

Policy and Advocacy Committee Minutes July 21, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #N220
Sacramento, CA 95834

Members Present

Renee Lonner, Chair, LCSW Member
Judy Johnson, LEP Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Marina Karzag, Policy & Statistical Analyst
Christina Kitamura, Administrative Analyst

Members Absent

Christine Wietlisbach, Public Member

Guest List

On file

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:41 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and attendees introduced themselves.

II. Review and Approval of the April 7, 2011 Policy and Advocacy Committee Meeting Minutes

Ms. Lonner requested to omit a duplicate paragraph on page one.

Rebecca Gonzales noted corrections for the spelling of her last name, from "Gonzalez" to "Gonzales." Ms. Gonzales suggested minor language changes on pages 3, 9, 11 for clarification of her comments.

Renee Lonner moved to approve the April 21, 2011 Policy and Advocacy Committee meeting minutes as amended. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

III. Discussion and Possible Action Regarding Changes to Advertising Guidelines and Regulations

Rosanne Helms reported on changes to advertising guidelines and regulations. Under current law, each healing arts board is required to define services to be advertised by professions under their jurisdiction for the purpose of determining whether advertisements

are false or misleading. The statute requires the Board of Behavioral Sciences (Board) to adopt or modify regulations defining what services may be advertised.

Current regulations provide some general requirements regarding advertisement for Marriage and Family Therapists (MFTs), Licensed Clinical Social Workers (LCSWs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs). However, the regulations do not specifically address all services that are available and how they should be advertised, e.g. licensees advertising as “Psychotherapists.”

In November 2008, the Board approved amendments and directed staff to initiate a rulemaking package to resolve the issues related to advertising. The regulatory amendments approved at the 2008 meeting incorporated the following changes:

1. Require any advertisement to include the licensee’s full name, complete license title or acceptable abbreviation, and the license or registration number;
2. Includes registrants in the above advertising requirements, and additionally requires them to provide this same information for their supervisor;
3. Defines acceptable abbreviations that may be used in an advertisement;
4. Specifies that a person may include their academic credentials in an advertisement as long as the degree is earned, and representations and statements regarding their degree are true and not misleading and
5. Allows the Board to issue a citation and fine for violations of advertising guidelines.

However, shortly after the approval by the Board of this regulatory language, staff learned that they would first need to run a regulatory package to implement the LPCC licensing program. The LPCC regulation package affected many of the same code sections as the proposed advertising rulemaking. Due to the conflict of amending a code section with two separate packages and the urgent nature of the LPCC package, the advertising proposal was placed on hold.

AB 956, sponsored by the California Association of Marriage and Family Therapists (CAMFT), is proposing several changes in law relating to advertisements for marriage and family therapy services. Board staff has been working with CAMFT to ensure that these proposed legislative changes are compatible with the Board’s proposed regulatory changes.

In the previous version of the proposed advertising regulations, the Board had voted to require a supervisor’s license information be included in any advertisement for an MFT intern. However, AB 956 instead proposes requiring that the MFT intern provide the name of his or her employer. The proposed regulations now incorporate this change that will be made with AB 956.

AB 956 will change the law for MFT interns as follows:

1. Requires an unlicensed marriage and family therapist intern to provide each client or patient, prior to performing any professional services, with the following information:
 - a. That he or she is an unlicensed marriage and family therapist registered intern;
 - b. His or her registration number;
 - c. The name of his or her employer (new provision); and

- d. Indicate whether he or she is under the supervision of a licensed MFT, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.
2. Requires any advertisement by or on behalf of a marriage and family therapist registered intern must include, at a minimum, all of the following:
 - a. That he or she is a marriage and family therapist registered intern;
 - b. The intern's registration number;
 - c. The name of his or her employer; and
 - d. That he or she is supervised by a licensed person.
3. Prohibits the use of the abbreviation "MFTI" in an advertisement unless the title "marriage and family therapist registered intern" appears in the advertisement.

AB 956 will change the law for MFT trainees as follows:

1. Requires a trainee to inform each client or patient, prior to performing any professional services, of the following:
 - a. That he or she is an unlicensed marriage and family therapist trainee;
 - b. The name of his or her employer;
 - c. Indicate whether he or she is under the supervision of a licensed MFT, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.
2. Requires any advertisement of services performed by a trainee must include, at a minimum, all of the following:
 - a. That he or she is a marriage and family therapist trainee;
 - b. The name of his or her employer; and
 - c. That he or she is supervised by a licensed person.

Due to the addition of the LPCC license, California Code of Regulations Title 16 Section 1811 had been updated since the advertising proposal was adopted by the Board in 2008. The new regulatory proposal includes: 1) the current version of Section 1811, 2) all previously approved changes from 2008, and 3) changes incorporating the AB 956 provisions.

Ms. Johnson stated that it is very thorough and comprehensive.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), pointed out that AB 956 allows an intern to use the abbreviation MFTI if it is accompanied by the title "marriage and family therapist registered intern." However, the title that an MFT intern should use according to the proposed regulation is "registered marriage and family therapist intern" as opposed to "marriage and family therapist registered intern." Therefore, if an intern uses the abbreviation MFTI in an advertisement, they would actually have to use both titles.

Tracy Rhine agreed, stating that the regulation needs to be consistent with the language of the statute.

Jill Epstein, CAMFT, pointed out that Section 1811 states that the abbreviation MFTI may be used along with the complete title of the registration. However, the Board's regulations state that the abbreviation MFTI cannot be used. This presents a conflict.

Ms. Helms recommended to add language from AB 956 and insert it into Section 1811(a)(2)(D) to expand on the intent.

The Committee agreed to make the same change to Section 1811(a)(2)(H) relating to registered professional clinical counselor interns.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), suggested adding "or" between licensed marriage and family therapist and MFT in Section 1811(a)(2)(A).

Mr. Caldwell asked how these changes to advertising will affect those individuals who advertise on Twitter feeds and Google Ads where there the length of the advertisement prohibits the individual from meeting all of the mandatory disclosures. If the feeds and ads link to a website where all of the legal mandates are met, would that be sufficient?

Ms. Rhine responded that according to legal counsel, the ad linking to a website where the mandates are met is sufficient. The feed or ad linking to a website is looked at "as a whole." Further discussion is necessary if there is a need to incorporate this into law or if it is even necessary.

Mr. Caldwell stated that a written legal opinion would be helpful.

Renee Lonner moved to direct staff to make suggested amendments and bring to the Board for approval. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

IV. Discussion and Possible Action Regarding the Use of the Title "Licensed Marriage and Family Therapist" in Board Licensing Law

Ms. Helms reported that current statute and Board regulations use the title "Marriage and Family Therapist" (MFT) to refer to a Board licensee who practices marriage and family therapy. It has been requested that the Board instead consider instead utilizing the title "Licensed Marriage and Family Therapist" (LMFT).

The title change was requested in order to clarify that the Board's marriage and family therapy licensees hold a valid state license. The Board's other licensees (LCSWs, LEPs, and LPCCs) all contain the term "licensed" in their titles.

Research shows only two states, Hawaii and Wisconsin, use the term "Marriage and Family Therapist." All other states use the term "Licensed Marriage and Family Therapist," or some variation of this title that includes the word "licensed."

Adoption of the title change from "Marriage and Family Therapist" to "Licensed Marriage and Family Therapist" would be a lengthy process. It would require that staff change all of the Board's regulations, make comprehensive statutory changes, and update all forms, publications, and the web site with the new title. Due to limited staff time and resources, staff recommends, that, if adopted, the phase-in of the term "licensed marriage and family therapist" would occur gradually. Staff proposes phasing in the new term as new legislation and regulations are run, and as forms, publications, and the web site are updated.

Mr. Caldwell expressed that AAMFT-CA prefers the consistency of the title between states, and agrees with the proposed change.

Judy Johnson moved to recommend to the Board that staff include the title “Licensed Marriage and Family Therapist” in all new regulatory and legislative proposals and make conforming changes to Board forms and publications as appropriate. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

V. Discussion and Possible Action Regarding Senate Bill 462 (Blakeslee)

Ms. Helms presented SB 462, Special Education Advocates Certification.

Current law provides students with exceptional needs and their parents with certain safeguards, including requesting a due process hearing, requesting mediation, or requesting an alternative dispute resolution.

Current law requires each meeting to develop, review, or revise an individualized education program to be conducted by a team of specified participants; and requires a local educational agency to initiate and conduct these meetings

Current law states that it is the intent of the Legislature that parties of special education disputes be encouraged to attempt to resolve the issue through mediation before filing a request for a due process hearing.

According to the author's office, "The purpose of this bill is to protect families against predatory advocates while reducing administrative and legal costs borne by school districts resulting from disputes and litigation over the adequacy and administration of special education Individual Education Programs (IEPs). Currently, many parents of children with special needs are being taken advantage of by advocates pushing them to engage their school or school district into due process litigation. This incurs great cost to both the parents and the school district. This bill would make sure that individuals who claim to be 'advocates' have adequate training in alternative dispute resolution and are familiar with the legal and fiscal implications of due process litigation."

This bill is attempting to develop a “certified special education advocate” under the jurisdiction of the Board. This bill defines a “certified special education advocate” as a non-attorney individual, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs.

This bill allows a special education local plan area to do the following:

- a. Develop a voluntary special education advocate certification program;
- b. Determine the yearly fee to be charged to someone seeking certification;
- c. Notify the Board of Behavioral Sciences (Board) whether a person seeking certification has completed alternative dispute resolution training; and
- d. Provide alternative dispute resolution training at least twice per year for persons seeking certification.

This bill requires the Board to do the following:

- a. Administer a test which those seeking certification as a special education advocate must pass in order to obtain certification. The test would certify that the applicant has sufficient knowledge and understanding of the process for resolving special education disputes;
- b. Certify a person who has successfully passed the test and fulfilled the training requirement, for a period of time not to exceed five years; and
- c. Charge a fee to a person seeking certification, not to exceed the reasonable testing costs.

This bill states a certified special education advocate will speak, write or work on behalf of a pupil who qualifies as an individual with exceptional needs, upon invitation of the parent and register with the Board and renew certification every five years by passing the prescribed test.

This bill prohibits the Board from requiring additional training as a condition of certification renewal and requires the Board to administer the certification test for a special education advocate in the applicant's native language.

Staff has several concerns with this bill:

1. This bill does not require that individuals providing services as a special education advocate be certified, have training, or pass an examination ensuring knowledge and understanding of the process of resolving special education disputes;
2. This bill offers no additional public protection as it is purely voluntary and does not regulate an activity or practice;
3. This bill requires the special education local plan area to develop the special education certification program, establish certification fees, and develop a training program related to alternative dispute resolution. However, this bill requires the Board to issue the special education advocate certificates, develop the related examination, and collect fees that are reasonable to the cost of the examination. This presents a number of problems, including but not limited to:
 - a. The local plan area determines a certification fee based on reasonable costs associated with training. However, the Board issues the certificates. The bill does not give the Board the authority to collect fees for costs it will incur for program administration.
 - b. The Board must develop a test based on a knowledge, practice, and skill set not under its jurisdiction. The practice of dispute resolution is not related to any activity regulated by the Board. Additionally, the training and scope of education is developed by the special education local plan area. It would be impossible for the Board to develop an examination based on the structure of the proposed certification program.
 - c. The special education local plan area develops the certification program, but the Board is required to issue the certificates. It is unclear how the Board would issue certification without developing and implementing the certification program.
4. This bill prohibits the Board from requiring any education or proof of continuing competency in special education advocacy upon renewal of certification.

5. The scope of practice of a special education advocate is not similar to the scope of practice for any of the Board's current licensees. Therefore, staff believes the task of certification is better left to an agency that is directly involved in the education process, such as the Department of Education, or even the special education local plan areas.

Ms. Johnson explained that the Special Education Local Planning Area (SELPA) typically conducts training for certification in a number of areas. She expressed that the school district and SELPA are capable of doing the training for the certification.

Ms. Johnson added that parents who are having a dispute are not going to turn to the school district or SELPA for an advocate. They are more likely to turn to the Department of Education. It makes sense for the Department of Education to oversee this certification.

Ms. Rhine stated that Ms. Helms tried to speak to the author's office and provide technical assistance. They may be more open to discussion once they receive a letter of opposition to their bill from the Board.

Ms. Rhine explained that the bill is poorly crafted. It sets a framework that can be harmful because it sets up a certification that is voluntary. The areas that have more money that want to implement this voluntary plan will have a different standard of care compared to areas that do not have a lot of money. The requirements are very minimal and there will be different standards based on area.

Ms. Johnson added that this is not congruent with free and appropriate public education.

Renee Lonner moved to recommend to the Board an oppose position on SB 462. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

VI. Discussion and Possible Regulatory Action to Make Non-Substantive and Technical Changes to California Code of Regulations Title 16, Sections 1832.5 and 1889.2

Ms. Helms reported that due to recent statutory changes, technical and non-substantive amendments to current regulations are needed. Staff identified two non-substantive changes in Division 18 of Title 16 of the CCR:

1. Repeal §1832.5: This section allows the Board to accept a degree from a school that had been approved to operate by the Bureau for Private Postsecondary and Vocational Education (BPPVE) as of June 30, 2007. The BPPVE was sunset on July 1, 2007.

The purpose of this section was to allow the Board to continue to accept degrees from schools that had been approved by the BPPVE prior to its sunset date. There is a provision in this section stating it shall become inoperative if a successor agency to the BPPVE is established. The Bureau for Private Postsecondary Education (BPPE) was created and replaced the BPPVE. Therefore, this section is now inoperative.

2. Amend §1889.2(b): This section discusses Board revocation of the registration of an MFT referral service. It states that the referral service appeals committee is to consist of three Board members, one of whom is a public member and two of whom shall be members representing two of the three license types issued by the Board. With the addition of the professional clinical counselor license (LPCCs), the Board now issues four license types. This section needs to be revised to reflect this.

Judy Johnson moved to direct staff to make any non-substantive changes to the California Code of Regulations Title 16 , Sections 1832.5 and 1889.2 and submit to the Board for consideration. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

VII. Discussion and Possible Action Regarding Regulatory Changes to Implement Provisions of Senate Bill 1111 (Negrete McLeod, 2010)

Ms. Helms presented SB 1111, Health Care Enforcement Reform Act.

Over the past three years, there have been many efforts to streamline the enforcement process of the healing arts boards in response to an issue with the Board of Registered Nursing. Typically, many boards within the Department of Consumer Affairs (DCA) take an average of 3 years to investigate violations of the law. During this process, consumers are unprotected.

SB 1111 was introduced in 2010 and the goal was to provide healing arts boards with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the the Senate Business, Professions and Economic Development Committee.

A new version of that bill, SB 544, is sponsored by the Senate Business, Professions and Economic Development Committee. It has many of the same provisions as SB 1111, and it has the same intent. The goal is to reduce the average time frame for an investigation to 12-18 months. However, SB 544 is a two-year bill. It failed in the Senate this year; it will be up for consideration in 2012.

Because this is a urgent matter and the need to protect consumers is a priority, the Senate Business, Professions and Economic Development Committee asked DCA and the healing arts boards to individually seek regulations to implement any provisions of the two bills that does not need statutory authority. The DCA legal office reviewed the two bills and identified four categories that boards have authority to implement through regulations:

1. Delegation of Certain Functions

Proposed Action: Use regulations to delegate to the Board's Executive Officer the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license, or allow the Executive Officer to delegate this function to another designee.

In cases where a licensee has voluntarily admitted to charges and agreed to the revocation, surrender, or suspension of their license, there is little discretion for the Board not to adopt the agreement. Allowing the Executive Officer to approve such an agreement, instead of requiring a full board vote, will shorten the timeframe for these cases, allowing them to become effective more quickly.

2. Required Actions Against Registered Sex Offenders

Proposed Action: Use regulations to require that the Board deny or revoke a license if the applicant or licensee is required to register as a sex offender pursuant to Penal Code Section 290. In addition, require that the Board deny any petition to reinstate or reissue a license to a registered sex offender.

The Board is already prohibited from issuing a registration or license to any person who has been convicted of a crime that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code. This proposal would clarify that the Board must revoke a license upon finding that an applicant or licensee was convicted of a sex offense, and would clarify that the Board must deny a petition for reinstatement or reissuance.

3. Unprofessional Conduct

Proposed Action: Use regulations to add the following as acts of unprofessional conduct:

- a. Including or permitting inclusion in a civil settlement agreement a provision prohibiting a party in a dispute from contacting, cooperating with, or filing a complaint with the Board, or requiring a party to withdraw a complaint with the Board.
- b. Failing to provide the Board lawfully requested documents within a specified timeframe.
- c. Failure to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory privilege.
- d. Failure to notify the Board within a specified timeframe of felony charges or indictment, arrest, conviction, or of disciplinary action by another licensing entity.
- e. Failure to comply with a court ordered subpoena to release records.

4. Physical or Mental Impairment of Applicants for Licensure

Proposed Action: Use regulations to require that an applicant for licensure be required to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental or physical illness.

Current law allows a Board to order a licensee to submit to physical or mental health examinations if it appears the licensee's ability to practice in a competent manner may be impaired due to a physical or mental illness. Existing codes specify that the Board may refuse to issue a license or registration if it appears the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. This proposal would clarify that the Board may require an applicant undergo an evaluation or examination in order to verify an illness.

Ms. Lonner requested clarified language on e. under Unprofessional Conduct (above). She explained that lawyers issue subpoenas and refer to them as "court ordered" when in fact, they are not court ordered. The therapist is required to get a release from the client and can refuse to cooperate. The language should say "failure to comply with a court order."

Ms. Johnson referred to b. under Unprofessional Conduct (above), explaining that specified timeframes may be outside of the Board's control.

Ms. Rhine stated that this is for policy discussion; this is not the exact language that will be used. Once the Board agrees to these policies, more discussion will take place regarding language.

Mr. Wong expressed that c. should be modified slightly and apply the language "as long as such action does not infringe upon the licensee's constitutional or statutory privilege" to b. and d. under Unprofessional Conduct (above).

Mr. Caldwell referred to d. regarding indictments, arrests, and convictions. He explained that charges, indictments and arrests are different from convictions. Currently, convictions must be reported at the time of license/registration renewal. This would change what is reported to the Board on renewal documents. Mr. Caldwell asked if the Board would take action on a charge, indictment, or arrest. Ms. Madsen responded that it depends on the situation and the underlying circumstances.

Mr. Wong stated that it seems unfair to take action on some individuals, not all individuals. Ms. Rhine reminded the audience that the action is the failure to report, not the arrest.

Ms. Madsen stated that PC 23 allows the Board to temporarily suspend a license/registration when a licensee/registrant has been arrested for an egregious act, until a verdict is made by the court. Mr. Wong responded that it is unfair to take action against those who are arrested but have not been convicted.

Ms. Rhine stated that the Board receives arrest information through fingerprinting. This allows discipline against somebody who fails to report the arrest to the Board.

Ms. Epstein expressed concern regarding discipline action based on an arrest without court proceedings.

Ms. Rhine explained that when the Board receives arrest information, the Board does not see other documentation regarding the circumstances of the arrest. When a licensee/registrant notifies the Board of the arrest, this can be an opportunity for the licensee/registrant to provide that additional documentation, which could work in their favor. The Board has difficulty getting additional documentation from other agencies.

Ms. Johnson stated that these are licensed professionals, and they have taken their ethics training. This is not about taking a license away because the licensee was arrested; this is about a licensee not complying with the requirements.

Mr. Caldwell stated that if the intent is to request additional documentation regarding the arrest, the intent is not understood in the language. Ms. Rhine agreed, stating that she believes the intent is to gather more information regarding the arrest.

Ms. Johnson recommended writing the language to clarify the intent.

Very brief discussion took place regarding Physical or Mental Impairment of Applicants for Licensure. It was agreed that the intent should be to include all applicants as opposed to applicants for licensure.

Ms. Epstein requested language for b. under Unprofessional Conduct to clarify that a therapist will not be held for unprofessional conduct when records that involve two parties cannot be provided because one party did not consent to release the records.

Ms. Epstein requested language for c. under Unprofessional Conduct to define "failure to cooperate."

Ms. Epstein added that CAMFT is opposed to SB 544, and they are concerned about how some of the provisions in SB 544 will be reflected in these regulations.

Judy Johnson moved to direct staff to draft regulatory language for consideration by the Board. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

VIII. Legislative Update

Ms. Helms provided a brief update to Board-sponsored legislation.

- SB 274, Professional Clinical Counselors, would extend the grandparenting period for LPCCs. This bill has been passed by the Legislator and is waiting for the Governor's signature.
- SB 363, Marriage and Family Therapists, is on the Assembly floor.
- SB 704, Healing Arts: Licensees: Board of Behavioral Sciences, passed the Assembly and is now with the Senate.

Ms. Helms provided a brief update to Board-supported legislation.

- AB 956, Marriage and Family Therapy: Interns and Trainees: Advertisements, is waiting for the Governor's signature.
- SB 146, Healing Arts: Professional Clinical Counselors, is in the Assembly Appropriations Committee. Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that SB 146 passed the Assembly.

IX. Rulemaking Update

Ms. Helms reported that the rulemaking package for LPCC and LEP CE was approved by the Office of Administrative Law, filed at the Secretary of State on May 24, 2011, and is effective immediately. Staff is now working on implementation.

X. Public Comment for Items Not on the Agenda

No public comments were made.

XI. Suggestions for Future Agenda Items

No suggestions for future agenda items were made.

The meeting was adjourned at 11:30 a.m.