

BOARD MEETING MINUTES August 17-18, 2011

Department of Consumer Affairs
1625 North Market Blvd.
First Floor Hearing Room
Sacramento, CA 95834

Wednesday, August 17

Members Present

Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
Harry Douglas, Public Member
Sarita Kohli, MFT Member
Renee Lonner, LCSW Member
Karen Pines, MFT Member
Christina Wong, LCSW Member

Members Absent

Samara Ashley, Public Member
Judy Johnson, LEP Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel

Guest List

On file

FULL BOARD OPEN SESSION

I. Introductions

Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 8:10 a.m. Christina Kitamura called roll. A quorum was established.

New Board members were introduced. Karen Pines, MFT, previously served as a member of the Board of Behavioral Sciences. She currently teaches at Pepperdine University. Sarita Kohli is a MFT member and currently serves as Director of Mental Health Programs at Asian Americans for Community Involvement in San Jose.

The remaining Board members and Board staff introduced themselves.

II. Petition for Modification of Probation Terms

Dian M. Vorters, Administrative Law Judge, presided over the hearings. Judge Vorters opened the hearing at approximately 8:20 a.m.

a. Cassandra Kendall, ASW 21095

Karen Denvir, Deputy Attorney General (DAG), represented the State of California. DAG Denvir presented the matter. Ms. Kendall presented her request to modify her probation and information to support her request. DAG Denvir cross-examined Ms. Kendall. Board members also posed questions to Ms. Kendall. After responding to all questions, Ms. Kendall presented her closing remarks. Judge Vorters then closed Ms. Kendall's petition hearing.

Judge Vorters called for a recess at 9:05 a.m. The hearings were reconvened at 9:20 a.m.

b. Balvinder Lallian, IMF 63646

Anahita Crawford, DAG, represented the State of California. DAG Crawford presented the matter. Ms. Lallian presented her request to modify her probation and information to support her request. DAG Crawford cross-examined Ms. Lallian. Board members also posed questions to Ms. Lallian. One witness testified. Ms. Lallian presented her closing remarks. Judge Vorters then closed Ms. Lallian's petition hearing.

III. Petition for Early Termination of Probation, Connor McFadden, MFC 47257

Karen Denvir, DAG, represented the State of California. DAG Denvir presented the matter. Mr. McFadden presented his request to terminate probation and information to support his request. DAG Denvir cross-examined Mr. McFadden. Board members also posed questions to Ms. McFadden. Mr. McFadden presented his closing remarks. Judge Vorters then closed Mr. McFadden's petition hearing.

The Board took a break and reconvened in 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

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

V. Pursuant to Government Code Section 11126(e), the Board Will Meet in Closed Session for Confer and Receive Legal Advice from Counsel (*Ventimiglia v. Board of Behavioral Sciences*)

The Board met in closed session to confer with counsel. The Board then took a lunch break and reconvened in open session.

FULL BOARD OPEN SESSION

VI. Presentation by Carolyn Fink, LCSW, Regarding The Soldiers Project

Carolyn Fink gave a presentation on The Soldiers Project. The Soldiers Project was created 7 years ago in an effort to reach out to the veteran population and their families. Ms. Fink gave an overview of what is required of the therapists that work with the veterans at The Soldiers Project. She also emphasized that the treatment is confidential and not reported to the Department of Defense. Ms. Fink discussed differences between the current war versus past wars, as well as the differences between veterans and their issues from the current war versus veterans and their issues from past wars. The Soldiers Project focuses on issues that resulted as soldiers being in combat and difficulties with reintegration of returning home.

VII. Public Comments for Items Not on the Agenda

No public comments were made.

VIII. Suggestions for Future Agenda Items

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), suggested that the Board invite a guest speaker to discuss “realignment” of state prisons, county jails, county probation, and county law enforcement.

IX. Adjournment

The meeting was adjourned at 3:33 p.m.

Thursday, August 18

Members Present

Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
Harry Douglas, Public Member
Sarita Kohli, MFT Member
Renee Lonner, LCSW Member
Karen Pines, MFT Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Rosanne Helms, Legislative Analyst
Michael Santiago, Legal Counsel

Members Absent

Samara Ashley, Public Member
Judy Johnson, LEP Member

Guest List

On file

FULL BOARD OPEN SESSION

X. Introductions

Christine Wietlisbach, Board Chair, opened the meeting at 8:13 a.m. Kim Madsen called roll. A quorum was established. Board members, Board staff, and audience introduced themselves.

XI. Approval of the May 18-19, 2011 Board Meeting Minutes

Corrections:

- Page one, Members Absent: Karen Pines, "Public Member" corrected to "Professional Member."
- Page six, first paragraph: "designated staff" to "designate staff."
- Page two, Item IV: "expenses attributed" to "expenses are attributed."
- Top of page five: "commended" to "commented."

Renee Lonner moved to approve the May 18-19, 2011 Board Meeting Minutes as amended. Harry Douglas seconded. The Board voted (4 pass, 3 abstentions) to pass the motion.

XII. Executive Officer's Report

a. Budget Report

Ms. Madsen reported on the Board budget. As of June 30, 2011, the Board's 2010/2011 budget was \$7,986,577. Board expenditures totaled \$6,833,834, reflecting 96% of the Board's total budget. Regarding expenditures to date, 33% was attributed to personnel services with 21% related to enforcement activities. Projected expenses through the end of the fiscal year reflected an unencumbered balance of \$207,823.

On August 18th, the Board members were provided an updated expenditure report reflecting updated figures and adjustments. Updated figures reflected personnel saving achieved through vacancies, the hiring freeze, and executive orders to reduce spending. Over \$1 million dollars was reverted into the Board fund.

Ms. Madsen reported that the MHSA program has ceased. The funding from Proposition 63 has ended, and the 2010/2011 final budget will reflect that over \$26,000 will be reverted back. The staff member whose position was funded by the Proposition 63 was integrated into the Board's staff and budget.

Ms. Madsen reported that the Board's current fund condition reflects a reserve balance of 2.8 months. The reduction in the Board's fund condition is a direct result of a \$3.3 million loan to the General Fund. Current loans to the General Fund total \$12.3 million: \$6 million in 2002/2003; \$3 million in 2008/2009; and \$3.3 million in 2011/2012.

The Board's 2011/2012 budget is \$7,779,000. This figure reflects the ongoing five percent workforce cap savings through the executive order. Specifically, this order directed the Board to reduce its personnel expenses by five percent and maintain this savings in future budget years. The Board achieved this savings through reclassification of vacant staff positions and the elimination of one position.

On July 22, 2011, the Board received direction from agency to achieve an additional \$323,000 in savings from its 2011/2012 budget. Subsequent to that, the Department of Finance established the target goal as \$44,000. The Board's plan for meeting the target goal is due August 8, 2011 for approval by the Department of Finance. Once the plan is approved, it is expected that the Board will be exempted from the hiring freeze.

b. Operations Report

Ms. Madsen reported that Board staff is comprised of 44 positions. Currently, there is a 20% vacancy rate; a total of seven positions. The Board submitted three requests for a hiring freeze exemption. Two of the three requests were approved. The Board received exemptions to hire four staff for the LPCC program and one clerical position in the fingerprinting program. The third request for a position in our cashiering unit remains pending. Effective September 1st, there will be no staff in the cashiering unit. The exemption request for the cashiering position been changed from one cashier to two cashiers.

Existing vacancies in the Licensing Unit include a Licensed Educational Psychologist evaluator and a fingerprint technician. The additional workload has impacted all licensing and examination programs. There are also two vacancies in the Enforcement Unit.

Ms. Madsen reported that on July 26, 2011 applications for the Licensed Professional Clinical Counselors (LPCC) were posted to the Board's website. On August 1, 2011, Governor Brown signed SB 274 which extends the grandparent application period until December 31, 2011.

Construction in the Board suite was completed late May. The renovations provide the Board with a larger file room, a secure cashiering room, and room for future growth.

Although the Board Outreach Program was significantly reduced, staff was able to participate in two Marriage and Family Therapist (MFT) Consortium meetings. One meeting was held locally in Sacramento and the other was conducted via telephone conference.

The Governor issued an executive order, which restricts in-state and out-of-state travel. Specifically, no travel will be permitted unless it is mission critical or at no cost to the state.

Ms. Madsen gave a brief overview of the Quarterly Statistical Report, emphasizing that the cashiering statistics were achieved with only one cashier on staff. The overall report reflects the processing times with reduced staffing. Ms. Madsen also gave a brief overview of the Enforcement Unit's Annual Performance Report and Performance Measures Report.

Ms. Pines expressed concern that people cannot get through to Board staff over the phone. She asked if other Board members feel that there should be a priority in being more responsive to the public, and if there is any room in the Board's budget to resolve this issue.

Ms. Madsen responded that staff is faced with very challenging decisions regarding operations. Staff is "triaging" and recognizing that it is important to renew a license so the licensee can continue practicing, and to process applications so that applicants can get into the exams. Folks are being directed to the website and communicate through the BBS Webmaster email, which is an easier method for staff to respond. Staff understands that this impacts the licensees. Ms. Madsen has submitted exemption requests for hiring additional staff; however, she must work within the confines of the executive order.

Mr. Wong requested to mail renewal notifications earlier to licensees. Ms. Madsen stated that the renewal application indicates a 4-6 week processing period. Additionally, renewal notifications are mailed out 120 days in advance. Unfortunately, the renewal system does not allow staff to post a renewal more than 90 days in advance of the expiration date. The associations have been very helpful in posting information on their websites regarding the Board's renewal situation.

Ms. Madsen also noted that in regards to the MFT Intern exam applications, staff has been updating the application processing dates weekly to keep applicants informed on the status of their applications.

c. Personnel Update

Ms. Madsen reported that two employees were hired to fill vacancies in the LPCC Program. Two recent departures were also reported. The limited-term appointment for the fingerprint desk expired in May. The recently hired cashier left the Board for a promotional position in June.

d. Licensed Professional Clinical Counselor Update

Ms. Madsen reported that in May 2011, the Office of Administrative Law (OAL) approved the LPCC regulation package, which established the fees necessary to implement the LPCC program. In June 2011, the Board received an exemption to the hiring freeze to hire four staff for the LPCC program. Two of those positions have been filled. Recruitment and hiring efforts for the remaining LPCC positions are ongoing.

Board staff continues to work with the Office of Information Services to modify its database to incorporate LPCCs. The modification will be phased in over several months. Therefore, some of the processes may be done manually until the database is fully operational.

The Board initiated the contracting process with the National Board of Certified Counselors to administer the National Clinical Mental Health Counseling Examination (NCMHCE) to California candidates for LPCC licensure. Development of the Gap Examination and the Law and Ethics Examination for LPCC licensure is complete. It is anticipated that these examinations will be available to candidates in the fall.

e. Sunset Review Update

In 1989, the Little Hoover Commission (Commission) issued a report, entitled Boards and Commissions: California's Hidden Government, which found that boards, commissions, authorities, associations, councils and committees were "operating outside of the normal checks and balances of representative government." In response, the Legislature created the Joint Legislative Sunset Review Committee (Joint Committee) in 1994 whose duties

included routinely reviewing the performance of the various regulatory boards. The review addressed six areas of concerns identified by the Legislature:

- Clarifying Licensing Laws and Regulations
- Implementing Disciplinary Action
- Representation
- Lack of Follow-Through of Mission Statements
- Inefficiencies
- Unethical Standards

Boards notified by the Joint Committee were requested to provide a detailed report regarding the board's operations and programs. Following submission of the report to the Joint Committee, a hearing was scheduled with the Joint Committee to discuss the report and any recommendations from the Joint Committee. If it was determined that a board should not continue to regulate the profession, the board would sunset. Boards within the Department of Consumer Affairs (DCA) that were required to sunset became a Bureau under DCA reporting directly to the DCA Director. The Board went through Sunset Review successfully in 1997, 2005, and 2006.

In May, Ms. Madsen was notified that the Board will undergo a Sunset Review. Although, the process has been revised, the essential question to be answered is should the Board be allowed to continue to regulate the profession in question or not. The Board's report is due on November 1st and will be provided at the November Board Meeting. Once the report is submitted, the Board will be scheduled for a hearing with the Joint Committee in early 2012.

XIII. Licensing and Examination Committee Report

Tracy Rhine reported that the Licensing and Examination Committee (Committee) was cancelled due to travel restrictions. The next scheduled meeting of this Committee is September 15, 2011 in Sacramento.

The new membership of this Committee has been appointed by Board Chair Christine Wietlisbach. The members of the Committee are: Christina Wong, Committee Chair, LCSW Member; Karen Pines, MFT Member; and Sarita Kohli, MFT Member.

XIV. Compliance and Enforcement Committee Report

Ms. Madsen reported that the Compliance and Enforcement Committee (Committee) was cancelled due to travel restrictions. The next scheduled meeting of this Committee is September 15, 2011 in Sacramento.

The new membership of this Committee has been appointed by Board Chair Christine Wietlisbach. The members of the Committee are: Patricia Lock-Dawson, Committee Chair, Public Member; Samara Ashley, Public Member; and Harry Douglas, Public Member.

XV. Policy and Advocacy Committee Report

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

Rosanne Helms reported on SB 462, Special Education Advocates: Certification.

Under current law:

- A local educational agency is required to provide students with exceptional needs and their parents with certain safeguards regarding education. This includes

requesting a due process hearing, requesting mediation, or requesting an alternative dispute resolution.

- The local educational agency initiates and conducts meetings in order to develop, review, and revise the individualized education program of each individual with exceptional needs.
- The local educational agency is required to form a team to develop an individualized education program, and the team must include specified participants under 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.
- The mediation conference must be conducted by a person with the following qualities:
 - Knowledgeable in the process of reconciling differences in a nonadversarial manner;
 - Under contract with the Department of Education; and
 - Knowledgeable in the laws and regulations governing special education.

This bill would allow a special education local plan area to develop a voluntary special education advocate certification program for those who participate as a member of pupil individualized education teams or in mediation conferences. According to the author's office, 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, which is very expensive to 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:

- 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.
- Allows a special education local plan area to: 1) develop a voluntary special education advocate certification program; 2) determine the yearly fee to be charged to someone seeking certification; 3) notify the Board of Behavioral Sciences (Board) whether a person seeking certification has completed alternative dispute resolution training; and 4) provide alternative dispute resolution training at least twice per year for persons seeking certification.
- Requires the Board to 1) administer a test to those seeking certification as a special education advocate; 2) certify a person who has successfully passed the test and fulfilled the training requirement; and 3) charge a fee to a person seeking certification.
- States a certified special education advocate will: 1) speak, write or work on behalf of a pupil who qualifies as an individual with exceptional needs, upon invitation of the parent; 2) register with the Board and renew certification every five years.
- Prohibits the Board from requiring additional training as a condition of certification renewal.

Staff's concerns with this bill:

- This bill does not require that individuals providing services as a special education advocate be certified. This bill offers no additional public protection as it is purely voluntary and does not regulate an activity or practice.
- 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.
- The bill does not give the Board the authority to collect fees for costs it will incur for program administration.
- 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.
- It is unclear how the Board would issue certification without developing and implementing the certification program.
- The value of the certification is questionable because the bill does not outline necessary education or experience requirements for certification. Additionally, this bill prohibits the Board from requiring any education or proof of continuing competency in special education advocacy.
- 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.

Patricia Lock-Dawson moved to oppose SB 462. Karen Pines seconded. The Board voted unanimously (7-0) to pass the motion.

b. Discussion and Possible Regulatory Action to Amend California Code of Regulations Title 16, Section 1811 Relating to Advertising

Ms. Helms reported on proposed advertising regulations.

Business and Professions Code (BPC) Section 651(i) specifies that each of the healing arts boards and committees shall define by regulation 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 to adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services.

Currently California Code of Regulations Title 16 provides some general requirements regarding advertisements for all four of the Board's licenses. However, the regulations do not specifically address all services that are available and how they should be advertised.

In November 2008, the Board approved amendments and directed staff to initiate a rulemaking under the APA to adopt the proposed language amending 16 CCR Section 1811 in order to resolve several issues related to advertising. The regulatory amendments approved at 2008 meeting incorporated the following changes:

- Require any advertisement to include the licensee’s full name, complete license title or acceptable abbreviation, and the license or registration number.
- Includes registrants in the above advertising requirements, and additionally requires them to provide this same information for their supervisor.
- Defines acceptable abbreviations that may be used in an advertisement.
- 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.
- 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 the same code section 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.

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:

- Requires an unlicensed marriage and family therapist intern to provide each client or patient, prior to performing any professional services, with the following information:
 - That he or she is an unlicensed marriage and family therapist registered intern (current law);
 - His or her registration number (new provision);
 - The name of his or her employer (new provision); and
 - Indicate whether he or she is under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology (current law).
- Requires any advertisement by or on behalf of a marriage and family therapist registered intern must include all of the following:
 - That he or she is a marriage and family therapist registered intern;
 - The intern’s registration number;
 - The name of his or her employer; and
 - That he or she is supervised by a licensed person.
- 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:

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

Due to the addition of the LPCC license, 16 CCR Section 1811 had been updated since the advertising proposal was adopted by the Board in 2008. The new regulatory proposal includes the following changes:

- Current version of Section 1811;
- All previously approved changes from 2008; and
- Changes incorporating the AB 956 provisions.

Patricia Lock-Dawson moved to approve the amendments, direct staff to make any non-substantive changes to the proposed language, and submit a regulation package to make the proposed changes. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.

The Board took a break at 9:28 a.m. and reconvened at 9:44 a.m.

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

Ms. Helms reported on proposed enforcement regulations.

Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe.

The first legislative effort was SB 1111 in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

The Senate Business, Professions, and Economic Development Committee is currently sponsoring SB 544. This bill contains many of the same provisions as SB 1111, with intent

of improving efficiency and increasing accountability for boards within DCA. If passed, SB 544 would provide healing arts boards with additional regulatory tools and authority for investigating and prosecuting violations of law. With these new authorities, it is expected that these boards will be able to reduce the average timeframe for an enforcement investigation to 12 to 18 months. SB 544 is a two-year bill, meaning it failed to pass out of the Senate, but will be eligible for consideration in 2012.

Due to the urgent need to protect consumers by streamlining the enforcement process, the Senate Business, Professions, and Economic Development Committee and DCA have asked healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 that do not require new statutory authority.

The DCA legal office has identified several components of the current and previous legislative efforts that may be established through regulations, which are grouped into four categories:

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.

Rationale: 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 or registration 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 or registration to a registered sex offender.

Rationale: The Board is already prohibited from issuing a license or registration to any person who has been convicted of a crime in this or another state or in a territory of the United States 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 or registration 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 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 or consumer's constitutional or statutory rights or privilege.
 - d. Failure to notify the Board within a specified timeframe of felony charges or indictment, conviction, or of disciplinary action by another licensing entity, or failure to provide Board-requested arrest documentation.
 - e. Failure to comply with a court order, issued in the enforcement of a subpoena, to release records.
4. Physical or Mental Impairment of Applicants for Licensure

Proposed Action: Use regulations to require that an applicant for licensure or registration 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.

Rationale: BPC Section 820 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. BPC Sections 4982.1, 4989.26, 4990.28, and 4992.35 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 for a license or a registration undergo an evaluation or examination in order to verify an illness.

At its meeting in July 2011, the Policy and Advocacy Committee recommended that staff make some clarifying changes to the unprofessional conduct sections of the proposed amendments. Additionally, staff made the following changes in the proposal for consideration:

- Removal of the proposed amendment allowing the Board to require an applicant to undergo an evaluation or examination in order to verify an illness, as the Board already has this authority.
- Added registrants into proposed regulations requiring certain actions against registered sex offenders.

Jill Epstein, CAMFT, recommended that the Board wait and see what happens with SB 544. CAMFT will likely oppose some or most of the proposed regulations if this moves forward.

Ms. Wietlisbach asked what the implementation date would be if the Board waits for the statutory changes. Ms. Helms responded that the statutory changes would go into effect on January 1, 2013.

Ms. Lonner pointed out that these are provisions to protect the public, in the meantime, from the most egregious issues. The Policy and Advocacy Committee felt that this was needed.

Mr. Wong agreed with Ms. Epstein's comments. He stated that there may be situations that are urgent in which these provisions would be needed, but that would be unusual or rare.

Ms. Epstein stated it is still unclear whether these provisions can go through the regulatory process, and that still has to be determined. CAMFT feels that the Legislature is the appropriate place to consider these issues.

Renee Lonner moved to direct staff to make any non-substantive changes and submit regulations to make the proposed changes. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.

d. Discussion and Possible Action Regarding the Use of the Title “Licensed Marriage and Family Therapist” in Board Licensing Law

Ms. Helms reported on the “Licensed Marriage and Family Therapist” title.

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 all contain the term “licensed” in their titles.

As marriage and family therapy interns are not licensees of the Board, use of the term “Marriage and Family Therapy Intern” (MFT Intern) would continue unchanged.

After researching the titles used in all of the states, only two other states 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.

At its July 2011 meeting, the Policy and Advocacy Committee recommended that the Board consider changing the current title “Marriage and Family Therapist” to “Licensed Marriage and Family Therapist.”

Ms. Lock-Dawson agrees that it is a good idea to change the title for standardization purposes; however, it is not a priority at this time.

Ms. Lonner pointed out that this would be phased in gradually. The Committee felt that the licensees are entitled to adding the term “licensed” in the title.

Ms. Lock-Dawson asked if anything currently prevents MFTs from using the term “licensed” in their title. Ms. Rhine stated that there is nothing prohibiting them from using the “licensed” term because they are licensed. Ms. Rhine added that staff will not pursue regulations and legislation for this purpose. If staff were to propose any legislation in a section that refers to the title, the change would be incorporated at that time.

Ms. Lock-Dawson responded that gradual changes will create inconsistencies; and as board membership and staff changes take place, there is a concern that this direction will not be

carried out. Ms. Rhine stated that there is a section in law that refers to the change from MFCC to MFT; staff can add the change from MFT to LMFT.

Ms. Wong stated that this title change makes it clear to the public that the MFT is licensed.

Mr. Douglas expressed support for the title change.

Sarita Kohli moved to direct staff to 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. Karen Pines seconded. The Board voted unanimously (7-0) to pass the motion.

e. Discussion and Possible Regulatory Action to Make Nonsubstantive and Technical Changes to California Code of Regulations Title 16, Sections 1832.5 and 1889.2

Ms. Helms reported on technical and nonsubstantive regulatory changes.

CCR Title 1, Section 100 allows an agency to add to, revise or delete regulatory text without following the specified rulemaking procedures if the change does not materially alter the regulations. Due to recent statutory changes, technical and nonsubstantive amendments to current regulations are needed.

- 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.

Assembly Bill 48, Chapter 310 created the Bureau for Private Postsecondary Education (BPPE), which replaced the BPPVE. Therefore, this section is now inoperative.

- 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 LPCCs, the Board now issues four license types. This section needs to be revised to reflect this.

At its meeting in July 2011, the Policy and Advocacy Committee recommended that the Board consider these amendments.

Renee Lonner moved to direct staff to make any nonsubstantive changes to the attached amendments and submit a regulation package to make the proposed changes. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.

f. Legislative Update

Ms. Helms reported on two legislative updates.

SB 274, Professional Clinical Counselors, was signed by the Governor on August 1, 2011. This bill would:

- Extend the grandparenting period through December 31, 2011, for those seeking licensure as an LPCC, as the current grandparenting period is set to expire before the Board is able to accept applications
- Make a technical change to allow supervision by professional clinical counselor or equivalent as acceptable supervision for a grandparenting candidate
- Remove the requirement of annual license renewal for grandparented LPCCs

AB 95, Marriage and Family Therapy; Interns and Trainees: Advertisements, was signed by the Governor.

Ms. Pines requested for a list of approved schools offering LPCC degree programs to be provided at a future meeting. Ms. Rhine stated that the list will be posted on the Board's website.

g. Rulemaking Update

Ms. Helms reported that with the passage of the LPCC rulemaking package, the Board can now run other regulations. Several regulatory proposals that were pending will now be going forward through the Office of Administrative Law.

XVI. Discussion and Possible Action on Assembly Bill 1424 (Perea)

Ms. Rhine presented AB 1424, Franchise Tax Board and Board of Equalization; Suspension of Professional License for Unpaid Tax Debt. AB 1424 was not presented to the Policy and Advocacy Committee because the bill was introduced on July 12, 2011.

This bill would allow the Franchise Tax Board (FTB) and Board of Equalization (BOE) to suspend the licenses of Board of Behavioral Sciences (BBS) licensees, as well as other state-issued professional licenses. This also includes licenses issued by the Department of Motor Vehicles.

The bill was amended on August 15th; however, those amendments do not affect the discussion at the BBS level because the bill would still allow FTB and BOE to suspend BBS licensees.

In 2008, a similar bill was introduced. The Board voted to oppose the bill unless it was amended to delete the content and instead model the bill on the existing practice for child support obligations set forth in Family Code section 17520.

Although there are several technical issues with this bill, the main concern is that this bill allows another governmental entity to suspend BBS licenses, which was the main concern that the Board had with the previous bill. Other concerns were:

- With having another entity take action against BBS licensees, there can be confusion for the consumer and for Board staff, especially if the Board has its own disciplinary actions pending.
- Unintended consequences to patients and continuity of care - The practical side effect of this bill is that patients of board licensed practitioners will suddenly lose their mental health care provider.
- Beginning in July of 2012 the Board will be utilizing BreEZe, the new applicant and licensee database. However, until the transition the Board must continue to use the

current antiquated IT system. This bill will require two new interfaces to two systems, the current system and the BreEZe system. The cost for this change to the vendor and the amount of time and labor from an IT perspective would be substantial. This bill does not provide for a delayed implementation. It would be impossible for DCA to implement the technical requirements of this bill, including updating the licensing system to allow for a temporary license by 2012.

Staff recommends amending this bill to allow the board to suspend the licenses of individuals with outstanding tax liabilities based on the model currently used for individuals in violation of a judgment or order for child support. DCA and the Board already have a process in place that allows the Board to receive information regarding individuals out of compliance with child support orders, and, in turn, requires the Board to take action against those licensees, including suspension or denial of licensure. This model, if applied to licensees and applicants for licensure with outstanding tax liabilities, will provide a mechanism by which to collect due revenue to the state while also allowing the board to retain its regulatory and enforcement functions.

Ms. Lonner expressed that this bill would hurt the consumer and the licensee. The licensee's due process is violated by suspension of the license under this bill. She expressed concern regarding consumer protection and "handing over" the Board's authority to another entity.

Ms. Kohli also expressed concern regarding continuity of care and consumer protection. If an agency has one mental health provider and their license is suspended, it is very unfair to the clients.

Ms. Epstein expressed CAMFT's opposition to AB 1424.

Renee Lonner moved to oppose unless amended as reflected in the analysis. Karen Pines seconded. The Board voted unanimously (7-0) to pass the motion.

XVII. Suggestions for Future Agenda Items

Mr. Douglas suggested a discussion regarding the Sunset law:

- The impacts of the Sunset implementation;
- How the Board is involved in Sunset process;
- How stakeholders are involved in the Sunset process.

Mr. Douglas suggested a discussion regarding budgets:

- Fund reserves;
- Fee structures;
- Loan repayment plan.

XVIII. Public Comment for Items Not on the Agenda

Darlene Davis commented on the new law prohibiting the averaging of supervision hours for interns stating that the new law causes hardships on the interns as well as the supervisors.

XIX. Adjournment

The meeting was adjourned at 11:01 a.m.