

BOARD MEETING MINUTES September 1, 2010

The Board of Behavioral Sciences met via telephone on September 1, 2010 at the following locations:

Department of Consumer Affairs
Stanislaus Room
2nd Floor South, S203
1625 N. Market Blvd.
Sacramento, CA 95834

925 Harbor Plaza
Long Beach, CA 90802

5506 Ranchito Avenue
Sherman Oaks, CA 91401

1151 Dove Street, #170
Newport Beach, CA 92660

1615 E. 17th Street, Suite 100
Santa Ana, CA 92705

Medical Board of California
4995 Murphy Canyon Road, Ste. 203
San Diego, CA 92123

Members Present

Renee Lonner, Chair, LCSW Member
Elise Froistad, MFT Member, Vice-Chair
Samara Ashley, Public Member
Jan Cone, LCSW Member
Legislative/Regulatory Gordonna (Donna) DiGiorgio, Public Member Analyst
Patricia Lock-Dawson, Public Member
Michael Webb, MFT Member

Staff Present

Kim Madsen, Interim Executive Officer
Gary Duke, Legal Counsel
Marsha Gove, Examination Analyst
Roseanne Helms,

Members Absent

Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Christine Wietlisbach, Public Member

FULL BOARD OPEN SESSION

Renee Lonner called the meeting to order. Marsha Gove called roll, and a quorum established.

I. Discussion and Possible Action on Regarding Approval of Modified Rulemaking Text, California Code of Regulations Sections 1800 – 1888, Relating to Licensed Professional Clinical Counselors and Licensed Educational Psychologists Continuing Education Requirement

Roseanne Helms, Legislative/Regulatory Analyst, reported that at its July 28, 2010 meeting, the Board directed staff to make approved changes to the regulation text and notice the proposed text modification for public comment. She noted that during the 15-day comment period, one contact was received. The comment pertained to a minor change to section 1820(b), exchanging the word if for the word as. Ms. Helms stated the change had been made, and is consistent with the MFT licensing law.

Ms. Helms indicated that the recommendation before the Board is to authorize the Executive Officer to make any necessary, non-substantive changes to the rulemaking package and direct staff to complete all necessary steps to finalize the rulemaking process, including final package submission to the Office of Administrative Law (OAL).

Gary Duke, new legal counsel to the Board, introduced himself to the meeting participants. He then commented that the next steps to be taken by the Board would appropriately be to make a motion and then open the item for discussion.

Jan Cone moved that the Board authorize the Executive Officer to make any necessary, non-substantive changes to the rulemaking package and direct staff to complete all necessary steps to finalize the rulemaking process, including final package submission to OAL. Donna DiGiorgio seconded.

The matter was opened for public discussion or comment.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), apologized for not having submitted her comments in advance of the meeting. She noted that throughout the document under consideration, the abbreviation MFT is used to refer to a licensed Marriage and Family Therapist. She stated that the other professions regulated by the Board all use the word “licensed” before the name of the profession, for example, Licensed Clinical Social Worker, Licensed Educational Psychologist, and in the foreseeable future, Licensed Professional Clinical Counselor (LPCC). Ms. Riemersma stated that at present the inconsistency makes an MFT appear to be a lesser profession, and it was CAMFT’s request that the Board begin using the title licensed marriage and family therapist (LMFT). She offered to provide the Board with the specific

sections of law and regulation to which she was asking the changes be made. She expressed the position that the requested changes are insignificant.

Ms. Rhine commented that with respect to the rulemaking package under consideration at the present time, such a change would necessitate another 15-day comment period due to making additional modifications to the text. She added that the requested change should be a policy discussion that the Board should have separate from the current regulation package. Ms. Riemersma responded with her acceptance of the idea that the Board would want to discuss the requested change, but reemphasized her belief that the modifications are very insignificant.

Ms. Riemersma referred Board Members to the proposed regulations, specifically section 1820.5, which she stated lack clarity. She proposed inserting the words “trainee” and “intern” in section (a)(1), and the word “licensee” in section (b)(1). Ms. Riemersma also commented about section 1820.5(b)(3)(A), with which she expressed difficulty in understanding the intent. She had questions about how much coursework would be required, how it would be documented and enforced. Ms. Riemersma read the section aloud and commented that it seemed to be missing wording or somehow was unclear to her.

A meeting participant asked Ms. Riemersma if there was a part of the section that seemed the least clear to her. Ms. Riemersma made suggestions regarding modifications to section 1820.5(b)(3)(A).

An audience member asked if the requirement was for additional coursework toward licensure or coursework taken after graduation. Ms. Rhine confirmed the coursework referenced was post-graduation. Ms. Riemersma stated that she believed the intent is that one has either had the course as part of the degree program, or it can be taken outside the degree program.

Ms. Madsen and Ms. Riemersma confirmed that the discussion pertained to the new LPCC license.

Ms. Rhine clarified that in the LPCC statute there is a provision that requires an LPCC to complete additional training and coursework if the LPCC wants to work directly with couples, families, or children. She stated that the regulations under discussion pertained to implementation of the Business and Professions Code section 4999.20, the LPCC scope of practice.

Dean Porter, California Coalition for Counselor Licensure (CCCL), raised questions regarding implementation and regulation of the coursework requirement. Ms. Madsen responded that if an individual is submitting an application for LPCC licensure and wants to work directly with couples, families, or children, that individual will have to demonstrate to the Board that all of the educational and experience requirements have been met.

Ms. Rhine clarified that the additional education and experience is not required to become licensed as an LPCC; it is required only if the LPCC wants to work directly with couples, families or children. She indicated that the issue of proving completion of the necessary coursework would be worked out administratively, whether through checking a box on an application; signing a certification statement; or another appropriate manner. She asked Ms. Riemersma to restate her issues, as there seemed to be confusion about the topic of discussion.

Ms. Riemersma responded that the intent was not to change the regulation conceptually, but rather to make it clearer. When asked for specificity, she repeated the modifications to section 1820.5(b)(3)(A), which she had suggested earlier. She again indicated that the text seemed to be missing words. She noted that there were two separate, independent issues being addressed in the section. With respect to the issue of enforcing the requirement, Ms. Riemersma provided her perspective that likely the Board would not be aware of a problem until such time as a complaint is filed against the clinician, which would then make it an enforcement-related matter.

Ms. DiGiorgio expressed her agreement with the suggested grammatical changes. She asked if making those changes would necessitate another 15-day comment period, to which she received an affirmative response.

Ms. Riemersma also commented about the need for unprofessional conduct language in regulation when it is also outlined in statute. Ms. Rhine commented that it has been the focus of the Board in updating statute in recent years to eliminate duplicate language contained in regulation in an effort to reduce confusion.

Ms. Madsen asked for confirmation that making the minor changes suggested by Ms. Riemersma would necessitate a 15-day comment period. Ms. Rhine responded that at the present time, the proposed regulatory package either needs to be approved as is and continue through the regulatory process or the Board needs to open another 15-day comment period to allow for discussion of any modifications to the existing language. If the Board were to direct staff to reopen the regulatory packet for comment, the matter would also have to come back before the Board at a subsequent Board Meeting for discussion and approval.

Ms. Rhine reminded the board members of the date, and emphasized that the Board cannot begin accepting applications for LPCC licensure unless there is a fee in law. The regulation package at hand contains the fee necessary to accept applications. Ms. Rhine reported having been told by the Department of Consumer Affairs that regulations are taking four to five months to get through the Department of Finance, in addition to time necessary to move the regulations through the balance of the approval process. She noted that even without an additional discussion period, it was uncertain that the regulation package would be approved before the end of 2010.

Ms. Rhine added that since the mandatory public comment period is closed, the Board is not required to accept comments made at the day's meeting, or respond to those comments. She stated that the changes suggested by Ms. Riemersma are minor and do not appear to change a lot of the meaning of the regulations. She expressed the position that the changes could be made in a subsequent, 'clean-up' regulation package. Ms. Rhine emphasized that at present the Board is on a tight time line. She encouraged moving forward with the regulatory package, which she described as correctly completed.

Mr. Duke expressed his agreement with Ms. Rhine's comments in terms of timelines. He indicated it may be possible, if the regulations were to move forward and be approved and filed, to make the changes suggested by Ms. Riemersma without further public comment. Mr. Duke briefly explained the process that could be followed to make those changes should the Office of Administrative Law (OAL) agree that the suggested changes are minor and grammatical. He stated he would agree with the staff recommendation that the package be approved and move forward, with the changes suggested by Ms. Riemersma being included in a future regulatory package if they cannot be approved in the current action.

Ms. Lonner emphasized that the time line is very important. She noted that historically minor regulatory changes have been included in clean-up regulations.

Dean Porter, CCCL, commented about Section 1805, Applications, specifically section (b) with respect to a 180-day waiting period between examinations. Ms. Rhine explained that reference to Business and Professions Code section 4999.54 was added because there is a law and ethics examination in that section, and so it was necessary to add the section reference. She stated that Ms. Porter was correct in her understanding that the Board is allowed the discretion for a lesser period of time between examinations; therefore, the 180-day waiting period should not be an issue.

A roll-call vote was taken. The Board voted unanimously (7-0) to pass the motion as originally stated.

II. Public Comment for Items Not on the Agenda

Mary Riemersma, CAMFT, read from the following written statement about Business and Professions Code Section 4999.54 – Grandparenting, which she provided to the Board.

“It has come to our attention that this section of law is being interpreted by BBS' staff and others as allowing any person who submits an application for a professional clinical counselor license between January 1, 2011 and June 30, 2011, to not have taken or passed any of the examinations specified in (a)(1)(D),

but to take any or all of the examinations after the application for licensure has been submitted.

“CAMFT believes that the law does not allow this interpretation to be made or implemented. The introductory clause to this section of law, in subsection (a), ends with the phrase, ‘... and provided he or she meets one of the following sets of criteria: 1) He or she meets all of the following requirements:’

“The law then specifies the requirements in (A), (B), (C), and (D). Clearly, the wording and the intent of the law, and the obvious and practical expectation, is that at the time that the application is submitted, these requirements have already been met. Obviously, when the application is submitted, the applicant will be presenting the documentation to show that all requirements have been met. The Board will be evaluating the application and the supporting documentation to make sure that all requirements have been met (except where the statute expressly allows for subsequent coursework).

“The language in all subsections dealing with education and experience use the same words (**has a** master’s degree, **has completed all** of the coursework or training, **has at least** two years experience, AND ... **has a passing** score on the following examinations ...). If one can take the exam after the application is submitted, why can he/she not complete the needed experience after application? The statute reads the same for both. There is no authority to do this.

“If the interpretation is as BBS staff has indicated, then the statute also would allow persons to apply who have not yet finished acquiring their hours of experience or not yet applied to take any examination. Even those near the end of their degree program could apply under this faulty interpretation. This faulty interpretation, if carried out, will lead to an administrative nightmare for the Board. More importantly, the Board should carefully review the statute and the legislative history to make sure that it does not move forward without the proper legal authority to do so.

“Furthermore, the materials that the Board posted on its website to inform the public about the requirements for grandparenting misquote words used in the law and make seemingly contradictory and confusing statements.”

Ms. Riemersma again expressed concern with the interpretation of the section. She expressed her agreement with the concept of the section, but stated that the wording is confusing. She stated that if the words are intended to mean a certain thing, and the resulting actions are different than that, then the law should be changed to allow for that.

An audience member asked if the California law and ethics examination was specifically for LPCCs. She reported having noticed that, with respect to continuing education courses, there was a course specified as being for LPCCs.

The course was not the same as those for MFT or LCSW licensees. She wondered if the same would be applicable to the law and ethics examination, with one version of the exam specifically for LPCCs.

Ms. Rhine responded that the examination under discussion at that time was specifically for LPCCs. The audience member asked about the differences between the LPCC specific exam and the exam for MFTs and LCSWs. Ms. Rhine asked for clarification, and then stated that at the present time there is no law and ethics examination for MFTs and LCSWs.

The audience member then asked about the differences in the continuing education courses. Ms. Madsen clarified that the continuing education being referenced by the audience member was to assist individuals who are coming from out-of-state or who might need a refresher course in California law and ethics. Individuals coming from out of state will be required to pass an examination in law and ethics to show their knowledge of and familiarity with the laws governing LPCC practice in California. Ms. Rhine added that each course and each examination is specific to the license type.

The audience member indicated she is from Florida, and holds licenses in the states of Florida and Idaho, as a professional counselor and a mental health therapist. She had several additional questions regarding the requirements to become licensed as an LPCC in California. Ms. Madsen responded that the Board is currently developing a list of frequently asked questions showing the pathway to licensure. She indicated that said information will be posted on the Board's website. She noted that there are many factors to be taken into consideration when reviewing applications.

Ms. Rhine confirmed that the various pathways to licensure can currently be found on the website. The audience member indicated she had read the information on the website, and was left with questions regarding the law and ethics examination, specifically, did the examination have to be completed before or after submission of the application. Ms. Rhine indicated that the law and ethics examination will be developed and administered through the Board. It is anticipated the examination will be implemented in February 2011. In order for an individual to be found eligible for that examination, he or she must first have applied to the Board for eligibility. She confirmed that an individual could apply for licensure as an LPCC and take the law and ethics examination subsequently.

III. Suggestions for Future Agenda Items

No suggestions were received.

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

FULL BOARD CLOSED SESSION

IV. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters