



BOARD OF BEHAVIORAL SCIENCES
1625 North Market Blvd., Suite S 200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



Board Meeting Minutes

May 18, 2006

Legislative Office Building
1020 N Street, Room 100
Sacramento, CA 95814

MEMBERS PRESENT

Gordonna DiGiorgio, Public Member
Robert Gerst, Public Member
Judy Johnson, LEP Member
Victor Law, Public Member
Peter Manoleas, Chair, LCSW Member
Karen Pines, MFT Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Spencer Walker, Legal Counsel
Kim Madsen, Staff Services Manager
Christy Berger, Legislative Analyst
Christina Kitamura, Administrative Assistant

GUEST LIST ON FILE

CALL TO ORDER AND ESTABLISHMENT OF QUORUM

The meeting was called to order at approximately 9:10 a.m. Mrs. Kitamura called the roll and a quorum was established.

I. Chairperson's Report

Mr. Manoleas introduced Charlene Zettel, Director of the Department of Consumer Affairs.

Ms. Zettel thanked the Board for their hard work. Ms. Zettel introduced Antonette Sorrick, liaison to the Boards at the department, and Rosario Marin, the Secretary of State and Consumer Services Agency. Secretary Marin briefly addressed the Board thanking them for their service.

A. Report on April 28, 2006 Conference on Diversity and Licensure

Mr. Manoleas reported that he was very impressed with the proceedings at the conference. He commended Board staff for bringing the conference together and Christy Berger for her report on California's Mental Health and Diversity.

Joe Hayes from the Public Policy Institute gave a presentation regarding California's diversity in the present and in the future. Rachel Guerrero, Chief of Multicultural Services at the Department of Mental Health, discussed their efforts in instilling cultural competency in the mental health system. Dr. Sergio Aguilar-Gaxiola from the Center for Reducing Health Disparities at the University of California, Davis, presented his research in Mexican-Americans in the Fresno area and the need for cultural competency in the mental health system. All the presenters provided suggestions for the Board's involvement in these efforts.

Those who attended the conference engaged in a brainstorming session. They addressed issues regarding education, licensure requirements, licensure examinations, workforce, and research. The Board will continue to take a look into all of the ideas. Some of these issues have already been addressed.

Board members and guests in the audience commented with positive feedback regarding the conference and guest speakers.

Mr. Gerst requested a report of all the items that were raised in the workshop and how the Board will move forward to address those items.

Mr. Riches responded that the items and inquiries raised in the workshop would be reviewed and brought to the appropriate committees for discussion.

B. Appointment of Continuing Education Appeals Committee

Mr. Riches explained the procedures for an appeal for denial or revocation of a continuing education (CE) provider. Title 16, California Code of Regulations, Section 1887.8 require an informal appeal with the Board's designee. If that appeal does not satisfy the appellant, then the appeal is heard by a committee or the Board. The regulation specifies a three-member committee consisting of one public member and two professional members.

Mr. Manoleas appointed Robert Gerst, Dr. Ian Russ, and Joan Walmsley to the Continuing Education Appeals Committee. The Appeals Committee meetings will be held in conjunction with the regularly scheduled Board meetings.

C. Appointment of Committee on Marriage and Family Therapist Education

Laws governing curricular requirements for licensure as a marriage and family therapist have not been subject to a thorough review in many years. Mr. Manoleas formed a committee to conduct a review of these requirements and recommend changes in the statutes if necessary.

Mr. Manoleas appointed Dr. Ian Russ, Karen Pines, and Gordonna Di Giorgio to the Marriage and Family Therapist Education Committee. Dr. Russ will chair the committee.

II. Executive Officer's Report

A. Personnel Update

There were two departures since the last Board meeting. Sal Reyes, Business Services Analyst, and Janene Mayberry, clinical social work evaluator, have accepted positions at the Board of Barbering and Cosmetology. There have been four new hires since their departures. Dominique (Nikki) Cotto was hired as a new Student Assistant. Kari O'Connor, a student assistant with BBS, was promoted to Office Technician in the cashier unit. Jessica Upadhye accepted the position as clinical social work evaluator and will begin with the Board on June 5th. Michelle Marine accepted the position as Business Services Analyst.

Mr. Manoleas inquired about who will be performing the CE audits. Mr. Riches introduced Cheree Lasley from the enforcement unit, who will be conducting the CE audits.

There are no further vacancies at the Board.

B. Designation of Executive Officer to Hear CE Provider Appeals

Mr. Riches explained that the Board's regulations specify the procedures for appealing the denial or revocation of a continuing education provider approval. The first route of appeal is for a hearing before the Board's "designee." The Board had not, to date, designated an individual to conduct these appeals. Since the Board has recently issued a number of denials of applications for continuing education provider approvals, it is recommended that the Board formally designate the Executive Officer to hear appeals.

Ms. Walmsley questioned how CE providers would be evaluated. This question will be addressed at the Consumer Protection Committee meeting.

ROBERT GERST MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO DESIGNATE THE EXECUTIVE OFFICER TO HEAR CE PROVIDER APPEALS.

C. Miscellaneous Matters

Some of the routine reports, such as budget updates, the Enforcement statistics, licensing statistics, are broken down into committee reports. The committees are overseeing those functions through their operations. Budget updates are included in the Budget Committee report, and the Enforcement statistics are included in the Consumer Protection Committee report.

D. Introduction of and Comments by Warren Hayes, MFT, Chief of MHSA Workforce and Education Training

Mr. Hayes is new to the Department of Mental Health (DMH) for the implementation of the Mental Health Services Act (MHSA) workforce education and training component. Mr. Hayes explained his action plan for reviewing the education and training section in the MHSA statutes. The statutes are very descriptive regarding how to spend the MHSA funds for workforce issues. DMH created a statewide advisory committee to assist in

responding to the statutory requirements and to develop and write a comprehensive 5-year education and training plan. The workforce identified several components, one that pertains to licensing and certification. Mr. Hayes encountered a lot of discussion about how licensing and certification issues can impact workforce issues in public mental health. The committee would like to focus on ideas for prudent use of the funds to solve public mental health workforce shortages, as well as honoring the intent of the MHSA.

Dr. Russ asked about the what type of training issues Mr. Hayes was addressing, for example, post-licensing training, changing curricula in the education program, training of unlicensed people who may serve as peer counselors, alcohol rehabilitation counselors, or para-professionals.

Mr. Hayes responded that he is addressing re-training existing workforce and all of those types of training cited by Dr. Russ. Other types of training include short-term training at the high school level; peer support; community partners and psychiatric residency programs.

Mr. Hayes stated that that they are still in the early development stage. Mr. Hayes indicated that he is keeping a wide-angled view of as much inclusion with as many partners as possible including the educational institutions. Mr. Hayes explained that the Board is a key player in the advisory committee's goals.

Mr. Manoleas suggested that the Board be represented in a formal seat on the advisory committee. Mr. Hayes was pleased with the suggestion.

Mr. Hayes stated that the DMH is waiting for the announcement of the new CEA for Prevention and Early Intervention. He offered to invite the new CEA to the next Board meeting and to meet the Board members.

III. Approval of February 16, 2006 Board Meeting Minutes

JOAN WALMSLEY MOVED, JUDY JOHNSON SECONDED, AND THE BOARD CONCURRED TO APPROVE THE BOARD MEETING MINUTES OF FEBRUARY 16, 2006.

IV. Approval of January 27, 2006 Board Meeting Minutes

IAN RUSS MOVED, ROBERT GERST SECONDED, AND THE BOARD CONCURRED TO APPROVE THE BOARD MEETING MINUTES OF JANUARY 27, 2006.

V. Report of the Consumer Protection Committee

A. Enforcement Statistics

Mr. Gerst requested a tracking of funds collected on citations and a breakdown by category in future statistics.

Dr. Russ referred to Recovery Costs statistics. Dr. Russ asked why less money was collected than what was ordered in most years with the exception of February 2003 and if costs are generally collected.

Mr. Riches responded that some are not able to pay their full amount the cost recovery up front; they pay it off over time. Generally, the costs are collected with exception of couple of cases where costs are ordered. For a revocation or surrender, typically the costs are ordered to be paid upon reinstatement of the application, which is the largest area where costs are not collected. The Franchise Tax Board (FTB) has an intercept program that the Board occasionally uses in an attempt to capture uncollected costs.

Dr. Russ referred to the Overview of Enforcement Activity, stating that the numbers are consistent over time except on the citations issued during the last year. There was a large increase on citations issued, however, there is a decrease on complaints received.

Mr. Riches responded that staff is now available to do the CE audits, which generates the numbers of the citations. The numbers of complaints are based on the first three quarters of the year. That number indicates that the total of complaints received will be significantly higher this year because we saw nine months of data in that number.

Mr. Gerst referred to the Breakdown of Enforcement Complaint Closures by Type, which reported 288 cases closed upon the issuance of a cease and desist, or warning letter. Mr. Gerst requested a break down illustrating why these people received cease and desist notices. Ms. Maggio responded that the information would be included at the next Consumer Protection Committee meeting.

Mr. Riches recognized the Enforcement Program for the hard work they do everyday. He stated that the enforcement numbers are significantly higher than they have been in the past. The Enforcement Program is facing work that is very challenging everyday.

B. Recommendation to Sponsor Legislation to Add Violations of Health and Safety Code Section 123110 to the Definition of Unprofessional Conduct

Ms. Maggio reported that the Enforcement unit receives a number of complaints regarding licensees who decline to provide patient records when requested by the patient. Although the Enforcement Analysts try to mediate the situation, they do not have any authority in which to require licensees to provide the treatment records to the clients, or to other individuals that the client requests the records to be sent to, even though the client signed a release. Draft language was brought to the committee to update the unprofessional conduct sections Business and Profession Code (BPC) Sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW) to include a violation of Health and Safety Code (HSC) Section 123110, which would require health care providers to provide patient records upon request.

Ms. Walmsey expressed concerns regarding turning over records to the patient. She explained that the laws are extremely rigid and very specific about documentation. If patients request their records, and the records are detailed, as the law requires, it can be potentially detrimental to the patient.

Mr. Gerst suggested that the existing statute be clarified by adding language that would incorporate both issues:

- That the patient has right to obtain their records
- Provide a means in which a professional can withhold records or limit the amount of material that is provided to the patient, if justified.

Mr. Riches explained that there is adequate protection for patients in the law and there is the ability for the therapists to provide summaries in situations where the record might be harmful. Mr. Riches further explained that we do not want to re-open those issues; the purpose is to be sure that the Board has the ability to enforce the existing law. The statute regarding the rules surrounding the release of patient records does not need to be clarified. The problem is compliance with the law.

Richard Leslie, representative for California Association of Marriage and Family Therapists (CAMFT), stated several points:

- A patient has a right to a copy of their records.
- The therapist has right to provide a summary of the records, if the therapist chooses to do so.
- The therapist has a right to deny access completely if they feel that it would be harmful to the patient to see a copy of the records, in which case they can provide the records to another health care professional.

Mr. Leslie cited in HSC Section 123110(i) which states, “Any health care provider who willfully violates this chapter is guilty of unprofessional conduct.” He explained that the Board has the authority to take disciplinary action against a licensee for unprofessional conduct for a violation of the chapter – not the section.

Mr. Leslie stated that if the Board wants to list subdivision I of HCS Section 123110 in BPC Section 4982, there would be no objection because it is already unprofessional conduct. However, if the Board does that, Mr. Leslie suggests that there are other sections in the codes that need to be addressed, such as the telemedicine statute. There are three grounds for unprofessional conduct in the regulations that should also be listed in BPC Section 4982. The only reason to do this is to list in one place in the unprofessional conduct section and other sections of law that declare certain acts as unprofessional conduct and to get rid of duplicative regulations.

Ms. Schieldge suggested that it is specifically identified as grounds for discipline in the unprofessional conduct statute. She suggested that staff do more research on this and look at other provisions of law that may be affected. The authority needs to be clarified.

Mr. Manoleas indicated that staff would need to redraft the proposal. He asked what issues should be considered in the redraft.

Ms. Schieldge responded with two options:

- Take Mr. Leslie’s idea by adding the specific statutory subdivision in cross-reference to the BPC.
- Take a look at HSC Section 123110 and either use the same language or other language in the BPC.

Mr. Riches recommended taking the existing body of the law and reference it – not to rewrite it.

Dr. Russ indicated that unprofessional conduct should be in one place. Mr. Gerst agreed.

Robert Gerst moved and Judy Johnson seconded to sponsor legislation to add a violation of HSC Section 123110 to BPC Sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW). However, Mr. Gerst withdrew his motion so that staff could redraft and bring it back to the next meeting.

C. Report on the April 17, 2006 Committee Meeting

Howard Stein, Committee Chairperson, reported that the Consumer Protection Committee met on April 17, 2006. Addressing the following action items, the committee:

- Conducted a review of progress on achieving strategic objectives under Goal #3.
- Discussed the definition of what constitutes online education.
- Received an update on the Supervision Survey for Marriage and Family Therapists (MFT), Interns, and Associate Clinical Social Workers (ASW).
- Discussed allowing supervision via video conferencing for MFT Interns and ASW registrants.
- Reviewed the scope of unprofessional conduct statutes.
- Reviewed the Board of Behavioral Sciences Enforcement Program.
- Reviewed the enforcement authority available to the Board for urgent/emergent cases.

VI. Report of the Budget and Efficiency Committee

A. Budget Update

Mr. Riches reported that the Board is operating well within its budget. There will be more information on the upcoming year's budget at the next meeting.

B. Licensing Statistics

Mr. Riches reported that the licensing program exceeded the strategic plan objective to reduce application processing time by 33%. Currently, an application without any deficiencies can be processed within 10-12 days. Deficient applications are the biggest issue. Staff is working on lowering those numbers.

Mr. Law proposed to bring back the discussion to grant CE credits to people who attend Board meetings.

Ms. Walmsley and Ms. Johnson commented on the benefits for those who attend Board meetings. This issue will be addressed at the next Board meeting.

C. Recommendation to Initiate Rulemaking for a Temporary Reduction in Fees

Mr. Riches reported that there is enough reserve in its fund to sustain operation for almost a year. In addition, there is an outstanding General Fund loan made in 2002-03 fiscal year for \$6 million. With those two together, the Board has a considerable reserve

in the fund. However, the General Fund loan is not considered as part of that on-going reserve. There is a statute that requires any Board when they reach 24 months of operating costs reserves, to reduce their fees. The Department of Finance recommends 3 to 6 months as an adequate ongoing reserve.

The majority of the Board's revenue is derived from renewal fees. Rather than waiting for the current fund to reach 24 months of operational reserve, staff developed a temporary fee reduction proposal. The fee reduction program would reduce the fund balance by approximately \$3.6 million.

D. Recommendation to Sponsor Legislation for a Temporary Increase in the License Renewal Surcharge for the Mental Health Service Providers Education Fund

Mr. Riches reported on the suggestion to offset the proposed reduced licensing fees by increasing the surcharge assessed to license renewals for the Licensed Mental Health Service Providers Education Program during the period of fee reduction. The program will be available to those people who are licensed as, or pursuing licensure as MFTs, LCSWs, or LEPs to pay down outstanding school loans if they agree to serve in an underserved area. Currently, the Board gives the program approximately \$200,000 acquired through license renewal surcharges. This could be an opportunity to help with some additional funding to that program.

Mr. Riches stated that the regulations needed to start handing out grants are not in place yet. There is revenue flowing into the fund and that we are working with the Health Professions Education Foundation under the Office of Statewide Health Planning and Development.

Dr. Russ stated that there are many universities across the United States that have trust funds and loan forgiveness programs for people who go into public service. There are other places that have the stake in spreading out mental health sources in this state.

Mr. Riches explained that the renewal reduction would be set by Board regulation. The Legislature specifies the range of our fees, and by regulation the Board sets the fee. There is a statute which states that a \$10 surcharge shall be directed to this fund. To do an increase in the surcharge will require legislation, and the fee reduction is by regulatory activity.

Mr. Manoleas stated that we would have to propose a fee increase by the same amount that the surcharge will put into the fund. The surcharge is increased but the bottom line of the renewal fee is not increased. Mr. Riches indicated that it will require two pieces of legislation. The Board will initiate the rule making and work out the timing so that both pieces of legislation will travel together.

Mr. Riches explained that in 2 years, the surcharge would decrease, returning back to \$10 and the renewal fee would increase, returning to normal.

Janlee Wong from the National Association of Social Workers (NASW) stated that California social workers are excluded from the national program for loan repayment because the Board has a "California-only" exam. The Board decided years ago to retain the national exam that is utilized by every other state. NASW would like the Board to change the policy.

Mr. Manoleas indicated that this could be brought to the Policy and Advocacy Committee.

There will be more information on this discussion at the next Board meeting.

E. Report on the April 17, 2006 Committee Meeting

Victor Law, Committee Chairperson, reported that the Budget and Efficiency Committee met on April 17, 2006 in Los Angeles. The action item on the agenda was the recommendation that the board direct staff to develop a rulemaking proposal to temporarily reduce fees to address the growing reserve in the Behavioral Sciences Fund. The fee reduction should occur in tandem with board-sponsored legislation to temporarily increase the license renewal surcharge to redirect 50% of the fee reduction revenue to the Licensed Mental Health Services Providers Education Program.

Addressing other committee activities, the committee:

- Received an update on the Board's budget.
- Received a report on current licensing statistics.
- Conducted a review of progress on achieving the strategic objectives under Goals 2, 5, and 6.
- Was informed that Board staff will be submitting a budget change proposal for the 07-08 fiscal year to add two enforcement analysts.
- Discussed a proposal to grant continuing education credits for attendance at board meetings.

VII. Report of the Communications Committee

A. Recommendation to Add Objective 1.7 to the Strategic Plan Regarding Board Outreach

The Committee made a recommendation to the Board to adopt a new Strategic Plan Objective 1.7 regarding Student Outreach. Sean O'Connor, Outreach Coordinator, visits qualifying degree-granting colleges or universities and presents information to students and faculty on the licensure process. The feedback has been very positive. The goals for student outreach would include 25 student outreach events a year by June 30, 2010. The team members would be Sean O'Connor and Kim Madsen.

Ms. Maggio explained the details of the presentation including the step-by-step process of what is required for licensure as an MFT or LCSW.

Ms. Pines, Ms. Walmsley, Ms. Maggio, and Kim Madsen, all provided examples of the positive feedback received in support of the program.

JOAN WALMSLEY MOVED, DR. IAN RUSS SECONDED, AND THE BOARD CONCURRED TO ADD OBJECTIVE 1.7 STUDENT OUTREACH TO THE STRATEGIC PLAN.

B. Report on the March 29, 2006 Committee Meeting

Karen Pines, Committee Chairperson, reported that the committee conducted a review of the progress on achieving the strategic objectives under Goal #1 – Communicate Effectively With the Public and Mental Health Professionals.

Objective 1.1 -- Provide Six Educational Opportunities for Stakeholders and Staff on BBS Budget by July 30, 2006.

Ms. Pines reported that Budget Analyst Paula Gershon presented a budget overview to the Board at the November 2005 Board meeting. Ms. Gershon prepared an article entitled *Understanding the Board's Budget* for publication in the Spring 2006 newsletter. Additionally, a presentation tailored to the public is included during outreach presentations, such as student and educator forums.

Objective 1.2 – Distribute a Handbook Outlining Licensing Requirements by December 31, 2006 to 100% of California Schools Ordering Qualifying Degrees.

Ms. Pines reported that staff is currently reviewing the formerly used “Frequently Asked Questions” information, which will serve as a basis for the student handbook.

Ms. Maggio explained that the handbook would meet the needs of examination candidates. The handbook includes answers to the most commonly asked questions from candidates. At the March 29, 2006 committee meeting, the brochure was reviewed for content and suggestions for improvement were made. The brochure is currently going through legal counsel review. The brochure would be enclosed with the notice mailed to candidates who are eligible to take the examination.

Objective 1.3 – Distribute Consumer Publication Regarding Professions Licensed by the Board by June 30, 2007.

Ms. Pines reported that staff has begun the steps to contract with a public relations (PR) firm to assist in the development of brochures, handouts, PowerPoint presentations as well as identify the Board's primary constituency groups and their needs.

Mr. Riches reported that staff is approaching the end of the contract process. Five firms were contacted and two proposals were received. Staff anticipates that the approval paperwork will be finalized and a PR firm will be secured by July. The services provided by the contractor will be to recommend changes regarding communication and to formulate a plan. The contractor will assist in areas of graphic design and layout, identifying audiences, how to reach those audiences, press releases, or billboards. The contract requires that the contractor attend a couple committee meetings and Board meetings to discuss their process and their findings.

Objective 1.4 – Achieve 60% on Customer Service Satisfaction Surveys by June 30, 2008.

Ms. Pines reported that the committee reviewed each survey and provided suggested edits. The surveys include: the general survey, the licensing survey, the enforcement survey, the outreach survey, and the website survey. The edits have been made and staff is researching the costs associated with printing the surveys and postage.

Mr. Gerst referred to the surveys where it asked to explain a rating of “unacceptable in the comment section.” He suggested changing the statement to read, “If you indicated other than ‘Excellent’ please explain in the comment section.”

Mr. Riches noted that the suggestion would go back to the committee for further discussion.

Objective 1.5 – Participate Four Time Each Year in Mental Health Public Outreach Events Through June 30, 2010.

Ms. Pines reported that on April 21-22, 2006 Mr. Riches, Board Members and staff attended the NASW Conference in Los Angeles. On May 4-7, 2006 Board Members and staff attended the CAMFT Annual Conference in Palm Springs.

Objective 1.6 – Review and Revise Website Content Four Times Per Year

Ms. Pines reported that staff found that the necessary updates have been forwarded to the Webmaster on a regular basis rather than waiting until the quarterly time frame to have revisions made to the web site. Ms. Pines recommended changing the language because it is a continual process.

Mr. Leslie suggested that Board policies be placed on the web site.

Ms. Pines noted that Mr. Leslie’s recommendation would go back to the committee for further discussion.

VIII. Regulation Hearing for Proposed Changes to 16CCR1803 Regarding Delegation to the Executive Officer

On Thursday May 18, 2006 at 2:10 p.m. in Sacramento, California, Mr. Manoleas went on the record and gave an introduction explaining the Board’s intent to conduct a public hearing of proposed regulations. Mr. Manoleas stated that the regulation proposal was filed with the Office of Administrative Law and has been duly noticed; and copies of the proposed regulations have been sent to interested parties. The regulation proposal would amend Title 16, California Code of Regulations Section 1803, which currently delegates a number of enforcement functions to the Executive Officer. This proposal would delegate the ability to issue an order compelling an evaluation of a licensee’s physical or mental condition as part of a complaint investigation. Mr. Manoleas opened the floor for anyone wishing to testify.

Richard Leslie of CAMFT, objected to the lack of proper notice of the hearing and stated that the notice needs to indicate a date and time, per government code. He testified that it

is the Board, not the Executive Officer, who should decide to issue orders for a psychiatric or physical examination. He stated that this function not be delegated to the Executive Officer in order to ensure that the Executive Officer is not exceeding his authority. The evidence should be brought to the Board to determine if the Board should order an exam. Mr. Leslie stated that it is a violation of due process to delegate the power to the Board's Executive Officer.

Geri Esposito, Executive Director of California Society for Clinical Social Work (CSCSW), concurred with Mr. Leslie. Ms. Esposito requested that the Board to reconsider delegating its authority and power to the Executive Officer.

No further testimonies were given. Mr. Manoleas closed the public comment session and proceeded with Board discussion.

Ms. Schieldge explained the history behind this proposal. It came to the Executive Officer's attention last year. The Board had delegated to the Chairperson the authority to compel a psychiatric or physical examination. When the Chairperson orders the exam, the Chairperson recuses himself from the decision-making process in order to ensure due process rights are not violated. Voting decision makers are lost when the Chairperson recuses himself. At the time, the Board was having quorum issues due to vacancies. The Chairperson asked to be removed from signing that order because the Chairperson knew the person who was going to potentially be evaluated. The authority was then delegated to another member of the Board. If that person recused himself, then there would be less people to vote if it came back to the Board for hearing.

Ms. Schieldge addressed the delegation issue stating that the Board can delegate any of its functions to the Executive Officer. She cited BPC Section 4990.13, which states that the enforcement of the chapter is vested with both the Board and the Executive Officer. Ms. Schieldge also cited BPC Section 4990.8, which states that the Executive Officer shall exercise the powers and perform the duties delegated by the Board.

Ms. Schieldge referred to the Administrative Procedures Act (APA). Government Code Section 11500 specifically refers to Article 4.5 of the APA. The APA specifically requires under 11425.30 of the Government Code, that there be a separation of function within each agency. That separation of function guarantees that there is no bias to achieve a particular end result. For this reason, the legal office recommended that whoever signs the order, recuses himself from the case.

Ms. Schieldge explained that the Board is considering this delegation for two reasons: (1) to provide more assurances of the bias potential being removed, (2) to address the concern about establishing a quorum.

Discussion was closed at the end of the Board discussion.

Mr. Leslie noted that the intent of BPC Sections 820-828 is for the Board to have the authority do both functions. He expressed that there is no need for anybody to recuse himself or herself, and that there is no need for delegation.

Mr. Riches mentioned a proposal to amend the proposed language for Section 1803 of Division 18 of Title 16 of the California Code of Regulations in response to comments from CAMFT. The proposal is to modify language to reflect the change from "issue orders

compelling psychiatric examination in accordance with BPC Section 820” to “issue orders compelling *an evaluation of a licensee’s physical or mental condition* in accordance with BPC Section 820.”

ROBERT GERST MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO AMEND THE PROPOSED REGULATION AS SUGGESTED AND DIRECT STAFF TO MAKE THE MODIFIED TEXT AVAILABLE TO THE PUBLIC FOR AT LEAST 15 DAYS, AND SET IT FOR ANOTHER PUBLIC HEARING FOR COMMENT ON THE TEXT.

Victor Law excused himself from the remainder of the meeting at approximately 3:16 p.m.

IX. Report of the Policy and Advocacy Committee

A. Recommendation to Amend and Adopt the Board’s Proposed Rulemaking Related to Title 16 CCR Section 1803

This item was discussed under Agenda Item XIII.

B. Review of Pending Legislation with Committee Recommendations

AB 525 Child Abuse Reporting

Christy Berger, Legislative Analyst, reported that AB 525 died.

AB 2283 Physicians and Surgeons: Ethnicity and Language Proficiency

Ms. Berger explained that physicians are asked to report their ethnic background and language proficiency to the Medical Board of California (MBC). This bill would require the MBC to compile information and report it on the MBC’s web site so that the public can access the information when choosing a physician who speaks their language. The Committee recommended that the Board support AB 2283.

ROBERT GERST MOVED, KAREN PINES SECONDED AND THE BOARD CONCURRED TO TAKE A SUPPORT POSITION ON ASSEMBLY BILL 2283.

AB 3013 Medical Information: Disclosures

Ms. Berger reported that this bill would strengthen and clarify laws regarding confidentiality by conforming California laws to federal law (HIPAA). This bill is intended to prevent psychotherapists from disclosing general health information regarding a patient. The Committee recommended that the Board support AB 3013.

IAN RUSS MOVED, KAREN PINES SECONDED, AND THE BOARD CONCURRED TO TAKE A SUPPORT POSITION ON ASSEMBLY BILL 3013.

AB 2428 Public Meetings

Ms. Berger reported that AB 2428 died in the Assembly.

SB 1228 Covenant Marriage

Ms. Berger reported that SB 1228 died in the Senate.

C. Recommendation to Sponsor Clean-up Legislation Regarding the Licensed Mental Health Services Provider Education Program

Mr. Riches reported that the Board was working with the Health Professions Education Foundation (HPEF) on getting the educational loan program running. In the course of working with the HPEF to put regulations together, it was identified that ASWs and MFT interns would not be eligible for that program. They would only be eligible after they become licensed which is approximately 3-4 years after they graduate. However most loan repayments begin 6 months after they graduate. The people that are coming out of school and becoming registered need assistance the most. The law precludes them from receiving the award until they are licensed. Mr. Riches recommended sponsoring legislation that would also allow registrants to receive the award.

KAREN PINES MOVED, IAN RUSS SECONDED, AND THE BOARD CONCURRED TO SPONSOR CLEAN-UP LEGISLATION REGARDING THE MENTAL HEALTH SERVICES PROVIDER EDUCATION PROGRAM.

D. Recommendation to Revise BBS Public Disclosure Policy E-04-2

Mr. Riches reported that the Governor signed Executive Order S-03-06, which requires all state agencies to take a number of actions related to agency compliance with the California Public Records Act (PRA). Among the required actions is for each agency to review and revise as necessary written guidelines for accessibility of public records. This order appears to have been triggered by an audit of agency compliance with the PRA by Californians Aware. The audit found substantial non-compliance by many state agencies, including the Department of Consumer Affairs.

Mr. Riches reported that the policies were reviewed, and two policies relating to the disclosure of public information were found to require revision. The policies do not mention reporting of settlements and arbitrations. There is a law that requires a malpractice settlement against the licensee in excess of \$30,000 to be reported to the Board. Another statute requires the settlement or arbitration awards relating to malpractice in excess of \$10,000 be reported to the Board. Under the PRA, the Board is required to disclose that information. The committee recommends that the policy be amended to be consistent with the requirements of the PRA as well as eliminate restrictions of fines.

Mr. Leslie suggested that #3 on Policy E-04-2 should read "an alleged violation" rather than "a violation" because paying the fine is not an admission of wrongdoing. Therefore, it is not a disciplinary action and is not considered a violation.

Ms. Schieldge responded that if the fine is paid, it is not considered disciplinary action. However, it is a final determination that a violation occurred if it is not appealed. She

suggested that the language could be changed to read "Final determination for a citation and fine, or citation and order of abatement issued by the Board."

Mr. Leslie referred to Policy E-04-02. Under Administrative Citations Issued on page two, he stated that it should read, "A citation and/or fine has been issued for an *alleged* violation of the law." He also referred to the Administrative Disciplinary Actions Disclaimer, and stated that the word "guilty" should not be used. He suggested that it should read, "Although an Accusation has been filed, the subject has not had a hearing or *not been found to have violated any law or regulation.*" Mr. Leslie also referred to paragraph two on the same page, and suggested replacing the term "release" with "written authorization."

Ms. Johnson recommended using the term "authorization."

Mr. Leslie expressed concerns about citations disclosed on the web site. He asserted that these are minor actions, there is no finding or admission of wrongdoing, and there is no violation of law.

Mr. Gerst stated that there is a misconception to say that the citation is minor and it is not insubstantial. It is an important tool in exercising the Board's function of protecting the public. Mr. Gerst explained that the Legislature adopted laws in order to protect the public that allows agencies to issue citations, and still protect the licensee. If the licensee feels that the violation is improper, an informal appeal can be requested.

Mr. Riches explained that according to the PRA, the Board is required to disclose that information upon request. He further explained that BPC Section 27 requires specified state agencies to put enforcement related information on the web site. The Board of Behavioral Sciences is one of those specified agencies.

Ms. Schieldge explained that everything that is owned, prepared, used or retained is a public record. This is a publicly disclosable record, not a category that is exempt from disclosure.

Mr. Leslie expressed his opinion that this is an underground regulation and should not be a policy. He encouraged the Board not to have this form in a policy, but in regulation. Mr. Leslie stated that the public policies are not found on the Board's web site.

Ms. Schieldge further explained that the Department of Consumer Affairs (DCA) is required by law to promulgate departmental guidelines with respect to access to public records as stated in Government Code Section 6253.4(a), and that such guidelines authorize Boards to specify the manner in which a record may be maintained.

Ms. Schieldge suggested that the subject should be clearer with respect to the license verification status and the recommendation of putting PRA requests in writing. The second paragraph should read, "Should the caller request *this information, staff should request that they submit the request in writing.*"

ROBERT GERST MOVED, JUDY JOHNSON SECONDED, AND THE BOARD CONCURRED TO ACCEPT AMENDMENTS TO THE BBS PUBLIC DISCLOSURE POLICY E-04-2.

Ms. Schiedge referred to the last sentence of Policy E-03-1, item 1. She recommended changing the language to read, "...the Board may issue citations, fines, and orders of abatement *in lieu of an accusation.*"

Ms. Schiedge referred to the last sentence on Policy E-03-1. She recommended striking or removing the references to Section 494 as inaccurate. She also recommended changing the language to read, "*These actions and decisions* are matters of public record and will be disclosed."

KAREN PINES MOVED, JOAN WALMSLEY SECONDED, AND THE BOARD CONCURRED TO ACCEPT AMENDMENTS TO REVISE BBS PUBLIC DISCLOSURE POLICY E-03-1.

D. Recommendation to Amend Title 16 CCR Section 1833.1 and Title 16 CCR Section 1870 Regarding the Qualifications of Supervisors

Dr. Russ reported that there are a number of agency leaders not seeing clients on a regular basis, but they are providing supervision. They are excluded from providing clinical supervision because they did not have enough client contact hours. The committee recommended revising the qualifications for supervisors because they were actively involved.

Mr. Riches explained that there are two regulations. One regulation applies to supervision of MFT interns. The other regulation applies to supervision of ASWs. The 5-hour per week client contact requirement only applies to the supervision of MFT interns. The proposal eliminates the 5-hour requirement for the MFT interns, making both regulations consistent. The other is to accept supervision time as a qualification in lieu of the direct psychotherapy.

Ms. Walmsley expressed her concerns about a licensee becoming a supervisor after two years of licensure and taking the course, and doing no additional clinical work except for supervising. She stated that many agencies are going to hire new licensees as supervisors who will forego their clinical work, because the agencies need supervisors.

Janlee Wong from NASW stated that this will not prevent someone with two years of clinical practice from supervising. Agencies can hire anyone they want. There is a shortage of good work experience sites for ASWs. Restrictions could possibly lessen the number of places where people can earn their hours.

Olivia Loewy, American Association of Marriage and Family Therapy (AAMFT) California Division, stated that many supervisors hire supervisees who can provide treatment to a lot of people who need services. Cutting down on that is cutting down on the amount of people served.

Heather Halperin, LCSW from the University of Southern California, expressed her concerns regarding supervisors who are not in direct contact with patients in a field where treatment is always changing and is not stagnant. Ms. Halperin stated that those supervisors may not be the best qualified to provide supervision.

Dr. Russ and Ms. Pines both agreed with Ms. Walmsley's concerns and suggested taking this back to committee for further discussion.

E. Recommendation to Sponsor Legislation Regarding Qualifications of Out-of-State Applicants for Clinical Social Work Licensure

Dr. Russ reported that the committee recommended to the Board to sponsor legislation that would credit out-of-state applicants for clinical social worker licensure for prior licensed practice time.

Ms. Berger explained that current law requires that an individual who is licensed as a clinical social worker in another state must meet education and supervised experience qualifications, regardless of how long he or she has been licensed. An applicant whose supervised experience is more than six years old, or who has not earned 3200 hours is required to gain those hours. The statute would permit out-of-state applicants to count their hours during the time that they have been licensed in lieu of supervised experience. The person must have been licensed for a minimum of four years in another state, whose license is valid, active and without disciplinary action. Persons licensed for fewer than 4 years would also be able to count some hours of licensed practice.

Geri Esposito expressed her support for the proposed changes. She suggested to the Board to get organizational support from the county mental health directors and county welfare directors before this goes through the Legislature.

JOAN WALMSLEY MOVED, JUDY JOHNSON SECONDED AND THE BOARD CONCURRED TO SPONSOR LEGISLATION REGARDING QUALIFICATIONS OF OUT-OF-STATE APPLICANTS FOR CLINICAL SOCIAL WORK LICENSURE.

G. Report on the April 19, 2006 Committee Meeting

Dr. Ian Russ, Committee Chairperson, reported that the Policy and Advocacy Committee met on April 19, 2006 in Sacramento. The committee conducted a review on Strategic Plan Objective 4.

Objective 4.1 – Participate in 15 public policy forums throughout the state addressing access to mental health services by June 30, 2010.

On March 23-24, 2006 Mr. Riches attended the meeting of the Mental Health Services Oversight and Accountability Commission (commission) in Sacramento. The commission is responsible for oversight of the Mental Health Services Act (Proposition 63). The meeting included organizational matters for the commission and presentations on prevention and early intervention in mental illness, which is a major focus of Proposition 63.

Objective 4.2 – Develop 4 proposals related to behavioral science

The Board sponsored a conference on diversity issues on professional licensing that was held on April 28th in Sacramento. The conference featured state and national experts in demography and cultural competence in mental health care as well as working sessions designed to provide feedback and suggestions for the Board's consideration.

Objective 4.3 – Advocate for 5 laws that expand access to mental health services by June 30, 2010.

Dr. Russ reported that the committee has not addressed this objective yet.

X. Public Comment for Items Not on the Agenda

Olivia Loewy, Executive Director of AAMFT, requested that the Board initiate an investigation related to reciprocity of out-of-state marriage and family therapist licenses.

Ms. Loewy recognized the efforts made to review the statutes and regulations for out-of-state applicants for clinical social work licensure. She indicated that the California public mental health system is facing severe shortages. The current statutes and regulations discourage experienced marriage and family therapists from practicing in California.

Ms. Loewy provided four letters from out-of-state marriage and family therapist applicants discussing their concerns and experiences regarding the California licensure process.

Mr. Manoleas noted that this item would be on the agenda for the Policy and Advocacy Committee meeting on June 28, 2006 in the Los Angeles area.

Ms. Loewy closed by commending the Policy and Advocacy Committee.

Heather Halperin, LCSW from University of Southern California, also added positive feedback for the Board.

The meeting adjourned at approximately 4:53 p.m.

Board Meeting Minutes

May 19, 2006

Legislative Office Building
1020 N Street, Room 100
Sacramento, CA 95814

MEMBERS PRESENT

Peter Manoleas, Chair, LCSW Member
Gordonna DiGiorgio, Public Member
Robert Gerst, Public Member
Judy Johnson, LEP Member
Karen Pines, MFT Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

Victor Law, Public Member

STAFF PRESENT

Paul Riches, Executive Officer
Kristy Schleidge, Legal Counsel
Spencer Walker, Legal Counsel
Christina Kitamura, Administrative Assistant

GUEST LIST ON FILE

FULL BOARD OPEN SESSION

The meeting was called to order at 9:08 a.m. Mrs. Kitamura called the roll and a quorum was established.

XI. Petition for Reinstatement

A. Daniel Richard Kinder MFC 9337 & LEP 0785

The Board heard a petition for reinstatement requested by Daniel Richard Kinder. The hearing was presided over by Administrative Law Judge, Stephen Smith.

The Board met in closed session to deliberate its decision in this matter pursuant to Government Code Section 11126(c)(3).

FULL BOARD CLOSED SESSION

XII. Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

The meeting was adjourned at approximately 11:35 a.m.