

BOARD MEETING MINUTES February 29 – March 1, 2012

Department of Consumer Affairs
Hearing Room
2005 Evergreen St., #1150
Sacramento, CA 95815

Wednesday, February 29th

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
(arrived at 1:29 p.m.)
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Sarita Kohli, LMFT Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Christina Wong, LCSW Member

Members Absent

None

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Rosanne Helms, Legislative Analyst
Marc Mason, Administration/Exam Manager
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel
Dianne Dobbs, Legal Counsel

Guest List

On file

FULL BOARD OPEN SESSION

I. Introductions

Dr. Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 8:27 a.m. Christina Kitamura called roll. A quorum was established.

II. Petition for Modification of Probation, Joel Fishman, LMFT 7650

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Karen Denvir, Deputy Attorney General (DAG) represented the Board. Board members introduced themselves for the official record. Joel Fishman represented himself.

Judge Frink opened the hearing. DAG Denvir presented the matter. Mr. Fishman presented his request to modify probation and information to support his request. DAG Denvir cross-examined Mr. Fishman. Board members also posed questions to Mr. Fishman.

Judge Frink closed the hearing at 9:37 a.m. The Board took a break and reconvened at 9:52 a.m.

III. Petition for Early Termination of Probation, Benton Dorman, LEP 2489

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, DAG, represented the Board. Benton Dorman represented himself.

Judge Frink opened the hearing. DAG Crawford presented the matter. Mr. Dorman presented his request to terminate his probation early and information to support his request. DAG Crawford cross-examined Mr. Dorman. Board members also posed questions to Mr. Dorman. After answering all questions, Mr. Dorman presented his closing remarks.

Judge Frink closed the hearing at 11:16 a.m. The Board entered into 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 Regarding Disciplinary Action

At the conclusion of the closed session, the Board took a break for lunch.

FULL BOARD OPEN SESSION

The Board reconvened in open session at 1:22 p.m. Ms. Kitamura called roll. A quorum was established. Board members, Board staff, and public attendees introduced themselves.

V. Approval of the November 9-10, 2011 Board Meeting Minutes

A revised draft copy of the November Board minutes was provided. No amendments were suggested.

Karen Pines moved to approve the November 9-10, 2011 Board meeting minutes as amended. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.

Dr. Wietlisbach took Item VII (Executive Officer's Report) out of order and. Item VI (Presentation by Board Counsel on Ethical Decision Making) was taken after Item VII.

VI. Presentation by Board Counsel on Ethical Decision Making

Dr. Wietlisbach introduced Board Counsel Michael Santiago. Mr. Santiago presented the top ten rules of the Bagley-Keene Open Meeting Act, and explained each of those rules and the Board members' responsibilities regarding the requirements of the meeting agenda, gathering of the board or a committee (serial meetings), teleconference meetings, public comments, closed sessions, and conflicts of interests.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), asked if Board members can attend conferences sponsored by associations and speak to licensees/conference attendees. Mr. Santiago replied that there is no prohibition to attending and speaking at the conferences. He added that Board members are encouraged to attend and participate in these conferences as Board representatives.

VII. Executive Officer's Report

a. Budget Report

Patricia Lock-Dawson joined the meeting at 1:29 p.m.

Kim Madsen reported on the Board's budget. The 2011/2012 budget is \$7,779,000. Expenditures as of December 31, 2011, total \$3,386,460, which represents 17% of expenditures in personnel expenses and 9% in enforcement activities. Revenues as of December 31, 2011, are \$4,396,080.33 representing 57% of the total budget. Projected expenses through the end of the fiscal year, which include the additional BreEZe costs, are estimated to be no more than \$7.7 million.

The Board's current fund condition reflects a reserve balance of 3.1 months. The General Fund loan total to date is \$12.3 million.

In January, the Governor released his 2012/2013 budget. The proposed budget provides \$8,153,000 in authorized spending for the Board, a slight increase from the Board's current year spending authorization. The Governor's budget also provides for a repayment of \$2 million dollars to the Board for monies previously loaned to the General Fund.

The Governor's budget also included reorganization of state government to make it more efficient by consolidating functions. Although it appears that the Board will not be directly impacted by the reorganization proposal, changes proposed to the Department of Consumer Affairs (DCA) and State and Consumer Services Agency could result in some indirect changes. Board staff will continue to monitor developments and will provide reports to the Board as more information is obtained.

Christina Wong noticed that the budget does not reflect an increase of staff due to the new licensure program, which will result in current staff sharing an increased workload. Ms. Madsen confirmed Ms. Wong's statement. Ms. Madsen added that staff has discussed submitting a Budget Change Proposal (BCP) for the 2013/2014 fiscal year to add staff.

b. Operations Report

Ms. Madsen reported on the Board's operations. For the first time since June 2010, the Board is now fully staffed. In November 2011, the Board was notified it was no longer subject to the provisions of the hiring freeze. Board staff moved quickly to fill its existing vacancies. There are two vacancies remaining in the Enforcement Unit, which are positions for additional staff.

Ms. Madsen provided an update on the Licensing and Examination Program. As of January, the licensing program is fully staffed for the first time since June 2010. Once the new staff is fully trained the Board anticipates a reduction in processing times in the coming months. The additional staff has allowed for the redirection of some of the less complex tasks associated with the evaluation of Marriage and Family Therapist (MFT) examination eligibility applications to other staff.

The fourth quarter statistics reflect a decrease in application volume for all licensing programs. As of February 19th, staff is working on applications received during the weeks noted:

- MFT intern registration - January 23, 2012
- MFT exam eligibility - September 20, 2011
- Associate Social Worker (ASW) registration - February 2, 2012
- Licensed Clinical Social Worker (LCSW) exam eligibility - January 17, 2012
- Licensed Educational Psychologist (LEP) exam eligibility - February 17, 2012
- Continuing Education (CE) Provider - January 3, 2012

Over 2,000 examinations were administered in the fourth quarter. Ten examination development workshops were conducted in October and November. The Board utilizes over 300 licensees as Subject Matter Experts (SME) to develop its examinations. A recent change in law now requires the Board to initiate a contract with each of these SMEs for this work. Board staff worked extensively to ensure that a contract for each SME was obtained by December 31, 2011.

Efforts to implement the examination restructure have begun. Board staff is working with the BreEZe team to ensure the modifications necessary in the BreEZe database system are incorporated by the effective date of January 1, 2013.

In regards to the Cashiering Unit, it has been fully staffed since November 2011. The processing times for renewal applications have been reduced from 29 days to 7 days, and processing times for other applications have been reduced from 35 days to 11 days.

Ms. Madsen provided an update on the Enforcement Unit. The Manager and the Special Investigator positions remain vacant. A tentative offer was made to an individual to fill the position of Special Investigator. This individual must complete a background check through the Division of Investigation, which takes about 30 days to complete. Interviews were conducted for the Enforcement Manager position; Board staff is waiting for hiring approval from the Department of Personnel Administration before an offer is extended.

Enforcement staff continues to meet or exceed their performance measures with the exception of the overall timeline it takes to process a disciplinary case. The current quarterly average is 960 days. However, this performance target is dependent upon the staffing and workload of outside agencies, such as the Attorney General's Office (AG) and the Office of Administrative Hearings (OAH).

Ms. Madsen provided an update on BreEZe. Implementation of the BreEZe system for the Board is scheduled for August 2012. Board staff has invested a lot of time and resources towards the implementation of this new system.

Ms. Madsen provided an update on the customer satisfaction survey. The fourth quarter reflects an improvement in overall satisfaction, accessibility, and courtesy. The successful service rating dropped from the third quarter but is higher than last year's rating. As the backlog continues to decrease, it is anticipated that the rating will improve.

Ms. Madsen provided an update on the Sunset Review. The Board's Sunset Review hearing has been scheduled on March 19, 2012.

Ms. Madsen provided an update on the Financial Integrity and State Manager's Accountability Act (FISMA) Report. Board staff submitted the report to DCA in November 2011. Staff identified the implementation of BreEZe, lack of sufficient resources to accomplish the Board's work, and implementation of the examination restructure as potential risks that may prevent the Board from fulfilling its mandate. Staff also identified steps it will use to mitigate these potential risks.

c. Personnel Update

Ms. Madsen reported on the Board's personnel update. Since November 2011, the Board has hired five staff members. Ms. Madsen introduced the Board's new Administration and Examination Program Manager, Marc Mason. Mr. Mason comes to the Board from DCA's Legislative and Policy Review Division and has worked on a number of the Board's legislative issues.

d. Licensed Professional Clinical Counselor Update

Ms. Madsen provided an update on the Licensed Professional Clinical Counselor (LPCC) program. The grandparenting application period ended on December 31, 2011. A total of 3,433 grandparenting applications were received. Over 2,000 of those applicants were California LMFTs and 158 were LCSWs.

As of February 6, 2012, one hundred and twenty eight (128) candidates were approved to take the GAP examination. Fifty-four candidates were approved to take the Law and Ethics examination. As of February 28th, there are 9 registered Professional Clinical Counselor (PCC) interns and 2 LPCCs.

Ms. Madsen stated that as of two weeks ago, the two LPCC evaluators were processing intern applications received in October 2011. Two challenges that the LPCC evaluators are facing are: 1) volume, and 2) schools that have not submitted their program curriculums. Schools that have already been reviewed by the Board are listed on the Board's website.

e. Association of Social Work Boards National Examination Update

Ms. Madsen provided an update on the progress of utilizing the Association of Social Work Boards (ASWB) national examination. In 2010, the Board moved forward and began discussions regarding implementation of the ASWB national examination. However, due to the implementation of the LPCC program, this project was placed on hold.

Following the November 2011 Board meeting, staff contacted ASWB to express our interest in resuming this project. Two meetings were held with ASWB representatives to discuss the format in which examination eligibility and examination results would be exchanged. Due to the implementation of BreEZe, this was an important component before beginning discussions regarding the contract.

The next step is to begin initiating the contract with ASWB to utilize the national examination.

VIII. Continuing Education Committee Report

Dr. Johnson provided a report on the Continuing Education Committee (Committee). The issues that the Committee is discussing:

- The possibility of an accreditation body for CE approval;
- Self-study versus online courses:
 - Definitions,
 - Differences;
- Grant CE credits to SMEs in exam development;
- Scope of approval – What authority does the Board have in approval of CE providers?
- Review of coursework and content
- Cite and fine CE providers
- Continuing competency model

The Committee is encouraging the associations to provide information and list issues that they want to discuss.

Tracy Rhine stated that the Committee will hold a public meeting on April 18th.

Dr. Harry Douglas added that there are two broad conceptual pieces: the accreditation model and the continuing competency model. He also stated that the Committee and Board staff will have one more meeting before the public meeting on April 18th.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), expressed that there should be a way to involve the public and associations in these Committee meetings. He stated that he wants stakeholders to provide input.

Ms. Rhine explained the reasons for forming a 2-member committee are to reduce staff's workload and be able to move the Committee's work faster. A lot of the work involves research by Board staff. The idea is to have this type of work completed so that the information can be presented in a public meeting setting. She indicated that no decisions will be made at the Committee level. A public meeting will take place on April 18th. The outcomes of that meeting will be discussed at the Policy and Advocacy Committee where they will make recommendations to the Board regarding the work of the Continuing Education Committee.

Dr. Douglas stressed that there will be no operational decisions made by the Committee. The Committee needs the input from the community.

Dr. Wietlisbach also stressed that there is no intent to make decisions without public input. This is at the information-gathering stage, and there will be plenty of opportunities for the public and the associations to assist the Board with this endeavor.

Ms. Lock-Dawson inquired on the timeline for the Committee's work. Ms. Rhine added that there are no established timelines at this point because this is at the beginning stages, and this will be a huge undertaking.

Jill Esptein, CAMFT, asked if the vision is to propose a comprehensive CE overhaul at the end of the process, or to address each issue one-at-a-time and make recommendations along the way.

Dr. Douglas replied that this is why the Committee wants to approach this conceptually first. Once the Committee knows what this model should look like, then it can be approached incrementally, and then timeframes can be established.

IX. Discussion Regarding California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Boards

Dr. Wietlisbach introduced Dr. Tracy Montez, Applied Measurement Services. Dr. Montez provided a brief update. The Association of Marital and Family Therapy Regulatory Boards (AMFTRB) sent a number of reports to Dr. Montez in January. She is currently reviewing those reports and formulating follow-up questions.

X. Policy and Advocacy Committee Report

a. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of regulations Title 16, Section 1833 Related to Telehealth

Rosanne Helms presented on the limit on telehealth experience for LMFT applicants.

Current law 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 applicant for licensure as an LMFT may gain performing services via telehealth to 375 hours.

This statute is in conflict with California Code of Regulation (CCR) Title 16, Section 1833, pertaining to experience needed to qualify for LMFT licensure. Section 1833(a)(5) allows no more than 250 hours of experience 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.

Karen Pines stated that there should be further discussion as to how the laws apply to the internet. She also stated that Skype should be considered when talking about online counseling, either for gaining hours or starting a business. Ms. Lonner stated that this would be a good future agenda item.

Christina Wong moved to authorize staff to make any non-substantive changes and pursue a regulation package to make the proposed amendment. Renee Lonner seconded. The Board voted unanimously (9-0) to pass the motion.

b. Discussion and Possible Action Regarding Legislative Clean-up to Business and Professions Code Sections 4980.44, 4980.48, 4980.78, 4980.80, 4999.62 and 4999.76

Ms. Helms presented additional items for the 2012 omnibus bill.

Upon review, 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. Although draft language for the 2012 omnibus bill has already been approved by the Board and submitted to the legislature, these additional changes, if approved, would be amended in to the omnibus bill.

1. Amend BPC Sections 4980.44 and 4980.48 – Addition of LPCCs to List of Supervisors.

SB 363 amended the law to allow LPCCs to supervise 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 13, 2011 Policy and Advocacy Committee Meeting and the November 9, 2011 Board Meeting, it was requested that reference to HIPAA in code 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 reference 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 the three code sections in LPCC licensing law to replace the reference 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 Sections 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 an LMFT or 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 a 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.

No discussion. No public comment.

Sarita Kohli moved to direct staff to make any non-substantive changes to the proposed language, and submit to the Legislature for inclusion in the 2012 omnibus bill. Samara Ashley seconded. The Board voted unanimously (9-0) to pass the motion.

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

Ms. Helms presented on the acceptance of valid passing examination scores.

SB 704 restructures the examination process for the Board’s LMFT, LCSW, and LPCC applicants 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.

For LPCCs, SB 704 specified that a valid passing score on the clinical examination must have been obtained less than seven years prior to the application date. This was based on current law for LMFTs and LCSWs that require a passing score on the standard written exam be no more than seven years old in order to be eligible to participate in the clinical vignette examination.

LPCC statute 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 ASWB Clinical Level Examination as the acceptable clinical exam 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 be able to begin offering the ASWB exam as the clinical exam when the exam-restructure takes effect on January 1, 2013.

The Board is beginning evaluation of the AMFTRB national examination to see if it would be suitable for future use as the clinical exam for LMFT licensure in California. The Board will continue to administer its own clinical exam for LMFT licensure until the national exam is found to meet the prevailing standards for validation and use of licensing and certification tests in California, and the Board accepts the use of the exam.

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 account for out of state applicants who passed the exam several years ago. For example, if the Board were to accept a national exam for LCSWs, an applicant could, under SB 704, apply using a passing exam score that was 10 years old, despite the fact that the Board has determined previous versions of that exam did not meet California standards.

The Board required applicants for LCSW licensure to take the national ASWB written clinical level examination, plus a California state oral examination, from October 19, 1991 until March 30, 1999. At that time, the Board determined 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, AMFTRB, and the National Board for Certified Counselors (NBCC) to determine if other states impose limits on the age of a passing exam score. All three entities indicated that a majority of states accept their national examinations with no age restrictions.

Some states do impose age restrictions for applicants who do not hold current licensure in another state:

- In Massachusetts, passing scores of the NCMHCE exam are valid for five years for unlicensed individuals. Passing scores of the ASWB exam are valid for two years for unlicensed individuals. There is no age limit on exam scores for MFT applicants, although the state's board is looking into adopting a limit.
- In Texas, passing scores of the NCE exam are valid for five years for unlicensed individuals.
- In Illinois, an unlicensed individual must apply for licensure as a clinical social worker within one year of passing the required exam.

Individuals in these states who hold the license for which they are applying in another state may be granted reciprocity without further exam. Policies vary from state to state and depend on license types; but in general, the exam is waived if a license is current and in good standing and if the state accepts the exam they have already taken toward licensure, and/or if licensing standards in the other state are deemed substantially equivalent.

The age of exam score issue was discussed at the January 2012 Policy and Advocacy Committee (Committee) meeting. The Committee directed staff to examine licensing laws

and regulations in the states of Massachusetts, Texas, and Illinois, for any age limits imposed on national exams.

Mr. Wong stated that typically the public sees the language changes at the committee level, has a discussion on the specific language changes at the committee level, then the changes are processed from Committee to the full Board. This process is taking a shortcut from the normal process.

Ms. Helms responded that staff proposed different language to the Committee, and staff was directed by Committee to change the language and bring it to the Board for discussion and action.

Dr. Wietlisbach explained that the policy used by Massachusetts was discussed at the Committee meeting. The Committee liked the idea of that policy and directed staff to draft language based on the Massachusetts' policy and bring it to the Board for consideration.

Mr. Wong expressed that a full review of the specific language with public comment in committee would be in order for this issue.

Ms. Rhine explained that this is something that is needed immediately because of the exam restructure taking place in January 2013 and the fact that the Board is trying to get ASWB specifically online beginning January 1, 2013. Legislation is needed this year.

Mr. Wong made additional comments/points for consideration:

- If a person has been in practicing for a number of years, does he/she need to take the exam again?
- The nature of the exam and its purpose versus the practitioner's area of practice/specialty.
- Age of exam score should not be solely considered. Other "checks and balances" are currently in place, such as continuing education requirements.

Ms. Kohli responded to Mr. Wong, stating that she would not want to take another exam. However, it is the license that allows one to practice in various specialties. If one chooses to practice in a specific specialty, the license still allows him/her to work in other areas. The licensee may never take a continuing education course related to their specialty. Since continuing competencies have not been established, there is no way for the Board to regulate what the licensee is doing after many years of taking the exam.

Ms. Pines responded to Mr. Wong, stating that it is not unreasonable to take another exam. A person may specialize in an area in his/her state, but may not practice that specialty in a new state.

Dr. Johnson stated that if a licensee from another state is currently licensed and practicing, in good standing, has not been disciplined, and passes the law and ethics exam, then he/she should be able to practice in California. The Committee is not trying to create obstacles to licensure in California.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that since this proposal addresses only those who are not currently licensed, and the language does not imply retesting for currently licensed individuals, she is in favor of the recommended language.

Ms. Epstein complimented the Board and staff on the draft language presented pointing out that the language allows the current exam accepted for LMFTs as well as a national exam for LMFTs in the future.

Dr. Montez also complimented the Board and staff, stating that the amendments reflect balancing fairness to candidates and consumer protection. The language delineates between those who are licensed, in good standing and meet minimum competent standards versus those who are not licensed. She agrees with the 7 years because it is consistent with the uniform federal guidelines on employee selection procedures which suggest that scopes of practice are evaluated every 3-7 years, and the exams are based on the scopes of practice.

Renee Lonner moved to direct staff to make the decided-upon changes to the amendments and submit to the Legislature for inclusion in a Board sponsored bill. Patricia Lock-Dawson seconded. The Board voted unanimously (9-0) to pass the motion.

The Board took a break at approximately 3:15 p.m. and reconvened at 3:32 p.m.

d. Discussion and Possible Action Regarding Uniformity of Experience and Supervisions Provisions of LMFT, LPCC, LEP and LCSW licensing law

Ms. Helms presented on code uniformity.

The four license types issued and regulated by the Board have many similarities across each profession's licensing law. The differing codes have evolved over time based on the unique differences and needs of each profession. In some cases, standardization in the law across the professions may help provide clarity and consistency to both licensees and consumers. In other cases, differences in the law may be needed in order to preserve the distinction between the professions.

At the January 2012 Policy and Advocacy Committee meeting, there was a request for Board guidance regarding the uniformity of the code sections. The questions raised were:

1. Should it be a goal of the Board to make the code sections more uniform, or should the differences in codes be regarded as a part of the uniqueness of each profession?
2. Are there any specific areas that could be made more consistent?

When making legislative and regulatory changes, staff considers uniformity across the codes on a case-by-case basis. When changing one particular code for one license type, if it makes sense to make a change for all professions, then such an amendment is proposed. Legislative and regulatory amendments that the Board is pursuing or has recently pursued:

1. SB 943 - Last year's Board omnibus bill amended several code sections to include LPCCs where the Board's other license types were already included, and made consistent changes to each code section regarding number of registrants allowed for a supervisor.
2. SB 274 - Added a definition of "engaging in practice" for each license type, as was already defined in LMFT law.
3. SB 704 - Restructured the Board's examination process for LMFT, LCSW, and LPCC applicants. A standard exam process was adopted for each of these three license types, setting up a pathway for the Board to possibly accept the national examination for each profession in the future.

4. Advertising Regulations - A regulatory change is being sought to make advertising regulations more consistent among the professions. It would require all licensees to include a license or registration number in an advertisement and would clarify acceptable titles and abbreviations for each license type.
5. Supervisors of ASW Regulations - Regulatory proposal seeks to require supervisors of ASWs be licensed for two years prior to commencing any supervision, which is currently required for supervisors of MFT and PCC interns.

There are several code sections which could be made more consistent across the professions. Some differences may exist for a reason, while others may be inadvertent differences made as the code sections have evolved separately over time. Below are some possible areas that may require evaluation:

1. Professional Experience Requirements - There are various differences in the hours of professional experience required for LMFT, LCSW, and LPCC applicants:
 - a. LMFT applicants are required to obtain no more than 375 hours of counseling experience via telehealth, while LPCC applicants are limited to not more than 250 hours providing counseling via telephone. There is no similar provision in LCSW law.
 - b. LMFT law allows 1,300 hours of supervised experience prior to the granting of the masters degree, while LCSW and LPCC laws do not allow this.
2. Supervision by a Licensee - LCSW licensing law requires at least 1,700 of the 3,200 hours of post-degree supervised experience be obtained under a LCSW. There is no similar provision in LMFT or LPCC law.

Staff would like the Board to consider the following questions:

- Should uniformity of the codes be a goal, or should it be decided on a case by case basis?
- Are there any particular areas where the Board sees a need to make its code sections consistent that should be prioritized?

Ms. Lonner stated that staff has done an excellent job alerting the Board of discrepancies. She expressed that uniformity should continue to be decided on a case-by-case basis, and does not see any areas of priority.

Ms. Wong concurred with Ms. Lonner, stating that the professions do not have to be identical and the Board should consider the uniqueness of each profession. With the LEP, it will not be possible for all professions to be uniform.

Ms. Porter suggested aligning the details where it would affect interns working in agencies, such as the requirements of 375 hours of counseling via telehealth for LMFT applicants and 250 hours for LPCC applicants.

Ms. Helms welcomed any ideas from associations that can be brought forward and discussed at the Board meetings

Mr. Wong agreed with Ms. Porter, however, the professions are different. He suggested that the Board should bring in more licensees so that the Board can have a better idea of what the licensees do in the workforce and the range of their work.

Christina Wong moved to direct staff to use Board direction when drafting future legislative and regulatory proposals and to seek changes on a case-by-case basis. Dr. Judy Johnson seconded. The Board voted unanimously (9-0) to pass the motion.

e. Legislative Update

Ms. Helms presented the legislative update. The Board is running the following bills this year:

- SB 632 - This bill is an urgency measure which will amend the section of licensing law and restore the original intent of SB 363 of requiring only specified MFT trainees to enroll in practicum to counsel clients.
- SB 1527 - This bill proposal adds a requirement, similar to the requirements in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics.
- Bill proposal regarding the 90-day rule for MFT and PCC interns - This proposal would delete the 90-day rule for MFT and PCC intern applicants, and instead require that they be registered with the Board as an intern before gaining any experience hours toward licensure.
- Omnibus legislation - This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

f. Rulemaking Update

Ms. Helms presented the rulemaking update. There are several pending regulatory proposals previously approved by the Board. Staff is currently running the proposals.

XI. Discussion and Possible Action Regarding Gaining Post-Degree Experience Prior to Registration with the Board

Ms. Helms presented on the deletion of the 90-day rule for LMFTs and LPCCs.

The Board approved the amendments contained in this proposal at its November 2011 meeting and directed staff to seek Board-sponsored legislation. However, due to concerns raised by stakeholders, members of the Board have requested a second Board discussion to revisit the issue.

Under current law, an applicant for MFT intern registration or PCC intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern. This allowance in the law is commonly referred to as “the 90-day rule.”

There is no 90-day rule for applicants for an ASW registration. They may not gain supervised experience hours until registered as an ASW.

The 90-day rule has been in LMFT licensing law for many years. It is now in the LPCC licensing law. Historically, the rule has assisted recent graduates in obtaining some of their supervised experience hours during the time they are waiting for their intern registration number. Before fingerprint processing was submitted electronically, there was at times a several-month wait between the time an applicant graduated and an intern registration number was issued. The 90-day rule allows the applicant to use any wait time to start gaining some of his or her supervised experience required for licensure, provided he or she submits an application to the Board within 90 days of the degree being granted.

On average, it currently takes the Board approximately 38 days to process MFT intern application and issue an intern registration number, if the application is complete. If there is any missing information, known as deficiencies, then the Board notifies the applicant, and the applicant has one year to provide the deficient information. Typically, applicants who are notified of deficiencies want to obtain their registration as soon as possible and therefore have an incentive to provide the Board with the deficient information quickly. MFT intern applications that have deficiencies take an average of 43 days to process.

The 90-day rule creates a loophole that was identified by the Enforcement Unit. Occasionally an individual waits until the very last minute to submit their criminal conviction information. In the meantime, the 90-day rule allows the individual to gain hours towards licensure. The violation may be egregious enough for the Board to decide to deny the registration or place other conditions on the applicant.

Dr. Wietlisbach stated that this issue was already discussed at the Board meeting in November, and the Board took a vote and decided on this issue. She asked if there was any new information that would change the Board's original decision regarding this matter.

Ms. Epstein stated that she is not completely satisfied where the problem is in regards to the Enforcement Unit's concern; there are no statistics showing that there is a problem with criminals gaining hours as a result of the 90-day rule. Ms. Epstein stated that most people who exercise the privilege of the 90-day rule have already been fingerprinted and working for agencies that require fingerprinting. The trainees that have not been fingerprinted are working under the supervision of a licensed professional. CAMFT is concerned about the continuity of care. The agencies are serving the most underserved population, and they would be short staffed if intern applicants could not earn hours and would end up leaving the agency for a job to earn an income.

Ms. Epstein also pointed out that in comparing the policies of other states that do not allow earning hours during this waiting period, those states also do not allow hours to be gained while in school. She expressed that it is not fair to use these states as examples. She urged Board to reconsider this.

Ms. Porter offered a different definition to the 90-day rule: the time period between degree conferral and issuance of a registration number. This would require the Board to process the applications in a quicker manner.

Ms. Pines stated that it is not realistic to limit the Board to processing applications within a certain timeframe given economic realities that the Board has recently experienced and could experience in the future.

Ms. Madsen stated that this would not address the peak application seasons when the Board receives an increase in applications. The Board has one intern evaluator who receives about 1,200 applications in one month during peak application season. In order to meet a processing deadline, this would create a fiscal impact on the Board as additional staff would have to be requested.

Paula Gershon, Program Manager, explained that it is not an application processing issue; it is an enforcement issue. The Enforcement Unit requests additional information from applicants regarding conviction information. If the applicant does not respond with the requested information, then the intern registration number cannot be issued.

If the concern is getting responses to the Enforcement Unit's request for additional information, Ms. Epstein suggested reducing the time frame to submit information from 1 year to a shorter period of time.

Ms. Rhine explained that the enforcement piece may be one of the deficiencies. If the applicant deficiency is to complete a course, it may take a year to complete the coursework. The Board, unfortunately, cannot compel an individual to provide information that is requested by the Enforcement Unit.

Ms. Epstein asked if there is a reasonable time to correct deficiencies, or can "deficiencies" be better defined.

Ms. Rhine asked what the purpose is in waiting 90 days to apply with the Board; why not require the applicant to apply for registration with the Board before they can earn hours.

Ms. Epstein stated that maybe the 90 days can be compressed, and they can gain hours as long as they as they apply with the Board.

Ms. Rhine agreed with Ms. Epstein. She also reminded the Board that MFT interns are different; they are the only population that can gain pre-degree hours. LPCCs are modeled more like LCSWs. LCSWs cannot gain hours prior to registration. What is the necessity of the 90-day rule, or any rule, that would allow them to gain hours prior to registration?

Dr. Douglas suggested an interim registration process, similar to the physician assistant process.

Ms. Lonner stated that there is a significant consumer protection function in registering. A motivated application will send their application as soon as they graduate. A processing time of 38-48 days is not a huge sacrifice to wait for the registration.

Ms. Epstein agreed with Ms. Lonner. However, the current processing times could change to a longer period of time due to other factors.

Ms. Kohli asked is the supervisor of the trainee is responsible for any misconduct of the trainee. Ms. Madsen replied that the supervisor is not held accountable for the trainee's conduct.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), urged the Board to consider a compromise and keeping the 90-day rule. She pointed out that the Board just voted on considering matters on a case-by-case basis. Ms. Loewy addressed the disruption of care as a result of this. She added that the agencies are struggling financially, so they depend on the trainees. The trainees are carefully trained and supervised in the public system.

Darlene Davis, Hope Counseling Center, supervises trainees in agencies. She stated that typically trainees do not get paid money; therefore, they want to earn their hours as quickly as possible. In an agency, the trainee wants the intern number because they can get hired and earn an income. Sometimes it can take up to 6 weeks to obtain the official transcript that confirms degree conferral. This could hurt the continuity of care (patient), the agencies, and the trainees.

Dr. Douglas suggested referring this back to the Policy and Advocacy Committee.

Luisa Mardones, California Society for Clinical Social Work (CSCSW), requested that ASWs be considered for allowance of the 90-day rule if the 90-day rule is to remain in effect for MFT intern applicants.

Mr. Wong stated that social workers have addressed the continuity of care successfully; they must issue a termination process with clients by end of the school term. He asked what the purpose is of gaining hours while in school versus gaining hours when out of school.

Juan Macias, University of Southern California School of Social Work, stated that when he applied to work for an agency, he did not earn hours right away, which is not uncommon. He added that agencies are concerned because they cannot be reimbursed for the same amount as if the individual was registered. Mr. Macias added that if the concern is consumer protection, he suggested that the applicant be required to get fingerprinted earlier in the process.

Ms. Pines recommended keeping the 90-day rule in place so that applicants can keep their hours.

Dr. Wietlisbach agreed that this should be referred back to the Policy and Advocacy Committee to discuss options.

Discussion took place on whether or not to rescind the previous motion on this matter. The Board agreed to not rescind the previous motion, but will refer this back to the Policy and Advocacy Committee to discuss options.

XII. Suggestions for Future Agenda Items

Ms. Lock-Dawson suggested a discussion regarding holding a Board workshop and to bring in a facilitator to identify common goals, work as a team, discuss processes, etc.

Mr. Wong stated that the Continuing Education Committee is a closed process. He appreciates that the Board is inviting the public to email suggestions for meetings. He suggested finding new ways to inform licensees and registrants regarding meetings that are available via webcast. He also requested making the meeting materials more easily accessible, and more comprehensible to the public.

XIII. Public Comment for Items Not on the Agenda

No public comments were made.

XIV. Adjournment

The meeting was adjourned at 4:51 p.m.

Thursday, March 1, 2012

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Sarita Kohli, LMFT Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Kristy Shellans, Legal Counsel

Members Absent

None

Guest List

On file

FULL BOARD OPEN SESSION

Dr. Christine Wietlisbach, Board Chair, opened the meeting at approximately 9:00 a.m. Kim Madsen called roll. A quorum was established.

FULL BOARD CLOSED SESSION

- XV. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board's Executive Officer**

FULL BOARD OPEN SESSION

- XVI. Suggestions for Future Agenda Items**

No suggestions were made for future agenda items.

- XVII. Public Comment for Items Not on the Agenda**

No public comments were made.

- XVIII. Adjournment**

The meeting was adjourned at 12:09 p.m.