

## BOARD MEETING MINUTES February 23-24, 2011

Alliant International University  
10455 Pomerado Rd.  
Green Hall  
San Diego, CA 92131

### ***Wednesday, February 23<sup>rd</sup>***

#### **Members Present**

Renee Lonner, Chair, LCSW Member  
Elise Froistad, Vice Chair, MFT Member  
Samara Ashley, Public Member  
Jan Cone, LCSW Member  
Donna DiGiorgio, Public Member  
Harry Douglas, Public Member  
Judy Johnson, LEP Member  
Patricia Lock-Dawson, Public Member

#### **Members Absent**

Christine Wietlisbach, Public Member

#### **Staff Present**

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

#### **Guest List**

On file

### **FULL BOARD OPEN SESSION**

Renee Lonner Board of Behavioral Sciences (Board) Chair called the meeting to order at approximately 8:10 a.m. Christina Kitamura called roll, and a quorum was established.

#### **I. Introductions**

Staff, Board members, and attendees introduced themselves.

#### **II. Approval of the November 4-5, 2010 Board Meeting Minutes**

Donna DiGiorgio noted a correction on page 19, item XV.a.: change "medication" to "modification."

Jan Cone noted a correction on page 11, 5<sup>th</sup> paragraph, 3<sup>rd</sup> sentence: omit "very." She also noted a correction on page 10, last sentence on the page: add "the" after "experience in."

Ben Caldwell, Alliant International University and American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested to be referred to as Mr. Caldwell, not Dr. Caldwell, in future meeting minutes.

Tracy Montez, Applied Measurement Services, LLC, noted a correction on page 8, 3<sup>rd</sup> bullet, last sentence: change sentence to read "The NCE passing rates are higher than BBS passing rates; however, the Board does not have to adopt both exams."

***Patricia Lock-Dawson moved to approve the November 4-5, 2010 Board meeting minutes as amended. Samara Ashley seconded. The Board voted unanimously (8-0) to pass the motion.***

### **III. Approval of the January 13, 2011 Board Meeting Minutes**

***Renee Lonner moved to approve the January 13, 2011 Board meeting minutes. Jan Cone seconded. The Board voted unanimously (8-0) to pass the motion.***

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

#### **a. Budget Report**

Kim Madsen reported the Board's budget for 2010/2011 was recently revised to reflect the savings to be achieved through Executive Orders and directives to reduce spending. Previously, the Board's budget was \$8,308,000. The revised budget for the Board is now \$7,986,577. The Board's expenditures are \$3,321,322. The expenditure projections for the remainder of the fiscal year indicate we will not exceed our current budget authority.

Ms. Madsen reported the MHSA Budget is \$122,000. A recent review of the current expenditure projections reflected approximately a \$30,000 deficit. The deficit is a direct result of a multi-year contract in which the final payment was made in this fiscal year and as well as a result of a reduction in funding. To address this deficit, the Board will transfer the remaining year's personnel services expenditures to the BBS budget.

The Board's current fund condition reflects an eight month reserve balance. Loans to the General Fund in 2002/2003 in the amount of \$6,000,000 and \$3,000,000 in 2008/2009 remain outstanding. Recent actions by the Governor projected another loan in the amount of 3.3 million in 2011/2012. This loan will leave the Board with a five month reserve.

A revenue collection report was provided in the meeting materials.

#### **b. Operations Report and c. Personnel Update**

Ms. Madsen announced a new staff member will join the Board staff in March. Marina Karzag was hired in a departmental hiring policy whereby Department of Consumer Affairs (DCA) staff can be hired internally.

Through the same departmental policy, Patricia Fay was promoted to the position of Staff Services Analyst in the licensing unit, leaving a vacancy in the Board's enforcement unit.

Ms. Madsen reported two employees have departed the Board. Additionally, two Board members have departed the Board.

The Board currently has 12 vacancies between the LPCC staff and the previously existing positions. The vacancies are seriously impacting the existing programs. One staff person is processing all MFT and examination applications. Currently, this staff person is processing

applications received in October 2010. With the departure of the renewal cashier, the renewals are impacted. Currently, the renewals received up to January 24<sup>th</sup> have been processed. It is taking about 30-45 days to process renewals once they are received in the office. Existing staff is absorbing the workload of the vacant desks in addition to their own duties.

A notification regarding the delays in processing has been posted on the Board's website. Board staff has also notified the associations.

Ms. Madsen reported on the suite expansion project. The Board is moving forward with its expansion plans. Bids for the construction have been received by DCA. We anticipate construction will begin in April. The cost is well under \$100,000.

Ms. Madsen reported on the BreEZe project, DCA's project to replace existing databases. The project is on schedule. DCA anticipates that the contract will be awarded July 2011. The first phase of implementation of the new database is scheduled for December 2012.

Ms. Madsen reported on the Sunset Review. Several DCA Boards are currently undergoing this review. The Board is scheduled for review January 1, 2013 and will begin preparing for the review late spring to early summer.

Ms. Madsen briefly reported on quarterly statistics: processing times are going up due to lack of staff; customer satisfaction is down as a result of that.

**d. Licensed Professional Clinical Counselor Update**

Ms. Madsen reported that the Licensed Professional Clinical Counselor (LPCC) regulation package remains pending at the State and Consumer Services Agency.

**e. Strategic Plan Update**

The Strategic Plan Update was provided for review. The Continuing Education Provider desk was recently filled; the processing times for that desk should go down. Enforcement staff recently completed training through the Council on Licensure, Enforcement, and Regulation (CLEAR). The Enforcement staff is scheduled to attend upcoming training courses.

Going back to operations and personnel updates, Ms. Madsen added that one of the Board's enforcement field investigators is leaving the Board. This will bring the number of vacancies to 12. Staff is submitting exemption requests to the hiring freeze.

Elise Froistad asked how much time is devoted to the implementation of the LPCC program. Ms. Rhine responded that a lot of time is spent on the LPCC program. Ms. Froistad then asked how the implementation can be slowed down since staff is pulling from already strained resources; staff is already backlogged in the existing programs. Ms. Rhine responded that although this is a fair question, she is unsure how far staff can back off. Ms. Madsen added that statute requires January 1<sup>st</sup> as the start date; without a change to that date, staff must move forward.

**V. Department of Consumer Affairs Update**

LaVonne Powell from the Department of Consumer Affairs (DCA) Executive Office provided an update regarding DCA activities. She reported that the Governor has made very few appointments. Director Brian Stiger was asked to stay with DCA as Acting Director. DCA is waiting for Department of Finance and Department of Personnel Administration to provide more

specific information regarding the hiring freeze. Ms. Powell added that Ms. Madsen is recruiting for vacancies as soon as she can, and she is applying for exemptions. Cell phones and state-owned vehicles were reduced per Executive Order. DCA is discussing a delegated contract process to contract with expert consultants for enforcement cases. The BreEZe project – this will help speed up the enforcement process as well as with other areas of work. DCA is encouraging webcasting of meeting, and using Facebook and Twitter. Ms. Powell concluded her update encouraging morale boosters and team bonding activities for all employees.

The Board recessed at 9:08 a.m. and reconvened at 9:21 a.m.

## **VI. Licensing and Examination Committee Report**

### **a. Discussion and Possible Action Regarding the National Counselor Examination and the National Clinical Mental Health Counselor Examination**

Tracy Rhine reported on the national examination for LPCC licensure. Senate Bill (SB) 788 established the LPCC Act. The law allows the Board to administer a national exam or to accept a national exam for LPCC applicants instead of a Board-administered exam. The Board contracted with Dr. Tracy Montez, AMS, to perform the analysis necessary to determine if any of the national examinations met the standards required by law. Dr. Montez analyzed the National Counselor Examination and the National Clinical Mental Health Counselor Examination. Dr. Montez presented her finding at the July 2010 Board meeting. Her findings were that the national exams met the standards required by law; however, there were some issues. The Board directed to staff to work with the National Board for Certified Counselors (NBCC) to work on the issues outlined in Dr. Montez's report. NBCC has addressed some of those issues.

There were no questions, discussion, or action taken.

## **VII. Policy and Advocacy Committee Report**

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

Ms. Rhine presented. At its November 2010 meeting, the Board discussed changes that would allow LPCCs to supervise marriage and family therapist (MFT) interns, and draft language was presented.

Ms. Rhine explained two issues regarding the draft language. The first issue was that the draft language made changes to BPC section 4980.03 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. The second issue was brought forth by the public. It was noted the Board should 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.

For an LPCC to work with families and couples, current law states that they must meet the following 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.

Discussion: Should an LPCC that is supervising an MFT Intern also meet these requirements?

Jan Cummings, California Association of Licensed Professional Clinical Counselors (CALPCC), stated that BPC Section 4999.20 was an amendment that CALPCC agreed to in negotiations. CALPCC did not realize that this would impact an LPCC's ability to supervise. It will impact resources and employment. Many LPCCs learn how to work with couples and children. They use alternative methodologies, but they have experience in their education and training. It should be based on scope of competence – based on experience, training, and education. Another concern CALPCC has is the impact in the community agencies. This requirement will impact employment.

Another representative from CALPCC stated that most students cover 60 semester units of coursework, which is more than the requirement. In that coursework, they are trained in a variety of theoretical approaches to working with clients. Students learn research-based, evidence –based practice. Students have a scope of competence. She suggested that this amendment not be passed.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), stated one of the unanticipated consequences is, for example, an LPCC from out of state is grandparented and may have experience working with couples, family and children, but they do not have the specific experience or education. That LPCC, for example, is hired by an agency to supervise associate social workers (ASW), and professional clinical counselor interns and trainees. CAMFT foresees that MFT interns and trainees would not be utilized because of the additional experience that the supervisor is required to have in order to provide the supervision. She is greatly concerned that clinical social workers, psychologists, and psychiatrists are not required to have any specific education or training to provide supervision. They all have to sign a supervisor responsibility statement that states they are knowledgeable in that area to provide supervision. CAMFT sees that as a hardship for their folks. Finding supervisors is increasingly difficult to do especially in this economic climate.

Mr. Caldwell, AAMFT-CA, expressed that he does not feel that an agency will hire an LPCC to supervise, and then realizes that LPCC cannot assess or treat couples or families, and cannot supervise MFT interns/trainees if this language is used, and then gets rid of their interns and trainees. It's not unreasonable for the Board to put in language allowing the Board to make exceptions on the requirement. In terms of other licensees that can supervise MFT interns/trainees, those other licensees can do couple and family therapy in their scopes of practice. The concern is whether the Board is going to allow someone to supervise an activity that is not in the supervisor's scope of practice. The concern is the activity, not the license type. The proposed language is the best solution.

Ms. Riemersma stated that if the Board is intent on moving forward with the proposed language, to at least consider doing this for those who began their graduate study on or after the effective date so they know what the restrictions are going to be, and not put the requirement on those who may have grandparented where they would be limited in providing supervision unless they have the specific education as part of their educational program and they did not have this as part of their hours of experience to qualify for the license.

A student in the audience expressed concerns regarding her supervision and how to know if her supervisor has the qualifications to guide her. If there is a requirement, it helps her to know that the supervisor has that experience and training.

Gerry Grossman suggested limiting the number of hours that an MFT intern or ASW can be supervised by an LPCC.

Olivia Loewy, AAMFT-CA, stated that if LPCCs coming to California have not met those requirements, their scope of competency would not qualify them to adequately supervise MFT interns and trainees.

A representative from CALPCC agreed with Ms. Riemersma's suggestion to push the requirement out further so that the counselors and agencies are prepared.

Ms. Riemersma stated that it is very difficult for MFT interns and trainees to get hours of experience working with couples, families, and children. Given the economic climate, it is even more difficult for MFT interns and trainees to get the required hours.

Mr. Caldwell expressed interest in knowing how many hours are being completed in working with couples, families, and children by MFT interns under the recent incentive. Mr. Caldwell guessed that most MFTs meet that incentive and possibly go beyond that within the program at Alliant International University. MFT interns and trainees are getting at least some of those hours. AAMFT-CA wants to ensure that the people supervising that activity are legally qualified to do so.

Ms. Riemersma made another suggestion to make this applicable to MFT trainees and not interns so that schools are in control and use the supervisors they need to ensure that the supervisors have the requisite education and experience. Furthermore, for the time being, allow MFT interns to work with supervisors across disciplines.

Jan Cone stated in supervising, it is the supervisor's license on the line with the practice of those individuals. Supervision is a part of practice, so it is difficult to carve out supervision from practice within the proposed language.

Harry Douglas stated that he heard the concerns regarding employment and impact on the community. Two other concerns that he is hearing are about public safety and quality of education.

Judy Johnson added to Mr. Douglas' statement. Board members need to approach this in a preventative and proactive way and to eliminate or minimize the unintended consequences when looking at training, scope of practice, and competence.

Carrie Lew, University of Southern California, stated that the current system, where it is difficult for MFT students to get hours in working with couples, families, and children, is based on very individualistic orientation. Consumers are much more family oriented than the consumers used to be. As policy makers, your policy will influence the future of the system. If you put in a requirement that promotes best service to fit the characteristics of the consumer, the system would probably need to make some changes to fit the current status quo, not the Board's requirements.

Mr. Caldwell stated that it would be difficult for an MFT intern to make a complaint against a supervisor that is a social worker, psychologist, or psychiatrist if the intern feels their supervision is inadequate. The benefit of having this standard in statute is that it is enforceable.

***Patricia Lock Dawson moved to accept the proposed language submitted by staff. Harry Douglas seconded. The Board voted unanimously (8-0) to pass the motion.***

**b. Discussion and Possible Action Regarding HIV/AIDS Continuing Education Course Requirement for Licensed Professional Clinical Counselor**

Rosanne Helms presented. Currently, MFTs and licensed clinical social workers (LCSWs) 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). Proposed regulations do not require LPCCs to take a continuing education course covering HIV/AIDS.

Ms. Helms explained that all MFTs, LCSWs, and LPCCs are required to complete 36 hours of continuing education (CE) relevant to their field of work during each renewal period. They must also complete a six-hour law and ethics course each renewal period. These courses cover a variety of topics: 1) Human Sexuality, 2) Child Abuse, 3) Spousal/Partner Abuse, 4) Aging and Long Term Care, and 5) Substance Abuse.

Ms. Helms added that in addition to the above 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 as a condition of their renewal. There is currently no requirement in law that an LPCC have any coursework covering HIV/AIDS, either as CE or as part of a graduate degree program.

At its January 2011 meeting, the Policy and Advocacy Committee recommended that the Board consider requiring LPCCs to take a one-time, seven hour CE course covering the assessment and treatment of people living with HIV/AIDS.

Ms. Lonner stated that this would make it consistent. Ms. Froistad agreed.

***Donna DiGiorgio moved to adopt the amended language to include the LPCCs. Elise Froistad seconded. The Board voted unanimously (8-0) to pass the motion.***

**c. Legislative Update**

Ms. Helms presented the legislative update. Board staff is currently pursuing the following legislative proposals:

- SB 704 Examination Restructure - The proposed exam restructure would change the exam process for applicants seeking MFT and LCSW licensure.
- Omnibus Legislation – This bill proposes several non-substantive amendments which will add clarity and consistency to licensing law.
- SB 363 – The MFT Experience and Supervision Bill – This bill would allow an MFT trainee to continue counseling clients while not in practicum if the last enrollment was less than 45 days. This bill will be amended to include the MFT intern limitation of client centered advocacy hours to 500 hours and the LPCC supervision of MFT interns.

**d. Rulemaking Update**

Ms. Helms presented the rulemaking update. The rulemaking package relating to SB 788 was submitted to the State and Consumer Services Agency in October 2010. It is still awaiting approval. Once approved at Agency, it must be reviewed by the Department of Finance and then by the Office of Administrative Law.

The rulemaking package relating to the revision of advertising regulations revises the regulatory provisions related to advertising by Board licensees. The Board approved the originally proposed text at its meeting in November 2009. Staff will address this rulemaking proposal in 2011 after the current pending regulatory proposal is approved.

**VIII. Discussion and Possible Action Regarding Proposed Legislation Amending Business and Professions Code Section 4999.47, and Adding Sections 4989.13, 4991.1, 4999.13 Relating to Engaging in Practice, and Employee Status of Clinical Counselor Trainees and Interns**

Staff recommends the following sections be added to LCSW, licensed educational psychologist (LEP), and LPCC licensing laws in order to be consistent with language in MFT licensing law:

**Add BPC Sections 4989.13, 4991.1, 4999.13: Engaging in Practice** – Current MFT law defines the act of engaging in practice. However, the LCSW and LPCC licensing laws do not define the act of engaging in practice although the licensing laws use the term “engaging in practice.” Staff recommends adding a section to the LCSW, LEP, and LPCC licensing laws which defines “engaging in practice.”

**Amend BPC Section 4999.47: Employment; Trainee, Registered Intern and Applicants; Remuneration** - Current law for both MFTs and LCSWs states that a MFT intern or ASW must, upon application for licensure, provide the board with copies of W-2 tax forms for each year of experience claimed if they were employed. If they were a volunteer, then upon application for licensure he or she must provide the board with a letter from his or her employer verifying the intern’s employment as a volunteer. However, this requirement is not currently required by law for a clinical counselor intern. Staff recommends an amendment to require clinical counselor interns to provide copies of W-2 tax forms for each year of experience claimed if employed or a letter from the employer verifying volunteer status if a volunteer.

Discussion took place regarding the definition of remuneration and bartering. It was noted that those terms are outlined in other areas of the law.

***Samara Ashley moved to direct staff to make any non-substantive changes and submit draft language as amended, including the amendment of striking “who” in sections 4989.13, 4991.1, 4999.13, and striking “who” and replacing with “when he or she” in section 4980.10, to the legislature for Board-sponsored legislation. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

**IX. Discussion and Possible Action Regarding Acceptance of Post Degree Hours of Experience Toward Licensure as a Professional Clinical Counselor**

Ms. Helms presented. Current law requires that candidates for licensure as an LPCC complete 3,000 post-degree hours of supervised clinical mental health experience. In order for post-degree hours of experience to be counted toward the 3,000 hours required for licensure, a candidate must register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree.

Now that the Board will be offering the LPCC license, it is a possibility that some MFT interns may decide to instead switch toward becoming an LPCC and become an LPCC intern, or the MFT intern may decide to pursue dual MFT and LPCC licensure. This raises several issues not presently addressed under the law:

1. Can an MFT intern decide to re-register as an LPCC intern, taking his or her post-degree hours of supervised experience gained as an MFT intern with them? Currently, the law does not prohibit this, but counting of the hours would be limited by the 90-day rule.
2. If an MFT intern decides to pursue an LPCC internship in addition to their MFT internship, can hours of experience gained be double counted?
3. Current law requires a candidate to register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree in order to count hours of experience gained before registration. Would an exception to this law be made for those already registered as MFT interns?
4. MFT and LPCC licensing law does not allow counting of experience hours gained more than six years prior to the date of application for examination eligibility. If allowed to transfer hours gained as an MFT intern to an LPCC internship, how would the six year rule apply?
5. If an LPCC intern later decides to become an MFT intern or pursue dual licensure, would the Board handle that the same way?
6. If any exceptions are made for MFT interns pursuing LPCC licensure, should the same exceptions be made for ASWs pursuing LPCC licensure?

Ms. Helms explained that the Policy and Advocacy Committee discussed a similar issue related to continuing education (CE) hours at its October 2010 meeting. The Board currently allows an individual who holds both an MFT and LCSW license to apply their CE coursework toward the renewal of both licenses as long as the courses meet the Board's CE guidelines and the subject matter relates to both scopes of practice. A question was raised as to whether LPCC licensees should be allowed to double count CE units that they earn for another license toward their LPCC education requirement. The Committee voted to allow double counting if the courses taken meet the Board's continuing education guidelines, and the subject matter relates to both scopes of practice.

The Board has also discussed the issue of counting experience hours at its meeting 2009 in a case where an MFT had subsequently completed a master's degree in social work. A question was raised as to whether this person could be credited the required supervised experience hours they had gained during their MFT internship toward LCSW licensure. It was proposed that the Board permit the MFT intern hours toward the LCSW license if the applicant had been a licensed MFT for at least four years and had completed a master's degree in social work. The Board rejected this proposal due to concerns about the equivalency of the experience hours, as well as known differences in MFT and LCSW scopes of practice.

Ms. Froistad stated that there has been discussion regarding the Gap exam, and it was determined that the LPCC practice was different. She asked how the hours can be counted when it was determined that the practice is different.

Ms. Johnson asked Dr. Montez what other states have duplicated this, and what have other states done. Dr. Montez responded that she does not have that information available for this discussion.

Ms. Riemersma responded to issue #2 and suggested that the hours be accepted across the two disciplines where there is overlap. As for the 90 day rule in issue #1, the LPCC hours cannot be counted until the individual applies for registration. That is the point where hours can be double counted.

Mr. Caldwell stated that if the hours meet requirements for both of the disciplines, the hours should count both. AAMFT-CA will work on recommendations for the Committee meeting in April.

Ms. Lonner stated that counting hours within the current constraints is reasonable for issues #1-#4.

Ms. Rhine shared feedback from the public, which is to allow double counting where it is applicable and within the current constraints.

The Board agreed to issue #5 in that it would be handled the same way.

Ms. Johnson responded to issue #6 by stating that the same exceptions should be made for ASWs if all the qualifications are met.

***Renee Lonner moved to direct staff to draft legislative amendments based on the discussion for inclusion at the April 7, 2011 Policy and Advocacy Committee meeting. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board took recessed for lunch.

#### **X. Discussion and Possible Action Relating to the Licensed Professional Clinical Counselor Gap Examination**

Kim Madsen reported. In October 2009, Governor Schwarzenegger signed Senate Bill 788, establishing the LPCC Act (Act). The Act authorized the Board to begin accepting applications for this new mental health profession effective January 1, 2011. The Act provides MFTs and LCSWs a method to obtain licensure as an LPCC if requirements are met and applications are received within a specified time period.

One requirement may include an examination on the differences between the practice of MFT and LPCC and the practice of LCSW and LPCC, and is specified in Business and Professions Code section 4999.54(b)(1)(2).

Ms. Madsen reviewed the chronology of the Board's previous action. Board staff met with the Office of Professional Examination Services (OPES) staff in November 2009. The purpose of the meeting was to discuss whether OPES had the staff and resources to conduct a comprehensive audit required to identify differences, if any, in the practice of the three professions (MFT, LCSW, and LPCC). Following this meeting it was agreed that OPES was not able to perform this work necessary to meet the requirements of Senate Bill 788 due to budget constraints, existing workloads, and the short time to complete the work.

Subsequently, the Board initiated the steps to obtain bids from outside vendors that could perform the comprehensive analysis required by the Act. In January 2010, the contract was awarded to Applied Measurement Services, LLC (AMS). AMS completed the analysis in April 2010 and presented the findings in a public report.

The AMS Report was presented at the May 7, 2010 Board meeting. Following discussion of the findings, the Board voted unanimously to not adopt a separate examination (the Gap Examination) for MFT and LCSW candidates who seek LPCC licensure.

Following the vote, the Board received a letter AAMFT-CA. The AAMFT-CA letter argued that Business and Professions Code section 4999.54(b) requires the Board to develop an examination on any differences that may exist between the three professions and that it does not allow the Board to make an exception to the examination based on perceived significance of the differences.

At its July 28, 2010 board meeting, during an open session the Board discussed the AAMFT-CA letter, the AMS Report, listened to public comment, and received input from the Board's legal counsel.

Following the July 2010 meeting, the Board received a letter from Richard Segal, an attorney with Pillsbury, Winthrop, Shaw and Pittman LLP, representing CAMFT. Mr. Segal expressed the view that the Board had violated the Bagley-Keene Open Meeting Act when it went into closed session on July 28, 2010 to discuss whether a Gap Examination should be required. The letter requested the Board acknowledge the defect in procedures and suggested the violation could be cured by taking action that would bring the Board to the point prior to when the violation occurred, and then the Board could proceed properly.

In the interest of improving public perception and relations, the Board met on September 9, 2010, to discuss and possibly rescind the decision made at the July 28, 2010 meeting to require a Gap Examination. The Board voted to rescind all decisions related to the Gap Examination. An open discussion was held with stakeholders, AMS presented its findings, and input was received from legal counsel.

At its September 9, 2010 the Board voted to find that a Gap Examination is necessary and directed staff to have an examination developed.

Michael Santiago explained that CAMFT petitioned for Writ of Mandate against the Board. CAMFT is basically requesting that the court make an order or a finding that the Board take an action. Mr. Santiago outlined the three areas in the petition.

- The Board erred in assessing the purported differences between the professions of clinical counseling, clinical social work, and marriage and family therapy, instead of assessing the differences, if any, between the practice of clinical counseling, clinical social work, and marriage and family therapy.
- The Board failed to consult with OPES in determining whether the Gap Examination is necessary.
- The Board failed to exercise its independent judgment in determining whether the Gap Examination is necessary.

Mr. Santiago stated that the court determined the following:

- The Board did not abuse its discretion in determining that practice and profession are essentially the same thing.
- The Board abused its discretion in failing to consult with OPES in determining whether the Gap Examination is necessary.
- The Board did not abuse its discretion in determining the Gap Examination is required if the Board determines there are "any" differences between the professions.

On February 14, 2011, the court issued a Peremptory Writ of Mandate that requires the following:

- The Board set aside its decision requiring the Gap Examination.
- The Board shall make its determination whether a Gap Examination is required "in consultation" with OPES.
- The Board will file a response to the court within 60 days after the issuance of the writ, setting forth what the Board has done to comply with the writ.

Mr. Santiago explained that the Board has already set aside its decision requiring the Gap Examination. The next step is to consult with OPES, which means to ask for advice or opinion

of OPES. OPES has provided their opinion in a letter to the Board as to whether the Gap Examination is necessary.

Ms. Riemersma stated that the court ordered the Board to set aside its decision requiring the Gap Exam. Since the decision to require the Gap Exam was made at a public meeting, CAMFT expected that the Board would meet in public to discuss the judgment and the Writ of Mandate, and then vote at this meeting to set aside the Board's previous decision to require a Gap Exam. Ms. Riemersma stated that the Board did not comply with the law in consulting with OPES, and the penalty was that the Board set aside its decision. She added that the Chair does not have the authority to act in place of the Board nor could the Board have held an unnoticed or closed meeting to take action to set aside the Gap Exam. The setting aside of the Gap Exam should be happening today at this meeting.

Mr. Santiago responded that there is no discretion; the court has ordered the Board to do this. A vote is not required.

Ms. Riemersma stated that OPES could not do the work because they were overburdened with work. When the Writ of Mandate is issued, OPES now has the time to perform a complicated analysis and review Dr. Montez's work, and did so rapidly. From CAMFT's perspective, it seems as if "this was a sham." She added that Dr. Montez identified that there were no meaningful or significant differences, and there were no differences that would affect public health and safety, yet the Board is still moving forward using the state's money to test people who have already been tested.

LaVonne Powell responded that OPES is a highly professional office. They would never do anything that is a "sham." There was a court order, and OPES put its work down to comply with the order.

Mr. Santiago stated that the OPES time frames is not the discussion here. The focus is on the Writ. The court stated in its findings that the Board's interpretation in "any difference" to require the Gap Exam is a reasonable construction of the statutory scheme. It does not have to be a "meaningful" difference.

***Renee Lonner moved that after consulting with OPES regarding the differences between the practice of professional clinical counseling and marriage and family therapy, and between the practice of professional clinical counseling and clinical social work, that the Board finds that a Gap Examination is necessary. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.***

***Judy Johnson moved to direct staff to jointly develop a Gap Examination with OPES to address the differences between the practice of professional clinical counseling and marriage and family therapy and the practice professional clinical counseling and clinical social work. Donna DiGiorgio seconded. The Board voted unanimously (8-0) to pass the motion.***

## **XI. Mental Health Services Act Report**

Ms. Madsen reported that the Board along with other state agencies is in partnership with the Department of Mental Health (DMH). The Board receives feedback from DMH that the Board is one of the premier partners in what the Board has accomplished.

The Memorandum of Understanding for funding that the Board receives from Proposition 63 expires at the end of the fiscal year. Staff is meeting with DMH to negotiate a new Memorandum of Understanding.

Ms. Lonner took the next two agenda items out of order. Item XIII was heard before item XII.

### **XIII. Suggestions for Future Agenda Items**

Ms. Riemersma requested consideration be given to meeting locations. Scheduling meetings at a particular school seems to give preference to that particular school. She stated that other schools have made comments regarding multiple meetings held at Alliant International University. She also requested consideration given to locations that are easily accessible and accessible to lunch places.

Ms. Riemersma requested discussion regarding the terms LMFT vs. MFT, specifically, she requested that MFT be changed to LMFT in any section of law that refers to MFT. This adds consistency across the disciplines and makes it clear that it is a licensed profession.

Ms. Riemersma requested discussion regarding continuing education providers. She stated that the Board is getting into the content of continuing education courses, and feels that is beyond the Board's authority in requesting specific content.

Ms. Froistad requested discussion regarding fees charged for psychiatric evaluations when Board licensees are required to have a psychiatric evaluation.

Mr. Grossman requested discussion regarding the laws relating to consensual sex involving minors. He stated if a minor discloses in counseling that they are engaging in oral or anal sex, that this is a mandatory report. Mr. Grossman stated that there is a discrepancy in current law regarding the type of sexual acts the minor is involved in.

### **XII. Compliance and Enforcement Committee Report**

Ms. Madsen reported that the next Compliance and Enforcement Committee meeting will be held on March 24, 2011 in Sacramento.

Ms. Madsen presented statistics for Enforcement Program for review. She pointed out a few numbers and provided brief clarification.

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

No public comments were made for items not on the agenda.

The open session meeting was closed at approximately 1:20 p.m., and the Board moved to closed session.

### **FULL BOARD CLOSED SESSION**

### **XV. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session for the Purpose of Evaluation of the Executive Officer**

The Board met in closed session, and the meeting adjourned at the end of closed session.

**Thursday, February 24th**

**Members Present**

Renee Lonner, Chair, LCSW Member  
Elise Froistad, Vice Chair, MFT Member  
Jan Cone, LCSW Member  
Donna DiGiorgio, Public Member  
Harry Douglas, Public Member  
Judy Johnson, LEP Member  
Patricia Lock-Dawson, Public Member

**Members Absent**

Samara Ashley, Public Member  
Christine Wietlisbach, Public Member

**Staff Present**

Kim Madsen, Executive Officer  
Tracy Rhine, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Christina Kitamura, Administrative Analyst  
Michael Santiago, Legal Counsel  
Ann Glassmoyer, Enforcement

**Guest List**

On file  
Christina Thomas, DAG

**FULL BOARD OPEN SESSION**

Renee Lonner Board of Behavioral Sciences (Board) Chair called the meeting to order at approximately 8:07 a.m. Christina Kitamura called roll, and a quorum was established.

**XVI. Introductions**

Administrative Law Judge Walker opened the hearing. DAG Christina Thomas represented the Board. Judge Walker called Barton Lewis Gibson to present his testimony.

**b. Petition for Modification of Probation Terms, Barton Lewis Gibson, LCS 10389**

Mr. Barton Lewis Gibson presented his request to modify the terms of his probation.

The Board recessed for a break at 9:42 a.m., and reconvened at 9:55 a.m.

**a. Petition for Modification of Probation Terms, Patricia Ann Evans, MFC 48187**

Ms. Patricia Ann Evans presented her request to modify the terms of her probation.

The Board recessed for a break at 10:55 a.m., and reconvened in closed session.

**FULL BOARD CLOSED SESSION**

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

The Board met in closed session to discuss and take action on disciplinary matters.

**FULL BOARD OPEN SESSION**

**XVIII. Adjournment**

The Board re-opened the meeting to the public and adjourned at 12:25 p.m.