

## Policy and Advocacy Committee Minutes April 19, 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  
Marc Mason, Administrative Manager  
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 9:37 a.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and guests introduced themselves.

### II. Review and Approval of the January 26, 2012 Policy and Advocacy Committee Meeting Minutes

*Renee Lonner moved to approve the January 26, 2012 Policy and Advocacy Committee meeting minutes. Dr. Christina Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.*

### III. Discussion and Possible Action Regarding Pending Legislation

#### a. Assembly Bill 40 (Yamada)

Rosanne Helms presented AB 40, Elder and Dependent Adult Abuse Reporting.

Existing Law:

- Specifies that certain individuals, including Licensed Marriage Family Therapists (LMFT), Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), and Licensed Professional Clinical Counselors (LPCC) are “mandated reporters” of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility by calling either the local ombudsperson or the local law enforcement agency immediately or as soon as possible.

- Restricts local ombudsman programs from sharing the identity of the complainant in reports of elder or adult abuse with local law enforcement agencies without the consent of the subject of the reported abuse or his or her legal representative.

This bill would require a report made via telephone by a mandated reporter to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility to be made to the local law enforcement agency. Furthermore, the written report must be made to both the local ombudsperson and the local law enforcement agency.

There is a concern that mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the subject/client. However, current law ensures the confidentiality of the identity of the reporter except as disclosed to specified agencies and under specified circumstances. This statute suggests that the level of trust between a mandated reporter and the subject of the abuse may not be compromised by submitting the report of abuse to the law enforcement agency.

This is a 2-year bill that was introduced on December 6, 2010. At its meeting in May 2011, the Board took a support position on this bill. This bill has been amended since the Board took its last position. Some concern was raised in the Legislature about requiring a dual mandated report to both a local ombudsperson and the local law enforcement agency. Therefore, the bill has been amended so that such a dual report is only required in the case of suspected physical abuse to an elder or dependent adult.

Dr. Johnson asked why sexual abuse was not mandated to be reported to a law enforcement agency. Sexual abuse is typically specified for mandated reporters. Ms. Helms agreed, stating that the term "physical abuse" does not specify the types of physical abuse. Dr. Johnson recommended adding sexual abuse as a separate category to be consistent with all other mandated abuse reports.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that AAMFT-CA opposes this bill. He explained that there is a problem that is caused by the inability of the ombudsman to communicate with law enforcement; the way to resolve that is not by adding a duplicative report on mandated reporters, but to allow the ombudsman to communicate with law enforcement as necessary.

Ms. Lonner asked why the ombudsman does not communicate with law enforcement. Mr. Caldwell responded that he was not familiar with the history; however, there is a restriction on the ability to communicate which can be resolved through legislation.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), expressed that CAMFT also opposes this bill. Ms. Epstein explained that the state needs to figure out how to best accept these reports. It is not clear whether this is a matter that the ombudsman is not reporting or cannot report. There is a communication gap between the ombudsman and law enforcement, and it is not a problem for the practitioners to resolve.

Rebecca Gonzales, National Association of Social Workers California Chapter, (NASW-CA), stated that NASW-CA supports this bill. She stated that the protection given to elderly folks in these facilities is worth the dual reporting. Ms. Gonzales agreed, however, that the suggestion to broadening physical abuse to include sexual abuse is a good idea.

***Renee Lonner moved to recommend to the Board a position of support if amended to include “sexual abuse.” Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) to pass the motion.***

**b. Assembly Bill 154 (Beall)**

This item was tabled.

**c. Assembly Bill 171 (Beall)**

Ms. Helms presented AB 171, Pervasive Development Disorder or Autism.

Existing law:

- Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child.
- Defines “severe mental illness” and includes in its definition “pervasive developmental disorder or autism.”
- Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs if the plan includes prescription drug coverage.
- Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, by no later than July 1, 2012.
- Defines “behavioral health treatment” as professional services and treatment programs and:
  - Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
  - Is provided under a treatment plan prescribed by a qualified autism service provider;
  - The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and
  - Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

This bill:

- Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, including pervasive developmental disorder or autism.
- Specifies that treatment for pervasive developmental disorder or autism does not include behavioral health treatment.
- Prohibits a health care service plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an enrollee or insured solely because that person is diagnosed with or has received treatment for pervasive developmental disorder or autism.

- Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts.
- Prohibits coverage for pervasive developmental disorder or autism from being denied on the basis of the location of delivery of the treatment, or because the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

Due to loopholes in current law, those with pervasive development disorder or autism (PDD/A) are frequently denied coverage for their disorder. When they are denied coverage, those with PDD/A must either go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for PDD/A seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with PDD/A by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.

Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. This bill would make the law more explicit about what must be covered.

SB 946 was signed into law last fall. It requires, no later than July 1, 2012, that every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A. This bill would expand upon SB 946 by requiring health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of PDD/A other than behavioral health treatment.

This is a two-year bill. At its meeting in May 2011, the Board took a “support if amended” position on this bill, recommending the bill be amended to define the term “screening of autism spectrum disorders.”

Ms. Lonner explained that PDD/A is already in the parity bill; it is one of the severe, persistent mental illnesses under the parity bill. Although AB 171 emphasizes PDD/A, she asked if it is necessary to outline it in this bill as well as the parity bill? Ms. Helms clarified that the current law requires treatment for severe mental illness including autism; however, it does not define coverage.

Marc Mason added further clarification stating that Senator Steinberg attempted to carve this out in SB 946. The author of AB 171 does not want to do away with the “carve out” of SB 946 by the passage of this bill. AB 171 will not affect the ability to treat for this or the ability to be reimbursed by the insurance companies.

Ms. Helms explained that SB 946 defines “behavioral health treatment” and specified that it must be covered by health insurance. AB 171 expands it by discussing additional conditions that must be covered. AB 171 does not specify behavioral health treatment because if the bill does not pass, then it will take behavioral health treatment down with it.

Dr. Johnson is in favor of this especially with all of the diminishing resources in the school districts, regional centers, social services, and government agencies.

Mr. Caldwell expressed AAMFT-CA’s support for this bill.

***Dr. Judy Johnson moved to recommend to the Board a position of support for AB 171 and direct staff to contact the author's office to discuss technical details. Christina Wong seconded. The Committee voted unanimously (4-0) to pass the motion.***

**d. Assembly Bill 367 (Smyth)**

Ms. Helms presented AB 367, Board of Behavioral Sciences (Board) Reporting.

Current law requires certain boards to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive to the State Department of Health Care Services within ten working days. The purpose of the reporting requirements is to prevent state reimbursement for Medi-Cal services that were provided after the cancellation of a license.

This bill would add the Board to the list of boards subject to the reporting requirements.

According to the author's office, the intent of this legislation is to prevent Medi-Cal fraud by Board licensees who may provide services that are eligible for Medi-Cal reimbursement, by requiring the Board to report to the Department of Health Care Services (DHCS) the name and license number of any license holder whose license is revoked.

The Department of Consumer Affairs (DCA) is in the process of implementing a new database system, called BreEZe, for its boards and bureaus. Implementation of the BreEZe system for this Board is scheduled for August 2012. However, any new program changes made between now and January 1, 2015 must be made by the BreEZe vendor at significant additional cost to the Board. Therefore, Board staff requests consideration of a delayed implementation date of January 1, 2015. At this point the department will retain control of the BreEZe system and will be able to make changes to the system internally.

Ms. Epstein stated that CAMFT sponsored this bill, and will work with the Board on the delayed implementation.

Mr. Caldwell expressed that AAMFT-CA supports AB 367.

***Dr. Christine Wietlisbach moved to recommend to the Board a position of support for AB 367 if amended. Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) to pass the motion.***

**e. Assembly Bill 1588 (Atkins)**

Ms. Helms presented AB 1588, Reservists Licensees, Fees and Continuing Education.

Existing law:

- Allows a licensee or registrant of any board, commission, or bureau within the DCA to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces. The following conditions must be met:
  - The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces;

- The application for reinstatement must be made while actively serving, or no later than one year from the date of discharge from active service or return to inactive military status; and
  - The applicant must submit an affidavit stating the date of entrance into the service, and must also submit the renewal fee for the current renewal period.
- Allows a licensee of the Board to submit a written request for a continuing education exemption if he or she was absent from the state of California due to military service for at least one year during the previous renewal period. The licensee must submit evidence of service and must submit the request for exemption at least 60 days prior to the license expiration date.

This bill is intended to prevent members of the military from being penalized if they allow their professional license to fall into delinquency during their service period.

This bill would require all boards, commissions, or bureaus within DCA to waive continuing education requirements and renewal fees for a licensee or registrant while called to active duty as a member of the United States Military Reserve or the California National Guard if the following requirements are met:

- The person's license or registration was in good standing at the time they were called to active duty;
- The renewal fees and continuing education requirements are only waived for the period that they are on active duty; and
- The licensee or registrant, or their spouse or domestic partner provides the Board with acceptable written notice of the active duty.

The Board does not currently waive renewal fees if a licensee is called to active military duty. A licensee called to active military duty may choose to renew their license to an inactive status. An inactive status is valid for two years and requires payment of an inactive license fee that is approximately one-half of the standard license renewal fee. There is no inactive status option for a registration.

The Board may waive a licensee's continuing education requirement if he or she was absent from the state of California due to active military service for at least one year during the previous renewal period. The licensee must request the exemption on a form prescribed by the Board at least 60 days before his or her license expires.

The Board does not currently track the number of licensees who are members of the military. However, for the past several years, the Board has tracked the number of licensees who have requested a continuing education exemption due to military service. This is typically a very small number.

Staff suggests an amendment setting a time limit by which the renewal fee must be paid once the licensee or registrant completes active service. The Medical Board currently has a renewal fee exemption for its licensees if they are engaging in active military status. This code states that a Medical Board licensee becomes liable for payment of the fee for the current renewal period upon discharge from full time active service, and has 60 days after discharge to pay the renewal fee before a delinquency fee is charged. However, any Medical Board licensee who is discharged within 60 days of the end of a renewal period is exempt from paying a fee for that renewal period.

Currently, this bill only requires the active duty reservist, or his or her spouse or domestic partner, to provide written notice to the Board substantiating the active duty service. Staff suggests an amendment specifying that the term “written notice” be replaced by the term “affidavit.”

Dr. Johnson asked if the Board of Psychology has something in place for their clinical psychologists who are serving in the armed forces. Ms. Helms responded that she will look into it. Dr. Johnson expressed that this bill is a good idea.

Ms. Madsen explained that the BreEZe project poses a problem with implementation. To make changes to the BreEZe programming at this time would cost the Board a substantial amount of money.

Ms. Helms stated that DCA is aware of the issue with BreEZe and implementation, and she expects that DCA would seek delayed implementation of January 2015.

Dr. Wietlisbach asked if we know for sure that this will cost the Board a substantial amount of money. Ms. Madsen responded that the system is not currently programmed to waive a renewal fee. This becomes a business process issue and requires a modification to the system. To achieve that, staff would be required to go through the BreEZe vendor. Ms. Madsen explained that a previous system change that staff was involved with cost \$15,000 just to have the conversation – that did not include design. After BreEZe is implemented, the costs will shift back to the DCA, and those costs will be significantly reduced. Ms. Madsen offered do more research and provide the information at the May Board meeting regarding the cost of implementation.

Ms. Gonzales expressed that NASW-CA supports AB 1588.

***Dr. Judy Johnson moved to recommend to the Board a position of support for AB 1588 if amended and direct staff to conduct further research regarding technical issues and the Board of Psychology’s policy. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.***

**f. Assembly Bill 1764 (Hernandez, R.)**

Ms. Helms began to present AB 1764 Private Adoption Agencies and Licensing, sponsored by CAMFT. Ms. Esptein stated that CAMFT is no longer pursuing this legislation. No discussion or action was taken.

**g. Assembly Bill 1785 (Lowenthal, B.)**

Ms. Helms presented AB 1785, Federally Qualified Health Centers and Rural Health Clinics and Medi-Cal.

Current law establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits that are reimbursed on a per-visit basis. The law defines a FQHC or RHC visit as a face-to-face encounter between an FQHC or RHC patient and one of the following:

- A physician;
- physician assistant;
- nurse practitioner;
- certified nurse-midwife;
- clinical psychologist;

- licensed clinical social worker;
- visiting nurse; or
- dental hygienist.

This bill would add a marriage and family therapist to the list of health care professionals included in the definition of a visit to a FQHC or RHC that is eligible for Medi-Cal reimbursement.

The intent of this legislation is to allow FQHCs and RHCs to be able to hire a marriage and family therapist and be reimbursed through Medi-Cal for covered mental health services. Under current law, only clinical psychologists or LCSWs may receive Medi-Cal reimbursement for covered services in such settings. According to the author's office, the inability to receive Medi-Cal reimbursement serves as a disincentive for a FQHC or a RHC to consider hiring a marriage and family therapist.

This amendment leaves out the Board's newest license type, LPCC. Because LPCCs also practice psychotherapy, the Board may want to recommend that LPCCs be included as well.

Staff suggests an amendment be made to include the word "licensed" in front of the term "marriage and family therapist."

Mr. Caldwell expressed that AAMFT-CA supports AB 1785.

Rebecca Gonzales expressed that NASW-CA opposes AB 1785. NASW-CA feels that the supply of LCSWs in these health centers is adequate, and the LCSW's experience is ideal for these types of centers for mental health services and any other services that are needed.

Ms. Epstein stated that CAMFT is receiving widespread support for this bill. The California Primary Care Association testified and sent letters of support, illustrating that physicians in these clinics do not have enough mental health professionals to refer out to. The cost increase is perceived to be a result of more visits, thus costing Medi-Cal more money.

Mr. Caldwell explained that there would be a short-term cost increase if LMFTs are added, because those who cannot access services would now be able to access services. Some analyses illustrate that there would be a long-term cost savings because mental health professionals are doing intervention as opposed to the client being hospitalized. This is an access to care issue, and a possible long term cost-savings.

Ms. Gonzales asked if there was another step to this process other than getting this bill passed. Ms. Epstein responded that this is a two-step process. If this legislation is passed, it does not mean that Medi-Cal will reimburse LMFTs. Legislative intent must be recorded, showing that the legislatures want LMFTs as providers to FQHCs. The state plan would then need to be amended by the Department of Health Care Services.

***Dr. Christine Wietlisbach moved to recommend to the Board a position of support for AB 1785. Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) to pass the motion.***

#### **h. Assembly Bill 1864 (Wagner)**

Ms. Helms presented AB 1864, Immunity of Court-Appointed Professionals.

Existing law:

- Specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation.
- States the purposes of a mediation proceeding are:
  - To reduce acrimony that may exist between the parties;
  - To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child;
  - To settle the issue of visitation rights of all parties in a manner that is in the best interest of the child.
- States that mediation of cases involving custody and visitation concerning children is governed by uniform standards of practice adopted by the judicial council.
- Allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional for not more than one year if the court finds:
  - The dispute between the parties seeking custody or visitation rights with the child poses a substantial danger to the best interest of the child;
  - The counseling is in the best interest of the child.
- States that a child custody evaluator must be an LMFT, LCSW, or other specified licensed professional or certified evaluator.
- States that a child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct.

This bill prohibits monetary liability or damages against a professional appointed by court order to provide services to the court in a child custody or visitation case or appointed by a court order to provide expert evidence. The prohibition extends to any act, opinion, report, or communication in the performance of the court ordered services as long it is in the scope of services and occurs during the provision of those service.

According to the author of this bill, California family courts regularly appoint lawyers, social workers, LMFTs, psychiatrists, or other professionals to serve as neutral fact-finders or expert witnesses. They provide the court with expert testimony or written reports to enable the court to make informed decisions.

While acting as a court appointed neutral professional for these purposes, these professionals are sometimes subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court. As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

This bill states that no professional appointed by court order to provide services in a child custody case or appointed by the court to provide expert evidence is liable financially or liable for damages, as long as the act in question is within the scope of the appointed services and occurs during the provision of the appointed services.

However, a licensed mental health professional that is not acting in a mediator role may be acting under the jurisdiction of the Board. For example, certain Family Codes allow the court to require parties of a child custody or visitation dispute to participate in counseling with a licensed mental health professional. A Board licensee acting as a mental health professional may fall under the jurisdiction of the Board if psychotherapy is performed. In addition, the Family Code section 3110.5 specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct.

This bill does not clearly address court-connected child custody evaluators or licensed mental health professionals who are providing certain court ordered services. Staff recommends an amendment to clearly define that the immunity from financial liability or damages only applies to an individual acting as a neutral party while performing specified defined services, and not when performing psychotherapeutic services.

Ms. Lonner commented that child custody evaluators need oversight; they have a powerful role over the most helpless people in society (children). The court usually accepts the evaluator's recommendations, and some evaluators are not neutral. This is a very specialized area, and it is very political. Ms. Lonner expressed that she does not agree with granting them immunity.

Dr. Wietlisbach added that the Board is charged with protecting the consumer.

Ms. Wong agreed with Dr. Wietlisbach, inquiring if the bill's intent is to protect the professional or the consumer.

Ms. Lonner pointed out that there are many professionals in very difficult roles; however, they are not given immunity.

Dr. Johnson pointed out that this is what they specialized in and this is their role. Family courts need to look internally to handle these issues, to better train these individuals, and find professionals that have integrity.

Ms. Lonner stated that, historically, this is a profession that is closed to new members and their problems are political.

There were no comments from the audience.

***Renee Lonner moved to recommend to the Board a position of oppose AB 1864. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.***

**i. Assembly Bill 1904 (Block)**

Ms. Helms presented AB 1904, Military Spouses and Temporary Licenses.

Existing law allows the Board to issue a license as an LMFT to a person who, at the time of application, holds a valid license issued by another state if that person has held that

license for at least two years if their education and experience is substantially equivalent to that required by the Board, passes specified Board-administered licensing examinations, and completes certain specified training or coursework.

The author's office notes that the process of obtaining a state license can cause re-employment delays for military spouses moving between states, and that because of these delays and the expense involved in re-licensure, many of these spouses decide not to practice their profession. They also note that this financial and career-related issue may impact military members' decisions to stay in the military.

This bill is part of a larger federal effort to improve the lives of military families. In February 2012, the U.S. Treasury and the U.S. Department of Defense issued a report titled "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing across State Lines." This report noted that approximately 35 percent of military spouses work in professions that require state licensure or certification, and recommended the use of temporary licenses to be used to accommodate qualified military spouses while they work toward a permanent license.

This bill:

- Would allow a board within DCA to issue a temporary license to an applicant who can prove that he or she is married to or in a domestic partnership or other legal union with, an active duty member of the U.S. Armed Forces who is assigned to duty in California under official active duty military orders. The applicant must:
  - Hold a current license in another state whose requirements are determined by the Board to be substantially equivalent to the Board's licensure requirements;
  - Not have committed any act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license by the Board;
  - Not have been disciplined by another licensing entity and is not the subject of any unresolved complaint or disciplinary proceeding by another licensing entity;
  - Pay the fees required by the Board; and
  - Submit fingerprints and fingerprinting fee as required by the Board.
- Would require the Board to expedite this temporary licensing process
- States that a temporary license is valid for 180 days, but at the discretion of the Board, may be extended for an additional 180 days if the licensee holder applies for an extension.
- Would allow the Board to adopt regulations to administer the temporary license program.

The Board does not currently have a temporary license status. An applicant who has an out of state license can submit an application for examination eligibility. The Board will evaluate the application to ensure the applicant meets the Board's education and experience requirements. If the Board determines that they meet all of the requirements, the Board will deem the applicant eligible to take the required examinations. Upon passage of the Board-required examinations, the Board will issue a license.

Over the past year, due to furloughs and the State hiring freeze, the Board has experienced a significant increase in processing times. However, as of February 2012, the Board is now fully staffed for the first time since June 2010. The Board expects to be able to significantly reduce the delays in the evaluation of examination eligibility

applications, and hopes to be able to return to a processing time of two months or less for most license types, typical of previous years.

This bill states that a board *may* issue a temporary license to a military spouse under certain conditions. It later states that the board *shall* expedite the procedure for issuing a temporary license. It is unclear if the objective of this bill is to allow a board the discretion to consider issuing a temporary license on a case by case basis, or if the intent is to require it be done for all military spouses.

This bill requires that the military spouse hold a current license in another state that the Board determines has substantially equivalent licensing requirements. It says nothing about passage of required Board administered examinations. Each of the Board's four license types is currently required to pass at least one Board-administered examination. Passage of a Board-administered examination ensures that a candidate for licensure has competencies unique to the mental health environment in California. Allowing mental health professionals from other states that have not passed an examination tailored to address the unique mental health environment in California could jeopardize consumer protection.

This bill creates a temporary license that is valid for a six-month period, with the opportunity to extend the license for a one-year period. A consumer who seeks mental health services often seeks treatment for an extended period of time. Having a practitioner whose license is only valid for six months could disrupt the continuity of care for their patients.

If this bill becomes law, it will require the Board to modify its database system to accommodate a temporary license type. Due to the implementation of the BreEZe system, Board staff requests consideration of a delayed implementation date of January 1, 2015.

Mr. Mason stated that it is not necessary to request delayed implementation because this bill is permissive; therefore, that amendment is not necessary at this point.

Ms. Wong expressed concern over the continuity of care.

Ms. Madsen stated that this bill allows a temporary license to individuals without passing the examinations. This bill affords the opportunity to a group of individuals that is not afforded to the rest of the population.

Dr. Johnson pointed out that this affects a small number of people.

Mr. Caldwell expressed that AAMFT-CA does not have a position on this bill. Some of the specifics of the bill are problematic. He noted that a lot of folks in the universities are military spouses. Many of them leave the state because their spouse is being relocated. For this reason, the concept is worth considering.

Ms. Porter agrees with Mr. Caldwell, stating that she also receives a lot of inquiries of LPCCs moving to California because their spouses are moving. She expressed that CALPCC supports helping military families with these transitions.

Ms. Epstein asked how the Board will balance its resources when there are interns in California who are waiting to get their applications reviewed. Ms. Madsen responded that this would require additional staffing and additional work with BreEZe.

Dr. Johnson expressed that she supports the concept of this bill.

***Renee Lonner moved to recommend to the Board a position of support for AB 1904. Christina Wong seconded. The Committee voted unanimously (4-0) pass the motion.***

The Committee took a break at 11:10 a.m. and reconvened at 11:30 a.m.

**j. Assembly Bill 1932 (Cook)**

Ms. Helms presented AB 1932, United States Armed Forces and Healing Arts Boards. She noted that this bill was amended two days ago.

Current law:

- Requires healing arts boards under the DCA to provide methods of evaluating education, training, and experience obtained in military service if the training is applicable to the requirements of the profession.
- States that for persons who apply for marriage and family therapist licensure or registration on or after January 1, 2014, the Board shall accept education and experience gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education and experience is substantially equivalent to the Board's requirements.

This bill:

- Beginning January 1, 2014, would require each healing arts board to annually issue a written report to the Department of Veterans Affairs and to the Legislature that details the board's method of evaluating education, training, and experience obtained in military service. The report must also state whether the military education, training, and experience can be applied toward the board's licensing requirements.
- Would require the report to include information about the number of military service members who have applied for and have used their military education, training and experience to fulfill the board's licensing requirements.

The author's office would like to require state agencies to identify which requirements are satisfied by military training and what additional training is required. The goal is to reduce the amount of time and money wasted forcing veterans to repeat their medical training from scratch.

The Board has very specific requirements for education and experience in its licensing laws. If an applicant for licensure or registration had military education and experience, the Board conducts a review to determine whether or not it was substantially equivalent to current licensing requirements.

The Board is not aware of specific circumstances in which an individual had military education or experience. This is not tracked by the Board and there is not a common provider of military education or experience that the Board sees cited on incoming applications. Occasionally, the Board sees supervised experience that was obtained out

of the country. This experience may be accepted by the Board if the Board can determine that the supervision was substantially equivalent and that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years.

The U.S. Army Medical Service Corps lists two types of behavioral health job descriptions on its website; one of those for a social worker. According to the website, appointment as a social worker requires a master's degree in social work with emphasis in clinical practice from a program accredited by the Council on Social Work Education. The social worker must also have a state license in social work that allows clinical independent practice.

Aside from utilizing social workers who are already state-licensed, it is unclear if the military offers any training programs to those seeking licensure as a psychotherapist. The military recently entered into a partnership with Fayetteville State University to establish a master of social work program at Fort Sam Houston military installation in Texas. This program is designed to allow soldiers to earn a master's degree in social work from an accredited university while in active duty military service in an effort to increase the number of social workers in military service.

Staff recommends an amendment to this bill which clarifies the Board's reporting requirement to the Department of Veterans Affairs. Currently, the report is required to "clearly detail the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board's requirements for licensure." Military education and experience is evaluated by the Board on a case-by-case basis if a military applicant applies for licensure or registration. It is not possible for the Board to evaluate all possible scenarios of military education and experience if the Board is not aware of them.

Ms. Wong stated that if the new program at Fayetteville State University begins, it would be necessary for the program to go through the Council on Social Work Education in order to be accredited, which would be consistent with the Board's requirements. With that said, she does not understand how this bill would be applicable to the Board.

Mr. Mason stated that if the military is providing this training, it would seem that the burden of providing information on these programs would be on them. It would be unrealistic and burdensome to conduct a survey of each military branch's training. On another note, the Governor announced that he is working to stop unnecessary reports because there is a tremendous amount of reports within the state government that are using up staff resources and costing money.

Ms. Helms stated that she did not find any clear military education that was directed towards social workers. The military would have to provide information on its program so that the Board could evaluate it.

Ms. Lonner stated that it is not the Board's job to do that.

The Committee did not take a position on AB 1932. No action was taken.

**k. Assembly Bill 2570 (Hill)**

Ms. Helms presented AB 2570 regarding Licensees and Settlement Agreements.

Existing law subjects an attorney to suspension, disbarment, or other disciplinary action for seeking the following in a settlement agreement:

- A provision requiring that professional misconduct not be reported to the disciplinary agency;
- A provision requiring a plaintiff to withdraw a disciplinary complaint or refuse to cooperate with an investigation or prosecution being conducted by a disciplinary agency; and
- A provision requiring that a record of civil action for professional misconduct must be sealed from review by a disciplinary agency.

This bill:

- Would prohibit a licensee regulated by the DCA from including or allowing inclusion of the following provisions in a settlement agreement of a civil dispute:
  - A provision prohibiting the other party in the dispute from contacting, filing a complaint with, or cooperating with DCA or a board, bureau or program; and
  - A provision that requires the other party in the dispute to withdraw a complaint from DCA or a board, bureau or program.
- States that a licensee who includes or permits inclusion of such a provision is subject to disciplinary action by the board, bureau or program.
- States that a board, bureau or program under DCA that takes disciplinary action against a licensee based on a complaint that has also been the subject of a civil action that was settled for monetary damages may not require the disciplined licensee to pay any additional sums of money to the plaintiff.

The intent of this bill is to close a loophole in current law that allows a licensee or registrant regulated by DCA to prohibit a consumer that settles a civil suit with that licensee or registrant from filing a complaint or cooperating in an investigation.

Previous supporters of similar bills have argued that the increasing use of these “regulatory gag clauses” is problematic because they are often used to intimidate victims into refusing to cooperate with investigations. This may prevent a regulatory board from taking disciplinary action against a negligent licensee or registrant. These licensees or registrants may continue to practice and harm the public because the Board is not aware of a civil dispute settlement.

AB 320 (2004) and AB 446 (2005) were both very similar to this bill and would also have prohibited regulatory gag clauses. The Board took a position of support on AB 446. Both bills were vetoed by Governor Schwarzenegger.

SB 1111 (2010) and SB 544 (2011) were both part of an effort by DCA to provide healing arts boards with additional regulatory tools and with additional authority for investigating and prosecuting violations of the law. Both bills contained a provision similar to the one in this bill. The Board did not take a position on SB 1111, and took a “support if amended” position on SB 544. Both bills died in the Senate Business, Professions, and Economic Development Committee.

On March 2012, the Board filed a notice with the Office of Administrative Law to proceed with a regulation package that contained this provision as well.

There were no comments from the audience.

***Dr. Christine Wietlisbach moved to recommend to the Board a position of support for AB 2570. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.***

**I. Senate Bill 1134 (Yee)**

Ms. Helms presented SB 1134, Persons of Unsound Mind and Psychotherapist Duty to Protect. This bill is sponsored by CAMFT.

Existing law:

- Requires a therapist who determines, according to professional standards that a patient presents a serious danger of violence to another, to use reasonable care to protect the intended victim against such danger. This includes warning the intended victim, the police, or taking whatever other steps are reasonably necessary under the circumstances.
- Allows no monetary liability or cause of action to arise against a psychotherapist who fails to warn of and protect from a patient's threatened violent behavior, or who fails to predict and warn of and protect from a patient's violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.
- Requires a therapist to warn a potential victim(s) if information communicated to the therapist leads the therapist to believe that the patient poses a serious risk of grave bodily injury to another.
- Defines a communication from a family member to the patient's therapist, made for the purpose of advancing a patient's therapy, as a "patient communication."
- Outlines instructions to a jury to determine if there is a cause of action for professional negligence against a psychotherapist for failure to protect a victim from a patient's act of violence.

This bill would remove a psychotherapist's duty to warn and provide that there can be no monetary liability or cause of action against a psychotherapist unless the psychotherapist fails to discharge his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

According to the author's office, this bill renames the duty of a psychotherapist from "duty to warn and protect" to "duty to protect." If this change is made, it will make the law consistent with changes made in 2007 to the Judicial Council of California Civil Jury Instructions, which renamed the therapist's duty a "duty to protect" and eliminated the reference of "duty to warn."

The author's office argues that the term "duty to warn" is no longer necessary, because steps needed for a therapist to avoid liability are spelled out in the Civil Code.

Ms. Epstein explained that this is to clean up language that was never intended by the court. This bill is not removing the duty to warn because there never really was a "duty to warn;" there is a "duty to protect." This bill is to give the psychotherapist the ability to determine the best way to protect without being subjected to lawsuits.

Ms. Lonner expressed concern about how this will be translated to licensees without it being too complicated.

Ms. Epstein stated that this bill does not change the way a therapist should behave now. Instead of making it a “duty to warn and protect,” which not what Tarasoff intended, it is making it a “duty to protect,” and it leaves it in the discretion of the therapist how to best protect.

Dr. Johnson agreed that this does clarify and it makes sense to her.

Ms. Lonner again expressed how this will get translated to the licensees. Currently, the duty is not all that well understood as it is now.

Ms. Wong expressed that this bill does not clarify the duty for her.

Ms. Epstein stated that there will be a hearing on May 8<sup>th</sup>; CAMFT’s expert witness will testify.

Ms. Lonner stated that she would like to see a more substantive change that would be well understood.

Mr. Mason stated that he would be interested to see if there is evidence of people who are warning when it’s inadvisable. The hearing may provide information on what is prompting this.

Dr. Johnson stated that she would like further clarification.

No action was taken.

**m. Senate Bill 1183 (Lieu)**

Ms. Helms presented SB 1183, Marriage and Family Therapists and Continuing Education. This bill was significantly amended. What this bill did before it was amended is more in line with SB 1172. SB 1172 will be analyzed in the May Board packet.

This bill:

- Would require continuing education (CE) providers other than accredited educational institutions to be approved by an accrediting organization such as a professional association, a licensed health facility, or a governmental entity.
- Stated that the Board will no longer approve CE providers.

According to the author’s office, this bill is an ongoing process and they are working on some of the details. As written, the version that was amended in April 2012, it only discusses CE for LMFTs and LCSWs. It leaves out LEPs and LPCCs. Ms. Helms expect another amended version of this bill to include LEPs and LPCCs.

Existing law:

- Requires the director of DCA to establish, by regulation, guidelines to prescribe components for mandatory continuing education programs administered by any board within the department. The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection.

- Requires licensees of the Board, upon renewal of their license, to certify to the Board that he or she has completed at least 36 hours of approved continuing education in or relevant to their field of practice.

Over the past year, questions have been raised concerning the nature of the Board's continuing education course (CE) content requirements. Current law states that a CE course must be relevant to the profession, related to direct/indirect care and shall incorporate specific aspects of the discipline. By not requiring CE to meet standards usually utilized by accrediting bodies, such as requiring content to be derived from relevant peer-reviewed research literature, more innovative, and California specific CE may be presented. However, this approach also allows for CE providers to offer courses for Board credit that may include content not necessarily found to be best practices in the profession or scientifically based.

Over the past year, questions have been raised concerning the nature of the Board's CE course content requirements. Current law states that a CE course must be relevant to the profession, related to direct/indirect care, and shall incorporate specific aspects of the discipline. By not requiring CE to meet standards usually utilized by accrediting bodies, more innovative and California specific CE may be presented. However, this approach also allows for CE providers to offer courses for Board credit that may include content not necessarily found to be best practices in the profession or scientifically based.

In July 2011, the Board began receiving complaints from the public regarding the Board-approved CE Provider National Association of Research and Therapy of Homosexuality (NARTH). Hundreds of emails were received from individuals protesting the approval of an organization that proffers "reparative" or "conversion" therapy for individuals that have unwanted homosexual tendencies.

NARTH received approval from the Board to offer continuing education courses in 1998. Since then, that approval has been renewed on a biennial basis. Renewal requires payment of \$200, but no additional paperwork. NARTH's CE provider approval expired October 31, 2010, and it was not renewed.

The Board's ability to deny an application as a CE provider is governed by regulations which say the provider must ensure its coursework is relevant to a licensee's practice and is related to direct or indirect patient care. The Board can only deny an application if it does not meet those standards.

According to current law, after receiving Board approval, providers can add new courses without submitting additional paperwork. There is nothing in laws and regulations to compel a provider to notify the Board when it adds new courses.

At its November 2011 meeting, the Board voted to form a Continuing Education Provider Review Committee (Committee) in order to examine the above issues, as well as other issues that have been raised with the Board's CE regulations. The Committee's first public meeting was in April 2012.

Mr. Caldwell expressed that AAMFT-CA does not have a position on SB 1183. He suggested that the Board amend the language to allow a long implementation time frame so that the Committee has an opportunity to do its work and run legislation if necessary.

No action was taken.

**n. Senate Bill 1238 (Price)**

Ms. Helms reported on SB 1238, the Board's sunset bill. This bill would extend the operation of the Board until January 1, 2017.

The Sunset Hearing was held on March 19, 2012 before the Senate Committee on Business, Professions, and Economic Development. Based on the findings of the Committee it was recommended that the Board's sunset date be extended for four years, to January 1, 2017.

***Renee Lonner moved to recommend to the Board a position of support for SB 1238. Dr. Judy Johnson seconded. The Committee voted unanimously (4-0) pass the motion.***

**IV. Discussion and Possible Action Regarding Other Legislation Affecting the Board**

No further legislation was discussed.

**V. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines**

Ms. Helms presented the proposed changes to enforcement regulations.

At its November 9, 2011 meeting, the Board approved several amendments to the Disciplinary Guidelines. The Disciplinary Guidelines are incorporated by reference into Board regulations. The proposed amendments were based on suggestions from the Board's enforcement unit. Staff is now in the process of preparing a regulatory package to make the proposed amendments.

The enforcement unit has proposed two additional amendments to the Disciplinary Guidelines. Because a regulatory proposal can take up to one year to obtain approval from the Office of Administrative Law (OAL), and because only one proposal affecting any particular regulatory code section can be run at a time, staff recommends that these additional proposals be considered for inclusion in the existing regulatory proposal to amend the Disciplinary Guidelines. The additional amendments are:

1. Recommended Language for Tolling of Probation, and
2. Recommended Language for Disciplinary Orders.

Tolling of Probation

The Board's Disciplinary Guidelines contain specific language for standard terms and conditions of probation, which are included in all disciplinary decisions.

Two of the standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident," allow a registrant or licensee to "toll" their probation if they are not practicing. Tolling probation stops the clock on a practitioner's probation term until they resume practice. The tolled period is then added to the end of the probation and extends the expiration date.

The "Residing or Practicing Out-of-State" condition includes language which allows the Board to cancel a license or registration after two years if the respondent does not return to California and resume practice.

The “Failure to Practice – California Resident” condition does not delineate a time limit on non-practice, as long as the licensee or registrant is residing in California. Therefore, probationers can continue in their toll status indefinitely or until their registration or license expires by operation of law.

Although the current disciplinary guidelines specify that time spent outside the state in an intensive training program is not to be considered non-practice, staff has never encountered a probationer who was in an intensive training program outside California. The current guidelines also state a respondent’s license must not be cancelled if he or she is residing and practicing in another state and is on active probation with the licensing authority of that state. Staff has also never encountered a probationer who was practicing in another state and on active probation with licensing authority in that state.

Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing, other than their notification to the Board. Therefore, the amendments proposed combine “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of their in-state or out-of-state residency.

#### Disciplinary Orders

The “Board Policies and Guidelines” section of the current Disciplinary Guidelines contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders. Staff proposes adding language to address the granting of other registrations or licenses by the Board and the application of probation for those other registrations and licenses.

Ms. Madsen stated that the intent of tolling was for short periods of time only.

No comments from the audience.

***Christina Wong moved to direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to recommend that the Board direct staff to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.***

#### **VI. Discussion and Possible Action Regarding Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts**

Ms. Madsen presented issues regarding licensees providing child custody evaluations.

For many years Board licensees have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role a Board licensee may serve as a child custody recommending counselor (formerly known as mediators), as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

A child custody recommending counselor may be a member of the professional staff of the family court, probation department, or mental health services agency or any other person or agency designated by the court. The child custody recommending counselor is not required

to possess a license with the Board. However, they must meet specific educational and training requirements set forth in Family Code.

The role of the child custody recommending counselor is to assist parents in resolving their differences and to develop a plan agreeable to both parties. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation. The child custody recommending counselor submits either the plan or the recommendation to the court. The time appropriated for this service is not extensive.

A court connected child custody evaluator or a private child custody evaluator has a more extensive role and must be licensed as a LMFT, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry. The evaluator has the task of conducting a comprehensive assessment (evaluation) to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation requires a significant amount of time. The Rules of the Court specify the content each evaluation must include as well as a description of the work completed by the evaluator. Upon the conclusion of the evaluator's work, the evaluator prepares a written report that is submitted to the court. The court will base their decision regarding custody and visitation on this report.

Pursuant to Family Code, this report is confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney,
- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator,
- Counsel appointed for the child pursuant to Family Code Section 3150,
- Any other person upon order of the court for good cause.

An individual releasing this report may be subject to sanctions by the Court.

Family Code Section 3110.5(e) states a child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that license.

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Further, the individual may express their complaint to the judge at the time of their hearing.

The individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board.

The Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a mediator, due their limited role. The Board will investigate complaints involving evaluators.

In all complaints, the source of the complaint alleges the licensee's conduct/recommendation is unprofessional or is unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board's statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator's report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of a Subject Matter Expert and at times, assistance from the Division of Investigation.

Board staff observes significant challenges associated with these cases. The inability to obtain all of the relevant documentation requires the Board to close an investigation. This outcome increases the individual's frustration not only with the courts, but also the Board.

Moreover, the Board has learned that its investigation of these cases is a concern for the courts in that licensees were alarmed that their reports may be subject to a board investigation. Many licensees expressed an unwillingness to continue their role as an evaluator. Consequently, the courts became concerned about decreasing resources to perform this service.

Last year, Board staff initiated discussions with the Administrative Office of the Courts (AOC) to exchange information each entity's process, and to explore possible solutions to resolve the current issues. During the initial meeting, the Board was informed that current law did not allow the Board access to the evaluator's report. To obtain the report, the Board is required to file a petition or subpoena with the court.

The Board met with AOC to discuss the inability to fully investigate allegations of licensee misconduct if the Board cannot obtain the relevant documentation to use in an administrative hearing. Both the Board and the AOC agree that it is essential that the courts receive accurate information from the child custody evaluator in order to determine the best interest of the child. Further, the AOC and the Board agree that a solution to this issue requires a legislative proposal to revise existing law.

Ms. Madsen stated that yet it remains in law that complaints can be made to the Board. Without these reports, the Board cannot investigate. It takes a significant dedication of resources to investigate these complaints. If staff cannot gain access to these reports, the resources could be better spent. She expressed that the reports that the courts receive, need to be accurate and factual. If they're not, the courts need to be made aware of that. The AOC were supportive of the Board's efforts to have access to these reports.

Ms. Madsen referred to staff in the audience. Cassandra Kearney, Enforcement Analyst, provided that nearly 40% of the complaints received by the enforcement unit are involving child custody issues.

Mr. Caldwell referred to AB 1864 and the Deputy Attorney General opinion which states that when acting in the capacity of a court-appointed child custody mediator or evaluator, the Board does not have jurisdiction. Mr. Caldwell asked if there a piece about this jurisdictional issue that may need to be resolved?

Ms. Madsen responded affirmatively stating that it may need to be addressed. A strong argument can be made because the Board is the agency to go to for licensee violations.

Dr. Wietlisbach suggested combining the two issues together (access to reports and jurisdictional issue) and crafting legislation.

Ms. Epstein stated that the Attorney General (AG) can go to the judge and petition to obtain the reports. It's not that the Board cannot get the document; the judge must approve that. However, the AG has the opportunity to argue to the judge the compelling reasons why the Board needs the document. CAMFT has concerns over giving the Board access to all confidential court documents without having the AG justify which confidential reports the Board can have access to.

Ms. Madsen stated that the report is needed at the beginning of the complaint investigation. She couldn't wait for the case to be referred to the AG in order to get the report. She added that Board staff is adept in determining those who are unhappy with their child custody decision versus those who have valid issues.

Ms. Wong stated that the child involved has no voice in the process. It is a disservice to the consumer if nothing is done regarding monitoring these professionals. The divorce rate is over 50%, and many of those divorces involve children. This population of children is already traumatized.

***Dr. Judy Johnson moved to direct staff to draft a legislative proposal that allows the Board access to the confidential report for investigative purposes and, if needed, to address the jurisdictional issue, and to include LPCCs in the language. Christina Wong seconded. The Committee voted unanimously (4-0) to pass the motion.***

## **VII. Discussion and Possible Action Regarding Research Related to the 90-Day Rule and Enforcement Actions**

Ms. Helms reported.

Under current law, an applicant for marriage and family therapy intern or professional clinical counselor (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."

At its November 9, 2011 meeting, the Board approved amendments to eliminate the 90-day rule for MFT intern and PCC intern applicants, and directed staff to seek Board-sponsored legislation. The need for this bill was based on the following:

### Need for Increased Consumer Protection

An applicant who has a previous conviction can submit an application for intern registration within 90 days of the degree being granted. They then have up to one year to submit their conviction records (considered a deficiency) to the Board for review. Although most submit the information quickly, an applicant with a serious conviction will occasionally try to delay, taking their one year period to submit the requested information. However, because they have followed the 90-day rule, they may then gain supervised experience during this one-year time period without any restrictions the Board might place on them due to their prior conviction. Once the Board's enforcement division obtains the conviction information and decides to deny or restrict the registration, they have already been gaining experience hours toward licensure.

If a consumer or the supervisor were to file a complaint against such a practitioner during this time, the Board would have no jurisdiction to investigate the complaint and take action, as they are not yet a registered intern.

### Decreased Application Processing Times at the Board

The 90-day rule was put into place many years ago when applicants for licensure were required to submit fingerprints on paper cards (called “hard cards”) to the Board so that their criminal background could be checked. These hard cards were then processed by the Board and then physically sent to the Department of Justice (DOJ) and then to the FBI so that a background check could be performed by both of these agencies. This entire process could take up to three months before the Board received the results.

Today, the Board uses Livescan fingerprinting, which is an electronic fingerprinting system. The Board now receives the results of electronic fingerprints in approximately three to seven days.

The adoption of Livescan fingerprinting has significantly decreased the time it takes for the Board to process an application, therefore, potentially eliminating the need for the 90-day rule.

Due to concerns cited by stakeholders, the Board agreed to revisit the 90-day rule proposal at its February 2012 Board meeting. At this meeting, stakeholders noted that there are no statistics available to show how often an applicant who followed the 90-day rule and is gaining hours is referred to the Board’s Enforcement division and, upon further investigation, is denied the registration or issued a restricted registration.

Board staff approached several legislative offices in January and February about authoring the 90-day rule proposal. Although several offices were interested and stated that they may be interested in running this bill in 2013, this same concern about lack of statistics was cited by several legislative staff members.

The Board has not kept statistics on this particular scenario in the past. The amendments to eliminate the 90-day rule were proposed after the Board’s enforcement division raised concerns that they were noticing that sometimes applicants with a criminal history follow the 90-day rule, and then may gain hours while the enforcement division investigates their application.

Staff recommends that the enforcement division gather data over a one-year time period in order to allow the Board to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule. Data on the following instances should be gathered:

1. Number of applicants with a criminal conviction who, while gaining hours, wait until the end of their one-year deficiency period (defined as the last two months) to submit any information requested by the Board’s enforcement division.
2. Number of instances in which an applicant follows the 90-day rule and begins gaining hours, only to have their registration denied due to the findings of the enforcement division.
3. Number of instances in which a denial of an application, due to enforcement division findings, is appealed and the applicant subsequently is granted a registration with restrictions.
4. In cases where a registration was denied or restricted due to enforcement division findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

Mr. Caldwell stated that the hard card process is no longer required; however, people have been waiting several months for their applications to be processed. The timeline for folks getting their intern registrations have not gotten faster since the end of the hard card process.

***Dr. Christine Wietlisbach moved to recommend to the Board to rescind the November 9, 20011 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule; and direct staff to collect data on the four instances outlined, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.***

#### **VIII. Legislative Update**

Ms. Helms provided the legislative update.

SB 632 is the clean-up bill for SB 363 that allows a trainee to counsel clients while not enrolled in practicum only if the lapse in enrollment is less than 90 days and is immediately proceeded and followed by enrollment in practicum.

SB 1527 required social workers to take Law and Ethics in their coursework. The bill was amended to address accepting older exam scores. This bill passed committee and is on its way to the Appropriations Committee.

SB 1575, the omnibus bill, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

#### **IX. Rulemaking Update**

The rulemaking update was provided in the meeting materials.

#### **X. Public Comments for Items Not on the Agenda**

Ms. Porter referred to AB 1674, which requires DCA to provide a certification process through 24 hours of training for LMFTs, LCSWs, psychiatrists, psychologists to provide supervised visitation. She noted that LPCCs are not listed in that bill.

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

Mr. Caldwell stated that members have come to AAMFT-CA regarding concerns about the Child Abuse and Neglect Reporting Act. Particularly, the concerns are that it is discriminatory against gay and lesbian adolescents by classifying that oral and anal sex is always abusive, and that vaginal sex is not always abusive. Additionally, it is inconsistent with what is considered to be normal sexual development. There are enough people who are concerned about this that AAMFT-CA would like this to be an issue of discussion.

Dean Porter suggested watching a bill AB 2007, which would license drug and alcohol counselors.

The meeting was adjourned at 1:41 p.m.