

MEETING MINUTES

Policy and Advocacy Committee

July 11, 2008

Woodfin Suites
58 Shellmound
Emeryville, CA 94608

Committee Members Present:

Gordonna DiGiorgio, Chair, Public Member
Renee Lonner, LCSW Member
Dr. Ian Russ, MFT Member

Staff Present:

Paul Riches, Executive Officer
Tracy Rhine, Legislative Analyst
Mary Hanifen, Enforcement Analyst
Kristy Schieldge, Staff Counsel

Committee Members Absent:

Karen Roye, Public Member

Guest List:

On File

Gordonna DiGiorgio, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 10:05a.m. Paul Riches called roll, and a quorum was established.

I. Introductions

Guests in the audience introduced themselves.

II. Review and Approval of the April 11, 2008 Policy and Advocacy Committee Meeting Minutes

Kristy Schieldge referred to page 3, 3rd paragraph. Ms. Schieldge's statement should read *The Board must be very confident in who it is linking to on the website, because the Board has not control over the content on other websites.*

Ian Russ moved to approve the minutes as amended. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

III. Review and Possible Action to Recommend Revisions to the Board's Disciplinary Guidelines

Mr. Riches explained that this process was started several months ago. A draft was presented at the prior Committee meeting. The item subject to the most numerous changes is updating the guidelines to reflect the new statutes when the licensed educational psychologist law is reorganized. There are some minor language corrections. On page four, it should read *statutes and regulations*. There are several substantive changes. One reflecting the recently enacted SB 797, which creates exemptions and the authority for the Board to take disciplinary action based on conduct prior to licensure in certain circumstances. There are a number of places where we are putting in current legislation, SB 1779, provisions in law and other codes that give the Board disciplinary authority over its licensees over certain types of violations: telemedicine, medical records, and subversion of the exam. Those are added here to reflect what is going on with SB 1779 so that this will reflect the current changes we have in the unprofessional conduct statutes.

There are two big parts to the disciplinary guidelines: the first is the portion that suggests the range of sanctions available based on finding of unprofessional conduct. The second piece is the language that the Administrative Law Judges (ALJ) and the Deputies Attorney Generals (DAG) use in constructing accusations and in constructing settlement agreements, and proposed decisions.

There are several issues that are not reflected in this draft, such as the ongoing issues with the probation process. Mr. Riches referred to page 18, item number four. Very commonly when somebody is on probation, they will be subject to supervision by another licensed professional. There are many good reasons for this; but it becomes a bit complicated in certain cases when we're disciplining a registrant, particularly if they are practicing in remote and underserved communities. Frequently those individuals are fortunate to have a practice supervisor, much less have the availability of another licensed practitioner provide probationary supervision. The standard language in place is that the probation supervisor needs to not have a prior professional relationship, but in the board's experience, there are cases where that is not practicable.

Mr. Riches suggested that the Committee consider adding language giving ability for someone to serve in a dual role if there was no other available supervision.

The other incident the board has experienced in some underserved areas is that it does indicate that the probation supervisor should be a licensed professional. That can be a challenge in some areas where they are fortunate to have any practitioner available much less a clinical social worker, a licensed educational psychologist or a marriage family therapist. This is another consideration in terms of the function of that probation supervisor.

Dr. Russ asked if internet supervision should be considered.

Ms. DiGiorgio asked for clarification on internet supervision. Dr. Russ explained that the use of real time video via the internet. The model could resemble online course work where there would have to be some face-to-face on a quarterly basis, for example.

Ms. DiGiorgio stated that she would like to see language that makes supervision more flexible.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists (CAMFT), stated that by giving the board the authority to make alternative arrangements in the case where there is inadequate supervision available, it leaves it open for the board to make a decision. These things can only be decided on a case by case basis as an individual submits what is necessary given the remote location they happen to be in.

Dr. Russ asked Kristy Schieldge if that is acceptable. Ms. Schieldge responded that language can be crafted stating that is the standard. If that standard cannot be met due to certain circumstances, then other option will be determined on a case-by-case basis. You should articulate what you optimally prefer.

Dr. Russ stated that he would also, for the immediate fix, be able to do that. He would like to also consider the face-to-face live video supervision, and hopes that universities adopt this so that students can observe this. This could be an educational tool.

Mr. Riches stated that Ms. Schieldge can assist staff in crafting the language for this direction.

Janlee Wong, Executive Director for the National Association of Social Workers (NASW), stated that he has concerns about this. There are some serious ethical considerations concerning dual relationships. By allowing these relationships where there are only a small number of mental health professionals in a small area; in time, they can no longer work with each other. The mental health professionals cannot be mixed up altogether.

Dr. Russ asked Mr. Wong to suggest a solution. Mr. Wong responded that he does not have a suggestion. Ultimately, the person who is being disciplined will have to face some hardship if they are in this particular circumstance. But because they violated a law, and they are being disciplined, then they have to take some responsibility and commute to another area to get their supervision. The Board should not try to make it as easy as possible for the person being disciplined.

Mr. Riches responded that it's not a matter of trying to make it an as-easy-as-possible situation so much as creating terms of probation that are achievable. This is really only going to be a case regarding registrants who have been disciplined. Unfortunately for some individuals the alternative is to surrender their license or registration. That is not an optimal outcome. The probationer pays for the supervision. This is not a simple term to comply with even when it is available. Mr. Riches emphasized that it is preferable to have a clear separation wherever it is practical.

Mr. Riches explained another issue regarding courses required of probationers. Probation agreements commonly require additional education: law and ethics, recordkeeping, and boundaries. The language in the current guidelines requires that these courses be taken at a graduate level institution. The problem is that these courses, with the exception of law and ethics, are not offered at graduate level institutions. Mr. Riches suggested accepting these courses on a continuing education level, with the requirement for physical presence. The courses cannot be taken online or through self-study. This term cannot be satisfied in any reasonable way. Staff ends up locating a course that contains some of the material but it's not well directed at that subject matter.

Dr. Russ stated that his concern about putting this into continuing education is that he questions the responsibility of the course provider. If the three associations collaborate and

provide these types of courses, even for only once a year, they can incorporate the associations' ethic standards into the course.

Ms. Riemersma stated that CAMFT does not have a problem with this idea; however, the other associations may have an issue. It does make sense to work cooperatively with the other associations on this.

Dr. Russ stated that the associations have the same purpose, and the course would offer a variety of useful input. It would give an opportunity for the associations to work together.

Mr. Wong stated that this is not economically feasible. He is not sure why the Committee is opposed to online courses. NASW would be willing to work with the board to develop online courses so that it can control the quality and direct the content.

Robert Weathers, Cal Southern University, stated that he completed an 8-hour online course specific to boundaries across disciplines. He stated that it was exceptionally presented and rigorous. He suggested that the associations develop the curriculum, put it into a format that is feasible such as online, and have an exam at the end.

Mr. Riches asked Mary Hanifen, BBS Enforcement Analyst, for her opinion. Ms. Hanifen replied that her concern would be validating that the person taking the online course is actually the probationer.

Mr. Wong stated that can also be an issue at a course requiring physical attendance. NASW does not require identification at their courses.

Ben Caldwell, American Association for Marriage and Family Therapy (AAMFT), asked what how probationers currently fulfill their educational terms.

Mr. Riches responded that probationers usually find boundaries in ethics courses. As for recordkeeping, it is a struggle finding courses. Staff usually works with probationers to find an outlet somewhere, but it is difficult. The board hasn't had a large base of probationers until the last couple of years. Since it's a growing population, staff is dealing with this issue more and more.

Ms. Riemersma asked if that will change with the new educational requirements, at least the recordkeeping part of it. Mr. Riches responded that may possibly change for MFTs. That is in the cluster of courses available on an extension basis, which is a third avenue here; it's not CE and it's not graduate level, but it is university-affiliated.

Mr. Weathers stated that one way to address accountability is to use web cam technology.

Mr. Riches asked audience members from schools if they are open to set up individual, independent study courses along these lines.

Barbara Grimes, Cal Southern University, responded that it would be a very good idea to have online courses addressing these issues. It would be credible to an extension course.

Ms. Lonner stated that most of the probationers have a supervised practice requirement. The supervisor could deal with the recordkeeping issue, since it is a part of supervision, and ask to

see written records, computer print outs, etc. The issue of boundaries is included in the law and ethics courses; but possibly not to the extent that the probationers need.

Ms. Schieldge stated that you would have to make sure that the supervision was always a term in every single probation order. The judges usually look at particular cases and decide which case requires supervision and which case requires education, or both; but sometimes they are not always concurrently chosen.

Ms. Riemersma asked what instruction is given to the supervisor as to what must be covered in the course of supervision, and what kind of reporting supports the material that was covered in supervision.

Ms. Hanifen responded that supervisors are given a packet of information with specific requirements of what to do. Ms. Hanifen offered to send a sample packet to Ms. Riemersma.

Ms. Riemersma stated that CAMFT is also addressing this issue with their Ethics Committee. How much information is given to the supervisor? Does the supervisor get all of the background and data to understand what the probationer did wrong so that the supervisor can address those issues over the course of supervision? Ms. Hanifen responded that the supervisor is given a copy of the accusation only.

Mr. Wong stated that the best way to determine if somebody is keeping good records is to look at the records. With boundaries, you have to deal with the person.

Mr. Riches stated that this is not a case of keeping good records. Usually when recordkeeping education is ordered, it is because one of the issues in the accusation was a failure to keep records. Usually there is a profound absence of understanding about recordkeeping.

Mr. Wong stated that if there is somebody looking at the records, then obviously records are being kept. If you have somebody taking a course through an extension or independent study, that doesn't mean they are keeping records.

Mr. Riches clarified that the education provisions are not about ongoing performance. It's about remediating a lack of knowledge. The reason the education is ordered is because the probationer exhibited conduct, which reflect that they do not understand. It's remediation; it's not part of an ongoing supervision and assessment of performance and practice.

Ms. DiGiorgio stated that her concern with a supervisor overseeing this is that sometimes supervisors do things their way, and it has trickled down to the fact they are not doing it right to begin with. The probationer needs a proper course so they learn what is required - not what a supervisor is doing.

Mr. Weathers asked if the knowledge deficit is valid. In practice after so many years, sometimes the knowledge erodes. Mr. Riches responded that these are not gray area cases. It's not that the probationer was not following best practices – they were not keeping records.

Ms. Riemersma stated that everyone knows that recordkeeping is required; they know it's the law. There is about 2% of the profession that claims that they do not keep records, but they know they should - they choose not to.

Dr. Russ stated that these are ethical lapses. They knew what to do, had the ability to know what to do, didn't care, didn't pay attention.

Ms. Schieldge stated that sometimes it is not a gross negligent failure; it's competence. Gross negligence and incompetence are two different concepts. Negligence is when one knows the duty but fails to perform it. Incompetence is when one does not even have the tools to understand what their duty is. Education gets one to the level where they understand that there is a duty and understands what tools are required to implement that duty.

Mr. Riches stated that some of the responses he gets are for example "it would violate confidentiality so I don't write things down; I need to protect my patient's confidentiality." They honestly believe that.

Mr. Caldwell stated that some kind of creative solution is in order, whether it be online or otherwise. He agrees that in order to make something like that work in terms of a workshop sponsored by the associations would be difficult. It would be difficult getting all of the associations on one page to decide what to teach and how to teach it. For someone who is not a student, a school will not allow them to come in for an independent study course because faculty must be paid to teach it. The tuition paid would not cover the costs involved.

Ms. Riemersma stated that even the most basic law and ethics workshop covers recordkeeping in sufficient details that the person is going to understand what they need to do. Whether or not they fulfill that responsibility is going to depend on the supervisor to enforce it. More responsibility needs to be placed on the supervision.

Dr. Russ suggested an online course requirement and attendance at a CE workshop on law and ethics, and bringing someone in periodically to review the records to make sure it is done right.

Mr. Riches stated that there appears to be a market failure. One of the things we need to evaluate is if this is something the board needs to do. The board needs to work with folks in the field to develop a curriculum and facilitates a course once a year for probationers - a mandatory attendance.

Ms. Riemersma stated that the board has the ability to verify identity, which is something CAMFT does not have the ability to do.

Ms. Schieldge stated that may require a legislative or regulatory fix. It would be outside of the confines of the disciplinary guidelines. In the interim, the board may want to consider making these changes so that there is a broader base of educational institutions to choose from. Regardless, the probationers have to submit this plan to the staff for approval. So the staff can still look at the course and see if they met the goal that the board has set to rehabilitate. I would recommend considering the problems that reduce the interim work, but that the long term goal may be legislative changes that allows the board to do this kind of training, and contractual authority to contract it out if the board chooses.

Mr. Wong pointed out that if the board wants to do their own course for recordkeeping in particular that may be setting a de facto standard for recordkeeping that would apply to all licensees. Mr. Wong doesn't know if that would be a good or bad thing until he sees it. It depends on whether it's prescriptive or not, and if it allows for some flexibility. Practitioners would have to weigh in unless the minimal basic elements were included.

Ms. Lonner asked if the recordkeeping is prescriptive. Ms. Schieldge clarified Mr. Wong's statement, explaining that a standard is set by having these courses; it looks like a prescriptive standard because it's coming from the board. If the market can't handle this, the board may need to consider allowing online or CE workshops as an option because those appear to be the only possible avenues. Or the board may consider offering the courses itself, and then dealing with the claims that there is prescription in the fact that it's coming from the board. Ms. Schieldge will research other boards in the department to see if they have provided courses and training and how they implemented it.

Ms. DiGiorgio suggested looking into interactive online courses with a web cam. Sometimes it can be economically feasible.

Mr. Riches stated his preference would be to bring this back to the next meeting because there are some issues that needs some work. The guideline is not a document that he wants to change frequently.

Ms. Riemersma suggested requiring the probationer to complete a research document on recordkeeping. The probationer would have to go out and do the research on their own, and come back to staff with a written report on what they learned. Again, there is still the issue of verifying that the probationer actually did the work.

Mr. Riches stated that is a question for the board in determining the appropriate measures of remediation.

Ms. Lonner stated that although it's a creative idea, it would put the board in the position of being an educational institution looking for plagiarism.

Dr. Russ asked how we would arrange for a program. Mr. Riches stated that there are a couple ways to do it. One way is to contract out to provide the course. If the three associations were to get together and bid on that, it would incorporate by definition the ethics of those three associations. Each of their ethic policies are all good and important and would be a wonderful contribution.

Mr. Weathers stated that the discussion is about moral decision-making and more knowledge about recordkeeping, and they are slightly overlapping. He suggested that if they are overlapping, then finding more stringent form of supervision where there is ongoing accountability and some kind of training.

Mr. Riches stated that there is never a probationer that has one term. These are layered agreements that include a multitude of options. It's exceedingly common that there is a supervision element. It's very common that ongoing psychotherapy is required as well as educational remediation.

Dr. Russ suggested hiring experts to review records periodically at the expense of the probationer. Mr. Riches responded that the board currently has recordkeeping monitors as an optional term.

Dr. Russ asked why aren't recordkeeping monitors used for these matters? Ms. Schieldge responded that some of these things come through the ALJ who create an educational requirement and put it in the order. Usually it will be a requirement of a course in boundaries

instead of law and ethics. The probationer ends up taking law and ethics because there are no courses on boundaries. We don't have any control when it gets to the ALJ, but we do have control over the guidelines.

Ms. DiGiorgio asked if we're going in the wrong direction; should we be retraining the ALJ since they are asking for something that does not exist?

Mr. Caldwell referred to the chart on page 14, the minimum penalty and maximum penalty columns are backwards. Ms. Schieldge agreed.

Ms. Riemersma referred to corrections needed on pages 19 and 22. Under education, the blue underlined sentence should read *that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist*. The same is true for page 22.

IV. Discussion and Possible Action Regarding Assembly Bill 239 Relating to Alcoholism and Drug Abuse Counselors

Ms. Rhine reported that at its May meeting, the Board voted to table the discussion on AB 239. The bill has been amended since the May board meeting. Ms. Rhine referred to Memorandum of Understanding on page 13 of the analysis, which was the most significant amendment. The amendment came out of the Senate Health Committee. The amendment states that the Board of Behavioral Sciences (BBS) must have a memorandum of understanding (MOU) with the Department of Alcohol and Drug Programs, stating that the two entities will work together on anything relating to alcoholism and drug abuse counselors.

There are issues with the MOU. The first issue is that the language states that the provisions of the MOU will be guided by shared goals of improving consumer protection and ensuring efficient uses of resources devoted to the treatment of chemical dependency. That is contrary to what is stated under Business and Professions Code in that the board's primary focus is public protection. The second issue is the MOU provides that the Director of ADP sit on the Board in an ex officio member. This bill would create a total of three additional seats on the board. The third issue is the need a MOU. Staff feels the MOU is not necessary. BBS holds open meetings and incorporates input from all public and private entities. Staff suggests alternative language stating that BBS will work with ADP.

There is an issue with program funding. The bill provides for funding the program's startup costs through a loan. The startup cost for this program is estimated to be about 1.2 million dollars.

There is an issue with the Alcoholism and Drug Abuse Counselor (ADAC) I education and scope of practice. The lower level counselor, ADAC I, who provides services under supervision only must have a Bachelors Degree, 255 hours of fieldwork in a clinically supervised practicum, and 315 hours of classroom instruction. After the grandparenting period, a Bachelor's Degree is required. Staff has concerns with continuing to have a sustainable licensing base with the new requirements of the Bachelor's Degree for the lower level counselor.

Ms. DiGiorgio expressed that a Bachelor's Degree is inappropriate. This is a minimum wage job. If extra education is required, the scope of practice for CAADAC is such that the extended education is never going to be used. If the education and standards are the same

as an LCSW or MFT, why wouldn't one become an LCSW or MFT? The coursework is already provided to obtain the CAADAC certification. She disagreed with the 60-hour CE requirement; MFTs and LCSWs are only required to have 36 hours.

Mr. Riches stated that staff had a lot of discussions about this. An Associate's level degree is more appropriate given the scope of practice particularly since these practitioners are exclusively operating under supervision. That educational mandate is far more accessible and attainable than a Bachelor's Degree.

Dr. Russ stated that it is essential to have a license that is across the board. The idea of an Associate's (AA) Degree is a good idea and is appropriate. Other AA programs, such as the nursing program, are good models. The 60-hour continuing education requirement is punitive especially when MFTs and LCSWs are only required 36 hours.

Ms. Riemersma stated that CAMFT demanded the Bachelor's Degree requirement, explaining that their board felt strongly that a Bachelor's level degree was important because that program develops skills that are not accomplished with the AA Degree.

Ms. DiGiorgio explained that the AA Degree would be required, but the student would also be required to take the CAADAC coursework which is almost a 2-year program. Ms. Riemersma responded that the numbers did not look like that much coursework. The numbers of hours was presented as 15 additional classroom hours, and that doesn't fit with the number of courses that one would have had they completed an entire Bachelor's Degree.

Mr. Riches stated that there is a separation in what CAADACs certification requirements are and the standards of the bill. There is a way to incorporate the professional training in the context of an AA Degree that gives a strong educational foundation and has the institutional oversight from a public education system. Staff had difficulty reconciling the scope of practice and the terms of practice with the education standards.

Sherry Daley, CAADAC, gave an update on ADP. The ADP would like to have this licensure component applied to facilities as well. CAADAC has yet to meet with ADP, but it is definitely their feeling as well that there needs to be a level accessible to those working in public facilities, and that they too need to be brought into this legislation. It appears that their concerns are mirroring BBS' concerns.

Willie Guerrero, lobbyist to CAADAC, stated that they are still working with all the parties to come up with the best piece of legislation possible.

Ms. Riemersma stated that CAMFT would not be opposed to reducing the number of continuing education hours to be consistent with the MFT and LCSW requirement.

Mr. Wong believes that he agrees with the Bachelor's level degree requirement. Consumers deserve the same level of care as they would receive from other licensed professionals. By having a despaired system, the people who do not have the higher standards will be adversely affected. Eventually, those people in the exempted settings will need to meet those standards in the private sector. This is already happening in social work. Mr. Wong expressed that this is flawed, it needs more work, and it should not be rushed.

Mr. Riemersma agreed that CAADAC is trying to accommodate many varied interests. There is no perfect licensing law. Flaws will be found that needs correction, and this has been seen

in the MFT and LCSW profession. Those who are currently in jobs are protected through grandparenting. It's reasonable for the protection for the public to go along with what CAADAC is proposing.

Ms. Daley stated that CAADAC is not trying to set up dual standards; they trying to create a career ladder. She believes CAADAC has a good product at the top tier, and will work to reach a compromise on the lower tier. She expressed that everyone's support is needed to keep this going over the next few months.

Ms. DiGiorgio stated that she is still wondering why licensure is needed when there is a certification. The scope of practice is very narrow. At this point, she does not support this. Dr. Russ asked if it would be acceptable if this was limited to private practice. Ms. DiGiorgio responded yes.

Ms. Riemersma stated that there are people already working in a private practice setting. This licensing act would protect the public.

Ms. Daley explained that the tier in question still needs to be worked out, whether it be a certification or a licensure.

Mr. Riches explained that staff spent a lot of time trying to figure out how to financially maintain this program once it's in place. Initially, a huge surge under grandparenting will come in. The standards become so high for those coming in after the grandparenting period, the line will drop. In terms of sustainability over time, the board has to make the numbers work without keeping fees too high. Staff doesn't see a large enough population over time that allows the program to maintain sustainability, especially after the grandparented people start retiring.

Ms. Riemersma stated that independent practice is a level that is higher compared to someone who is employed who might operate at a level that is different than the private practitioner. Even though this person is supervised, he or she is still working independently in their own business, collecting fees, unsupervised when in the room working with the client. In an entity, there is an employer in control. There can be the two-tiered approach.

Mr. Wong stated that Ms. Riemersma's comment is true from an academic standpoint; however, people in the public sector get lower quality care than in the private sector because the public sector does not pay enough to its providers. So you don't have quality providers that are needed despite the levels of supervision. The scandals with public sector happen because of the level of pay, training, education and qualifications are lower. Mr. Wong stated that theoretically one can say there is a high level of supervision, and therefore the quality of care is good; but in reality that is not true.

Dr. Russ responded that changing the qualifications for institutions will not drive up the salaries. The legislature will not give the state of California more money to put into the institutions because the employees have Bachelor's Degrees. Mr. Wong disagreed because that is currently happening in the social work profession.

Ms. DiGiorgio explained that insurance does not cover treatment; there is no money. The residential treatment program where Ms. DiGiorgio is employed is probably the lowest cost residential program around, because the owner believes in the system and believes in what he's doing. He makes no money, and the program is full all of the time. The owner allows

people to stay there for 7-8 months, usually free for 3-4 of those months. Insurance will not cover it. Regardless of what license she carries, she would still receive the same pay. Until insurance changes the way they regard addiction, it's not going to change.

Mr. Guerrero asked for direction from the Committee and staff. Mr. Riches responded that the MOU language is not acceptable.

Ian Russ moved to recommend a position of oppose unless amended to remove the Memo of Understanding provisions. Renee Lonner seconded. The Committee voted unanimously (3-0) to approve the motion.

Further discussion took place. Ms. Daley stated that she would go back and look at other states where this license is thriving with the Bachelor's Degree requirement and sustaining numbers.

Mr. Riches explained that the complicated matter is that there is a grandparenting clause where everybody is going to apply for licensure. An infrastructure will be built around that population, and then over time, the numbers will decline. Most people in the field are in recovery and have had personal and financial impacts in their lives. Sustaining a financial commitment in midlife and midcareer is difficult without having the requirements working against them. Realistically, the only population that is going to be drawn to licensure is the population that has that credential to begin with.

Ms. Daley stated that it appears that there needs to be a certificate level in there, which is what CAADAC intended. CAADAC is hearing this from both BBS and ADP.

Dr. Russ asked what would be done if the numbers decline. Mr. Riches responded that the renewal fees would continue to rise for that particular licensing category or subsidizing would take place.

Dr. Russ stated that the Committee has enormous concerns regarding the long term financial implications that this may have on the board. In addition and after long and thorough discussions, an agreement cannot be reached.

The Committee adjourned for lunch at 12:09 p.m. and reconvened at 12:58 p.m.

V. Discussion and Possible Action Regarding Permissible Work Settings for Marriage and Family Therapist Trainees

Ms. Rhine reported that CAMFT previously requested that the board review the permissible work settings for MFT trainees.

Ms. Riemersma explained that the problem CAMFT noticed is that there is so little specificity. We went from a point where there was so much specificity as to what the work settings were, to the point where it was so vague that it couldn't give good instruction to trainees or supervisors as to what were appropriate work settings, and thus the board did not have the ability to readily determine whether a work setting was appropriate or not. Consequently, there needs to be something more explicit. There was recently a disciplinary action where an entity that many believed was more of an agency, but it was a private practice. The law needs to more clearly delineate what is appropriate for the trainee and to make it clear that as a private practice is not appropriate.

Ms. Riemersma stated that she does not have specificity on what the language should look like. In the past, there was a list of appropriate work settings, which was cumbersome. The law was changed to make it less cumbersome and more vague, but it created confusion. She requested to find a way to help trainees and supervisors to better understand what is and is not appropriate.

The Committee, board staff, and audience members brainstormed possible solutions. Ideas that were mentioned were:

1. Defining specifically which settings trainees can gain experience.
2. Adding a section on the verification form for supervisors to indicate if the setting is a non-profit organization, not privately owned, etc.
3. Board-published materials for trainees providing information on appropriate and lawful work settings and acceptable hours of experience.
4. Send notification to supervisors informing them of their responsibilities.
5. Allow the consortiums to address this matter.

Dr. Russ requested board staff to send a letter to the consortiums bringing awareness to the situation.

VI. Discussion and Possible Action Regarding the Mandatory Submission of Fingerprints for Board Licensees and Registrants

Mr. Riches reported that on April 1, 1992, the Board began requiring applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) prior to licensure. This also provides the board with subsequent arrest information on an ongoing basis.

Board staff has identified a licensing population of over 27,000 licensees who have not participated in a criminal history background investigation via the fingerprint process. Because the Board's highest mandate is protection of the public, staff believes it is imperative that the Board requires all its licensees to submit fingerprints to receive subsequent arrest information. The statute clearly states that the board can require only applicants to submit fingerprints. To implement this requirement the Board will have to propose amendments to current statutes.

This raises issues: 1) staff may not be able to act upon any information learned from current or past background that occurred prior to the requirement of fingerprinting for licensees; 2) given the length of time from the occurrence of events, disciplinary actions may take place that would not have ordinarily taken place.; 3) coming up with a way to get 27,000 licensees to submit fingerprints without causing board operations to come to a halt. Currently, staff receives about 500-600 fingerprint clearances a month, which is already a struggle. Over a two to three year period, staff would receive about 1,500-1,600 clearances a month.

Options to consider: 1) Tying the requirement to the renewal process, making it a condition precedent to renewal of the existing license. This would be similar to submitting their fee with their renewal application. If the licensee fails to submit the fingerprints, the application would be deemed incomplete and the license would lapse if they fail to comply with the fingerprint requirement. Staff's concern with this option is that a number of renewals are deemed incomplete because licensees fail to check the boxes regarding compliance with continuing

education requirements, conviction history within the renewal cycle or they forget to sign the renewal application. This one-time requirement may add another reason for a deficient renewal application and increase the workload for the Cashier Unit that processes the renewal applications. 2) Requiring a set number of licensees to submit fingerprints each month over a two or three year timeframe. The Board has already identified the licensees who have not been printed. Staff would notify the licensees by mail of the one-time fingerprint requirement. This is staff's preferred option. Mr. Riches stated that this function is normally performed by one staff person. The additional workload would require two staff people such as temporary or permanent intermittent staff.

Ms. Schieldge asked if staff figured out projected costs with respect to the administrative hearings that would attach to the citations. Mr. Riches responded that is still to be determined.

Ms. Riemersma expressed concern stating that if the requirement is tied to the renewal, the website will show a delinquent license when the renewal is actually deficient and can create problems for the licensee's reimbursements. Mr. Riches replied that this was one reason why staff preferred to not tie the requirement to the renewal process.

Mr. Caldwell asked if this would require additional enforcement staff. Mr. Riches responded that enforcement activity will increase, requiring additional enforcement staff.

Ian Russ moved to direct staff to develop a legislative proposal to require licensees to submit fingerprints upon notification from the board as outlined in option two. Renee Lonner seconded. The Committee voted unanimously (3-0) to approve the motion.

Mr. Riches added that this may become a department-wide initiative.

VII. Discussion and Possible Action Regarding Draft Regulations Implementing Mandatory Continuing Education for Licensed Educational Psychologists

Ms. Rhine reported that the Governor signed into law SB 1048, which required licensed educational psychologists (LEP) to complete 36 hours of continuing education (CE) upon renewal. This requirement went into effect January 1, 2008. The board must initiate rulemaking to outline those requirements.

One issue is implementation. Two options for delayed implementation were outlined.

- *Option A* provides that a licensee would not have to complete 36 hours of CE until the first full renewal cycle after the operative date of the regulation. Making the section requiring CE operative April 1, 2009, a licensee that renews his or her license March 30, 2009 would not have a full renewal cycle until after his or her renewal in March 2011, conceivably making the completion of 36 hours of CE not mandatory until renewal in March 2013. This could allow almost four years in some instances until a licensee would have to comply with the requirement – and making the law in effect for up to six years before some licensees would have to be in compliance.
- *Option B* would provide for a phased-in implementation of the CE requirements over 32 months. Specifically, Option B states that a licensee renewing in 2010 would have to complete 18 hours of CE upon renewal. Beginning January 1, 2011, licensees would have to complete the full 36 hours of CE for renewal. In the instance of the licensee that renews on March 30, 2009 – this individual would have to certify

completion of the full 36 hours upon renewal in March 2011. For a licensee that renews his or her license this year, only 18 hours of CE would be required upon renewal in 2010. Option B would bring LEPs and the board in line with statutory CE requirements within eighteen months.

The Committee expressed that Option B is the preferred method.

Ms. Rhine explained the next issue of specific course requirements. Provisions in Business and Professions Code section 29 directs the board to consider adopting CE requirements related to chemical dependency and early intervention training for LCSWs and MFTs. This section does not expressly direct the board to consider this training for LEPs. Additionally, Business and Professions code section 32 directs the board to consider including training related to acquired immune deficiency syndrome (AIDS) in any CE requirements of board licensees, including LEPs. The Committee was asked if they want the same course requirements to apply to the LEP requirement.

Ms. DiGiorgio responded that the same requirements should apply.

Dr. Russ asked if this matter was brought to Judy Johnson, LEP member of the Board for an opinion. Mr. Riches responded that Ms. Johnson's opinion was to apply the same rules, and treat the LEP requirement on the same terms as the MFTs and LCSWs.

Dr. Russ stated that LEPs are going to have to deal with these issues, but what is offered in those CE courses required of MFTs and LCSWs do not have much to do with what LEPs actually deal with.

Mr. Riches stated that most of the CE offered will not make sense for LEPs. This requirement will make a demand for and a supply of LEP specific CE courses. There may be a body of training specific to LEPs that is not under the board's CE requirements yet. The California Association of School Psychologist (CASP) may offer courses.

Dr. Russ suggested inviting CASP to provide proposals for CE. Dr. Russ does not feel that the AIDS/HIV course and the substance abuse course are necessary for LEPs.

Ms. Riemersma asked if the more recent mandated courses would apply to the LEP, such as the domestic violence course and the aging and long term care course. Dr. Russ stated that domestic violence would apply, but not sure about the aging and long term care.

Ms. Rhine explained that the two recent courses were not included in statute, but it can be required.

Mr. Wong stated that the profession should decide what it wants. Because the LEP field is different from social work and marriage and family therapy, they may see some courses are more appropriate that should be mandated.

Dr. Russ stated that we're only talking about a few specific courses: chemical dependency, domestic violence, AIDS, and aging. Dr. Russ stated that he doesn't want the profession determining the courses; he wants them to have a voice. He recommended Option B, directing staff to make changes to the rulemaking, and inviting the professional organization to include their input.

Donna DiGiorgio moved to direct staff to make changes to the rulemaking to include Option B and domestic violence, aging and long term care, chemical dependency, and HIV/AIDS. Ian Russ seconded. The Committee voted unanimously (3-0) to approve the motion.

VIII. Update on Board Actions, Proposed Legislation, and Proposed Regulations Regarding Acceptance of Degrees Granted by Institutions Approved by the Bureau for Private Postsecondary and Vocational Education

Mr. Riches reported that the bill was taken up on the Assembly floor with an urgency clause; which means the bill will take effect immediately upon signing by the Governor. The bill did not pass with a two-thirds majority vote as required. The bill will be amended to remove the urgency provision and taken up again. It's unclear at this time what the vote will be without the urgency provision.

A significant intervening event occurred since the last discussion, which was the formal opposition of from the California Chamber of Commerce, which is an influential lobbying organization. Their record of obtaining vetoes on opposed legislation is very good. The California Chamber of Commerce believes that this creates additional liabilities for the schools. There will be ongoing legislative activity throughout the summer regarding this. There has been some discussion of revisiting what the board did last year, which was the Legislature passing another one-year extension. It is not clear what will become of that.

The MFT curriculum bill passed in the Assembly Appropriations Committee on a unanimous roll call.

The board's legislation, AB 1897, appeared to be on track. However, the amendments put into print were not what the board sponsored; in fact, they were the opposite of what staff understood them to be. It is unclear what is going to result from discussions on that issue. The amendments stated that the bill would only take effect if SB 823 or a subsequent act did not pass this year. What came out in print was language stating that AB 1897 would only become effective if SB 823 passed. The bill is currently sitting in the Senate Appropriations Committee.

The board published proposed regulations to extend the ability of the board to accept degrees from BPPVE approved programs in June, and a regulation hearing will be held in Sacramento on August 4, 2008 to take public comment on the proposal. Mr. Riches invited all interested parties to provide comments to the board by July 28, 2008. Staff expects to have the board vote on the proposed regulation at the August 2008 board meeting. The regulation could be in effect before the end of 2008 if the rulemaking proceeds as planned.

Dr. Russ suggested that schools explore other methods of obtaining accreditation in the meantime.

Ms. Riemersma stated that this is an issue of protecting the people in the pipeline and students who entered educational programs in good faith, and ensuring them that they are able to get through the program and still get a license. CAMFT appreciates the board's efforts in addressing these issues.

Mr. Caldwell stated that without a legislative solution, these temporary fixes cannot be used indefinitely. There is a need to protect people in the pipeline and keep the pipeline open to future MFTs. Mr. Caldwell thanked the board for the work it is putting into this issue.

Mr. Wong stated that the mission is to protect consumers, not students. Consumers are not students.

Ms. Riemersma stated that the board has a responsibility to protect students who entered programs in good faith. There is a duty to protect students. There is nothing that has demonstrated that those who have graduated from approved schools pose any greater danger than those who have graduated from accredited schools. It's not a public protection issue. If there was something that could be put into regulation that would compel schools to be forthright as to the possibilities of those degrees not qualifying for those entering schools from this point forward.

Mr. Riches stated that next week, he will be visiting campuses to have this conversation with student bodies. Some of the programs that Mr. Riches spoke to are seeking accreditation.

IX. Legislative Update

Mr. Riches reported that SB 797, Unprofessional Conduct, Statue of Limitations, was signed by the Governor. AB 2543, Geriatric and Gerontology Workforce Expansion Act, has been amended per the Board's request. AB 1925, License Suspension for Unpaid Tax Liabilities, failed in committee.

AB 1486, License Professionals Counselors (LPC), is proceeding. The Department of Consumer Affairs (DCA) took a position on this bill of opposed unless amended to do away with the marriage and family therapist license and make it a specialization with a broader license professional counselor license, reducing the board to nine members. Staff was caught off guard by this position.

Ms. Riemersma stated that she had a conversation with the author of the letter. The response was that the author does not have to provide information such as where the idea or thought originated. The responses to Ms. Riemersma's questions were inappropriate from a governmental body that should care about being open. The profession should be brought in for this kind of decision making. Marriage and family therapy has been in existence for over 40 years and is recognized throughout the nation as a distinct license and profession. It makes no sense to mold it into another profession. CAMFT has advocated for MFTs to grandfather into LPCs; however, CAMFT does not want it to be imposed upon the profession to have to become something it never intended to be. CAMFT will do everything it can to oppose this.

Mr. Caldwell expressed AAMFT's opposition to DCA's position and commitment to change DCA's opinion. He asked the board to educate the department on the distinction of these professions.

Ms. Riemersma added that CAMFT is also opposed to reducing the board to nine members. The board has not shown to be ineffective in its current structure.

Dr. Russ stated that to never have been consulted and blindsided in trying to change something that has been part of community discussion for many years is inappropriate. He

proposed that the Committee make a statement to oppose this. The current structure of the board with two social workers and two MFTs allows more points of view and gives the board a better perspective. Dr. Russ stated that the Committee is opposed to changing the structure of the board and eliminating MFTs and putting them under the LPC.

Mr. Riches spoke to the sponsors of the bill, who were also caught off guard and expressed no interest in this amendment.

Ms. Riemersma added that she asked Laura Zuniga why MFTs and not LCSWs. Ms. Zuniga's response was that the department would start with MFTs.

Ian Russ moved to recommended that a statement be made to DCA stating that the board opposes their position, that marriage and family therapy is its own distinct profession, and it would be inappropriate to place it under another category; and to recommend that the board oppose DCA's position to change the board structure. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

Mr. Riches reported that SB 963, Oversight of DCA Boards and Bureaus, was recently amended. This bill eliminates the current sunset process for all DCA boards and instead provides for the reconstitution of all boards on statutorily set schedule. The reconstitution of the board is subject to the same sunset procedures currently in place – allowing the terms of the board members to be extended if legislation providing for the extension is signed by the Governor before the reconstitution. The board's proposed reconstitution date would be in 2010.

The bill does a number of things: 1) It subjects the appointments of executive officers to the approval of the DCA. This is a poor idea, because it creates a situation of enormous dependency on relations with the individual director. The bill also subjects executive officers to be approved by the Senate. The bill essentially creates situations where the executive officer has multiple bosses. 2) It puts all board members on the same term cycle. There would be an absence of continuity with all board members on the same terms. 3) It subjects all board members to disclose all ex parte communications. All board members who discuss anything related to the board would be required to report who the member communicated with and the subject of that communication at the next board meeting.

DCA has a position of oppose on the bill. A meeting is currently taking place at the State Capitol regarding this bill. This bill politicizes the executive officer position. Currently, this board is due to sunset as of June 1, 2009. Because of constitutional restrictions, if a bill is not passed this year to continue those dates, the board becomes a bureau on July 1, 2009. At this point, this bill is the only vehicle that extends the date.

Ms. Riemersma stated that CAMFT has a letter of opposition ready to be submitted today.

Mr. Wong stated that if the board completely opposes this bill, there is the problem of the continuation of the board. Mr. Riches stated that it's two separate issues. This is the only vehicle at the moment.

Mr. Riches suggested presenting this issue to the board in August and see where the bill is at during that time. This is a leadership bill, and it has to be worked out with the administration, and there is not a lot of space in that discussion.

X. Rulemaking Update

The rulemaking update was provided for reference.

XI. Suggestions for Future Agenda Items

No suggestions were made for future agenda items.

XII. Public Comment for Items Not on the Agenda

No public comments were made for items not on the agenda. Mr. Riches announced that the next board meeting will be held on August 21, 2008 in Eureka.

The meeting was adjourned at 2:47 p.m.