



BOARD OF BEHAVIORAL SCIENCES
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**Consumer Protection Committee Meeting Minutes
 January 10, 2007**

9:00 a.m. – 12:00 p.m.
 Department of Consumer Affairs
 1625 N Market Boulevard
 El Dorado Room – Second Floor
 Sacramento, CA 95834

MEMBERS PRESENT

Judy Johnson, Chair, LEP Member
 Howard Stein, Public Member
 Joan Walmsley, LCSW Member

MEMBERS ABSENT

None

STAFF PRESENT

Paul Riches, Executive Officer
 Mona Maggio, Assistant Executive Officer
 Christy Berger, Legislative Analyst
 Justin Sotelo, Regulation Analyst
 Stephen Sodergren, Program Manager
 Christina Kitamura, Administrative Assistant
 George Ritter, Legal Counsel
 Rosanna Webb-Flores, Enforcement Analyst
 Pearl Yu, Enforcement Analyst
 Julie McAuliffe, Enforcement Analyst
 Mary Hanifen, Enforcement Analyst
 Cheree Lasley, Enforcement Technician
 Jason Reinhardt, Enforcement Technician

GUEST LIST ON FILE

I. Introductions

The meeting was called to order at approximately 9:07 a.m. Committee members introduced themselves in place of roll. A quorum was established. Staff and guests also introduced themselves.

II. Review and Approve September 20, 2006 Consumer Protection Committee Meeting Minutes

Page 8, item XII: *Section 12311o corrected to Section 123110.*
 Page 9, item XII: *Section 12310 corrected to Section 123110.*
 Page 9, item XII: *Close parenthesis (BPC sections 4982 and 4992.3)*
 Page 9, item XII, 4th bullet: *Minor corrected to minor.*

HOWARD STEIN MOVED, JOAN WALMSLEY SECONDED, AND THE COMMITTEE CONCURRED TO APPROVE MINUTES AS AMENDED.

III. Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes - Report on Progress

Objective 3.1 -- Complete Revisions for Continuing Education Laws by December 31, 2006.

Mona Maggio, Assistant Executive Officer, reported on Title 16, CCR, Sections 1816.7 and 1887.7, 1887.75, and 1887.77. This proposal would allow a registered provider of continuing education (PCE) a period of one year from the registration's expiration date in order to renew an expired PCE registration with a \$100 delinquency fee. The regulatory hearing was held on November 16, 2006. Staff distributed a 15-day notice to the public to incorporate minor modifications into the language and will present the modified language to the Board for final approval at its February 2007 meeting.

Ms. Maggio reported on Title 16, CCR, Sections 1887.2(a) and 1887.3(a). Licensees are currently permitted to take an unlimited amount of continuing education (CE) by conventional or online means. However, hours earned through "self-study" courses are limited to one-third of the total required CE hours. The original intent of this proposal was to delete the definition of a "self-study course" and delete the limitations regarding self-study hours. The Consumer Protection Committee approved this proposal at its September 20, 2006 meeting. The proposal went before the Board for preliminary approval at its November 16, 2006 meeting; however, the Board recommended modifications to the proposed language – to retain the definition of a "self-study course" and to increase the self-study course limitations to one-half of the total required CE hours. Staff completed the required regulatory documents for noticing. The notice was published, which initiated the 45-day public comment period. A public hearing will be held at the Board's next meeting on February 15, 2007.

Ms. Maggio reported on Title 16, CCR Section 1886. This proposal would provide the Board with the authority to issue a citation and fine to a continuing education provider. This proposal is currently on hold due to staff workload considerations.

Objective 3.2 -- Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.

Ms. Maggio reported that limited progress was made on this objective. Staff is collecting data from other boards and bureaus on how they measure quality continuing education.

Objective 3.3 -- Complete 12 Substantive Changes in Laws and Regulations by January 1, 2008.

Ms. Maggio reported on the Board sponsored Senate Bill 1475 (Figueroa) This bill reorganizes and revises the Board's Administration statutes for clarity, removes obsolete provisions, and makes some minor refinements. This bill also reorganizes and revises the LEP statutes to remove obsolete provisions, modernize statutes relating to licensure, scope of practice, continuing education, and enforcement, and creates better consistency with the Board' other practice acts. This bill also facilitates portability of licensure for clinical social workers licensed in another state. Additionally, this bill extends the Board's sunset date by one year to July 1, 2009. This bill became effective January 1, 2007.

Ms. Maggio reported on the Board sponsored Assembly Bill 1852 (Yee). This bill allows marriage and family therapist interns and associate clinical social workers to be eligible to apply for educational loan repayment under the Licensed Mental Health Service Provider Education Program. The Health Professions Education Program, a division of the Office of Statewide Health Planning and Development, (OSHPD) administers this program. This bill became effective January 1, 2007.

Staff has met with Stephanie Clendenin, the representative from OSHPD. She met with the Policy and Advocacy Committee and gave an update. Staff will be working with OSHPD on regulations to get this moving forward.

Ms. Maggio reported on Title 16, CCR Section 1886.40. These regulations would provide the Board with the authority to issue a fine between \$2,501 and \$5,000 for specified violations. These regulations became effective on September 4, 2006.

Ms. Maggio reported on Title 16, CCR Section 1803. This proposal would allow the Board's executive officer to sign orders to compel a physical or mental evaluation of a Board licensee or registrant as part of an investigation of a complaint. The Board gave final approval to this proposal at its meeting on November 16, 2006. Staff will be submitting the final regulatory packet to the Office of Administrative Law (OAL) for final approval.

Ms. Maggio reported on Title 16, CCR Sections 1833.3 and 1870. Supervisors of registrants are currently required to have practiced psychotherapy for two out of the five years preceding any supervision. This proposal would allow supervisors to count time spent directly supervising persons who perform psychotherapy toward this requirement and delete the requirement that supervisors of MFT Interns and Trainees average 5 hours of client contact per week for two out of the five years prior to supervising. The regulatory hearing was held on November 16, 2006; no public comments were received. It will be presented to the Board for final approval at its February 2007 meeting.

Objective 3.4 – Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010.

Ms. Maggio reported The Board voted to support Assembly Bill 3013 (Koretz). This bill strengthens patient confidentiality laws by conforming California law to provisions of the Health Insurance Portability and Accountability Act (HIPAA) which limit the release of patient information, provide the patient the opportunity to prohibit such a release, and permit the health care provider to make judgments regarding releases in emergency situations. This bill became effective January 1, 2007.

Ms. Maggio reported on Assembly Bill 2257 (Committee on Business and Professions). This bill would require a psychologist to retain patient records for 7 years from the patient's discharge date. This bill became effective on January 1, 2007.

Objective 3.5 – Provide Four Educational Opportunities for Division of Investigation (DOI) and The Office of the Attorney General (AG) Regarding the Board of Behavioral Sciences (BBS) and It's Licensees by June 30, 2008.

Objective 3.6 – Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.

Ms. Maggio reported on Objective 3.5 and 3.6. DOI senior administrators Kathy Door and Bill Holland have left DOI for promotional opportunities elsewhere within state government. Ms. Maggio met with Rex Cowart, Acting Chief; however, there is no positive news on when DOI will be able to fill its vacancies. There is over a 50% vacancy within DOI. As a result, some of the cases sent to DOI for formal investigation take an average of 12-18 months for completion.

In an effort to handle more complaints in-house, enforcement staff attended the Council on Licensure, Enforcement and Regulation's (CLEAR) Basic National Certified (NCIT) Investigator/Inspector Training Program and are designated as "Certified Investigator/Inspector." Cases requiring field work will remain with an investigator from DOI.

Staff, along with a representative from DOI and two representatives from the Attorney Generals Office, is conducting a training session for Expert Witnesses on January 31, 2007.

Objective 3.7 – Complete Annual Review of Examination Program and Report the Results at a Public Meeting.

Ms. Maggio reported status of Objective 3.7. Staff is currently working with the Office of Examination Resources (OER) on the MFT occupational analysis. A presentation on the Board's Licensing and Examination Programs is given each year at the February Board meeting. Staff meets regularly with the OER to discuss the Board's current examination program, pass rates, examination development workshops and the examination vendor Thompson/Prometric.

Paul Riches, Executive Officer, added that the Board's budget change proposal for two enforcement analysts was approved and will be included in the Governor's budget. He also stated that staff will be reviewing options in the enforcement unit to determine which investigative processes can be reallocated to enforcement staff and to determine if the current investigative model requires changes to resolve cases.

Mr. Riches reported on the status of the examination vendor bid. There may be a new exam administration contract in place by early summer. The exam review session may need to be moved to the May Board meeting.

IV. Discussion and Possible Action to Create a Retired License Status for Marriage and Family Therapists (MFT), Licensed Clinical Social Workers (LCSW) and Licensed Educational Psychologists (LEP).

Justin Sotelo, Administrative Analyst, gave the background on the retired license status and current inactive status for licensees. The Board of Behavioral Sciences (Board) receives numerous inquiries and requests from licensees regarding a retired license status. Currently, if a licensee retires from practice, he/she can: 1) request that his/her license be placed on inactive status and pay a biennial fee of one half the standard active renewal fee (inactive license fees are \$65 for MFTs, \$50 for LCSWs, and \$40 for LEPs); or 2) not pay a fee and allow his/her license to expire. Renewing with an inactive status, by definition, means that a licensee may not engage in practice and is exempt

from continuing education requirements. Allowing a license to expire means that the license will go into delinquent status and will ultimately be cancelled after five years. Mr. Sotelo reviewed the license status terms and definitions.

Mr. Sotelo listed the boards within the department that offer a retired status. He gave a comparison of license status provisions between those boards as well as the draft legislative language that follows those boards, while illustrating the difference in language between those boards.

Mr. Sotelo requested that the Committee also consider whether or not to allow the licensee to reinstate his/her retired license, and if so, what requirements they must meet to reinstate the license.

Geri Esposito, Executive Director of California Society for Clinical Social Work (CSCSW), stated that the retired license status is appealing.

Mary Riemersma, Executive Director of California Association of Marriage and Family Therapists (CAMFT) stated that the inactive license is all that is needed and recommends that the current license status remain as is.

Judy Johnson stated that a retired license status is a good option to offer licensees, however, it is important to educate licensees about the inactive license status.

Joan Walmsley stated that the retired license status is a dignified option, however, the licensee should have an understanding of what it means to have a retired status.

After some discussion regarding retired license status and inactive license status, Ms. Johnson suggested that the Committee continue to pursue the retired license status, and requested Mr. Sotelo to bring back some retired license status models to the next Committee meeting.

JOAN WALMSLEY MOTIONED, JUDY JOHNSON SECONDED, AND THE COMMITTEE CONCURRED TO CONTINUING PURSUING THE RETIRED LICENSE STATUS.

V. Discussion and Possible Action to Standardize the Exempt Settings Across the MFT and LCSW Practice Acts

Christy Berger, Legislative Analyst, defined “exempt settings” and reported that when comparing the LCSW and MFT statutes, they have some exempt settings in common, but there are some differences. The MFT statute lists fewer exemptions and is narrower. The Licensed Educational Psychologist statute does not specify any exempt settings. Ms. Berger cited several reasons to standardize exempt settings. (1) the scopes of practice for MFTs and LCSWs are very comparable, therefore, exempt settings should not differ, (2) for purposes of administrative simplicity, standardization and better-defined exemptions, (3) most exempt settings require licensure anyway for reimbursement reasons, and (4) this proposal would enhance consumer protection by requiring licensure for persons in additional settings.

Ms. Berger indicated that the MFT statute is narrower and better defined, and was used as the basis for the proposed language. The proposed changes would remove the following as exempt settings in the LCSW practice act: (1) family or children services

agencies, (2) private psychiatric clinics, and (3) nonprofit organizations engaged in research and education.

Ms. Riemersma, CAMFT, expressed support for the proposal.

HOWARD STEIN MOVED JOAN WALMSLEY SECONDED, AND THE COMMITTEE CONCURRED TO SPONSOR LEGISLATION TO STANDARDIZE THE EXEMPT SETTINGS BETWEEN THE LCSW AND MFT STATUTES.

VI. Discussion and Possible Action to Revise Continuing Education Exception Criteria for MFT and LCSW License Renewals

Mr. Sotelo reported on Section 1887.2 of Title 16, Division of the California Code of Regulations, which sets forth continuing education (CE) exception criteria for Marriage and Family Therapist and Licensed Clinical Social Worker license renewals. This regulation sets forth: (1) a reduced CE requirement for initial licensees, (2) a CE exemption for those whose licenses are in inactive status, and (3) CE exception criteria and procedures to make a request for exception. Staff recommended changes in order to clarify and/or better facilitate the request for exception from the CE requirement process. Mr. Sotelo added that “major life activities” and “impairment” were defined to be consistent with federal law (American Disabilities Act).

HOWARD STEIN MOVED, JUDY JOHNSON SECONDED, AND THE COMMITTEE CONCURRED TO REVISE THE CONTINUING EDUCATION EXCEPTION CRITERIA.

VII. Review Supervisor Responsibility Statements

Ms. Berger reported that the Committee requested a review of the responsibility statement for supervisors of an Associate Clinical Social Worker (ASW) or Marriage and Family Therapist Intern (IMF) or Trainee. Ms. Berger explained that current supervision law specifies the requirements to become a supervisor of an IMF, trainee, or ASW; the required structure of supervision and inherent responsibilities; and details the requirements of the supervisor’s employment or practice, depending on the work setting. Any supervisor of an IMF, trainee or ASW must sign a responsibility statement prior to the commencement of supervision.

No comments were received.

Committee adjourned briefly for a break.

VIII. Discuss Marriage and Family Therapists Utilizing Biofeedback in Therapy

Pearl Yu, Enforcement Analyst, reported that Board staff received inquiries from marriage and family therapists (MFT) requesting clarification regarding whether or not their MFT license permits them to utilize biofeedback in their practice. The standard response staff has been providing to MFTs is that they can use biofeedback as a psychotherapeutic technique so long as they are working within their scope of practice and scope of competence as established by their education, training, and experience. Since the Board’s statutes and regulations do not specifically address the use of

biofeedback as a psychotherapeutic technique, staff is seeking clarification regarding this issue to ensure that staff is providing licensees with correct information.

Ms. Johnson stated that the professionals are trained in this area, they can utilize biofeedback, and the Board does not need to regulate it.

Ms. Esposito, CSCSW, stated that the largest certification program requires licensure and has standards.

Ms. Riemersma, CAMFT, stated that biofeedback is an unregulated activity. Anybody who has the competence to use the technique, as long as they are working under their scope of practice, can use the technique.

IX. Review Enforcement Program Statistics

The Committee was asked to review the Enforcement Program's statistical reports.

Howard Stein stated that continuing education (CE) appears to be a problem, and asked if there are enough courses available or if licensees choose to not take the CE courses. Mr. Riches responded that it is a combination of both. Ms. Walmsley also responded that there are enough courses available.

Mr. Stein stated that the numbers in the report are constantly rising. He asked if the Board is licensing more people, if the Board is catching more people breaking the law, or if the Board is becoming more efficient.

Mr. Riches responded all of the above; the licensing numbers are rising steadily each year and there is a significant increase in complaints. The only enforcement actions that come from staff initiatives are the CE audits.

X. Review Draft Candidate Bill of Rights

Steve Sodergren, Program Manager, reported that staff has been receiving numerous calls about problems with the examination. Many times candidates do not understand what to do and how to get help.

In an effort to assist the candidates with the examination process and informing them of their rights and responsibilities, staff drafted a Candidate Bill of Rights. The information contained in the Candidate Bill of Rights is what candidates should expect from the testing facilities, as well as what their responsibilities are prior to taking an exam. Also included is information on actions to take if there is a problem with the testing facilities. This information is currently in the Candidate Handbook, however, the handbook is quite large. Once approved, this document will be provided to candidates with the Notice of Examination Eligibility and will also be provided to them at the testing site in addition to the Candidate Handbook.

Ms. Maggio added that this would also be an enclosure with their eligibility notice.

Ms. Riemersma stated that this is valuable because there is already a fear of backlash. This tells the candidates that it is ok to articulate concerns or complaints.

Ms. Johnson expressed that the Candidate Expectations and Responsibilities document is excellent.

XI. Presentation by Lindle Hatton of Hatton Management Consultants Regarding Strategic Planning Process.

Lindle Hatton of Hatton Management Consultants introduced himself and gave a brief background. Dr. Hatton worked with the Board on its previous strategic plan, and is now working with the Board to update the strategic plan.

Dr. Hatton presented the strategic planning process to the Committee. He also reviewed the upcoming plan to meet with the staff in February and August, and gave his expectations of the Board members during this process.

Dr. Hatton explained that he uses an expanded approach using multiple constituencies, engaging as many internal and external stakeholders as possible. To do that, the model approach is to follow the state's strategic planning guidelines, consistent with the Governor's office and the Department of Finance. That model consists of four driving questions: (1) where are we now?; (2) where do we want to go?; (3) how do we want to get there?; and (4) how do we measure progress? We are now moving into the first phase of scanning the environment. Previous discussions with Mr. Riches and Ms. Maggio involved developing a list of key stakeholders who have an interest in the Board and with a working knowledge of the Board. Dr. Hatton received a list of 91 stakeholders, 52 of which are external. He asked the Committee whether they felt this was a good sample.

Dr. Hatton stated that the strategic planning process was last performed 23 months ago and there was a very nominal response from stakeholders. They are working to get a greater response by expanding the list and using the Internet. The survey is designed in two primary segments. The first is regarding the Board's organizational effectiveness, consisting of approximately 25 questions rated on a scale of one to five, then five open-ended questions, the first asking about the accomplishments of the Board over the past two years, the other four speak to the SWOT Analysis: strengths and weakness that may limit the Board's effectiveness, opportunities the Board should be prepared to pursue, and the threats that might limit the Board.

The survey will probably be sent out soon with a two-week response deadline. Dr. Hatton will be meeting with all Board staff on February 7th and 20th, where the survey responses will be reviewed. Management and Board members will initially review the responses and have the opportunity to provide feedback, then it will go to staff for prioritization of themes. Those themes should be able to fit into existing goals, or we will need to create new goals. This is also an appropriate time to revisit the mission statement. In May, the Board will have a focused working session with Dr. Hatton to review vision, mission and themes based upon data collected from the surveys, and how they align with current goals, and taking new suggestions. The objectives this time are to have a more robust data and to have more staff involvement than last time.

Dr. Hatton explained that all information collected from stakeholders would be kept confidential. The Board has a two-year contract with him to allow training and assistance to staff for actualization and accountability on an ongoing basis, at least quarterly. He would have a more hands-on role in creating work action plans. As tasks are aligned with people responsible for those tasks, we will create a forum for them to

return and report on progress. He would like to do that by having staff report personally to the Board, as he feels it is important to send a strong message to staff that the Board is interested in what they are doing. It also gives them an opportunity to interact with the Board in a more formal level, and for staff development purposes.

XII. Discuss Future Meeting Dates and Agenda Topics

Meeting Dates

Ms. Maggio asked the Committee to review and set future meeting dates.

The Committee agreed to the following meeting schedule:

- April 11, 2007 in Orange County
- June 27, 2007 in Sacramento
- September 26, 2007 in southern California (exact location not yet determined)

Agenda Topics

Ms. Johnson would like to discuss opportunities for candidates to access resources to study and prepare for the exam. Mr. Riches stated that this topic is being considered under the Communications Committee.

Ms. Johnson would like to discuss a manner in which to include as an option for continued education, "accountability groups." This is where professions get together, encourage one another and hold each other accountable to standards. This is done in other professions; some call it "peer review." The idea is to promote integrity in the profession and keep each other excellent. Ms. Johnson suggested looking at models.

The meeting adjourned at 11:19 a.m.