

BOARD MEETING MINUTES September 9, 2010

The Board of Behavioral Sciences met via telephone on September 9, 2010 at the following locations:

Department of Consumer Affairs
San Francisco Room
3rd Floor North, N318
1625 N. Market Blvd.
Sacramento, CA 95834

Alliant International University
Scripps Ranch Campus
MFT Program, Daley Hall 2nd Floor
10455 Pomerado Rd
San Diego, CA 92131

Hotel Maya
Fuego Restaurant
700 Queensway Drive
Long Beach, CA 90802

Pioneer High School
10800 E Benavon Street
Whittier, CA 90606

1151 Dove Street, #170
Newport Beach, CA 92660

415 Karla Court
Novato, CA 94949

1104 Ridgefield
Carson City, NV 89706

1615 E. 17th Street
Santa Ana, CA 92705

5506 Ranchito Avenue
Sherman Oaks, CA 91401

Members Present

Renee Lonner, Chair, LCSW Member
Elise Froistad, MFT Member, Vice-Chair
Samara Ashley, Public Member
Jan Cone, LCSW Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Michael Webb, MFT Member
Christine Wietlisbach, Public Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Spencer Walker, Legal Counsel
Marsha Gove, Examination Analyst
Rosanne Helms, Legislative/Regulatory Analyst

Members Absent

Patricia Lock-Dawson, Public Member

FULL BOARD OPEN SESSION

Renee Lonner called the meeting to order at approximately 11:00 a.m. Marsha Gove called roll, and a quorum was established.

I. Discussion and Possible Action Regarding Previous Board Action to Require California Licensed Marriage and Family Therapists and Licensed Clinical Social Workers to Take a Gap Examination for Licensure as a Licensed Professional Clinical Counselor

Spencer Walker, Legal Counsel, reported that the Board, at its July 28, 2010 meeting, revisited the prior Board vote to not require an examination for marriage and family therapists (MFTs) and licensed clinical social workers (LCSWs) seeking licensure as a Licensed Professional Clinical Counselor (LPCC) during the grand-parenting period. He indicated that based on information presented at that meeting, the Board voted to require a Gap Examination; the action reversed the Board's May 7, 2010 action. Mr. Walker reported that subsequently, on August 24, 2010, the Board received correspondence from an attorney representing the California Association of Marriage and Family Therapists (CAMFT). The letter alleged violations of the Bagley Keene Open Meeting Act had occurred at the Board's July 23, 2010 meeting. Mr. Walker indicated that, specifically, it was alleged that the Board improperly and unlawfully met in closed session to discuss whether a Gap Examination should be required.

Mr. Walker commented that public perception is key when conducting the people's business. He reported that in the interest of fostering improved public perception and relations with the Board of Behavioral Sciences, the September 9, 2010 Board Meeting was scheduled for the purpose of discussing and possibly rescinding the Board's July 28, 2010 action to require a Gap Examination. Mr. Walker stated that if the Board elects to rescind its previous action, following comment from the public, the Board's May 7, 2010 action to not require a Gap Examination would be revived, and the Board would move on to the next agenda item.

Mr. Walker recommended to the Board to rescind its previous action and move on to discussion and possible action regarding the LPCC Gap Examination.

Renee Lonner moved to rescind the Board's July 28, 2010 motion and the related Board action to require a Gap Examination. Donna DiGiorgio seconded.

The matter was opened for board discussion. There was no discussion. The matter was open for public comment.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), asked if the Board were to take action to rescind the July vote, the parties interested in Agenda Item II should act as though the discussion preceding the vote never occurred. He clarified by asking if interested parties should act as though the discussion leading up to the Board's vote never occurred, or only that the

vote itself never occurred. Mr. Walker responded that it would be as if the July discussion and action never occurred.

With the motion on the floor, a roll-call vote was taken. The Board voted unanimously (10-0) to rescind the July 28, 2010 action.

II. Discussion and Possible Action Regarding the Licensed Professional Clinical Counselor Gap Examination

Ms. Lonner asked Mr. Walker to discuss the legal issues that the Board should be aware of prior to beginning the discussion of this agenda item.

Mr. Walker indicated that, since the Board voted to rescind its July 28, 2010 action to require a Gap Examination for licensure as an LPCC, the Board's previous decision to not require that examination has been revived. He indicated that the May 7, 2010 decision currently stands as the Board's decision in this matter. He added that since the Board's action taken in July 2010 has been rescinded, the agenda item that permitted such action must still be addressed because it was not tabled. Mr. Walker indicated that as such, the language used to frame the issue in Agenda Item II is the same language that appeared on the July 28, 2010 agenda.

Mr. Walker continued that in order to avoid any public perception or concerns regarding the procedural aspects of again addressing this issue, he recommended that the May 7, 2010 action to not require the Gap Examination also be rescinded before commencing discussions on the necessity of the examination. Ms. Lonner asked Mr. Walker to confirm that rescinding the May 2010 action would "wipe the slate clean" and the Board would then have a fresh discussion about the need for the Gap Examination. Mr. Walker responded that Ms. Lonner's understanding of the issue was correct.

Michael Webb moved to rescind the Board's May 7, 2010 motion and the related Board action to not require a Gap Examination for grand-parenting purposes. Christine Wietlisbach seconded.

The matter was opened for board discussion. There was no discussion. The matter was open for public comment. There was no public input regarding this matter.

With the motion on the floor, a roll-call vote was taken. The Board voted unanimously (10-0) to rescind the July 28, 2010 action.

Prior to the onset of discussion regarding the LPCC Gap Examination, Mr. Walker encouraged meeting participants to be aware that any discussions that occurred at the July 28 and May 7, 2010 meetings, since both actions had been rescinded, had nothing to do with the September 9, 2010 meeting. He added that the participants needed to deal with the issue at hand as though it was being addressed for the first time.

Ms. Lonner asked Tracy Rhine, Assistant Executive Officer, to review the item. Ms. Rhine introduced herself. She then proceeded to explain that SB 788, which created the LPCCs, sets forth a grand-parenting period. One of the pathways to licensure during the grand-parenting period is for licensees regulated by the Board of Behavioral Sciences – specifically MFTs and LCSWs. Ms. Rhine stated that Business and Professions Code (BPC), Section 4999.54, states that MFTs and LCSWs would have to take an examination on the differences between an LPCC and an MFT, and an LPCC and an LCSW, if the Board and OPES found that there are differences between the professions. She read the pertinent Code section, 4999.54(b), to meeting participants, as follows:

“The Board and the Office of Professional Examination Services shall jointly develop an examination on the differences, if any differences exist, between the following:

“(A) The practice of professional clinical counseling and the practice of marriage and family therapy.

“(B) The practice of professional clinical counseling and the practice of clinical social work.”

Ms. Rhine indicated that the Board has contracted with Dr. Tracy Montez to perform an audit of the practice of LPCCs and how that practice differs from the practice of MFTs and LCSWs. Ms. Rhine asked Dr. Montez to report her findings from the audit.

Dr. Montez, Applied Measurement Services (AMS), introduced herself and presented the Board with the results of her review of the MFT, LCSW, and LPCC practices. She reported that consistent with the statement of work and contracted services or significant differences were examined to determine whether a Gap exam is needed. Dr. Montez explained that to standardize the analysis of the professions, the exam plans or content outlines from the respective occupational analyses of the MFT, LCSW, and LPCC practices were compared. She indicated that qualitative data from interviews and document reviews were also used to supplement the comparisons.

Dr. Montez stated that with respect to the analyses, the results show the expectations for entry level practice as an MFT, LCSW, or LPCC differ. Those differences were noted across the three broad content areas of Diagnostic and Assessment Services; Professional Practice Activities; and Professional Development. Dr. Montez noted that due to a confidentiality agreement with the National Board for Certified Counselors (NBCC), she is precluded from disclosing further details. She indicated it was nonetheless important to emphasize that although the three professions perform work tasks across those three domains, it is the depth of knowledge and the associated practice expectations upon entry into the profession that differ. Dr. Montez reported that it was the conclusion of AMS that those differences will diminish once the full requirements for grand-parenting are achieved. She added that LCSWs and MFTs grand-parenting into the LPCC profession would be expected to meet minimum

acceptable competence standards to practice as an LPCC in California. Dr. Montez noted that it would then be AMS' recommendation to the Board that a Gap Examination is not necessary.

The matter was then opened for discussion.

Mr. Webb asked Dr. Montez for clarification as to whether she was recommending that a Gap Examination is not necessary. Dr. Montez answered affirmatively, indicating she is staying with her original and ongoing recommendation that a Gap Examination is not necessary.

Ms. Lonner asked Dr. Montez if it was her opinion that the spirit and intent of the law would be met even if no Gap Exam was administered; that it is consistent with the relevant code section pertaining to LPCCs. Dr. Montez responded that she is not an expert in law and therefore declined to respond to the question. She stated that the services she was contracted to perform were to look for meaningful differences between the professions. Dr. Montez indicated she did find differences, but it was her opinion that once the requirements for grand-parenting are met, those differences would diminish and the individuals who are currently licensed and in good standing as an MFT or LCSW could then meet the same expectations for entry level practice as an LPCC.

Ms. Lonner expressed her understanding of Dr. Montez's position that the noted differences between the MFT, LCSW and LPCC professions would be diminished by the established requirements for grand-parenting into the LPCC profession. Dr. Montez confirmed, and she explained there are several course requirements that must be met which represent those areas that are not tested as in-depth on the MFT and LCSW exam plans as compared to the LPCC exam.

Ms. Rhine attempted to frame the issue by explaining that what Dr. Montez is saying is that there are differences, but those differences would be remediated before licensure would occur. She added that part of the discussion should be that the law does not say that the Board should develop an examination if significant or meaningful differences exist, but rather if any (emphasis added) differences exist. Ms. Rhine expressed her understanding of Dr. Montez's findings, which are that differences exist between the professions.

Ms. Lonner indicated that her understanding of the statute is that it does not allow any subjectivity. She asked Mr. Walker or Ms. Rhine if they were of the same understanding as she, that there is very little subjectivity in the statute as written. Mr. Walker agreed with Ms. Lonner's interpretation of the law. He indicated his reading of the statute is that it does not provide any "wobble room." He commented that since Dr. Montez had reported that the differences will no longer exist when it comes to licensure, there is no violation of the statute by not requiring an examination. However, if the differences are only reduced then it would mean that some of the noted differences would continue to exist after licensure. He asked Dr. Montez for

clarification, if possible. Dr. Montez responded that she is comfortable in saying that the way the statute was written is that the differences would be alleviated. The requirements were established so that if the candidate took the required coursework they would therefore be on equal standing. She added that it appears from AMS' analysis that the homework was done in terms of reviewing the gaps in knowledge, and it was built into the remediation. She indicated that the remediation would cover the areas which are deficient. Dr. Montez emphasized that her findings are contingent on the applicant meeting the other requirements in the statute. Mr. Walker stated his understanding that if the candidate meets the requirements at the time of licensure, the differences would no longer exist once licensure is obtained. Dr. Montez responded that the expectation is that the candidates would have the exposure and would therefore be expected to practice at the entry level standards.

Mr. Walker commented that based on Dr. Montez' clarification, it was his opinion that not requiring a Gap Examination would meet the requirements in existing statute. Ms. Lonner asked Mr. Walker if he was saying that legally a Gap Examination is not required. Ms. Wietlisbach expressed her disagreement with the notion that the problem would be remediated simply by taking coursework. She expressed the position that if that were true, everyone would obtain licensure right after graduating from college; she added the position that that is the reason for taking the state board examination. She expressed uncertainty that the Board could definitely say that the candidate would meet the requirements for licensure once the remedial coursework is completed, and that the candidate still needed to be tested on what they have learned.

Ms. Lonner expressed her agreement with Ms. Wietlisbach, but argued that the quantity of material is so different between what would be on a Gap Examination and what is on a licensing examination. Ms. Wietlisbach responded that the Gap Exam would only need to test on the differences, so it would not be the same as the licensing exam. She expressed the belief that the law clearly requires the Board to test on the differences.

Ms. DiGiorgio asked the time frame for the grand-parenting period. Ms. Rhine responded the period ran from January 1, 2011 through June 30, 2011, with an additional twelve months to remediate deficiencies. She added that the time frame, in total, was eighteen months. Kim Madsen explained that a candidate who applies during the grand-parenting period would have the application reviewed and would be notified of any deficiencies. The candidate would have one year from the date of notification to clear those deficiencies.

Dr. Montez clarified that this was a unique situation because the grand-parenting candidates are individuals who already hold a license and are in good standing. They are not individuals who have not passed a licensing examination but rather have been practicing and in good standing.

Judy Johnson expressed thoughts similar to those of Dr. Montez. She noted that the grand-parenting candidates currently hold a professional license under which they

have been practicing, and that license is in good standing. The individuals understand what is within the scope of practice. Ms. Johnson stated that if these candidates are taking classes for content, it is different; that is why it is considered grand-parenting. The Board is not saying these individuals need to take an examination in order to become licensed; they have already been practitioners.

Ms. Lonner again asked Mr. Walker if, from the legal standpoint, he does or does not feel a Gap Examination is necessary or required by law. Mr. Walker responded that after listening to the comments from the board members, he was not comfortable with the statement that the deficiencies would not exist at the time of licensure. He expressed that the Board would need some type of proof or evidence that that would not be the case. He stated that without such proof before the Board, he stated the position that the examination is required because differences have been identified.

Mr. Webb expressed the understanding that there is already a provision in place for remediation and that there is no Gap Examination required for an LPCC who wants to practice Marriage and Family Therapy. He asked Ms. Rhine if his understanding is accurate. Ms. Rhine asked if Mr. Webb was speaking about the provision in law that states that LPCCs cannot work with couples or families unless they take specified coursework and have accrued a certain number of hours of experience. Mr. Webb responded affirmatively. He asked if there are a specific number of hours in question. He expressed the understanding that the requirement was more about taking appropriate coursework. Ms. Rhine explained to Mr. Webb that the issue he raised is separate from the issue being discussed. Mr. Webb again expressed concern with the idea that there would be no Gap Exam necessary. Ms. Johnson clarified that those candidates were not trying to obtain another license.

Ms. Rhine commented to Mr. Webb that the section he was referring to specifically pertains to LPCCs who, after becoming licensed by the Board, intend to work with couples or families. Those individuals have to earn a certain number of hours of supervised experience working with those populations, and also must complete specified coursework. She emphasized that those are individuals who are already licensed as LPCCs. Mr. Webb expressed concern that the Board may get into the position of having to require a Gap Exam any time a licensed individual wants to practice in another domain; for example, an LCSW who wants to practice as an MFT, or vice versa. Ms. Rhine expressed her understanding of Mr. Webb's concerns, and clarified that the issue currently under discussion is strictly based on what is in statute for this specific licensing category. The current discussion pertains only to a Gap Examination for the LPCC profession. She emphasized that it is not simply something subjective the Board decided to do, but rather a provision the Board is tasked with implementing. Ms. Lonner expressed to Mr. Webb that this is a separate license type, which is different from the different forms of specialty certifications that an individual can obtain.

Ms. Lonner noted that the Board has not introduced a new license in many years. She asked staff if there is any precedent or anything to think about, perhaps in terms

of other boards, to better understand how the issue has been viewed previously. She offered the position that the issue was a legal issue versus a more subjective approach. Mr. Walker responded that the subject is both a factual and legal issue. He stated that the factual issue is whether or not any differences exist. He noted that differences have been found to exist. Differences have been identified. The legal issue is, according to statute, the Board must test on those differences. He stated that there is no evidence or proof of any kind before the Board to indicate that some of the identified differences would not exist after licensure. He indicated that the Board needs to ensure that it is protecting consumers; by protecting consumers, the Board would be following the law. Mr. Walker emphasized this was the Board's obligation and duty.

Ms. Lonner and Ms. Johnson commented that it seems clear what the Board must do, versus choosing an option that might be preferred.

Ms. DiGiorgio asked Mr. Walker if he had stated that the exam would be required unless proof could be provided that by taking the coursework those differences would be remediated. Mr. Walker responded that he had originally taken that position. He explained that because of input by board members during this discussion, he had been provided with additional information that resulted in his change of perspective, which is that there is no wiggle room the way the law is written.

Mr. Webb asked Mr. Walker what was the intent of the language. He recognized that there are differences in the "anatomy." He explained that LPCCs and MFTs have the ability to accomplish the same job; they may do it differently, one may do it better, but they have the ability to do the same job. In that sense, there are no differences in terms of the scope in which they do their job. Mr. Webb questioned whether the intent was in regards to the differences in "anatomy" or in regards to one cannot do the other job adequately.

Mr. Walker responded that in trying to determine the intent of the legislature when enacting a statute, one first looks at the plain meaning of the statute by looking at the words. He stated that when looking at the plain meaning of the LPCC statute regarding grand-parenting, the word that must be focused on is "any." He explained that if the legislature had wanted certain differences to not be included in the analysis, the legislature would have specifically exempted or excluded those issues. Mr. Walker emphasized that, because the word "any" is used, there is no wiggle room.

Elise Froistad asked for clarification regarding "any differences" versus "any meaningful differences," referring to a comment that had been made earlier. She asked if the statute contained language about "meaningful differences." Ms. Madsen explained that the term "meaningful differences" was not in the law, but had from the onset been part of the discussion in developing the language for this statute. She expressed the belief that most if not all of the individuals involved in crafting the language assumed that differences should be "meaningful." Ms. Madsen noted that it

was not until it was pointed out that the statute states “any” differences was it realized that the group’s assumption was erroneous.

Discussion continued about the wording and intent of the law. Ms. Lonner expressed her agreement with Mr. Walker’s interpretation, and expressed the position that if the legislature had intended the Board to have any leeway, the language in the statute would have contained qualifiers regarding the differences. Ms. Lonner stated that in her opinion, the language was intended to be “cut and dry.”

Ms. Wietlisbach asked about Mr. Walker’s earlier comment regarding the Board doing its job in terms of public protection. She stated the position that it doesn’t seem that requiring a Gap Exam with individuals who have been in private practice is a safety issue or an issue of public protection. She noted that the individuals in question have previously been found safe to practice. She asked if there was any way that a previous determination of competence to practice could be taken into consideration in the current situation. Ms. Wietlisbach expressed the position that a Gap Examination will not change whether an individual is safe to practice. Ms. Johnson commented that it is a matter of competence and scope of practice. Mr. Walker affirmed that it comes down to competence, and added that when dealing with competence one is talking about safety of the public. He stated that because the legislature found that testing is required if any differences exist, the legislature clearly found this to be a consumer protection issue in the broad sense.

Ms. DiGiorgio asked why, if the language allowed the Board no flexibility, there was any need for discussion or Board vote on the subject. Ms. Johnson and Ms. Lonner agreed with the question. Mr. Walker responded that because the statute requires the Board to make a determination about whether differences exist and to test on those differences, the Board’s Executive Officer could not drive a policy if the Board did not take action to set a policy; in this case whether or not an examination is required. He pointed out that the Board drives the Executive Officer. Mr. Walker emphasized that is why the issue is before the Board, and why it must be voted on by the Board. He stated that the Board must set the policy on the issue of whether or not the examination is required. He continued that once the Board votes to make a determination about requiring the exam, the action sets the policy and gives direction to the Executive Officer to develop that examination. This is what will be voted on.

Ms. Rhine reported that the issue originally came before the Board because of the need to hear the findings from the study done by AMS, and discuss whether there were in fact differences in the professions. Ms. DiGiorgio raised the subject of Dr. Montez’ recommendation that no examination is required. Ms. Rhine confirmed that was the recommendation, but emphasized the recommendation was based on the fact that the differences found by Dr. Montez were not significant in nature or meaningful. She explained that if the Board accepted the report that there are differences in the professions, then the Board must then adhere to the statutory requirement that the Board implement a Gap Examination. Ms. Lonner noted that Dr. Montez’ recommendation was offered as a psychometrician expert, not as an attorney.

Mr. Webb asked if the differences were merely qualitative; in other words, there are no differences in that they are able to do the same thing, but the differences of mere quality, but each can practice at a level of competence in which there is no difference. Ms. Lonner stated that is not what she heard Dr. Montez say. Mr. Webb continued that the LPCC may be able to practice qualitatively at a higher level, but the LCSW can still practice, but they are still practicing at minimal competency. In that sense, there are no differences. Ms. Lonner responded that Dr. Montez could address that, and added that this is not what is stated in law. The law states “any differences.” Mr. Webb stated that the law mentions “differences exist between the practice;” you have the words “any differences” and “the practice of professional clinical counseling” and “the practice of marriage and family therapy.” Mr. Webb explained that “practice” is meaning on a clinical level, meaning one will practice maybe on a higher level, clinically in terms of qualitatively. However, the marriage and family therapist can practice at a minimal competency level. There is a difference, but the difference is such that it will put the public at risk.

Ms. Lonner asked Mr. Walker for his input. Mr. Walker again expressed that since Dr. Montez has found differences in the professions, the Board must test on those differences.

Jan Cone commented about the varying opinions and types of information being presented to the Board. She asked if there should be more weight given to the data from an objective consultant than to other data that has been presented via discussion of the issue. She expressed concern that if the Board has only one piece of information leading to a statement that there are differences in the professions, can a different opinion by the Board counteract that objective data. Ms. Madsen responded that it is important to remember that the Board is a regulatory agency and is charged with implementing and carrying out the BPC statutes that govern the Board’s licensees. She voiced her willingness to make use of any legal flexibility a statute might afford, but emphasized that absent any such wiggle room it is very difficult to show proof of public protection by not adhering to the law. She commented that it is those times when there is deviation from the requirements of the law that lead to negative publicity and reactionary responses. Ms. Madsen stated that while it would be a relief from the staffing perspective to not have to develop and administer a Gap Examination, she could foresee significant problems if the Board deviated from what the statute states.

Mr. Walker added that if the Board decided to not require the Gap Examination, it would be necessary to make sure there was documented proof or evidence to support the finding that there are no differences between the professions. He indicated that requiring the exam would be a sound decision because it is supported by the analysis prepared by Dr. Montez, that analysis finding that there are differences, although those differences were not construed to be “meaningful.” Ms. DiGiorgio asked if the word “meaningful” is part of the statute. Ms. Madsen responded that it is not; the statute says “any.” Mr. Walker clarified he was referring to the analysis prepared by AMS.

Ms. Lonner commented that the task Dr. Montez was contracted to perform was an analysis of the professions to determine if there are differences in the professions. Dr. Montez confirmed Ms. Lonner's assessment of the task. She reiterated that the analysis went back to the occupational analysis performed for the professions under discussion. She stated that the job analysis is considered a scientific study of the professions at a precise moment in time. It is a way of standardizing an examination, with critical studies performed and documents examined. Dr. Montez emphasized that there is a scientific basis to the services she was contracted to provide.

Ms. Froistad commented that although the board members may have different opinions about the issue, it did not seem that legally those opinions have any weight. Rather, the scientific research performed by Dr. Montez would have more weight than the opinions of those who are discussing the matter. Ms. Lonner agreed with Ms. Froistad.

Mr. Webb asked Mr. Walker and Ms. Madsen what would happen if, hypothetically, the Board was to vote to not require a Gap Examination, and that decision was challenged. What would be the consequence? Mr. Walker responded that if the Board voted to require a Gap Exam, the decision would be in line with the findings reported by Dr. Montez. If the vote was to not require the exam, the Board would have to break down the analysis by AMS. Each of the identified differences would have to be countered by documented evidence in support of the differing opinions. He noted that while the Board can vote to disagree with the findings of the analysis and not require a Gap Exam, based on opinions that may be opposed to Dr. Montez', such a decision would be difficult to support. Mr. Walker stated that the report is very clear.

Ms. Johnson expressed the concern that the Board needs to be efficient with its time, adding that with the impact of the budget delays and related restrictions, this is a time-sensitive issue. She pointed out that there will be many professionals and consumers who will be affected by this decision, and emphasized the need to make a decision and move forward with implementation of LPCC licensure in California. Ms. Lonner agreed.

The matter was opened for input by the public.

Richard Segal, counsel to California Association of Marriage and Family Therapists (CAMFT), stated there were points he wanted to discuss, some of which CAMFT agrees with, and others that lean in favor of not having the Gap Examination. First, he made reference to Mr. Walker's explanation that the primary way to determine the Legislature's intent in drafting a statute is to look at the words in the statute itself. He noted that the entire discussion about the Gap Exam had been based around what the statute says and what the Board believes it requires them to do. Mr. Segal commented that the difficulty is that it seems in some of the paraphrasing that has occurred over the preceding several months has resulted in the meaning of the statute having changed in terms of what has unfolded versus what the law actually says. He referred to two memos that had been presented to the Board by Ms. Rhine in which

reference is made to differences in the *professions*. He noted that the same language was used in the contract with Dr. Montez asking her to examine if there are differences in the *professions*. Mr. Segal also noted that the word “professions” was used several times in the letter from the American Association for Marriage and Family Therapy, California Division (AAMFT-CA). He expressed the opinion that many board members feel constrained because the statute says “any differences” as opposed to any “material” or “substantial” differences. He stated that the entire assumption of the discussion has been any differences in the professions, because that is what involved parties have been told repeatedly.

Mr. Segal stated that the statutory language that needs to be reviewed is BPC Section 4999.54(b). He read the section as follows:

“The Board and the Office of Professional Examination services shall jointly develop an examination on the differences, if any differences exist between the following: ... The practice (emphasis added) of professional clinical counseling and the practice (emphasis added) of marriage and family therapy; (and) ... The practice of professional clinical counseling and the practice of clinical social work.”

He noted that the language in that section was different from the sections of the statute that talk about and at the beginning of the statute declare that there are differences in the three professions. There are different names and courses of study. He stated that there is no dispute that the professions are different. He summarized the pertinent statute as saying that there are differences in the professions, and a third profession is being created. Now it must be determined if the *practices* of the professions are different, and test on those differences if any are identified.

Mr. Segal continued that if the intent had been that the Board must test on any differences, the law would have said that there are differences and therefore a test must be given. He again emphasized that the law states that a test must be given if differences in the *practices* are identified and test on those differences if any. Mr. Segal added that Dr. Montez had conducted a study, as requested, on the differences in the professions. He emphasized that Dr. Montez was not asked to determine if there are differences in the practices of the professions. He noted that any comments made on that subject by Dr. Montez in her report were very minor and in his opinion do not provide a basis to make that decision because all of the major differences that were identified pertain to educational background, courses of study, and how a candidate can ameliorate by completing the course of study required for the grand-parenting candidate. He commented that the results of the study did not address what the various professions actually do.

Mr. Segal went on to say that in order to determine that a Gap Examination is required, according to the express language in the statute, the finding has to be made that there are differences in the practices of the professions, an issue he noted that

Mr. Webb had also raised. Mr. Segal expressed CAMFT's opinion that there was no evidence before the Board on which that statement could be based.

Mr. Segal noted one area in which he was in disagreement with Mr. Walker pertains to the burden the Board has in this situation. He noted that Mr. Walker's point was that, without proof of no differences, the exam is required. He then referred to BPC Section 4999.54(b)(2). Mr. Segal paraphrased the section as indicating that if the Board determines that an examination is necessary – for example, if the Board determines that there are differences in the practices – then a test must be administered. He expressed the opinion that the Board's obligation is to test if differences are found in the practices. He offered the position that the statute provides if no differences are found in the practices, then, by default, no test is required. Mr. Segal stated that the information provided to the Board to date has all been about differences in the professions, but that is not the correct question. He stated emphatically that the correct question pertains to differences in the practices. He expressed CAMFT's opinion that as a result of how things have progressed, in addition to the information that has been provided to the Board about what the question is, there is no information before the Board on which a determination can be made that differences exist in the practices of the professions, such that a Gap Examination is required.

Mr. Segal spoke next about Mr. Walker's interpretation that the statute offers no wiggle room. He noted that it is a general rule of statutory interpretation that a statute is not interpreted to be absurd in its results, but rather that all statute must be interpreted to have a reasonable result. He offered the hypothetical scenario involving a facet of LPCC practice being a dimming of lights when in session. He continued that such is not the same in MFT practice. Mr. Segal noted that this would be a difference in the practice of LPCC versus MFT. He then stated that it would likely be considered absurd to assume that the legislature requires testing on the ability to dim lighting, even though a difference in the practices has been identified. Mr. Segal stated it was clear to him that the wording "any difference" doesn't really mean "any difference;" it has to mean any reasonable difference under the circumstances. He argued that while CAMFT would agree that it would be clearer to have the statute include wording like "meaningful" or "substantial," but the absence of those words does not mean that any means absolutely any under any circumstances. He expressed the position that such would not be a reasonable reading of the statute.

In closing, Mr. Segal commented that the fact that the Board has been given the discretion to examine this issue and is not just ordered to administer an examination when the statute recognizes there are differences in the professions seems to imply two things. First, he believed it implies that the Board is not supposed to be looking at the professions but rather at the practices of those professions as set forth in statute. He added that, secondly, it implies that the Board is allowed a certain amount of discretion as to where to draw the line as to what a "real" difference is in those practices. He continued that that is why regulatory bodies exist - to make such determinations given the guidance provided by the statutes by the legislature.

Mr. Walker responded that Mr. Segal had raised a good point regarding profession and practice. He expressed the view that Dr. Montez should be asked if in her opinion there is a difference between profession and practice, so the Board can make a determination whether or not it does have adequate information at its disposal.

Dr. Montez stated that in her analysis, “profession” and “practice” have the same meaning. She noted that the words tend to be used interchangeably, explaining that one might hear about professions analysis, practice analysis, occupational analysis or task analysis. All are essentially looking at relatively the same thing where licensure is concerned, that being the expectations for entry level practice. Dr. Montez read to the group from the Standards for Educational and Psychological Testing, Standard XIV, 14, as follows:

“The content domain to be covered by a credentialing or licensing test should be defined clearly and justified in terms of the importance of the content for the credential worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted.”

Dr. Montez then read the additional comments in the book that underscored her earlier assertion that the words “profession” and “practice” are used interchangeably. She noted that when an occupational analysis or job analysis is conducted, you will see the words profession and practice used interchangeably, the idea being that you are looking at the tasks performed by those individuals in the profession.

Mr. Segal responded by noting that the question is not what the clinical definition would be, but rather what the statutory definition would be. He noted that what the group was attempting to accomplish is to determine what the legislature meant. He stated that from the statutory interpretation standpoint, if you start off with the idea that there are three different professions, there would be no need for the analysis to be performed to determine if there are differences, since the legislature already has said that differences exist. He repeated his earlier assertion that the statutory language would have said that there are differences, therefore you must test on the differences. Mr. Segal again stated that his interpretation of the statute is that it has been determined there are differences in the professions, and now the Board needs to determine whether there are any differences between the practices of the professions. If there are differences found, then the Board must test on those differences. He expressed the position that the distinction exists in the legislation, which could necessitate a distinction between the two words in Dr. Montez’s analyses. He added that if the words meant the same thing, he considered the approach taken in this case to be absurd because the legislature would have already declared the right answer.

Dr. Montez clarified that in her analyses the words are used interchangeably. She explained that the analysis did involve looking at the three professions and their

expectations of practice, including the particular tasks performed in the professions and the underlying knowledge used to perform those tasks in the practice setting.

Mary Riemersma, CAMFT, expressed concern that, since it appeared the discussion was returning to where it had been prior to the May Board Meeting, board members were arriving at conclusions about an issue without the benefit of public input. She spoke about the statement of work from which Dr. Montez was performing her analysis. She commented that the Statement of Work says there would be public meetings throughout California to obtain public input related to meaningful differences between the LPCC, MFT, and LCSW professions, said meetings to be held in February and March. Ms. Riemersma noted that to her knowledge, those hearings did not occur. She continued that, if the group was speaking about the letter of the law, the letter of the law says that the work would be done by the Office of Professional Examination Services. She noted that it was not until a question was raised about that that the issue was brought forth for public comment.

Ms. Riemersma voiced CAMFT's belief that a test is unnecessary. She commented that when looking specifically at the practices of the professions, you see three professions that deliver the same service, making an examination unwarranted and unnecessary. Ms. Riemersma stated that CAMFT concurs with Dr. Montez' findings, even though the Statement of Work Dr. Montez was responding to contained incorrect language and was talking about differences in the professions; Ms. Rhine's memos to the Board also speak about differences in the professions and not differences in the practices. She emphasized, as had Mr. Segal, that the letter from AAMFT-CA contained seven references to differences in the professions, adding that it fails to state the law accurately. Ms. Riemersma added that if the group is talking about accuracy and looking at the intent of the law, to CAMFT it is clear.

Ms. Riemersma spoke about participating in the negotiations on the legislation with the various stakeholders involved in those discussions. She named various involved parties, including the Board's former Executive Officer, Paul Riches. Ms. Riemersma reported that Mr. Riches had presented a detailed analysis comparing the scopes of practice of the three disciplines. His conclusion at that time, was that after reviewing the scopes of practice of the three disciplines, what you were left with was professions that ultimately deliver the same service although the approaches are different. She noted that all three are providing mental health services with members of the public and the two differences that are attempting to be grand-parented into the LPCC profession have passed examinations that qualify them and have determined them safe to practice with the public providing mental health counseling and psychotherapy. She voiced the position that it is unnecessary to require further testing for work that said licensees can already perform. She stated that the statute was very carefully worded to make sure the involved parties were looking at practices and not differences in the professions.

Richard Leslie, counsel to CAMFT, expressed the opinion that the Board has been provided with bad information and voiced an interest in reviewing certain points so the

Board would fully understand CAMFT's position on this issue, which he described as serious.

Mr. Leslie first referred to the AAMFT letter dated May 10, 2010, which he noted was received by the Board three days following the May Board Meeting during which the Board unanimously passed a motion. Mr. Leslie repeated Mr. Segal's earlier comment that seven times in the AAMFT letter the word "professions" is used. He emphasized that the word "professions" is nowhere in the statute that AAMFT refers to when speaking of BPC 4999.54(b)(1) or (b)(2). He added that in Ms. Rhine's memo of August 30, 2010, she states that BPC Section 4999.54(b)(2) gives the Board the authority to determine if an examination on the differences in the professions is necessary. He again emphasized that in looking at sections 4999.54(b)(1) and (b)(2), no reference is made to the "professions."

Mr. Leslie expressed the opinion that Mr. Webb had made a key statement in the Board's discussion and raised a key issue. Mr. Leslie reminded the group that MFTs and LCSWs work with individuals, adults and children, couples, families and groups. He asked for a response to the question about what, in practice, an LPCC can do that an MFT or LCSW cannot do. He expressed an interest in having a discussion with the Board in an open meeting and open forum to explore that question. Mr. Leslie voiced the position that a review of the situation would reveal things an LPCC cannot do in their practice that an MFT or LCSW can do. He provided as an example that MFTs are authorized in law to perform custody evaluations; LPCCs are not. He continued by noting that he could provide a list of settings where an LPCC cannot work but an MFT can, and tasks such as treating minors without parental consent. He again emphasized that there is nothing an LPCC can do that an MFT cannot do. Mr. Leslie repeated his position that the discussions on this issue be conducted with participation by board members and the public.

Mr. Leslie again restated the concern that the letter from AAMFT seven times misstates the law. He commented about earlier statements by the Board Chair that the Board must do what the law says. Mr. Leslie again restated the CAMFT position that while the AAMFT correspondence refers to differences in the professions, the law refers to differences in the practices. He further restated Mr. Segal's earlier position that it is already established that there are differences in the professions. He alluded to what he noted as being Dr. Montez' perspective that the two words are treated the same; Mr. Leslie offered the differing perspective that they are not to be treated the same. Again, it was noted that the pertinent section does not contain the word professions, but rather refers to practice.

Mr. Leslie commented again about the use of words in the AAMFT letter being seven failed attempts to quote the law correctly. Mr. Leslie expressed concern with the misunderstanding and noted his interest in learning how and why the misunderstanding occurred. Mr. Leslie again made reference to Ms. Rhine's memo of August 30, again noting the use of the word professions.

Mr. Leslie then made reference to two meetings conducted between AAMFT and Board staff that CAMFT did not know about and which he stated, to his knowledge, no member of the public was aware of. Ms. Madsen asked if Mr. Leslie was referring to CAMFT's allegations of violations to the Bagley-Keene Open Meeting Act, and emphasized that such was not the issue before the Board at the current meeting. She stated that the group was discussing whether a Gap Examination for MFTs and LCSWs is necessary; whether differences are found to exist and, if so, does the Board need to offer an examination. She added that if he wished to discuss the Bagley-Keene Open Meeting Act, such discussion could be held in another forum. She again emphasized that such discussion could not occur under the agenda item at hand. Mr. Leslie asserted he was not speaking about the Bagley-Keene Open Meeting Act. Ms. Madsen asked that he then cease making reference to that issue.

Ms. Riemersma commented to Ms. Madsen that Mr. Leslie was not discussing the Bagley-Keene Open Meeting Act. Ms. Riemersma stated that the point being raised by Mr. Leslie is that there were meetings with AAMFT-CA. Mr. Walker commented that that was not an issue and the day's proceedings were not the forum to raise that issue. Ms. Riemersma responded that she was talking about a statement of work that was provided to Dr. Montez, which called for obtaining public input. Ms. Madsen responded that the Board had obtained public input as was known to Ms. Riemersma. It was established that Ms. Riemersma had attended all of the public meetings held to discuss the subject of a Gap Examination. Ms. Riemersma responded that while the various meetings that had occurred were all conducted lawfully, there were some meetings that did not occur at a time when CAMFT had the ability to provide input. She asserted the comments made by CAMFT representatives had nothing to do with the issue related to the Bagley-Keene Open Meeting Act. Mr. Leslie again revisited the issues he had raised earlier.

Mr. Walker commented to Ms. Lonner that Dr. Montez had previously indicated she used the words "profession" and "practice" interchangeably. He stated there was no reason to continue to have public comment on that issue, which he asserted was occurring at the current meeting. Mr. Walker stated that if there were others who wanted to provide different comments, they should be allowed to speak, but that it was unnecessary to further belabor the meaning or use of the two words in question.

Ms. Lonner commented that the Board has been addressing practice throughout. Mr. Leslie again asked what a counselor could do in practice that an MFT or LCSW cannot do. Ms. Lonner offered career counseling as a response. Mr. Leslie responded that career counseling is not a regulated activity. Mr. Walker again reminded meeting participants that the meeting was at the point where public comment was being taken and there was no reason for the Board to answer questions.

Ms. Johnson noted to Ms. Lonner that an answer to Mr. Leslie's question would best be provided by Dr. Montez. Mr. Leslie again asked the question about what an LPCC can do that an MFT or LCSW cannot. Mr. Walker stated it was up to the Board Chair

whether or not to permit Dr. Montez to respond to the question. He again reminded Mr. Leslie that the public comment period on a particular issue was not the appropriate forum for the public to make a comment and have another member of the public answer the question. Mr. Leslie responded that CAMFT would like to have a forum to discuss the issue. Mr. Walker again stated that it was up to the Board Chair whether to allow response from Dr. Montez to Mr. Leslie's question; absent such permission the meeting needed to move on. Ms. Lonner expressed the belief that Dr. Montez had already addressed the issue, and therefore Ms. Lonner preferred to not permit Dr. Montez to respond. Mr. Walker confirmed that Dr. Montez had in fact previously addressed the issue. Ms. Lonner expressed the position that there was no point in having Dr. Montez repeat herself, and the meeting should move on.

Ms. Lonner asked that further public comment on this issue be conducted in a courteous and respectful manner.

Ben Caldwell, AAMFT-CA, noted that there had been quite a bit of discussion about the intent of the legislation. He stated that there is specific intent language contained in BPC Section 4999.11; he read a portion of that section. Dr. Caldwell expressed the position that it is a leap of language and logic to say that there are differences in the professions but doing those professions is the exactly same. He stated that it has been AAMFT's contention from the beginning that there are meaningful differences between the practices, and a test should be administered addressing those differences. He added the position that such action is consistent with the language in the legislation.

Janlee Wong, National Association of Social Workers (NASW) California Chapter, expressed his appreciation to the Board and all involved parties for their efforts in working on the issue of a Gap Exam. He voiced his agreement with Ms. Riemersma, Mr. Leslie, and Mr. Segal. He noted that his interpretation of the statute is that the Board has discretion to decide whether or not to require a Gap Exam. He expressed his agreement with the findings in Dr. Montez' report and her recommendation to the Board. Mr. Wong commented that the Board needs to consider other input as well, such as public comment, as well as from board members who are practitioners. He added that he did not agree that the decision had been made for the Board, but that the Board has the authority to decide what to do.

Mr. Wong also commented that it is important to consider how people practice. He noted that an occupational analysis is a very scientific manner of obtaining such information, but added that another way to do so is by gaining input from practitioners who are practicing in the professions of marriage and family therapy, clinical social work and professional clinical counseling, and evaluating that information.

No further public comment was presented.

Renee Lonner moved that the Board find that a Gap examination is necessary and staff of the Board is directed to develop that examination. Judy Johnson seconded.

Mona Foster, Board Member, noted that the statute states that the Board and the Office of Professional Examination Services (OPES) shall develop the exam. She asked if the earlier motion was all inclusive. Mr. Walker responded affirmatively, because the Board is part of the Department of Consumer Affairs. However, for purposes of clarification, he recommended that Ms. Lonner to withdraw her motion, and have the second agree to that withdrawal.

Ms. Lonner withdrew her earlier motion; Ms. Johnson agreed. Mr. Walker then suggested that the motion be made to require a Gap Examination and have the examination developed.

Renee Lonner moved that the Board find that a Gap Examination is necessary and direct staff to have an examination developed. Judy Johnson seconded. The Board, via roll-call vote, voted five to three (5-3) to require the Gap Examination. The motion passed.

It was noted that two of the board members who had previously been involved in the meeting were not available at the time the roll call vote was taken. A quorum was nonetheless maintained. Mr. Walker confirmed that the vote was based on the number of members present at the time of the vote.

III. Public Comment for Items Not on the Agenda

No public comment was offered.

Ms. Froistad asked permission to make a comment. She expressed her disappointment over the threatening of legal action and the questioning of the Board staff and the Board's integrity by CAMFT. She stated her position that the Board and staff has always behaved honestly and followed the law. She expressed frustration over the need to conduct the day's meeting under the circumstances it was called.

Ms. Lonner voiced her agreement with Ms. Froistad's comments. She expressed her dismay stating that differences of opinion are to be expected. She added that those differences in perspective should be aired in a manner that is not perceived as an attack on character. Ms. Lonner voiced her respect for all of the stakeholders who attend and participate in the meetings and commented that she expected the same respect be shown to the Board. She encouraged any stakeholders who continue to be upset to sit down with a member of the Board and discuss their concerns.

Mr. Webb added his agreement with the other board members' comments noting his disappointment as an MFT. He also corrected those meeting participants who had previously referred to him as doctor, noting that the title was not appropriate for him.

IV. Suggestions for Future Agenda Items

No suggestions were offered.

The opened meeting session adjourned at 11:45 a.m. The Board moved into closed session.