidance as to when the increase would be appropriate. In addition, the meeting materials included draft language specific to the Board to identify the circumstances when a fine would be imposed of amounts between \$2,501 and \$5,000.

Mr. Riches stated that there were prior discussions within the Board about the use of citation and fine and, with the statutory increase of the fine, he thought this would be a good time to look at citation and fine as a whole and discuss where changes may be needed. He then provided a brief overview of federal statutes that require release of information and civil state laws that address exemptions from confidentiality.

Kristy Schieldge, Legal Counsel for the Board, cautioned the Committee regarding citation and fine changes. She advised that the Board needs to keep close to the suggested language included in the memorandum from the DCA or they could run the risk of having their regulations disapproved.

Mr. Gerst stated that he was aware of the Governor's direction to ensure that changes do not negatively affect businesses. He then stated that the Board is entrusted with ensuring that the public is protected and there is a need to notify practitioners that there is a citation and fine process for behavior that falls below a certain level.

Ms. Kay questioned if the statutes in place allow the Board to impose a citation and fine. Mr. Riches stated that regulations are in place to specify the general statute and amendments to the regulation are required to increase fine amounts and citable offenses.

The Committee referred the draft amendments back to staff to include language to further clarify the Committee's direction of making it clear that no fine of \$2,501 to \$5,000 shall be imposed unless specific circumstances occur and bring back for inclusion in the discussion on enforcement activities at the February meeting.

Ms. Kay asked that further discussion in the future include a heightened awareness of unlicensed practice and the Board's authority.

Ms. Riemersma asked that the Board take the issue of unlicensed practice very seriously as there are many people who title themselves something other than a marriage and family therapist and are providing services within the scope of practice for which a license is required and asked that there be some mechanism implemented to fine for unlicensed practice.

Ms. Morrow questioned whether there is a limit or level of abuse that would then allow for release of information to the Board by a subsequent therapist. Ms. Johnson stated that unless the client gives a release and report, the Board would not be able to investigate but staff does encourage the therapist to address the issue with the client and recommend that they file a complaint with the Board.

The meeting was adjourned at approximately 10:00 a.m.