BOARD MEETING MINUTES
January 23, 2010

Shriners Hospital for Children
2425 Stockton Blvd.
Auditorium, 1st Floor
Sacramento, CA 95817

Members Present
Renee Lonner, Chair, LCSW Member
Elise Froistad, Vice Chair, MFT Member
Samara Ashley, Public Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Patricia Lock-Dawson, Public Member
Victor Perez, Public Member
Michael Webb, MFT Member

Staff Present
Kim Madsen, Interim Executive Officer
Christy Berger, MHSA Manager
Tracy Rhine, Legislation Analyst
Sean O’Connor, Outreach Coordinator
Marsha Gove, Examination Analyst
James Maynard, Legal Counsel

Members Absent
None

Guest List
On file

FULL BOARD OPEN SESSION

Renee Lonner, Board Chair, called the meeting to order at approximately 10:30 a.m. Marsha Gove called roll, and a quorum was established.

III. Introductions

Ms. Lonner announced recent appointments to the Board. All board members introduced themselves, with the new appointees providing comments about their respective backgrounds and workplace settings. Board staff and audience members also introduced themselves.

IV. Approval of the October 10, 2009 Board Meeting Minutes

Harry Douglas moved to approve the board meeting minutes of October 10, 2009. Donna DiGiorgio seconded. The board voted 9-0 to adopt the minutes, with one member (Patricia Lock-Dawson) abstaining.
V. Approval of the December 7, 2009 Examination Program Review Committee Minutes

Judy Johnson moved to approve the Examination Program Committee meeting minutes of December 7, 2009. Elise Froistad seconded. The board voted 9-0 to adopt the minutes, with one member (Patricia Lock-Dawson) abstaining.

VI. Chairperson’s Report

a. Appointment of Interim Executive Officer

Ms. Lonner reported that in a closed session meeting held December 7, 2009, via a roll-call vote, the Board approved Kim Madsen as the Interim Executive Officer.

b. Possible Appointment of Executive Officer

Ms. Lonner announced that earlier in the day on January 23, 2010, the Board voted unanimously to select Kim Madsen as the Board’s official Executive Officer.

Ms. Lonner then administered the oath of office to Ms. Madsen.

c. Upcoming Meeting Dates

The following dates were discussed as possible board meeting dates:

- May 6-7, 2010 (location to be determined)
- July 28-29, 2010 (Sacramento)
- November 4-5, 2010 (location to be determined)

Ms. Lonner announced that committee meeting dates had not been set. A review of the committee structure is underway. Ms. Lonner indicated that, as the structure is fine-tuned, Board members could expect to be contacted for participation in the various groups.

Ms. Madsen clarified that the Board Meeting previously scheduled in April had been rescheduled to the May 6-7, 2010 dates discussed earlier.

VII. Executive Officer’s Report

a. Budget Report

Ms. Madsen provided an update on the status of the Board’s budget for the current fiscal year. She also presented a similar update for the current fiscal year Mental Health Services Act (MHSA) budget. She indicated that both budgets are expected to have an unexpended reserve at the end of the fiscal year.

Ms. Madsen indicated that on January 8, 2010, the Governor issued an executive order directing all state agencies to reduce the personnel services component of the budget by five (5) percent. She reported recently receiving instruction regarding how the reduction would be implemented. She reviewed with the Board the Expenditure Report pertaining to FY 09/10, and indicated which items reflected on the report are included when speaking about “personnel services.” Ms. Madsen indicated that the
Board’s targeted reduction for the current budget year is approximately $29,000; she described the manner in which those savings are expected to be achieved. Ms. Madsen also spoke briefly about the restrictions that had been imposed by the Department of Finance on funds remaining available after the required reduction has been achieved. She explained that although a reserve in the budget is anticipated at the end of the fiscal year, none of those funds can be redirected to offset the expenses that must be cut from the personnel services line item.

In FY 10/11, a personnel services reduction of approximately $123,000 must be achieved. Ms. Madsen described the task as “difficult,” and offered as partial explanation that newly enacted legislation had resulted in the Board being assigned regulation of another profession, “Professional Counselor.” She reported plans to work with the Department of Consumer Affairs, professional associations, and the Senator who authored the legislation in an attempt to ensure as smooth an implementation of the new program as possible, despite the required budget cuts.

Ms. Madsen apprised the Board that approval had been received for staffing for the Licensed Professional Clinical Counselor (LPCC) program. Approval was also received for positions in both the Enforcement and Licensing programs.

Other pending changes to the 2010/11 budget include a reduction in funding for the MHSA program; Ms. Madsen described those changes. She also stated that the Governor’s Budget suggests the possibility that employee furloughs will cease. However, the fiscal impact to the state of returning to a five-day work week would be offset by a required increase in employee retirement contributions, as well as a five percent “across the board” cut to staff salaries. Ms. Madsen noted that while a return to “normal work hours” would allow more time to address an increasing workload, staff would still feel the impact financially. She emphasized that changes to employee retirement contributions or salary would have to be implemented via legislation and worked out.

b. Operations Report

Ms. Madsen reviewed the Operations Report, which reflects statistics for the last two years, as pertain to various aspects of the Board’s business processes. She commended Board staff on their efforts to address the workload in a timely manner during a period of reduced work hours. Ms. Madsen noted that the processing times reflected on the report have not changed significantly.

c. Personnel Update

Ms. Madsen spoke about various personnel changes that had occurred with Board staff, including promotions and staff reassignments.

d. Licensed Professional Clinical Counselor Program

Ms. Madsen indicated that, as noted previously, legislation (SB 788) enacted in October 2009 creates a new category of psychotherapist in California – Licensed Professional Clinical Counselor (LPCC). Regulation of LPCCs will be the responsibility of the Board of Behavioral Sciences. Ms. Madsen reported about meetings held with Board staff to discuss priorities and timelines pertaining to implementation of the new
program. Additionally, discussion has been held with the Office of Professional Examination Services regarding development of necessary examinations, including recruitment of Subject Matter Experts.

Ms. Madsen also noted that SB 788 requires the Board to conduct a comparison of LPCC practice to both the Marriage and Family Therapist (MFT) and Licensed Clinical Social Worker (LCSW) professions. The analysis is intended to determine if sufficient differences exist between the LPCC profession and each of the others to require licensed MFTs and LCSWs to complete an examination in order to become licensed as an LPCC. Upon determination by the Board that an outside vendor was needed to complete the required analysis, steps were taken to obtain bids and initiate the contract process. The contract was subsequently awarded to Applied Measurement Services, LLC, (AMS) with work on the analysis to begin immediately.

Pursuant to the requirements of SB 788, the Board will also conduct an audit of the national examination for LPCCs, to determine if use of that examination is a viable option for use in California. The audit will be performed by AMS as well.

Ms. Madsen closed her report on the LPCC program by indicating that plans had been made to recruit staff to fill positions authorized for the program, beginning in roughly mid-February. However, those plans have been impacted by directives resulting from statewide budgetary constraints, and the recruitment halted at this time.

e. MHSA Program Coordinator Report

Prior to the start of this report, an audience member asked for additional information regarding the School Liaison position referenced by Ms. Madsen during the Personnel Update portion of her report. Christy Berger, Mental Health Services Act (MHSA) Coordinator, clarified that the position involved working with the schools authorized to offer an educational program leading to licensure by the Board, and does not involve evaluation of school children or students.

With respect to the MHSA Program, Ms. Berger began by providing a brief background of the Mental Health Services Act. She spoke about how the MHSA brings changes to the paradigm of how services are delivered, and subscribes to principles such as recovery being possible for individuals suffering from severe mental illness. Ms. Berger indicated her role as MHSA Coordinator is to take the new vision brought by the MHSA and determine how it impacts the practice of Board licensees, and what changes might be necessary to the Board’s requirements for licensure as a result of the MHSA.

Ms. Berger provided a list of major activities related to the Mental Health Services Act that took place during 2009, or will be occurring in early 2010. She made particular note of the changes to the Marriage and Family Therapist educational requirements, slated to take effect in August 2012. Ms. Berger indicated she has been working with educators to provide training and technical assistance in implementing the new requirements. She also spoke briefly about other activities in which she has been involved.
Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT) referred to Ms. Berger’s involvement in the effort to help California LCSWs qualify for federal loan repayment programs. Ms. Riemersma indicated that California MFTs and LCSWs face the same dilemma, that due to the licensure examination not being a national test, neither group is currently eligible for federal programs designed to assist with loan repayment. She asked that the same efforts be put forward for MFTs as for LCSWs in this arena. Ms. Berger indicated she would follow up on Ms. Riemersma’s request.

VIII. Examination Program Review Committee Report Presentation by Dr. Tracy Montez Regarding the Examination Program Review Committee’s Progress

Elise Froistad, MFT, Board Vice-Chair, opened the report by providing background information about the Examination Program Review Committee (EPRC). She reported that the EPRC was established in February 2008, and, following delays due to budgetary issues began its work in December 2008. The committee was assigned to review the MFT and LCSW licensure examinations, both currently comprised of a multiple-choice exam and a clinical vignette (CV) exam, and the manner in which those tests are administered. When funding was subsequently received related to the Mental Health Services Act, the decision was made to also look at how the MHSA was impacting LCSW and MFT practice, and what changes, if any, might be necessary to ensure the exams are testing competencies related to the MHSA. She noted that Dr. Montez has provided education and training to the committee members regarding examination construction and development at each of several meetings during 2009. Ms. Froistad then deferred to Dr. Montez for information regarding the committee’s status and any recommendations that have come to the Board from the EPRC as a result of their work.

Dr. Montez reported that effective December 7, 2009, the EPRC concluded the committee meetings with a final training component addressing how the examinations are administered via computer-based testing. The group discussed the information available to candidates on the website, and reviewed the various standards regulating why tests are administered as they are and why it is important to provide information to candidates.

Dr. Montez then reported on the seven recommendations the EPRC had developed based on its studies and stakeholder feedback. She also spoke about documentation supporting those recommendations.

Board Member Judy Johnson commented about the recommendation (#5) concerning a survey of reference materials used by schools to assist with examination development efforts. Ms. Johnson based her comments on experience gained as an educator, private practitioner, and former subject matter expert for the Board. She indicated that there is a difference between reference materials used by schools and those used in the development of the examination. She encouraged the inclusion of reference materials used by subject matter experts in the survey recommended by the committee.

Renee Lonner noted that although it had previously been reported that the EPRC had concluded its meetings, there may be the need for additional meetings to work out the fine points pertaining to the committee’s recommendations. She gave as one example the issue of the recommended Law and Ethics Examination, and the most appropriate
time for that test to be administered. Dr. Montez noted the importance of continuing to have stakeholders and subject matter experts involved in any future EPRC meetings.

Janlee Wong, NASW, commented about several of the committee’s recommendations, including the proposed Law and Ethics examination, when it should be administered, and what repercussions might occur if a candidate does not pass that examination. He spoke about the differences between the MFT and LCSW curricula. Mr. Wong encouraged the Board to remain aware of and consider those dissimilarities when making decisions that impact the licensure process for both professions.

a. Discussion and Possible Action on Recommendation of the Examination Program Review Committee

1. Discussion and Possible Legislative Action on the Recommendations of the Examination Committee

Tracy Rhine, Legislation Analyst, referred Board Members to a memo she had prepared regarding implementation of the EPRC recommendations, specifically Registrant Law and Ethics. She commented that this was a starting point for where the Board might want to go with the committee’s recommendations. She also spoke in favor of continuing the EPRC to discuss in depth the issues surrounding implementation of the recommendations. Ms. Rhine reviewed the framework for the new examination process, and spoke about the consequences of structuring the exam process in the recommended manner. She spoke about the four populations of examination candidates that had been identified by Board staff as impacted by the recommended changes. Ms. Rhine reiterated that a very difficult task will be to determine how to implement the changes to be fair and equitable to all candidates, and not present a barrier to licensure, which is not the Board’s intention. She then opened the issue for discussion.

An audience member asked for clarification regarding two statements in Ms. Rhine’s report that appeared to be conflicting; specifically, one statement speaks about a candidate being required to pass the new law and ethics exam within the first year of registration, while another statement speaks about what will happen if the registrant cannot pass the examination by the second year after initial issuance of the registration.

Ms. Rhine clarified that according to the proposal, if a registrant did not pass the law and ethics examination in the first year of registration, he or she would not lose the registration, but would not be able to renew it or continue to gain hours of supervised experience. The candidate would maintain the registration as they tried to pass the test, but the registration would not be current, and could not be renewed until the examination is passed. Kim Madsen, Executive Officer, emphasized that the suggestions in Ms. Rhine’s memo were starting points or ideas that came to mind when staff from the Board and the Office of Professional Examination Services discussed the issue. Ms. Madsen noted that the process has been multi-layered, with one idea leading to two or three others. She welcomed the idea that the EPRC continue meeting to work through the related concerns.

The audience member then went on to express her concerns with the contents of the law and ethics examination, considering the MHSA and how the approach to treatment challenges the traditional ethics that MFTs function by at the present time. She spoke about the formidable challenge in developing a test that will take into consideration the
changes, and expressed concern that the new ethical standards have not yet been developed.

Ms. Rhine commented that one of the ideas when starting to implement the new exam is to have two different law and ethics examinations. One exam would be for new registrants with the exam based more on education, while the other test would be for individuals who are already practicing. She indicated that this was one of the considerations when the committee was developing the recommendations.

Mary Riemersma, CAMFT, voiced the organization’s conceptual support for the proposed law and ethics examination, but agreed that more work needs to be completed on the issue. She expressed concern with the proposal as presented, and cited several areas in which more information needs to be gathered. She encouraged the Board to bear in mind the anxiety that can come with overly changing something to which people are accustomed. She suggested implementation of the requirement for newly registered interns, but allow those interns who are already registered to continue as before unless the individual had to obtain another registration due to the expiration of the initial one. In such situations, those individuals would then be held to the same requirements as newly registered persons. She agreed with Ms. Loewy that the proposal as presented contained conflicts. Ms. Riemersma specified certain areas of concern, such as imposing a time frame during which the law and ethics exam must be successfully completed or the registration is cancelled. She expressed support for the concept of requiring completion of a course, but encouraged the Board to develop specific requirements for the course including content, course length, and setting. She committed CAMFT’s continued involvement in the committee’s work.

Ms. Madsen noted that many of the issues raised by Ms. Riemersma were similar to the concerns Board staff had identified as needing to be resolved.

Geri Esposito, California Society for Clinical Social Work (CSCSW), voiced her agreement with previously noted concerns that current social work curricula do not uniformly provide the education in law and ethics that a recent graduate would need to successfully complete a test of the type being proposed. She, too, encouraged the Board to bear in mind the differences between the MFT and LCSW curricula when developing examination requirements to encompass both professions.

Cathy Atkins, CAMFT, stated that in reviewing the proposal, many questions come to mind. She asked about the appropriate forum for addressing those issues. Ms. Atkins was encouraged to submit her concerns in writing to Ms. Rhine, for future discussion by the EPRC.

An audience member (unidentified) asked about policing or censorship of social workers who obtain a doctoral degree from an unaccredited, on-line educational program. He made specific reference to court appointed mediators acting as a supervised facilitator. Ms. Lonner noted that the required education level for board licensees is a master’s degree; a doctoral degree is not required in order to obtain licensure by the Board. The audience member asked about any difference between a social worker and a supervised visitation facilitator. James Maynard, Legal Counsel, responded that it seemed what the audience member was talking about was a standard imposed by the court system, and not something that fell under the Board’s purview. When the audience member asked about repercussions to a licensee for falsification of their title, Mr. Maynard encouraged the gentleman to contact the Board if he believed a licensee has falsified or misrepresented themselves professionally.
Following a brief exchange, Mr. Maynard spoke of the need to adhere to the announced agenda, in compliance with existing statute.

Another audience member spoke of his concerns regarding the proposed law and ethics examination. He noted that the Board’s current licensure examinations are based on an occupational analysis. He asked if, in terms of the proposed exam, a separate occupational analysis would be performed for MFTs and LCSWs. He noted that currently the exams for the two professions differ in percentage of emphasis on law and ethics, and asked how the proposed exam would be formulated to align itself with issues seen to be important in both professions. The audience member also noted that there had been discussion about whether the California examinations would in some way dovetail with the national examinations. He asked the Board’s intent in terms of moving to a national exam or continuing to administer a state constructed test.

Dr. Montez was asked to respond regarding a separate occupational analysis. She indicated that a full occupational analysis would not be performed. Rather, focus groups would be held and subject matter experts brought together to review the current test plans and make modifications as appropriate.

Dr. Montez also noted that, with respect to the issue of a national examination, the Board is currently looking into the use of the national examination for each profession. She stated that steps would need to be taken before California can begin use of the national examinations, and that progress is being made in these areas.

Elise Froistad, Board Vice-Chair, commented that the EPRC has established a working relationship with the AMFTRB (Association of Marriage and Family Therapist Regulatory Boards). The Board and the AMFTRB plan to collaborate on the next occupational analysis for the national exam. The Board hopes to engage in similar collaboration with respect to the next national occupational analysis pertaining to the social work profession. Ms. Madsen emphasized that the Board is still gathering information regarding this issue, and a formal decision has not been made.

Ms. Riemersma, CAMFT, added that AMFTRB is now looking at the possibility of adopting the education currently prescribed in California as a national model.

Ms. Lonner referred the various issues back to the EPRC for further review and consideration.

IX. 2010 Legislation

a. Discussion and Possible Action to Add a Retired License Status

Tracy Rhine, Legislation Analyst, provided background regarding the proposal to create a retired license status for Board licensees. She noted that, in 2007, the Board approved proposed language changing existing statute to allow licensees the option of maintaining a retired license. However, due to workload issues staff has to date been unable to introduce legislation necessary to implement those changes. Ms. Rhine indicated that the proposal approved by the Board in 2007 has been amended to reflect pertinent statutory changes that have occurred since 2007. She noted that the current proposal is nearly identical to the previously approved language. She reviewed the content of the amended proposal, and asked the Board to discuss those
changes, as necessary, and if acceptable, sponsor legislation to create a retired license status.

Mary Riemersma, CAMFT, began by making an unrelated request that, since the Board was working on changes to the law, a word other than “delinquent” could be used to describe an unrenewed or lapsed license. She then commented about the proposed language, and suggested alternate wording. She also asked for clarification and history regarding certain sections of the proposed statutory changes.

Discussion occurred regarding the use of the word “retired” by licensees who are no longer practicing, but who do not hold a “retired license.” Mr. Maynard noted that the Board does not have the authority to restrict use of the word “retired.” Ms. Rhine suggested deletion of the proposed language that could be construed as imposing such restrictions.

Susan Kelsey, CAMFT, asked if the proposed statute would include a requirement that a licensee practice for a period of time before requesting a retired license. She asked the difference between the proposed retired license and one that is inactive. Mr. Maynard explained that with a retired license, an individual cannot practice; individuals are legally mandated to have an active license in order to engage in the practice authorized by the license. Ms. Rhine indicated that there is nothing in the proposed statute that would require a licensee to practice before requesting a retired license.

Janlee Wong, NASW, also expressed uncertainty about the difference between a retired and an inactive license. Discussion ensued. Ms. Madsen explained that an individual holding an inactive license continues to renew that license and can reactivate it by completion of required continuing education, regardless of how long the license has been inactive. The proposed retired license would limit to three years the period during which the license could be made active; after three years the retired licensee would have to pass existing licensure requirements in order to restore the license to full active status.

Mr. Wong questioned the need for implementation of the new license status. Ms. Rhine responded that numerous requests have been received from licensees about obtaining a retired license, with an often noted concern being the negative connotation associated with the “delinquent” or “inactive” status currently assigned to the unused license. Ms. Madsen added that the availability of a retired license is not uncommon in many professions. Mr. Wong continued to express concern over the seeming difference in the manner in which individuals with an inactive license would be treated versus those with a retired license.

Sean O’Connor, Outreach Coordinator, commented that one consideration that needed to be addressed with respect to the proposed retired license status involves the new fingerprint requirement for long-time licensees. He suggested that the Board look at how the fingerprint requirement might impact individuals seeking a retired license.

Ms. Rhine revisited the previous suggestion to change the time limit during which a retired license can be reactivated, from three years to five. She asked if the Board wanted to discuss the issue at the present time. Discussion occurred, and touched on the need for continuing education (CE) when reactivating a license. Mr. O’Connor
provided clarification regarding the CE requirement, and explained that individuals are not required to complete continuing education when renewing in inactive status; the CE must be completed during a specified period of time prior to the return to active status.

Geri Esposito, CSCSW, commented about extending the period of time to reactivate the retired license. She noted numerous contacts from licensees announcing their retirement. Ms. Esposito stated she encourages those individuals to renew the license in inactive status and not let the license go delinquent and ultimately cancel, because circumstances change and the license might be needed in the future.

Mr. Maynard outlined for the Board Members what options are available regarding action on the issue of the retired license status.

Patricia Lock-Dawson moved to accept the legislative proposal, with amendments. The amendments would 1) change, from three to five years, the period in which a retired licensee can reactivate the license without having to retake the licensure examination; and 2) remove the second sentence from subdivision (b) of the statutory proposals pertaining to sections 4984.41, 4989.45, 4997.1, and 4999.113 of the Business and Professions Code. Victor Perez seconded. The Board voted unanimously (10-0) to pass the motion.

b. Sunset Legislation

Tracy Rhine, Legislation Analyst, reported that there currently are two sections of the Business and Professions (B&P) Code pertaining to the Board which will be repealed effective January 1, 2011, unless extended through legislation. B&P Code Sections 4990 and 4990.04, in summary, speak to the composition and function of the Board, and the appointment and authority of the Executive Officer, respectively. Ms. Rhine stated that what is known as the Sunset Review process historically has occurred every few years. It is intended to assess various facets of a board within the Department of Consumer Affairs, to determine if that regulatory agency is functioning effectively and should continue to exist. She noted that in recent years the reviews have not been conducted due to a lack of funding for the legislative office charged with performing the assessments.

Currently, the Board is scheduled to “sunset” January 1, 2011. Ms. Rhine indicated that in order for the Board to continue functioning, legislation must be passed in 2010 to ensure its ongoing operation. Historically, such legislation is sponsored by the Senate Business and Professions Committee, and includes several regulatory agencies which, in addition to the Board, are under review. Ms. Rhine reported having spoken with staff of the Senate B&P Committee about the introduction of such legislation. Although she did not receive a specific response, Ms. Rhine indicated she was told not to include the sunset review issue in other legislation, such as the Board’s Omnibus Bill. At the present time, the Board has no plans to introduce legislation specific to the sunset review procedure. Ms. Rhine voiced the opinion that the B&P Committee may be in the process of revamping the existing process, and stated she had seen at least one piece of legislation aimed at that goal.

Ms. Rhine closed by noting that her report was intended to bring the Board Members up to date on the subject of Sunset Review. She stated that although there are no
plans for the Board to introduce legislation in this area, it is anticipated that changes to
the sunset process are underway and will be introduced. Ms. Rhine committed to
keeping the Board Members apprised of any changes that occur.

The Board adjourned for a lunch break at 12:30 p.m., and reconvened at
approximately 1:00 p.m.

c. Omnibus Legislation

Ms. Rhine reported that, on an annual basis, the Board sponsors either its own
Omnibus legislation, or a piece of a larger Omnibus Bill. The purpose of the bill is
generally to clean-up existing statute and maintain the code specific to the Board. Ms.
Rhine indicated that the proposed omnibus legislation currently before the Board
includes a significant number of amendments required as a result of the passage
Senate Bill 788, legislation establishing the licensure and regulation of Licensed
Professional Clinical Counselors (LPCC) by the Board. Ms. Rhine stated that the
proposed legislation is broken down into four main categories; she named each
section and indicated she would review the contents of the proposed bill, category by
category. She noted that a portion of the material to be reviewed is very technical, and
encouraged meeting participants to ask questions if clarification is required.

TECHNICAL AND NONSUBSTANTIVE CHANGES

Ms. Rhine reviewed each of the proposed changes. She noted that specific language
pertaining to all recommended changes was attached to the report provided to the
Board Members.

Harry Douglas, Public Member, asked about the proposed change to B&P Code
Section 4980.40.5. The suggested change resulted from a revision to the name of one
of the accrediting agencies accepted by the Board. Mr. Douglas questioned the
absence of the Western Association of Schools and Colleges (WASC) from the list of
suitable agencies. Ms. Rhine noted that reference is made to WASC as an acceptable
accrediting agency in a different, related section of the B&P Code. She expressed the
understanding that the agencies currently listed in B&P Section 4980.40.5 are
accrediting agencies throughout the United States that are on par with WASC. Mr.
Douglas encouraged a further review of B&P Section 4980.40.5 to determine if WASC
should also be added to the list of accrediting agencies.

TECHNICAL CLEAN-UP TO LPCC LICENSING LAW

Ms. Rhine noted that the changes made to the unprofessional conduct statute for
Licensed Professional Clinical Counselors (LPCCs) had previously been made to
similar code sections pertaining to the other professions (MFT; LCSW; LEP) regulated
by the Board. She stated that the proposed amendments to the LPCC unprofessional
conduct statute would make those sections of the LPCC law consistent with
comparable sections of the MFT, LCSW and LEP laws. She then reviewed the
changes to the unprofessional conduct statute.

Next, Ms. Rhine reviewed the code sections pertaining to Professional Experience of
LPCC Interns. She noted that in current MFT, LCSW, and LEP statute, there is no
limitation as to the number of registrants who may be supervised by one qualified
licensee, except in a private practice setting. The LPCC statute does not make any exception about setting, but puts a limitation of two (2) on the number of registrants who can be supervised by one supervisor. The proposed change would remove that limitation. The rationale for the amendment is that, in the early stages of the new licensing program, the number of individuals seeking registration will far exceed the number of eligible supervisors, for at least two years. Current MFT law requires an individual to be licensed for at least two years in order to be qualified to supervise. The assumption is that the same standards will be applied to LPCCs.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), asked if the Board intended to place a limitation on LPCC registrants in private practice settings. Ms. Rhine responded that the issue was a policy decision and would need to be brought before the Board for consideration. She expressed the intent to include the issue on the next Board Meeting agenda.

The next issue pertained to gaining hours of experience under the supervision of a spouse or relative by blood or marriage. Again, existing MFT and LCSW statute prohibits supervision of a registrant by a spouse or relative of that registrant. The recommended change would make the LPCC law consistent with MFT and LCSW statute.

Mary Riemersma, CAMFT, pointed out that existing statute pertaining to MFT and LCSW licensure also prohibits a registrant from gaining supervision from an individual with whom the registrant currently has, or in the past has had, a personal or business relationship. Ms. Rhine expressed the belief that the provision referenced by Ms. Riemersma appears in a separate section of the LPCC law. However, she committed to research the matter further and recommend changes necessary to ensure consistency with MFT and LCSW statute.

Ms. Rhine indicated the next amendment served to clarify existing statute regarding direct supervisor contact for registrants. Current law requires direct supervisor contact for every ten (10) hours of client contact in each setting. MFT and LCSW laws require one hour of direct supervisor contact for every week in which there more than 10 hours of face-to-face psychotherapy is performed in each setting. The suggested change to the LPCC law would make it consistent with MFT and LCSW statutes.

Mary Riemersma, CAMFT, expressed confusion with the proposed amendment, stating it sounded as though the registrant would require supervision only if more than ten hours of psychotherapy was performed, but not until that point. Ms. Rhine reaffirmed that the intent was to make this provision consistent with the other Board licensing laws. Discussion was held among meeting participants, resulting in rewording of the proposed amendment to provide clarification and consistency.

Ms. Rhine reviewed the balance of the proposed amendments pertaining to Professional Experience of LPCC Interns. No comment or request for clarification was made by meeting participants.

The last of the technical clean-up to the LPCC law involved Out-of-State Applicants. Ms. Rhine indicated that the LPCC law was written to include a section for out-of-state applicants who apply for examination eligibility between January 1, 2011 and December 31, 2013. She noted there are also sections applicable to candidates who
apply January 1, 2014 and after. Ms. Rhine stated that to make the LPCC law consistent with the MFT statute specifically, there was a need for two sections pertaining to out-of-state applicants who apply between January 1, 2011 and December 31, 2013. Current law speaks about candidates who have held licensure as an LPCC in another state for at least two years. The proposed amendment would add a section specifically applicable to candidates who have been licensed in another state for less than two years.

Ms. Rhine completed her review of the proposed amendments pertaining to out-of-state applicants. She then raised an issue not included in her report. Specifically, Ms. Rhine reported that current MFT law does not require a candidate who is fully licensed in another state for at least two years to complete 250 hours of supervised experience within California. The requirement is only applicable to out-of-state candidates with less than two years of licensure in another state. Existing LPCC law requires the 250 hours of all out-of-state candidates. In order to make the LPCC requirements consistent with MFT statute, Ms. Rhine proposed amending the LPCC statute to require the hours of supervised experience only of candidates whose out-of-state licensure has been for less than two years.

**ADDITION OF LPCCs TO MFT AND LCSW LICENSING LAW**

Ms. Rhine reported that current MFT and LCSW statutes allow the Board to deny an application or take disciplinary action against a licensee or registrant based on disciplinary action taken against a separate Board issued license or registration. The proposed amendment would update the applicable sections of MFT and LCSW laws to add professional clinical counselor to the list of professions under the Board’s jurisdiction.

**ADDITION OF LPCCs TO GENERAL BOARD STATUTES**

Ms. Rhine reported there are sections of statute that are applicable to all licensees under the jurisdiction of the Board. With the implementation of the LPCC program, these sections must be amended accordingly. The proposal would update the necessary sections to include reference to the practice of professional clinical counseling.

Ms. Rhine next reviewed and clarified the suggested changes made by the Board with respect to the proposals she had presented in her report.

Ms. Lonner invited public comment regarding the proposed legislative and regulatory changes.

Janlee Wong, NASW, spoke about the use of the term ACSW. He stated that in the 1960s the NASW created a credential called the ACSW, meaning “Academy of Certified Social Workers.” He further indicated that the Board-issued registration called the Associate Clinical Social Worker was sometimes also referred to as ACSW, which led to confusion for some. Mr. Wong proposed possibly including language in the Omnibus Bill to specify that the acronym ASW would be used when referring to the Associate Clinical Social Worker.
Ms. Rhine asked if Mr. Wong was proposing a change to the Board’s Advertising Guidelines. A brief discussion ensued. Mr. Wong clarified that his suggestion was made in an attempt to resolve confusion to the public as well as within the profession with respect to the meaning of the term ACSW. Ms. Rhine indicated the need to research the matter further before taking any action, and that the suggestion could then be brought before the Policy and Advocacy Committee.

James Maynard, Legal Counsel, voiced concern about a proposed amendment to B&P Code Section 4999.90(c) relating to the use of controlled substances and dangerous drugs. Discussion occurred regarding the intent behind the proposed change, and the impact of that change on the Board’s disciplinary authority. Mr. Maynard recommended not making the proposed change, and leaving the section un-amended.

Donna DiGiorgio moved to pass the Omnibus Legislation, as amended. Staff was instructed to research and make the suggested changes to the proposed legislation, and return the matter to the Board for further review and discussion. An unidentified speaker seconded. The Board voted 10-0 to pass the motion.

X. 2010 Rulemaking

a. Discussion and Possible Action Regarding Title 16, CCR Sections 1807, 1807.2, 1810, 1819.1, 1887 to 1887.14, Continuing Education Requirements: Licensed Educational Psychologists, Exceptions From and Providers

Renee Lonner, Board Chair, announced that Board Member Judy Johnson, LEP, had left the meeting. She noted Ms. Johnson’s support of the next issue pertaining to continuing education (CE) for Licensed Educational Psychologists.

Ms. Rhine reported that continuing education for LEPs has been a topic of discussion for the Board on several occasions. She provided a brief history of the statute requiring CE as a condition of LEP license renewal. She indicated that implementation of this law requires adoption of regulations. Ms. Rhine stated that, per prior Board approval, a proposal had been filed with the Office of Administrative Law (OAL) providing for a phased-in implementation of the CE requirement. After describing how the “phase in” process would work, Ms. Rhine listed several courses that would be required CE for LEPs. Those courses are currently required CE for MFTs and LCSWs.

As part of the regulatory process, public comment was received by the Board regarding the proposed regulations, including three negative comments. Ms. Rhine outlined these three responses. The first involved the contention that the mandatory coursework in large part is not relevant to the practice of educational psychology, despite the fact that the coursework is required of all other Board licensees (MFT and LCSW practice). The next argument presented through public comment was that although the Board would require only 18 hours of CE for individuals renewing in 2011, a total of 63 hours would be required to complete the mandatory coursework listed in the proposal. The third comment was that the CE coursework was more than the five dollars ($5) per unit stated in the Board’s proposal. Ms. Rhine explained that in the proposal the cost was estimated at $15 per hour for each of the courses. She described the process followed in determining the average cost of five dollars per unit.
Following the public comment period, staff reviewed the comments received and developed options for the Board to consider in addressing public concern regarding the proposal. Ms. Rhine reviewed those options with the Board. In summary, the options were:

1. Delete some of the specific courses required. Possibly revisit the currently mandated coursework to determine if the requirements should apply to all Board licensees regardless of differences in scope of practice;

2. Delete all specific coursework required, but keep the blanket requirement regarding the number of hours that must be completed;

3. Maintain coursework requirements but change implementation timeline to allow coursework to be completed over more than one renewal cycle;

4. Make no changes to the regulatory package.

Ms. Rhine referred the Board to language she had developed reflecting an updated list of mandatory CE courses for LEPs, including Law and Ethics; Child Abuse Assessment; and Alcoholism and Other Substance Dependency.

Discussion occurred about the importance of CE in ensuring all licensees have the same competencies. Ms. Rhine noted that LEP Board Member Judy Johnson felt strongly about the importance of keeping the profession on par with other related professions. Ms. Rhine stated a significant amount of discussion had occurred in determining the areas that were most important for all LEPs to be knowledgeable of in order to be safe and competent practitioners. Discussion continued among meeting participants.

Janlee Wong, NASW, provided a historical perspective on the need for the mandated coursework for Board licensees. He discussed issues such as Human Sexuality, and the importance for a licensee whose scope of practice includes providing psychological counseling to have specified knowledge in this and other related areas. He encouraged the Board to consider leaving the list of mandatory courses for LEPs the same as those courses required for completion by MFTs and LCSWs.

Jim Russell, California Association of School Psychologists (CASP), stated that CASP has provided testimony and written a letter regarding this issue. He noted that school psychologists and licensed educational psychologists do not disagree with the need for knowledge in certain areas such as alcohol and substance abuse; however, he noted that such treatment is not part of the daily practice for an LEP. Mr. Russell expressed concern that requiring an LEP to complete coursework that includes treatment of a particular disability implies that the licensee’s scope of practice in fact allows the individual to provide that treatment. He stated the position that an overview course intended to provide background knowledge about a disability such as alcoholism would be sufficient for an LEP. In terms of professional development, however, it would be better for the licensee to complete coursework that is applicable to the scope of practice for their license.

Discussion ensued regarding the LEP scope of practice. Ms. Lonner suggested that further dialogue regarding the agenda item be deferred until the next meeting to allow opportunity for additional research into the issues raised by Mr. Russell. She expressed concern that the subject required more time and attention than would be available at the present meeting. She apologized for any inconvenience the tabling of
XI. Review and Discussion of the Board’s Enforcement Program

a. Update on the Substance Abuse Coordination Committee’s Uniform Standards

Ms. Lonner announced that Kimberly Kirchmeyer, Deputy Director of Board/Bureau Relations, Department of Consumer Affairs, would present information regarding the work of the Substance Abuse Coordination Committee. Ms. Kirchmeyer provided background information regarding the establishment of the committee, pursuant to passage of Senate Bill 1441 (Ridley-Thomas). She noted that the monitoring of substance abusing licensees for all healing arts boards has been a focus of discussion for approximately two years. The committee was established, consisting of executive officers from the allied health boards; the Director, Department of Consumer Affairs; and a representative from the Department of Alcohol and Drug Programs. The group met with set criteria to develop guidelines for compliance with each of sixteen (16) requirements outlined in SB 1441. Ms. Kirchmeyer stated that her attendance at the Board Meeting was to solicit the Board Members’ support for the sixteen guidelines. She noted that each standard has undergone legal review. As a result, the determination has been made that some of the items will require legislation in order to be implemented. Ms. Kirchmeyer indicated that the necessary legislative language is being developed and will be included in a bill. She asked the Board’s support for the guidelines/standards that will come up in legislation. Further, she asked that the Board at its next meeting include on the agenda regulatory proposals necessary for implementation of the standards that require such action. Last, she asked the Board to take steps to have the executive officer implement as soon as possible, those standards that can be implemented as policy.

James Maynard, Legal Counsel, reported meeting with Ms. Madsen to review the committee’s recommendations and determine how they would dovetail with the Board’s laws and regulations. Several of the recommendations were found not to be applicable to the Board in that they related to a diversion program, which the Board does not have. It was determined that four of the items could be implemented via changes to the Board’s Disciplinary Guidelines. The remaining standards were found to require legislation for implementation.

Mary Riemersma, CAMFT, expressed the association’s concerns regarding the proposed guidelines. She began by affirming CAMFT’s position that individuals who inflict harm to the public should be swiftly and appropriately sanctioned. She expressed CAMFT’s position, however, that it is impossible to impose standards in the same manner on boards that have a diversion program versus boards that do not. She expressed concern that in reviewing the proposed guidelines, it is not clear who they apply to until you reach the end of the document. She encouraged the committee to clearly define initially who is impacted by the standards. Additionally, Ms. Riemersma expressed that some of the proposed requirements are so strong as to result in financial hardship to the licensee who attempts to comply. She stated CAMFT’s position that historically the Board has done well with respect to its disciplinary cases, and that it is important for the Board to maintain the discretion to make decisions based on the facts and circumstances particular to each case. She urged the Board to be cautious in how it adopts the committee’s recommendations.
b. Department of Consumer Affairs Enforcement Model

Ms. Kirchmeyer indicated she was speaking on behalf of the Brian Stiger, Director, Department of Consumer Affairs (Department), with respect to the Consumer Protection Enforcement Initiative. She provided a brief history of the genesis of the initiative, citing systemic problems experienced by various healing arts boards in the timely investigation and prosecution of consumer complaints. In response to the unveiling of these difficulties, representatives within the Department met and developed the Consumer Protection Enforcement Initiative. The purpose of the proposal is to improve the enforcement processes, reducing the time to prosecute licensees found to have violated the law. At the onset of the project, the average enforcement completion timeline was thirty-six (36) months; the goal of the Department is to reduce that to between twelve (12) and eighteen (18) months.

Ms. Kirchmeyer noted that the initiative is designed to address three specific areas: Administrative Improvements; Staffing and IT Resources; and Legislative Changes. She reported that representatives from the healing arts boards have met with the Department in a coordinated effort to identify best enforcement practices. The anticipation is that based on the best practices, an Enforcement Academy can be developed for enforcement personnel from each board to attend and be trained in the entire process.

Another step taken by the Department was to hire a Deputy Director of Enforcement and Compliance to review and monitor the boards’ performance and compliance with the applicable requirements. Ms. Kirchmeyer also reported the establishment of performance agreements with certain state agencies critically involved in the enforcement process, including the Office of the Attorney General and the Office of Administrative Hearings.

Ms. Kirchmeyer touched on other areas applicable to the success of the Consumer Protection Enforcement Initiative, including planned improvements to the licensing and enforcement database systems. She also spoke about legislative changes being proposed that will contribute to the success of the initiative, improving such areas as the length of time required to suspend a license; better access to medical records; and delegating to the executive officer approval of default decisions and stipulated settlements. Ms. Kirchmeyer indicated that no legislative language is yet ready for the Board’s review, but committed to provide that information as soon as it is available. She again asked for the Board’s support for the proposed legislation and for the proposed enforcement model. She closed by thanking the Board and staff for its significant contribution to this process.

Renee Lonner, Board Chair, asked how the reduced staff and work hours will impact the efforts to improve the enforcement process. Ms. Kirchmeyer indicated that those issues had been taken into consideration in the development of the initiative. It is recognized that the decrease in work hours and staff could present hurdles in reducing the enforcement timelines. Ms. Madsen noted that the Board has begun a thorough review of its enforcement processes, many of which have been in place for a long period of time. She stated that at least two areas have already been identified in which time savings can be realized simply by eliminating steps in the process that are no longer necessary. Ms. Madsen expressed the expectation that completion of the
review will serve to fine tune and improve timelines associated with the enforcement process.

c. Retroactive Fingerprint Update

Sean O’Connor, Outreach Coordinator, provided a background of the fingerprint project for the new Board Members. He explained that the Board currently requires background checks and receives subsequent arrest notifications for new applicants; however, a group of individuals was identified who were licensed by the Board prior to the implementation of the fingerprint requirement. These 34,685 individuals are now being required to submit fingerprints. To date, approximately 7,800 have been notified of the need to comply with the requirement. A majority of those licensees and registrants has now been fingerprinted. Mr. O’Connor reviewed the processes followed by Board staff in apprising individuals of the need to be fingerprinted, and in following-up with those who have not complied within a specified time frame. In closing, he noted that in December 2009, Board staff in conjunction with the Department of Consumer Affairs Office of Information Services developed an automated system for receiving fingerprint information from the Department of Justice. As a result, a significant reduction has been realized in the need for manual key data entry of information received through the fingerprint process.

Janlee Wong, NASW, asked Mr. O’Connor to describe the process that is followed once an individual’s fingerprint information is received by the Board. Mr. O’Connor responded that once fingerprints are submitted, the Board receives an initial criminal background check, and the individual’s name is stored with the Department of Justice. If that individual is subsequently convicted of a crime, the Board is notified immediately, sometimes within two to three days of the event. He described the program as fundamental to consumer protection. The question was raised about whether the notification was received after the individual is convicted or accused. Ms. Madsen explained that two types of notification might be received. The Board can receive an arrest notification immediately after the arrest, and/or an arrest and conviction notice together. The Board might receive only a conviction notice if the incident is old. Either notification would result in some type of action by the Board.

Ms. Lonner commended Mr. O’Connor and other Board staff for their efforts with the fingerprint project. She spoke briefly about her experience in fulfilling the requirement. Ms. Madsen joined Ms. Lonner in giving kudos to staff for their work in this area, pointing out that the Board was one of the first to implement the retroactive fingerprinting. Staff work to develop and streamline the process resulted in the Board being one of the first to receive the automated system described earlier.

d. Presentation by Deputy Attorney General Christina Thomas Regarding Penal Code Section 23

Christina Thomas, Deputy Attorney General (DAG), briefly explained her role as Attorney General (AG) liaison to the Board. She provides litigation for the Board, and works with other DAGs statewide regarding cases against Board licensees and registrants.

Ms. Thomas introduced the Board to Penal Code Section 23. This provision allows for immediate action against licensees determined to be a public threat. She stated the
statute allows the Board to appear in any criminal proceedings against a Board licensee and provide information and assistance as necessary to promote consumer protection, if the crime charged is substantially related to the qualifications, functions, or duties of the licensee. Ms. Thomas also referred the Board to B&P Code Section 320, which provides administrative authority for the Board to take action pursuant to PC 23. She then offered pros and cons to use of the statute. Ms. Thomas then provided the Board with information pertaining to a case in which the provisions of PC 23 were used successfully.

Ms. Thomas also spoke about an Interim Suspension Order (ISO), which is a tool that can only be used when there is no criminal case. It is a device that allows the Board to petition for an order in the same manner as when using PC 23, but only through use of a declaration. She noted that this tool is helpful when working with witnesses who are hesitant, afraid, or want to remain anonymous. Ms. Thomas indicated there are stringent requirements associated with obtaining an ISO that keep it from being a favored tool in the disciplinary process.

Janlee Wong, NASW, asked for clarification regarding when the Board might present information pursuant to PC 23.

Mary Riemersma, CAMFT, expressed the association’s concern that the Board’s attempts to take swift action against a licensee or registrant do not result in a violation of due process. Ms. Thomas cited applicable federal case law, and committed to forward a copy of the law to Ms. Riemersma.

XII. Review and Possible Action of Strategic Plan

This agenda item was tabled for discussion at a future Board Meeting.

XIII. Discussion and Possible Action Regarding Board Registrants Paying for Supervision by a Licensee

James Maynard, Legal Counsel, reported that this issue had been discussed at a previous meeting. The Board received a letter from a licensee asking about the appropriateness of registrants paying for supervision by a licensee. He referred to existing law that makes it illegal for an employer to require an employee to pay the employer any money. Mr. Maynard reported that the Labor Board had been contacted and had agreed with the Board’s position that imposing such a requirement on a registrant/employee is not a legal labor practice. He noted that the Board of Behavioral Sciences does not have the authority to tell a supervisor/employer they cannot require payment for the supervision but the Labor Board does hold that authority. Mr. Maynard recommended lobbying of the legislature and/or the Department of Labor Standards Enforcement to effect change in this area. Ms. Madsen stated that in discussing the matter with the Department of Labor Standards, she was informed that individuals with concerns related to this practice could submit those concerns in writing and an opinion would be rendered in response. Ms. Madsen then provided addresses where regular mail and e-mail contact could be made with the Department.

Mr. Maynard provided clarification about situations in which it would be appropriate to pay for supervision. He referred to situations in which the registrant is serving as a volunteer. Discussion ensued among meeting participants.
Mary Riemersma, CAMFT, requested clarification on certain aspects of the issue, and expressed concern with the impact of the labor board’s findings on Board licensees and registrants attempting to gain hours of experience required for licensure. Mr. Maynard reiterated that the focus when talking about paying for supervision needs to be on any employer/employee relationship. He again noted the need for legislation to revise requirements pertaining to supervision. Discussion continued among meeting participants. The Board was encouraged to continue studying and addressing the issue thoroughly.

a. **Representative from the Department of Labor Standards Enforcement**

   No representative from the Department of Labor Standards Enforcement attended or provided input at the meeting.

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

Gerry Grossman stated that he previously raised concerns regarding mandatory reporting responsibilities in cases of consensual sex acts between minors. He spoke specifically about Penal Code Section 11165.1, which names the types of acts the knowledge of which constitutes a mandatory reporting responsibility for a therapist. Mr. Grossman reported a concern among clinicians about the seeming discrepancy between the sex acts named in the statute and others not considered reportable but which also involve minors. He noted there is currently proposed legislation on the floor pertaining to this issue. Mr. Grossman asked to make a presentation at the next board meeting to provide information to the Board and garner support for the bill.

XV. **Suggestions for Future Agenda Items**

Consensual Sex Involving Minors – Mandatory Reporting Requirements Pursuant to Penal Code Section 11165.1