

Policy and Advocacy Committee Minutes January 13, 2011

Alliant International University
2855 Michelle Drive, Room 319
Irvine, CA 92606

Members Present

Renee Lonner, LCSW Member
Michael Webb, MFT Member

Analyst

Members Absent

Donna DiGiorgio, Chair, Public Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative

Michael Santiago, Legal Counsel

Guest List

On file

I. Introductions

Renee Lonner served as the Policy and Advocacy Committee (Committee) Chair during Donna DiGiorgio's absence. Ms. Lonner called the meeting to order at approximately 10:05 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and attendees introduced themselves.

II. Review and Approval of the October 12, 2010 Policy and Advocacy Committee Meeting Minutes

Ms. Kitamura noted a correction on page one; Donna DiGiorgio was Chair of the meeting, not Renee Lonner.

Ms. Lonner noted corrections on page seven. On the third paragraph, "different" should be "difference." On the fifth paragraph, "acquire" should be "acquired."

Kim Madsen noted corrections on page 13. On the fourth paragraph, "H" should be "He."

Renee Lonner moved to approve the Policy and Advocacy Committee meeting minutes of October 12, 2010 as amended. Michael Webb seconded. The Committee voted unanimously (2-0) to approve the meeting minutes as amended.

III. Discussion and Possible Action Regarding HIV/AIDS Continuing Education Course Requirement for Licensed Professional Clinical Counselors

Rosanne Helms reported that the Board of Behavioral Sciences' (Board) marriage and family therapist (MFT) and clinical social worker (LCSW) licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS). Ms. Helms explained that proposed regulations do not require the Board's professional clinical counselor (LPCC) licensees to take a continuing education course covering HIV/AIDS. However, LPCCs are as likely as MFTs and LCSWs to treat patients with HIV or AIDS.

Ms. Helms referred to Business and Professions Code (BPC) Section 32, which states that a board regulating certain professions, including MFTs, licensed educational psychologists (LEP), and LCSWs, should consider including training regarding the characteristics and method of assessment and treatment of AIDS in its continuing education (CE) or training requirements. This section of law was established before the creation of the LPCC Act.

Ms. Helms stated that currently, all MFTs, LCSWs, and LPCCs are required to complete 36 hours of continuing education relevant to their field of work during each renewal period. These licensees must also complete a six hour law and ethics course each renewal period. These licensees are also required to have coursework covering a variety of topics. Typically, this coursework is a requirement of licensure; however, depending on when the license was obtained, it may be a renewal requirement if the coursework was not required at the time of licensure. These topics are: Human Sexuality, Child Abuse, Spousal/Partner Abuse, Aging and Long Term Care, and Substance Abuse.

Ms. Helms explained that in addition to the current requirements, MFTs and LCSWs are required to take a one-time, seven hour CE course covering the assessment and treatment of people living with HIV/AIDS. This CE requirement is a condition of the MFT and LCSW renewal. Currently, there is no requirement in law that an LPCC have any coursework covering HIV/AIDS.

Discussion was then opened regarding whether LPCCs should be required to take a one-time, seven hour CE course covering the assessment and treatment of people living with HIV/AIDS.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that this was an oversight. Ms. Porter preferred that this requirement be a condition of license renewal as opposed to a pre-licensure requirement.

Renee Lonner moved to amend Title 16 Section 1887.3(c) to include LPCCs as one of the license types that must take a seven hour continuing education course covering HIV/AIDS. Michael Webb seconded. The Committee voted unanimously (2-0) to pass the motion.

IV. Policy Discussion and Possible Action Regarding Proof of Employment by Registrants for Supervised Work Experience Hours; Stipends

Ms. Helms reported that when applying for licensure, an MFT Intern and Associate Social Worker (ASW) registrant must provide the Board with verification of his or her

employment for all required supervised work experience hours. By law, this verification can be provided in one of two ways: 1) Provide the Board with a letter from the employer verifying his or her volunteer status, or 2) Provide the Board with copies of his or her W-2 tax forms for each year of experience claimed.

Ms. Helms reported that the Board has received applications from several registrants who are not able to provide the Board with a W-2 or a volunteer status letter, because they were not employees or volunteers. Instead, they received a stipend in exchange for work performed with a specified agency. Typically, the stipend is being credited to the registrant for the repayment of a student loan or educational expenses.

Ms. Helms explained the common types of stipends:

- *County Department of Mental Health Stipend Programs* – These are sometimes done in partnership with various colleges and universities. Graduating MFT students from these schools may be eligible to apply for an educational stipend. In return, they agree to work as an MFT Intern at an agency within the county's mental health system that is in need of mental health providers for at least 12 months.
- *State Stipend Programs* - The California Department of Mental Health provides stipends to second year social work or marriage and family therapy students who meet certain qualifications. Recipients of the stipends complete an employment payback agreement with a county public mental health agency or a community-based organization under contract to a county public mental health agency. Once they graduate and obtain MFT Intern or ASW registrant status, they are required to complete their employment payback. They are typically paid a salary at this time in addition to their stipend, thus they are considered employees of the agencies.
- *Federal Stipend Programs* - The Indian Health Service and National Health Service Corps are federal programs offering loan reimbursement to MFTs and MFT Interns who work in specified underserved settings.

Ms. Helms explained that most of these government stipend programs also pay the participants a salary for their services while working. Therefore, they are issued a W-2 form and meet the Board's requirement of being able to provide this form in order to verify the hours of experience claimed. However, the Board occasionally receives applications where experience was gained under other types of non-government stipend programs, such as universities or other service agencies. If a 1099 form instead of a W-2 form is issued, the applicants hours gained may not be counted.

Ms. Helms cited examples where the Board rejected experience hours because a W-2 tax form was not issued. Some of those examples cited involved applicants who received stipends.

Under current tax law, scholarship, fellowship, or tuition reduction for teaching, research and other services are taxable; therefore, a W-2 tax form is issued.

Ms. Helms explained the reasons the Board does not allow interns and associates to be independent contractors. MFT Interns and ASWs contracting themselves out independently would be able to "freelance," making money indefinitely as an ASW or MFT Intern with no commitment to a particular supervisor or organization. By not having to pay wages to that person as an employee, the organization escapes the tax implications of employing the person, and therefore has no incentive to require that the person work toward licensure.

If the Board accepts 1099 forms, this opens the door to independent contractors being able to freelance indefinitely. However, it seems there are some cases where circumstances beyond the registrant's control required that they receive a 1099, and they received the same experience and supervision as a W-2 employee would. Additionally, because the Board does not accept these forms, it may encourage some applicants who received a 1099 to attempt to pass themselves off as volunteers.

Discussion was opened regarding educational stipends in order to explore if any further action is needed.

Ms. Rhine commented that it is the supervisor's responsibility to know the laws. She also stated that in trying to find a fix to this situation; this could end up more complicated by involving more situations other than the stipends.

Ms. Riemersma stated that when an employer is paying a stipend and providing the employee a 1099 at the end of the year, the employee is considered self-employed, which is in conflict with the law. The employer that is paying the stipend can withhold taxes and give the employee a W-2 at the end of the year. Employers have been pushed to go back and fix this so that the interns can count the hours. CAMFT would like to see people eligible for stipends from outside sources but does not want to see the law changed to allow people to provide services without being employees/volunteers coming under the direct supervision and control of the employer and the supervisor.

Mr. Wong stated that the reason why there are two forms, 1099 and W-2, is for withholding taxes. He explained that the Franchise Tax Board (FTB) and the Employment Development Department (EDD) consider 1099 employees to be independent contractors, not employees. When interns work under supervision, FTB considers the interns as W-2 employees. FTB also assumes that the employer claims the interns as 1099 employees to avoid paying employment taxes. Mr. Wong cautioned the Board on making exceptions to the law especially when other state agencies are involved.

Mr. Wong suggested adding a certification on the Board's forms that indicate the intern understands these circumstances in which their hours of experience will or will not be counted.

Ms. Riemersma stated that the Internal Revenue Service has a form listing criteria of an independent contractor versus an employee. According to the checklist there is no way an intern, training or associate can be permitted to practice independently. Furthermore, it is important to be sure that employers are providing workers compensation insurance.

No action was taken.

V. Discussion and Possible Legislative Action Regarding Licensed Professional Clinical Counselor Supervision of Marriage and Family Therapist Interns

Ms. Rhine reported that at the November 2010 board meeting, the Board considered changes to allow LPCCs to provide supervision for MFT trainees and interns. Currently, LPCCs are not included as licensees that may supervise MFT interns. Two issues were raised at the November Board meeting regarding the draft language presented. The first issue was that the draft language made changes to allow LPCCs to supervise registrants

without also making conforming changes to code sections that outline the relevant licensing law construction with other licensing acts.

Ms. Rhine explained that BPC Section 4980.01 says that nothing in the MFT licensing act can be construed to limit the other licensing acts. A conforming change is required to BPC Section 4980.01 to insert the LPCC act within this section.

Ms. Rhine pointed out the second issue in regards to training and education requirements: Should the Board consider clarifying that an LPCC may not supervise an MFT intern unless the licensee has met the additional training and education requirements to treat couples and families? An amendment to BPC Section 4980.03 is recommended to clarify that an LPCC must meet the additional requirements in order to supervise MFT interns.

Additionally, an amendment to BPC Section 4996.13, which is the LCSW law that correlates to BPC Section 4980.01, is recommended.

The discussion was opened to LPCCs supervising MFT interns, and if so, those supervisors must meet the requirements outlined in BPC Section 4980.01.

Ms. Riemersma stated that clinical social workers, psychologists, and psychiatrists may supervise MFT interns. They may not have had training in marriage and family therapy. Like the LPCCs, they will be signing a supervisory statement that indicates that they are knowledgeable in marriage and family therapy, the licensing law, and supervision. Ms. Riemersma stated that CAMFT is comfortable not imposing additional requirements because it is adequately addressed. CAMFT is interested in opening up supervision.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that the other disciplines do not have the additional training requirement in their licensing law. AAMFT-CA supports legislation for requiring additional training.

Mr. Webb stated that he has mixed feelings over this issue. He expressed that here are a lot of people providing marriage and family therapy who are not well trained and is concerned about the treatment consumers are receiving. He expressed that on the other hand, there is an opportunity to gain from the experienced LPCC population to effectively treat couples and families.

Kathleen Wenger, Pepperdine University, stated that LCSWs can currently supervise all of MFT intern hours; however, MFTs cannot supervise all of clinical social worker hours. She suggests that if LPCCs can supervise MFT interns, that it would be percentage-based, and recommended that interns receive 50% of their hours by a licensed MFT.

Ms. Lonner responded that Ms. Wenger's comment would be a future agenda item, which can be visited after the LPCC program is started.

Ms. Loewy stated that with LPCCs coming to California, there is an opportunity to develop the distinction between the two professions. Ensuring that LPCCs have the training as MFTs and to include it in legislation would serve each profession well in its evolution.

Ms. Rhine added an amendment to the proposed language, BPC Section 4980.03(g)(2), which should read "A professional clinical counselor must meet the requirements of Section 4999.20."

Ms. Porter stated that when AAMFT-CA asked CALPCC to amend the bill to include additional training in order to "hang a shingle," CALPCC felt that was reasonable. The discussion was not around supervision. A psychologist, social worker or MFT can all supervise an LPCC. Although those professions may not know about any particular area of expertise that the LPCC intern or registrant has developed in their graduate work, the supervisor is overseeing the psychotherapy, which is what the intern/registrant is obtaining licensure to do. This is an ethical concern, and this should not be put into law because it could be a deterrent. CALPCC feels that LPCCs should not be singled out with the additional requirements.

Ms. Riemersma explained that another situation could arise where an LPCC who has experience in supervision, consultation, and continuing education in marriage and family therapy and could be a competent supervisor and be able to sign a supervisory statement. However, they do not have the education. This would limit the LPCC. Furthermore, this is a legal issue because they are signing the supervisory statement under penalty of perjury. Requiring the additional training is overly restrictive.

Ms. Rhine reviewed the requirements: 1) Six semester units or nine core units specifically focused on the theory and application of marriage and family therapy, and 2) a specialization or emphasis in the area on the qualifying degree of marriage and family therapy, and 3) no less than 500 hours of documented supervisory experience working directly with couples, families or children, and 4) six CE hours specific to marriage and family therapy completed at each license renewal.

Mr. Wong cautioned the Board about the language singling out groups and suggested that counsel takes a look at the language.

Michael Webb moved to direct staff to bring amended language to the Board for consideration for sponsored legislation. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

VI. Rulemaking Update

Ms. Helms provided the rulemaking update. She reported that the rulemaking package relating to the creation of the LPCC program and the continuing education requirements for licensed educational psychologists was submitted to the State and Consumer Services Agency in October 2010. It is still awaiting approval. Once it is approved, it will move forward to the Department of Finance for approval, and then to the Office of Administrative Law.

The text regarding Title 16, CCR Section 1811, Revision of Advertising Regulations, was originally approved by the Board at its November 2009 meeting. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.

Ms. Madsen added that if the Governor does not appoint a Secretary to the Consumer and Services Agency, all Department of Consumer Affairs' rulemaking packages will not move forward.

VII. Public Comment for Items Not on the Agenda

There were no public comments for items not on the agenda.

VIII. Suggestions for Future Agenda Items

There were no suggestions for future agenda items.

The meeting was adjourned at approximately 11:13 a.m.