

## BOARD MEETING MINUTES

October 10, 2009

Hilton Los Angeles Airport Hotel  
5711 West Century Blvd.  
Los Angeles, CA 90045

### Members Present

Renee Lonner, Chair, LCSW Member  
Elise Froistad, Vice Chair, MFT Member  
Gordonna (Donna) DiGiorgio, Public Member  
Harry Douglas, Public Member  
Judy Johnson, LEP Member  
Victor Perez, Public Member

### Staff Present

Paul Riches, Executive Officer  
Kim Madsen, Assistant Executive Officer  
Christina Kitamura, Administrative Analyst  
James Maynard, Legal Counsel  
Kristy Schieldge, Legal Counsel

### Members Absent

None

### Guest List

On file

Renee Lonner, Board Chair, called the meeting to order at 8:55 a.m.

### **I. Introductions**

The board introduced themselves in place of roll call. A quorum was established. Board staff and audience members introduced themselves.

### **II. Approval of the May 21-22, 2009 Board Meeting Minutes**

Ms. Lonner noted a correction on page 1, which should reflect that Ms. Lonner was absent.

Kristy Schieldge noted a correction on page 10, item J for the motion and vote taken. The vote should omit the word "unanimously" and read "The board voted (4-2) to pass the motion."

Christina Thomas noted a correction on page 13, last paragraph. Number 3 should read "Penal Code Section 23."

**Donna DiGiorgio moved to approve the board meeting minutes of May 21-22, 2009 as amended. Harry Douglas seconded. The board voted unanimously (6-0) to pass the motion.**

### **III. Approval of the April 10, 2009 Policy and Advocacy Committee Minutes**

Paul Riches requested that the board members who were not appointed to the former Policy and Advocacy Committee (committee) step away from the dais while those who were appointed to the committee take action on the committee's meeting minutes.

**Donna DiGiorgio moved to approve the Policy and Advocacy Committee minutes of April 10, 2009. Renee Lonner seconded. The committee voted unanimously (2-0) to pass the motion.**

### **IV. Chairperson's Report**

#### **A. Upcoming Board and Committee Meetings**

Ms. Lonner reported that the Exam Program Review Committee will meet in December.

The LCSW Committee is on a hiatus. Ms. Lonner stated that this committee is looking at the possibility of an additional license, a macro-oriented license for those who work in agencies performing non-clinical work. The LCSW Committee is looking for feedback from stakeholders.

The Policy and Advocacy Committee is no longer meeting, and those issues will be heard and addressed by the board.

Ms. Lonner talked about her visit with board staff, which was a very positive experience. In the current climate, staff remains positive and feels well supported.

Ms. Lonner announced that Sean O'Connor was named DCA Employee of the Year.

Ms. Lonner requested that the board discuss upcoming meeting dates. The board agreed to hold the winter board meeting on January 23<sup>rd</sup> in Sacramento. The board agreed to hold the spring board meeting on April 17<sup>th</sup> in San Francisco.

### **V. Executive Officer's Report**

#### **A. Budget Report**

Paul Riches announced that the Department of Consumer Affairs, through which the Board is provided legal services, had changed the board's staff counsel. Mr. Riches introduced James Maynard as the new legal counsel for the Board. Mr. Riches thanked Kristy Schieldge for her work as the Board's legal counsel for the past several years.

Mr. Riches reported on the budget. He gave a brief description of the budget process, and indicated that the Board is currently working on the budget for fiscal year (FY) 2010-2011. Mr. Riches then spoke about the FY 2008-2009 budget, and the impact of the state's budget crisis on the board's functioning. He made specific note of the impact on the board's meeting schedule, stating that the meeting generally held in August had to be cancelled and rescheduled for October as a direct result of the absence of a state budget.

Harry Douglas asked what the board could do to continue its work without interruptions resulting from the budget crisis. He asked why the board is impacted when it generates its own revenue and does not operate out of the general fund.

Mr. Riches and Ms. Schieldge gave a background regarding the budget crisis and actions taken by the Governor towards all state agencies. They outlined the steps that Mr. Riches and the Department of Consumer Affairs took to obtain exemptions to the restrictions imposed by the Governor. Ms. Schieldge explained why the board, as a self-supporting

agency, was required to adhere to the Governor's executive orders. A brief discussion continued, with Mr. Riches noting that many of the licensing boards were feeling the negative impact of the budget crisis in the same manner as the Board of Behavioral Sciences.

Judy Johnson spoke about also having had the opportunity to meet with board staff in the same manner as Ms. Lonner had noted previously. Ms. Johnson encouraged other board members to engage in similar exchanges with board staff if possible, and expressed that such a show of support was important in the existing fiscal environment. Mr. Riches added that staff had expressed positive comments about the meetings.

Mr. Riches reported on 2009-2010 budget. He stated that the current Executive Order required state agencies to reduce expenditures by at least 15% for the upcoming fiscal year. The board's spending reduction plan was approved. As a result, the Board has committed to revert \$220,000 to its Operating Expense and Equipment budget at the end of the fiscal year. Mr. Riches explained the effect of the reduction on the Board's budget. He noted that historically the Board has finished the fiscal year with unencumbered funds in the overall budget. He added, however, that increased expenditures are anticipated in the areas of examinations and services provided by the Office of the Attorney General. Mr. Riches explained why increased expenses are expected in these two areas. He reported the Board continues to be in sound fiscal condition, but the impact of the statewide budget issues is expected to persist. He indicated that efforts are constantly underway to find ways to offset the effect of the continuing budget crisis while still maintaining performance and customer service standards.

Mr. Riches reviewed the analysis of the fund condition for fiscal year 2009-2010. He spoke about the projected fund conditions for the next three fiscal years, and discussed the different factors that could or will impact those projections.

Janlee Wong, National Association of Social Workers (NASW), asked for clarification regarding certain aspects of the budget process. Mr. Riches responded to those questions.

A discussion about budget-related issues continued among meeting participants.

## **B. Operations Report**

Mr. Riches reported on board operations and performance. He spoke briefly about the performance challenges experienced as a result of furloughs and changes in workload. He noted that despite these challenges, improved performance had been noted in several areas.

Cashiering Unit is showing great progress. The cashiering process has been streamlined to reduce the turn-around time of applications and renewals. New applications are processed through the cashiering unit within 3-4 days. Renewals are getting turned around in less than ten days, down significantly from the nearly 40-day turnaround time noted in late 2007. Mr. Riches complimented staff for their efforts in making the much-needed improvements.

Mr. Riches spoke briefly about the Enforcement Unit workload. He deferred in-depth discussion to agenda item VI, which pertained specifically to the board's Enforcement Program.

With respect to the Licensing Unit, Mr. Riches noted high numbers reported on the MFT desk. This is due to the regularly high numbers of applications received, and in large part to an MFT evaluator being promoted to the Enforcement Unit. The vacancy has been filled, however it generally takes about 6-8 months to fill a vacancy and get the new employee fully trained. During this training period, the numbers always rise. Similarly, evaluators' workloads also increase at the time of program completion when graduates are ready to join the workforce and gain experience required for licensure.

Meeting participants briefly discussed possible resources available to assist with the heavy workload.

The customer satisfaction survey was discussed by Mr. Riches. He reported the survey is very valuable in monitoring the board's overall performance. According to the survey, the board has been very successful in providing service to consumers. Mr. Riches lauded the efforts of board staff, in general and in particular when facing hurdles related to the ongoing state fiscal crisis.

The board adjourned for a break at 10:35 a.m. and reconvened at 10:52 a.m.

### **C. Retroactive Fingerprint Update**

Mr. Riches provided a brief background of the retroactive fingerprint project. He reported regulations adopted earlier in the year require the submission of fingerprints by licensees and registrants who had not previously submitted fingerprints to the board. The individuals identified as being affected by this requirement are required to submit their fingerprints prior to their next renewal date occurring on or after October 31, 2009. Mr. Riches emphasized the requirement is not a condition of renewal, but failure to comply with the requirement can result in issuance of a citation and fine or other action by the board. He reported that to date, the response to the requirement has been less adverse than anticipated. Mr. Riches stated that four new staff had been hired for this project: two staff persons to process the fingerprints and two staff persons to handle the resulting background checks. He noted that action is taken as determined necessary upon review of the conviction documents.

Mr. Riches briefly touched on the issue of statute of limitations, and how it could impact the board's ability to pursue disciplinary action due to a criminal conviction.

A meeting participant asked about what action the board would take if an individual were to be convicted of a crime after being licensed. How would the board know about the conviction? Mr. Riches responded that once an individual has submitted fingerprints to the board, the individual is noted in the system. If he or she is subsequently arrested the board is notified, generally within 24-48 hours by the Department of Justice. Mr. Riches stated that the subsequent arrest notification component of the fingerprinting process is extremely valuable to the board in its efforts to ensure consumer safety and protection.

Mr. Riches responded to questions from two meeting participants by providing clarification regarding the retroactive fingerprint project. Mr. Wong offered the services of NASW in relaying the message to licensees and registrants regarding the new fingerprinting requirement.

#### **D. Legislation Update**

Mr. Riches provided the status of current legislation that is being sponsored or monitored by the board.

He reported that Senate Bill 33 (Correa) had been signed by the Governor. Mr. Riches indicated that the new statute contains significant changes relating to the educational and supervised experience requirements relating to Marriage and Family Therapist (MFT) licensure. The board is currently in the process of revising forms and publications, training staff, and taking other steps necessary for implementation of the new requirements. Mr. Riches provided a brief overview of the changes and the implementation dates for those changes.

Mr. Douglas asked about the role of the state in determining educational requirements for a graduate degree. Mr. Riches, Donna DiGiorgio, and others provided clarification regarding the board's involvement with specific respect to the MFT requirements.

Mr. Riches then provided the status of SB 819 and SB 821, both Omnibus Bills. He indicated that both bills are awaiting action by the Governor.

The next legislation discussed by Mr. Riches was SB 788, which would establish licensure for Professional Clinical Counselors in California. The board continues to support this bill as it has in the past. Mr. Riches indicated that if the legislation passes, the impact on the board would be significant. He briefly described how the board would be affected. This legislation is also awaiting action by the Governor.

Mr. Wong asked for clarification regarding the funding for the Licensed Professional Clinical Counselor program. Mr. Riches confirmed Mr. Wong's understanding of the legislation regarding funding.

#### **E. Regulation Update**

Mr. Riches reported that efforts to file a large, multi-faceted regulatory package met delays due to a policy change pertaining to the regulatory process. He indicated that staff is working to make the adjustments necessary to move forward with the proposed regulatory changes.

Mr. Riches also reported there are minor changes needed to the advertising guidelines. He indicated that those changes would be addressed once the new process is figured out.

#### **F. Personnel Update**

Mr. Riches referred the audience to the personnel update provided in the meeting materials.

#### **G. Review of Board Publications**

Mr. Riches presented the library of board publications that were created over the past couple of years. Mr. Riches briefly described each publication and noted those that were translated in Spanish and Korean. Mr. Riches asked the public to provide places and contacts where these publications can be displayed, made available to consumers, and can be used most effectively.

Ms. Johnson recommended that the publications be sent to county agencies that can be accessed via 211. She explained that this is the county social services output agency for nearly everything.

#### **H. Review of Bibliography for Senate Bill 33 Curriculum Changes**

Mr. Riches reported that during the work of the MFT Education Committee, consistent feedback was received regarding the need for a bibliography addressing recovery-oriented practice. He indicated that an agreement was entered into with CSU Northridge to develop such a document. Mr. Riches referred meeting participants to the bibliography, and encouraged the audience and board members to review the numerous resources outlined in the document. He indicated that the bibliography would soon be posted on the board's website.

Board members commented favorably about the thorough compilation of information.

#### **VI. Review and Discussion of the Board's Enforcement Program**

Mr. Riches gave a presentation illustrating the enforcement program. He reported that he and Ms. Lonner attended a meeting during the summer with Department of Consumer Affairs' administration and representatives from the State and Consumer Services Agency regarding enforcement. He noted the department's concern that the public and some boards were not aware in sufficient detail about the nature of the enforcement programs. Mr. Riches stated that the board historically has been open about its enforcement program.

Mr. Riches' presentation provided data from several fiscal years, from 2001-2002 through 2008-2009. The areas highlighted included: 1) the number of conviction complaints and consumer complaints received; 2) conviction and consumer complaint processing times; disposition of complaints; 3) the number of field investigations pursued and closed; 4) average complaint processing time; 5) investigative analysts; 6) disciplinary activity for consumer and conviction filings and cases referred to the Attorney General's office; 7) disciplinary actions for consumer and conviction cases; 8) the enforcement budget, enforcement expenditures vs. non-enforcement expenditures; 9) board staffing, enforcement positions vs. non-enforcement positions.

Mr. Riches noted that the enforcement process begins with receipt of a complaint; he outlined the various types of complaints that are generally received. A significant increase was noted in the areas of consumer complaints and conviction-related complaints. Mr. Riches emphasized that the board has a considerable burden of proof when pursuing action against a licensee or registrant; the board must show clear and convincing evidence that unprofessional conduct has occurred. He indicated that with respect to action taken based on convictions, that burden of proof has already been met. However, he noted that when investigating allegations of inappropriate practice, it is often difficult to obtain documentation or other evidence necessary to prove the alleged misconduct. He noted that this is due in part to the private, often one-on-one nature of the professions overseen by the board. As a result, investigations frequently take quite a bit of time to meet the burden of proof. He reported an unusual, difficult to understand phenomenon pertaining to an increase in the number of consumer complaints received as compared to the natural growth in the licensee population.

Mr. Riches next spoke about the impact of the retroactive fingerprinting project on the number of complaints opened by the board. He anticipated a significant growth in this area as well. At the time of the meeting, approximately half of the licensee population had submitted fingerprints for background checks. Mr. Riches noted that due to the screening process that takes place through the educational institutions, training sites, and at other times en route to licensure, it is rare for an initial application to reveal a previously unknown criminal history. He

stated that the bulk of the board's work in this area comes from subsequent arrest reports, and he expects the fingerprinting of the remaining licensee population to result in an increase in the enforcement workload over time.

The question was raised about whether the board has a mechanism in place to enforce compliance with the fingerprinting requirement. Mr. Riches explained that regulations require that on renewal, licensees who have not previously done so must submit to the fingerprinting process for the board. Failure to comply with the requirement can lead to citation and fine and possible disciplinary action by the board.

Mr. Wong asked if the board had performed any kind of comparison of the number of complaints received overall and the number of complaints received by other professional licensing boards. Mr. Riches indicated that no such comparison had been completed to date.

Mr. Riches went on to discuss length of time it takes to process a complaint, i.e., from receipt of the complaint through disciplinary action being finalized. He stated a time frame that is fairly consistent among licensing boards is 2-3 years. Mr. Riches referred meeting participants to data specific to the board in the meeting materials. He noted a significant increase in the length of time it takes to process a consumer complaint, and attributed that rise to how and by whom the board's investigations were being conducted. He stated that staff has for many years conducted preliminary investigations of complaints, but has had to rely on the services of the Department of Consumer Affairs Division of Investigation (DOI) to conduct interviews and perform other more in-depth investigations. Mr. Riches added that DOI conducts investigations for many of the boards and bureaus within the department, with investigators carrying a heavy caseload that resulted in long periods needed to complete an investigation of a complaint. He explained that investigators with DOI are sworn peace officers. As a result, the process required to fill a vacant investigator position is lengthier due to the time required for completion of necessary background checks.

Tina Thomas, Office of the Attorney General, spoke positively about the timely manner in which the board handles issues that come up and require immediate attention. Mr. Riches added that historically the board has worked complaints sufficiently, prior to referring to DOI, so that when the matter was sent for further investigation, there was specific information being requested versus starting the investigation from scratch.

The next topic discussed by Mr. Riches involved disposition of complaints. He noted that a significant number of complaints received by the board are not pursued through the disciplinary process for a variety of reasons. These reasons include jurisdiction, lack of access to records due to the issue of confidentiality, lack of witnesses, and other inability to support the required burden of proof – clear and convincing evidence. He stated that approximately 3% of the complaints received by the board result in disciplinary action.

Mr. Wong asked about the amount of the board's resources that are used in working those cases that do not result in disciplinary action. Mr. Riches responded that quite a bit of the board's resources were spent on such cases. He added that while the bulk of the complaints received by the board ultimately cannot be pursued through the disciplinary process, each complaint is owed a thorough review prior to making the determination that the matter will be closed.

A meeting participant asked if any of the cases that cannot be pursued by the board are referred to the professional associations for possible action by ethics committees. Mr. Riches responded that disciplinary actions are public and information about those actions is listed on the board's website. He stated that no information is released about the receipt of a complaint, but the matter is made public when the disciplinary action is filed.

A meeting participant inquired about the relationship between the increase in complaints and other issues such as changes in the licensing requirements. A brief discussion followed

regarding the change from the use of an oral examination to a written clinical vignette examination, and how that might impact the number of complaints received by the board. Mr. Riches expressed that there are too many factors that can play into the filing of a complaint to attribute the increase to a change in the type of examination administered. Kim Madsen, Assistant Executive Officer, added there has been a concerted effort by the Department of Consumer Affairs in the last year to increase consumer awareness. She expressed the position that the increase in board complaints could be the result of the effort to educate the public about resources available to them and consumers' rights when availing themselves of various professional services. Discussion of this issue continued among meeting participants.

Mr. Riches presented information about field investigations and complaint processing times. Field investigations were defined as the collection of information and evidence related to a complaint. He again noted that the investigations historically have been completed by DOI. Mr. Riches reported that last year the board obtained approval to hire full-time staff to conduct field investigations of the board's complaints. Two new staff has been hired as investigators. These individuals are not sworn peace officers, and therefore, there are still cases that must be referred to DOI. However, field investigations are now performed by board staff.

Mr. Riches referred to data regarding timelines for completion of investigations and noted a decrease in the length of time to begin and complete investigation of a complaint since the hiring of staff investigators. He also reported that many cases that had been pulled back from DOI following the hiring of board investigators had been completed; those that were left for completion by DOI are expected to be completed by the end of the year. Mr. Riches reviewed data regarding the average complaint processing time, and provided clarification regarding the breakdown of that data.

Mr. Wong asked how consumers would learn about severe misconduct by licensees and registrants if the issue is not made public until disciplinary action is initiated. Mr. Riches spoke about various tools available to the board in situations that require more immediate public notification. He noted that these situations generally also involve pending criminal action. Ms. Thomas commented about the various options available for providing notification to the public. Mr. Riches added that with the hiring of investigative staff, the board more quickly can initiate and complete investigation of complaints alleging egregious misconduct, and can more quickly initiate disciplinary action as determined warranted. He stated that licensees must be afforded due process, and there are constitutional limitations to the manner in which the process must be completed.

Mr. Riches then discussed data regarding disciplinary activity. He noted that the marked increase in cases referred to the Attorney General's Office in the last year could be attributed to several factors including the staffing changes made in Enforcement Unit. He elaborated that in addition to hiring investigative staff, the size of the Enforcement Unit staff has grown from 6 to 13, including a manager. As a result, the complaints are completed more quickly.

Mr. Young asked about the types of complaints received by the board. Mr. Riches responded by providing general categories that complaints fall into, such as incompetence, gross negligence, dual relationship, and breaches of confidentiality. Ms. Madsen added that the board prepares a breakdown of the types of complaints received and the disposition of the complaints on an annual basis. The information is provided for review by the board and the Department of Consumer Affairs.

Discussion continued briefly regarding complaint and disciplinary processes.

Mr. Riches noted that one outcome of the department meetings regarding enforcement is the development of a new enforcement model. While the model is still being developed, there are key portions that are expected to move forward. Two components involve performance standards: 1) all investigations should be completed within an average of six months from the

data the complaint is received. Mr. Riches expressed reservations about the board being able to meet that standard, speaking from a current staffing standpoint. 2) Completion of the disciplinary process in 12 to 18 months from the receipt date. Mr. Riches described the various steps that must be completed to accomplish this goal and the factors that can impact the process. He spoke about the settlement process and how settlement of a disciplinary case can result in successful and timely resolution of a case.

Mr. Riches spoke briefly about other aspects of the new enforcement model that could impact the board.

A meeting participant commented about her experience with the complaint process. Mr. Riches expressed understanding about the difficulty of filing a complaint from the complainant's standpoint. He offered his assurance that the board is a consumer protection agency. Ms. Madsen added that the board's role is to substantiate whether or not a violation has occurred, and every effort is made to thoroughly review and investigate all complaints prior to closure.

Mr. Riches reported that one potential result of the department review of the enforcement process is the agreement that the existing data systems need replacing. He spoke about programs currently available.

In conclusion, Mr. Riches provided information about the board's enforcement budget, expenditures, and staffing. He expressed confidence that with an increase to the resources and staff, the board will be able to meet the previously discussed performance standards that are part of the new enforcement model.

The board adjourned for a break at 12:30 p.m. and reconvened at 1:36 p.m.

## **VII. Review and Discussion of the Substance Abuse Coordination Committee's Uniform Standards**

Kim Madsen reported on the progress of the Substance Abuse Coordination Committee (SACC), which was established by legislation in 2008. The SACC exists within DCA and consists of executive officers from the healing arts boards within DCA and a representative from the state Department of Alcohol Drug Programs. It is charged with establishing, by January 1, 2010, uniform standards in specific areas that healing arts board would be required to follow when addressing the issue of a substance abusing licensee and ensuring public protection. At its initial meeting in March 2009, the group determined that its work would be more efficiently completed by creating a smaller working group to develop draft standards that can be applied to licensees in diversion programs and those on probation. Many members of the smaller group, including Ms. Madsen, have expertise in the areas of diversion, probation, enforcement and legislation.

Ms. Madsen outlined the steps that will be followed toward completion of the group's assignment. She reported that a challenge faced by the group is to construct standards sufficiently broad to be used by boards that have diversion and probation programs. Ms. Madsen noted that not all boards have both types of programs. The crux of the group's efforts to date has been to draft standards that can be followed by either type of program.

To date, 15 of the 16 standards have been completed. The standards were to be presented at a SACC meeting in September 2009. That meeting was cancelled and has yet to be rescheduled. Ms. Madsen reported that the group's work is anticipated to be completed and the drafts adopted by November 2009 in sufficient time to present all 16 standards by the January 1, 2010 due date.

Ms. Madsen noted that with respect to BBS specifically, it is anticipated that the standards will result in revision to the board's disciplinary guidelines.

A discussion among meeting participants ensued. Topics raised included use of the provisions in Penal Code Section 1000. Ms. Madsen explained that this legislation allows an individual to enter into a diversion program through the courts with successful completion resulting in a dismissal of charges. She indicated that none of the boards has authority to use that legislation. As such, it was the group's decision to determine what constitutes major and minor violations and the consequences for each type of violation.

Ms. Madsen indicated that the group tried, with respect to all standards, to leave intact the boards' discretionary ability to work with each individual on a case-by-case basis. She noted that although there are suggested consequences for each violation, the various boards are not limited by those recommendations or required to use all of them.

Discussion continued about the various draft standards, with Ms. Madsen committing to take input back to the SACC for further discussion. She spoke briefly about submission of public comment and encouraged interested parties to provide such input. She noted that to date, none of the draft standards has been adopted.

#### **VIII. Review and Discussion of Licensing Requirements Related to Aging**

Mr. Riches noted that during the course of discussions about SB 33, the board interacted with the Commission on Aging (CCOA) regarding the training requirements pertaining to issues for older adults. One result of those discussions was the CCOA's request to speak to the board about various concerns pertaining to this population.

Carol Sewell, CCOA, presented facts regarding elder adults and abuse. Ms. Sewell noted that while some programs exist to assist this population, many elder adults have a skewed perspective about therapy and have a difficult time availing themselves of services when desired. The CCOA contacted the Board regarding Senate Bill 33 (Marriage and Family Therapist education/experience, Statutes of 2009) and asked that the board amend the proposed legislation to include requirements for education related to providing therapy to elder adults and adult abuse assessment and reporting. The bill was amended on June 8, 2009 to include these changes. Ms. Sewell proposed additional amendments to the MFT and LCSW relating to working with victims of elder abuse and their families and the elder population in general.

Mr. Wong stated that in terms of social work education, there is a major component regarding elder adults and abuse that has been in place for several decades; additionally, the California Social Work Education Center has curriculum competencies in aging. He emphasized that social work education is very familiar with issues pertaining to the aging population and elder or adult abuse.

Discussion followed. Mr. Riches indicated that the decision before the board at present is whether or not to pursue review of this issue more broadly. He acknowledged CCOA's interest in doing so through the board or in another forum.

Judy Johnson expressed interest in looking into the matter further. Mr. Riches stated that board staff will look into this matter, talk to experts in this area, and bring information back to the board for further discussion at a future meeting.

## **IX. Discussion and Possible Action Regarding Board Registrants Paying for Supervision by a Licensee**

James Maynard reported that the issue of registrants paying for supervision was brought to the board's attention by a licensee who was of the impression that the board's law allows supervisees to pay employers for supervision. Mr. Maynard expressed the understanding that this is more of a problem in private practice settings.

Mr. Maynard stated that California law recognizes only three types of workers: 1) volunteers; 2) employees; and 3) independent contractors. He indicated that the board's laws prohibit registrants from working as independent contractors. A registrant could volunteer with a practice and pay for supervision, an arrangement Mr. Maynard indicated would not be objectionable under current law. California Labor Code prohibits an employee for paying an employer for most services without prior written agreement and then only in a limited number of narrow categories. He expressed the position that there is no scenario under which it would be appropriate for a supervisee to pay an employer for supervision.

Aaron Feldman stated that he had been working to build a non-profit agency to train interns. He indicated it was while working toward this goal that he came across an apparent discrepancy between the board's laws and the Labor Code regarding payment for supervision. Mr. Feldman reported being under the impression that the board permits licensees to charge fees from registrants for supervision.

Mr. Maynard clarified that the board does not permit payment for supervision by employees.

Mr. Feldman stated that "everyone" is charging fees for supervision. He indicated that his research into the matter revealed an apparent conflict in the laws pertaining to interns. He expressed frustration with the conflict and stated that no one is benefitting from the existing set-up. Mr. Feldman also spoke of his experience as an intern and how those experiences contribute to the manner in which he now provides supervision as a licensee. He also clarified that the problem also appears to exist in non-profit agencies, though it is not as egregious.

Discussion followed among meeting participants. Cathy Atkins, California Association of Marriage and Family Therapists (CAMFT), asked for clarification regarding the board's laws in this regard. Mr. Maynard reiterated that in a volunteer relationship, an intern can pay for supervision. He emphasized that it is in an employer-employee relationship that an intern cannot pay for supervision, except in very limited circumstances outlined in the Labor Code. Discussion continued.

Mr. Maynard stated that the board is not the appropriate entity to address employee/labor issues. Mr. Maynard suggested that Mr. Feldman discuss the issue with the professional associations and the labor board. The associations have lobbyists who get laws changed.

Mr. Riches added that the Board of Behavioral Sciences' responsibility is consumer protection. He indicated that the issue at hand is a workplace/labor law question. He supported Mr. Maynard's suggestion that the issue would be better addressed between professional associations and the labor board.

Ms. Atkins provided her contact information to Mr. Feldman to discuss the issues further.

Questions were raised by meeting participants regarding requirements for supervisors. Mr. Riches responded by listing some of the existing requirements, including signing of a responsibility statement detailing the legal obligations as a supervisor.

**X. Discussion and Possible Legislative or Rulemaking Action Regarding Experience Requirements for Licensed Clinical Social Workers**

Mr. Riches reported that current law requires that candidates for LCSW licensure must hold a masters degree in social work, complete 3,200 hours of supervised experience, and pass the board administered examinations. It also provides that individuals licensed as clinical social workers in other states for more than two years may take the examinations and be eligible for licensure without documented supervised experience (Business and Professions Code Section 4996.17). This change was made to recognize the practice experience gained in other states as a qualification for licensure.

Ordinarily, current law clearly addresses the many situations of applicants for licensure. However, the board has been contacted by an individual who presents a confounding situation. This individual first obtained a license as a marriage and family therapist and has practiced under that license for some time. Subsequently, the individual completed a master's degree in social work and would like to also be licensed as a clinical social worker. Current law requires that this individual complete another 3,200 hours of supervised experience prior to taking the licensing examinations. Given that this individual has already completed 3,000 hours of supervised experience and now acts as both a therapist and a supervisor for marriage and family therapy interns and associate clinical social workers, it is difficult to construct a rationale for requiring the additional supervised hours.

The Policy and Advocacy Committee considered this request at its April 10, 2009 meeting and directed staff to develop a legislative proposal to allow practice experience as a licensed mental health professional to be credited toward the supervised experience requirements for LCSWs. As a result, an amendment to the LCSW experience requirements was drafted that would allow an individual licensed as a marriage and family therapist for at least four years and has completed a masters degree in social work, to take the examination required for licensure as a clinical social worker. Mr. Riches explained that if the decision is made to further pursue this change, the board must direct staff to sponsor legislation to facilitate the change.

Mr. Wong stated that NASW does not support the proposed change. He cited two main points of concern: 1) Are the work experience hours equivalent? He provided meeting participants with a document reflecting the statutory requirements for licensure as an LCSW as well as requirements for licensure as an MFT. He asserted that the requirements are different, as is the scope of practice for each profession. 2) Mr. Wong wondered if the licensing statutes were being circumvented by saying that a component for one set of licensure requirements can be substituted for a component of another set of licensure requirements for a different profession. He expressed that the proposed change seemed to be trying to make that kind of a substitution. He questioned the appropriateness of such action. While concerned with the proposal as presented, Mr. Wong expressed a willingness to work with the board on the issue.

Mr. Riches commented that in drafting the language, one area that was reviewed involved changes that were made in recent years regarding the LCSW statute pertaining to out-of-state licensees. He noted that prior practice experience was credited toward the supervised experience requirement, knowing that a requirement of approximately 3,000 hours was generally the norm among the mental health professions.

Ben Caldwell, American Association for Marriage and Family Therapy (AAMFT), stated that AAMFT does not support the proposal. He spoke about the differences in the scope of

practice for each profession and expressed concern that making this type of change could reduce the distinction between the MFT and LCSW licenses.

Discussion continued among meeting participants and attendees about the similarities and dissimilarities between the two professions and requirements for licensure.

Jose Luis Flores, Phillips Graduate Institute, stated that he agreed with Mr. Wong. He spoke of the value of post-degree experience in honing ones professional identity.

An audience member questioned the wisdom of making a law for one person. She spoke of supervising both MFT interns and associate clinical social workers (ASW), and expressed that these individuals definitely come with differing perspectives.

Mr. Riches expressed that the board is charged with consumer protection. He stated that, when preparing the proposal, it was difficult to discern how the public would not be protected in ensuring a minimally competent practitioner in this or a similar situation.

Victor Perez stated that there are clearly differing perspectives among stakeholders regarding this issue. Mr. Perez proposed to table this matter to allow the stakeholders to provide more input. The board agreed to table the matter. Ms. Lonner asked to be provided a breakdown of the services that can be provided under one license that cannot be provided under the other.

**XI. Discussion and Possible Action to Amend California Code of Regulations Title 16, Sections 1807, 1807.2, 1810, 1819.1, 1887 to 1887.14 Regarding Continuing Education Requirements: Licensed Educational Psychologists, Exceptions, and Providers**

This item was not discussed. This item will be discussed at the January 2010 board meeting.

**XII. Public Comment for Items Not on the Agenda**

Cathy Atkins, CAMFT, asked to hear more about the Penal Code Section 23 process. Mr. Riches committed to note this request for the January 2010 board meeting agenda.

**XIII. Suggestions for Future Agenda Items**

Gerry Grossman spoke about the issue of consensual sex involving minors, and how the nuances in current laws pertaining to sex between minors impact a therapist's responsibility to report. Mr. Riches stated that this subject would be noted for a future board meeting.

An audience member asked why therapists seem to refer clients to HIPPA instead of the BBS when the client wants to file a complaint. Mr. Riches explained that this agenda item pertained to suggestions for future agenda items, and therefore, could not discuss the matter. He committed to add the topic to the list of future agenda items.

The board adjourned at 3:19 p.m.