

## Policy and Advocacy Committee Minutes January 26, 2012

Department of Consumer Affairs  
El Dorado Room  
1625 North Market Blvd, #N-220  
Sacramento, CA 95834

### Members Present

Renee Lonner, Chair, LCSW Member  
Dr. Judy Johnson, LEP Member  
Dr. Christine Wietlisbach, Public Member  
Christina Wong, LCSW Member

### Staff Present

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

### Members Absent

None

### Guest List

On file

### I. **Introductions**

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:36 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and guests introduced themselves.

### II. **Review and Approval of the October 13, 2011 Policy and Advocacy Committee Meeting Minutes**

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested clarification to the statement on page two "SB 704 will not take place until January 2013." To clarify, the statement was changed to "The changes to the exam process as a result of SB 704 will not take place until January 2013."

On page six, "HIPPA" should be corrected to "HIPAA." Also on page six, "about that this looks like across the country" should be corrected to "about what this looks like across the country."

Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA), referred to page seven. "Gonzalez" should be corrected to "Gonzales."

***Dr. Christine Wietlisbach moved to approve the October 13, 2011 Policy and Advocacy Committee meeting minutes as amended. Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) to pass the motion.***

**III. Legislative Clean-Up to Business and Professions Code Sections 4980.44, 4980.48, 4980.78, 4980.80, 4999.62 and 4999.76**

Rosanne Helms presented additional items for the 2012 Omnibus Bill.

Staff has identified additional amendments to the Business and Professions Code (BPC) which are needed in order to add clarity and consistency to the Board's licensing laws. Draft language for the 2012 Omnibus Bill has already been approved by the Board and submitted to the Legislature. The additional changes, if approved, would be amended through the Omnibus Bill.

1. Amend BPC Sections 4980.44 and 4980.48 – Addition of Licensed Professional Clinical Counselors (LPCCs) to List of Supervisors

SB 363 amended the law to allow LPCCs to supervise Marriage and Family Therapist (MFT) interns if they meet specified additional training and education requirements. BPC Sections 4980.44 and 4980.48 list the allowable supervisors of MFT interns and trainees, but LPCCs are not included in this list.

The recommendation is to amend Sections 4980.44 and 4980.48 to include LPCCs in the list of supervisors of MFT interns and trainees.

2. Amend BPC Sections 4980.78, 4980.80, and 4999.62 – Reference to Health Insurance Portability and Accountability Act

Certain sections of the Board's licensing laws require coursework in California law and ethics that covers, among other topics, the Health Insurance Portability and Accountability Act (HIPAA).

During previous discussions of the 2012 Omnibus Bill at the October 2011 Policy and Advocacy Committee Meeting and the November 2011 Board Meeting, it was requested that references to HIPAA in Sections 4999.32, 4999.57, 4999.58 and 4999.59 be removed and replaced with the term "state and federal laws related to confidentiality of patient health information." The reasoning for this is that HIPAA is a federal law, which in the future could be repealed or replaced with a different title, therefore making the reference obsolete.

Amendments deleting the references to HIPAA in Sections 4999.57, 4999.58, and 4999.59 and instead including the new reference term in Section 4999.32 have already been approved by the Board. However, there are three other code sections in LPCC licensing law that also reference HIPAA.

The recommendation is to amend BPC Sections 4980.78, 4980.80, and 4999.62 to replace the references to HIPAA with the term "state and federal laws related to confidentiality of patient health information."

This amendment would be in addition to the amendments to 4980.78 and 4980.80 that have already been approved by the Board and submitted to the Legislature for inclusion in the 2012 Omnibus Bill.

3. Amend BPC Section 4999.76 – Continuing Education for Grandparented LPCC Licensees

SB 274 repealed the requirement that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as a Licensed Marriage and Family Therapist (LMFT) or a Licensed Clinical Social Worker (LCSW) renew the license annually. However, Section 4999.76 still contains an annual continuing education requirement for these licensees, despite the annual renewal requirement being repealed.

The recommendation is to delete the requirement in Section 4999.76 that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or LCSW must complete 18 hours of annual continuing education. If this provision is deleted, these licensees would be required to show completion 36 hours of continuing education every two years upon license renewal, as is required of all other LPCC licensees.

***Dr. Judy Johnson moved to direct staff to make any non-substantive changes to the proposed language and submit to the Board for approval as Board-sponsored legislation. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.***

#### **IV. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of Regulations Title 16, Section 1833 Related to Telehealth**

Ms. Helms presented possible regulatory action regarding telehealth experience for LMFT applicants.

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies.

Current law limits the number of experience hours that an LMFT applicant may gain performing services via telehealth to no more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth.

This statute is in conflict with California Code of Regulation (CCR) Section 1833, pertaining to experience needed to qualify for LMFT licensure. CCR Section 1833(a)(5) allows no more than 250 hours of experience counseling or crisis counseling on the telephone to count toward the experience required for licensure.

Staff believes that this regulation is outdated, as it only limits counseling via telephone and does not discuss counseling provided over the internet.

Hours of experience that an applicant may gain via telehealth appears to be adequately addressed in BPC Section 4980.43. Therefore, staff believes the conflicting requirement in regulation is no longer needed and proposes striking the regulation.

Ms. Lonner asked if staff feels there are issues with this. Tracy Rhine responded that this is quite technical, and staff does not have any issues with this. The regulation is outdated and obsolete, and the easiest way to address it is to strike the outdated regulation. She added that the definition of telehealth includes real-time interaction between a patient and a health care provider located at a distant site, which includes Skype.

Mr. Caldwell stated that AAMFT-CA would support this change; it seems unnecessarily complex to say that there is a limit of 375 hours on telemedicine but only 250 of those hours can be crisis counseling on the telephone. He agreed that the best way to solve this would be to strike that section. He questioned whether Section 1833(a)(4) should be stricken as

well because it is already in legislation. Ms. Helms responded that in previous discussion regarding this section, it was noted that this change would be included in the SB 363 rulemaking package if the Board approves that proposal. As for Section 1833(a)(4), Ms. Helms stated that she would have to look into what was decided regarding that particular section.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), expressed that she would like to make the same changes to the LPCC law in order to keep it consistent with the other licensing laws since it is a technical issue. Ms. Helms responded that it would be a legislative change; it could not run in a regulation package. This would have to be addressed in the next legislative session.

Ms. Rhine added that the reason this regulation change is coming about is due to recent legislative changes. The LMFT code has changed; therefore, it is necessary to change this legislation. The conforming change has not happened with the LPCC licensing law.

Ms. Porter stated that technical standards such as this are confusing in the field. She supports keeping the technical standards the same across the professions. Ms. Rhine stated that is something that can be discussed in a future meeting.

Dr. Johnson suggested adding this matter (consistent standards across the professions) for future agenda items to discuss.

Jill Epstein, California Association of Marriage and Family Therapists, expressed that CAMFT supports the proposed change.

***Renee Lonner moved to direct staff to make any non-substantive changes and recommend to the Board submission of the approved amendment in a rulemaking package. Christina Wong seconded. The Committee voted unanimously (4-0) to pass the motion.***

**V. Discussion and Possible Action to Amend Business and Professions Code Sections 4980.397 and 4992.05 Related to Accepting Passing Scores from National Examination Vendors**

Ms. Helms presented background regarding acceptance of valid passing examination scores.

SB 704 restructures the examination process for the Board's LMFT, LCSW, and LPCC licensees beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

LPCC law gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Examination (NCMHCE). Based on an in-depth audit that found the NCMHCE met California examination standards, the Board chose to use the NCMHCE. The law now requires that a passing score on the NCMHCE must be obtained less than seven years from the date of the application, and within seven years of the first attempt.

The Board has accepted the Association of Social Work Boards (ASWB) Clinical Level Examination as the acceptable clinical examination for LCSW licensure. ASWB has committed to making the changes required by the Board. If the changes are made in time, the Board hopes to begin offering the ASWB exam as the clinical exam on January 1, 2013.

The Board is beginning evaluation of the Association of Marital and Family Therapy Regulatory Board's (AMFTRB) national exam to determine if it would be suitable for future use as the LMFT clinical licensing exam. In the meantime, the Board will administer its own clinical exam for LMFT licensure.

SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained for LMFT and LCSW candidates, as long as it is passed within seven years of the initial attempt. It does not cover out of state applicants who passed the exam several years ago.

The Board required applicants for LCSW licensure to take the national ASWB written clinical level examination and a California state oral examination from October 19, 1991 until March 30, 1999. In 1999, the Board determined that the ASWB clinical examination did not meet California standards, and switched to requiring passage of both a State-administered written and a State-administered oral examination.

The Board has never accepted a national examination for LMFT licensure.

Board staff contacted ASWB and AMFTRB to determine if other states impose limits on the age of a passing exam score. Both entities indicated that a majority of states accept their national examinations with no age restrictions. AMFTRB surveyed the states using its exam if they imposed an age limit. AMFTRB provided Board staff with a chart showing the policies of the states that responded. (This information was provided in the meeting materials.)

Massachusetts was the only responding state that imposes an age limit of five years. According to a representative for Massachusetts, this limit was agreed upon because it gives applicants a reasonable amount of time to benefit from a passing score, but also ensures the applicant shows familiarity with contemporary issues. However, an applicant with a current license in another state can be offered reciprocity regardless of how old their passing exam score is, as long as their license from the other state is current. If the license is expired and the exam score is over five years old, the applicant may be required to repeat the exam.

The purpose of a licensing examination is to measure a candidate's competency in performing a given profession. Competencies can change over time based on the changing needs of the population. Typically, an occupational analysis is performed every five years to ensure that an examination is still measuring the needed competencies. The following should be considered in deciding whether to limit the age of passing exam scores:

- The degree to which the profession has changed over time;
- Whether the exam, at any point in the past, still accurately measures the competency needed to practice in the present environment; and
- The best way to achieve balance between accurate measurement of competency, and fairness to the applicant.

Mr. Caldwell suggested requesting a report from AMFTRB on how often exam items turn over and any information they can provide illustrating to what degree the fundamental content of the exam has changed over time. That may provide some ideas in determining when an exam score is too old.

Ms. Lonner stated there is the issue of reciprocity and those who were licensed in the past and need to become "re-licensed." Ms. Lonner added that the national exam was probably not a great exam before 1999.

Ms. Rhine pointed out that a person who has been licensed for many years and has continued to practice versus a person who took an exam 20 years ago and has not been practicing is a very different professional. She added that the Massachusetts model is intriguing. Ms. Helms added that the Massachusetts model is written in their policy, not in regulation.

Ms. Lonner asked if ASWB will be prepared to begin testing by the implementation date. Ms. Madsen responded that staff is in negotiations, and there are technical issues that need to be worked out.

Ms. Rhine explained that the technical issues are a result of DCA's new database and changes with BreEZe, which make it difficult to have a process where there is an interface between ASWB and DCA. Board staff and DCA staff continues to work with ASWB to overcome these issues.

Ms. Gonzales asked the Committee to consider those professionals who have been practicing in other states for years without any disciplinary actions against them; there is no need for those individuals to repeat the exam.

Ms. Wong stated that the candidate will have to pass the California Law and Ethics exam and the national exam. The national exam measures the clinical competency, and the law and ethics exam is tailored to California. After the Board implements the national exam, over time, it will be seen if those exam items can truly reflect competency. It is important to not confuse the licensees and to have a standard in place. Seven years could be the standard to begin with, and then it could be changed later if needed.

Ms. Lonner stated by limiting the age of passing scores of the national exam that a judgment is being made about the curriculum, which is a national curriculum. It's a difficult argument to make.

Dr. Johnson suggested gathering more information from Massachusetts and Texas. Massachusetts and Texas licensing provisions have been very similar to California.

Ms. Porter requested the same research to be conducted regarding LPCCs. She suggested going to the American Association of State Counseling Boards (AASCB) for this information. The National Board for Certified Counselors (NBCC) may be able to provide this information as well.

***Renee Lonner moved to direct staff to conduct further research and submit a revised draft to the Board for consideration as a legislative amendment, to include the standard "currently licensed with no disciplinary actions," and to include information regarding LPCC exam limits. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.***

## **VI. Rulemaking Update**

The rulemaking update was provided for reference. Ms. Helms reported that some of the pending regulatory proposals will be grouped together and will run as a single package.

Ms. Epstein expressed concerned regarding the regulations that are going to be proposed to implement provisions of DCA's Consumer Protection Enforcement Initiative. She inquired

about the timeframe it will take for the Office of Administrative Law (OAL) to determine whether the Board has the authority or legality to implement the regulations.

Ms. Rhine responded that determining the authority and legality happens at the end of the process. Ms. Helms files the package with the Office of Administrative Law (OAL) for notice. There is a 45-day comment period, which becomes part of the rulemaking package. Every comment is addressed. OAL does not review final rulemaking package until the end. OAL has 45 days to review the package.

Ms. Helms stated that it will be submitted within the next couple of months, and the 45-day comment period will be noticed. A hearing date will be set where stakeholders can appear and make their comments. Comments are also accepted in writing.

**VII. Public Comments for Items Not on the Agenda**

Mr. Caldwell referred to the language from SB 363, stating that if the clean-up goes through this year, the piece regarding continuous enrollment and practicum will still affect those coming under the new curriculum standards. Schools are dealing with the 90-day window issue in a variety of ways. These schools need guidance for implementation, and it would be helpful if the Board could provide that guidance by providing some information on this issue.

In regards to the issue with the 90-day window for registering as an MFT intern after graduation, Mr. Caldwell expressed that AAMFT-CA opposes eliminating the 90-day window.

**VIII. Suggestions for Future Agenda Items**

Suggestions were noted during the course of the meeting (under agenda item IV).

Dr. Wietlisbach requested a CE Committee update at the next Policy and Advocacy Committee meeting.

The meeting was adjourned at 10:47 a.m.