

## **BOARD MEETING MINUTES May 16-17, 2012**

Department of Consumer Affairs  
Hearing Room  
1747 North Market Blvd., 1<sup>st</sup> Floor  
Sacramento, CA 95834

**Wednesday, May 16<sup>th</sup>**

### **Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Samara Ashley, Public Member  
Dr. Harry Douglas, Public Member  
Dr. Judy Johnson, LEP Member  
Renee Lonner, LCSW Member  
Karen Pines, LMFT Member  
Christina Wong, LCSW Member

### **Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Marc Mason, Administration/Exam Manager  
Christina Kitamura, Administrative Analyst  
Michael Santiago, Legal Counsel  
Dianne Dobbs, Legal Counsel

### **Members Absent**

Patricia Lock-Dawson, Vice Chair, Public Member  
Sarita Kohli, LMFT Member

### **Guest List**

On file

## **FULL BOARD OPEN SESSION**

### **I. Introductions**

Dr. Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 9:12 a.m. Christina Kitamura called roll. A quorum was established. Board members, Board staff, and meeting attendees introduced themselves.

Dr. Wietlisbach informed the audience that agenda item VI. f., regarding AB 1864, failed in committee and will not be discussed. She also informed the audience that agenda item XIII, regarding a two-member executive committee, is tabled.

### **II. Approval of the February 29 - March 1, 2012, Board Meeting Minutes**

***Karen Pines moved to adopt the Board meeting minutes. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

### **III. Executive Officer's Report**

#### **a. Budget Report**

Kim Madsen provided an update on the Board's budget. The Board's 2011/2012 budget is \$7,779,000. Expenditures as of March 31, 2012 total \$5,605,217. Of these

expenditures, 26% are directly related to personnel expenses and 14% are related to enforcement activities. The remaining expenses are related to operating and equipment costs.

The Board is on target in finishing the fiscal year with an encumbered balance of about \$100,000. Ms. Madsen expects this figure to go up due to the end of the year adjustments.

Projected expenses through the end of the fiscal year, which include the additional BreEZe expenses, are estimated to be close to \$7.6 million. Total revenue as of March 31, 2012 is about \$6.8 million which represents 88% of the total budget.

The Board's current fund condition remains at a reserve balance of 3.1 months.

The Board has loaned a total of \$12.3 million dollars to the General Fund. The Board was recently notified that it is scheduled to receive a repayment, however, it is not clear what the amount will be. Department of Finance typically prefers to see the reserve below 3 months.

The proposed 2012/2013 budget for the Board is \$8,153,000. The May revise was released, which is an adjustment based on revenue collections and a forecast for the upcoming year. The Governor is proposing cuts, which will depend on the tax initiatives. The proposal to cut state employees' compensation by 5% will affect the Board and its operations. The proposal is to move to 4-day work week at 9.5 hours per day, a total of 38 hours per week, closing the office one day a week. Although this proposal must be negotiated with the unions, it is clear that the reduction in compensation will take place. A reduced work week will go into effect on July 1<sup>st</sup>, but it is unclear what the time reduction will look like.

Other proposals are to eliminate or reduce the number of external contractors, eliminate non-essential hiring of retired annuitants, and permanently reduce the state workforce. Last week, vacant positions were eliminated. The Board lost two of its vacant positions, leaving it with 44 staff instead of 46. Those positions were the evaluator position in the licensing unit and an analyst position in the enforcement unit. Delays in processing times are anticipated.

The Little Hoover Commission has been meeting regarding the reorganization plan. The portion of the plan that would affect the Department of Consumer Affairs (DCA) would see the Department of Real Estate, the Board of Chiropractic Examiners, the Office of Real Estate Appraisers, and the Structural Pest Control Board all come under DCA. The Director of DCA and the State and Agency Secretary both testified in support of this plan.

Dr. Judy Johnson suggested putting a notice on the website regarding the anticipated delays due to the reduced work schedules taking effect in July.

## **b. Operations Report**

Ms. Madsen provided an update on operations. Two positions were eliminated by the Governor. In the Licensing Program, there was an overall increase in application volume. There was a slight decrease in the volume of social work applications. Processing times for marriage and family therapy examination applications have improved from a 6-month delay to a 4-month delay. Staff is making plans for the social

work desk so that it does not experience a long backlog due to the elimination of the vacant position.

Ms. Madsen reported on the Licensed Professional Clinical Counselor (LPCC) Program. The Board has received 91 intern applications, 39 LPCC applications, and 3433 LPCC grandparent applications.

Due to the complexity of the LPCC Program and limited resources, the process to approve applications is significantly delayed. One challenge is the inability to get information from schools relating to curriculum that meets requirements for licensure in California.

Recently, the Board redirected a vacant position from another unit to the Licensing Unit in an effort to add another licensing analyst to the LPCC Unit. Currently, there are two evaluators in the LPCC Unit.

As of March 31, 2012, the Board has issued 15 LPCC licenses and 14 Professional Clinical Counselor (PCC) Intern registrations.

Dr. Johnson asked, in regards to employment, how many people actually have positions that they cannot access because they are waiting to be licensed. Some of these people are teaching at universities and doing other duties that does not require licensure. Are folks not accessing services to be able to work because of this "bottleneck?"

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that many of the grandparent applicants have been working; some of them are either under employed or working in other fields. Those who have been licensed in another state and relocate to California may not be working. Ms. Porter expressed that she hopes the interns will be a priority because they need the registration to continue. Ms. Porter asked how long it will take the Board to process these applications so that she can relay the information to the LPCC population.

Ms. Madsen replied that it is not possible to provide a time frame because there are so many variables to each individual application. This is a new program, and staff is still trying to obtain information from schools in order to evaluate applications.

Paula Gershon, Program Manager, estimated that it may take 1 ½ years, for those applications already received, from the date it was received. This is worst case scenario.

Michael Brooks, Center for Clinical Social Work, expressed that those who already have a license to practice in another field and have jobs should be low priority. He also suggested sending a letter of explanation to those people in order to cut down on phone calls.

Dr. Harry Douglas suggested setting up benchmarks based upon the receipt of all required information necessary to evaluate the application.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA) commended Board staff on their work in evaluating the numerous amounts of applications that they are receiving. She stated that the associations can communicate the complexities, details and specifics related to the delay in processing the applications to its members.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), warned against sending unrealistic expectations. Applicants may submit everything that is required; however, the Board must determine if it is sufficient.

Dr. Wietlisbach thanked the staff for its hard work.

Ms. Madsen reported on the Examination Program and Administration Program. A total of 1895 examinations were administered in the first quarter. The Cashiering Unit is currently processing renewal applications within 7 days of receipt. All other applications are processed within 3 days.

Ms. Madsen reported on the Enforcement Program. Enforcement staff continues to meet or exceed the established performance measures (PM) with the exception of PM 4, Formal Discipline. This is the part of the process that Board staff does not have control over, because the Board must rely on the Attorney General's Office and the Office of Administrative Hearings.

Ms. Madsen reported on the BreEZe project. Board staff continues to work with the BreEZe team and vendor to ensure that our business processes and needs are accurately reflected in our new database system. Significant Board resources are involved in reviewing and testing the design.

Ms. Madsen reported on the Customer Service Satisfaction Survey, citing the improvement in overall satisfaction since last quarter.

**c. Personnel Update**

Ms. Madsen announced that Steve Sodergren accepted the Assistant Executive Officer position effective May 1, 2012. He previously served as the Board's Licensing Manager and Enforcement Manager from 2006 to 2008.

**d. Sunset Review Update**

On March 19, 2012, Dr. Christine Wietlisbach, Renee Lonner, and Kim Madsen attended the Senate Business Professions and Economic Development Committee (Committee) Sunset Review hearing. The purpose of the hearing was to address the questions from the Committee following its review of the Board of Behavioral Sciences' Sunset Review report.

As requested by the Committee, the Board discussed four of the fifteen questions raised in the Committee's background paper. A written response to all fifteen questions was provided to the Committee on April 19, 2012. Several professional associations also attended the hearing and provided testimony in support of extending the Board. Two licensees also attended and provided their perspective.

The Sunset Bill to extend the Board is moving through the legislative process, and the proposal is to extend the Board until January 1, 2017.

**IV. Continuing Education Committee Report**

Marina Karzag reported on the Continuing Education Committee's (Committee) work. The two-member Committee was established with Dr. Douglas and Dr. Johnson as its members. This Committee was created to address a number of issues that came to the attention of staff this past year related to continuing education (CE) provider requirements. These

issues were presented and discussed at the October 2011 Policy and Advocacy Committee meeting and at the November 2011 Board meeting. At its November 2011 meeting, the Board voted to create a two-member committee to review and discuss the Board's current CE provider requirements and other models of continuing education.

The Committee held its first public meeting on April 18, 2012. The meeting focused on the issues that were identified regarding the Board's current CE provider requirements. The Committee also compared the Board's requirements with other DCA healing arts boards and licensing boards in other states. The Committee received valuable input from stakeholders that attended the meeting.

The next meeting is scheduled on May 31, 2012. The Committee will focus on the role of the CE provider accrediting agencies and how this model may address some of the issues identified by staff.

Dr. Douglas commended Ms. Karzag on her research and information provided to the Committee. He listed some of the issues that came up at the April 2012 meeting:

- Accreditation,
- Lack of oversight and accountability,
- Renewal process,
- Instructor qualifications,
- Provider approval, and
- Financial burden on the individual, the provider, and the stakeholder.

Ms. Pines expressed her concerns regarding self study courses that grant 6 hours of CE credit for taking a 2-hour course. Ms. Karzag responded that the Committee will be taking a look at the issues regarding self study and remote/internet courses.

Dr. Johnson stated that it is important to find the balance of percentage of self study versus interface. Some people only have access to online and self study courses; but the interface is important because of the nature of this field.

Dr. Douglas outlined the plan for the four Committee meetings:

- 1<sup>st</sup> meeting (April 18<sup>th</sup>) discussed continuing education,
- 2<sup>nd</sup> meeting to discuss accreditation,
- 3<sup>rd</sup> meeting to discuss the continuing competency model, and
- 4<sup>th</sup> meeting to discuss recommendations

Dr. Wietlisbach suggested, in light of Senate Bill (SB) 1183, moving up the schedule of the meetings to get the work done faster.

## **V. Update on the California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Boards**

Dr. Tracy Montez, Applied Measurement Services (AMS), provided an update on the California marriage and family therapy occupational analysis and collaboration with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

Dr. Montez received and reviewed documents and reports from AMFTRB as requested by AMS. AMS then submitted a list of follow-up questions to AMFTRB. Responses to the questions were received from AMFTRB within two weeks of submission. Dr. Montez is generating another list of questions.

Currently, Dr. Montez is looking at how AMFTRB develops their exam, how they administer it, and their security procedures. During this time, AMFTRB is developing a practice analysis to update their scope of practice. The Board is also developing a practice analysis.

All of this information, including the two updated scopes of practice, will be compiled and included in a report at the end of the year.

Ms. Madsen added that two California Subject Matter Experts (SME) are participating in AMFTRB's practice analysis.

The Board took a break at 10:12 a.m. and reconvened at 10:34 a.m.

## **VI. Policy and Advocacy Committee Report**

### **a. Recommendation #1 - Support, Assembly Bill 40 (Yamada) if amended**

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

Current 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.

The law requires a mandated reporter to make a report via telephone to local law enforcement to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility. The written report must be made to both the local ombudsperson and the local law enforcement agency.

According to the author's office, the local ombudsman's limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation and resolution of certain elder and dependent adult abuse reports.

At the April 2012 Policy and Advocacy Committee (Committee) meeting, a proposed amendment was suggested. The suggestion was to amend the Welfare and Institutions Code to require a report by telephone to local law enforcement be made in the case of alleged physical and/or sexual abuse. This change was suggested because in other areas of the law that reference physical abuse, sexual abuse is often specified in the reference.

The Committee recommended the Board take a support position on this bill if it is amended to reference "physical abuse and/or sexual abuse."

Dr. Wietlisbach stated that at the Committee meeting, the question was whether the definition of "physical abuse" included sexual abuse. Now that the definition has been provided, it seems that this would be redundant to propose this amendment.

Christina Wong agreed with Dr. Wietlisbach, stating that it is not necessary to list sexual abuse since it is defined under physical abuse.

Ms. Pines asked if this bill included financial abuse. Ms. Helms responded that it does not include financial abuse, explaining that when this bill was first introduced, it included

financial abuse. Concerns were raised regarding the dual mandated report for all situations of elder abuse. The bill was amended so that the dual mandated report would be required in all suspected physical abuse cases.

Michael Brooks stated that both terms (physical and sexual abuse) should be outlined in the bill, even if it's redundant, because it makes it very clear. Ms. Lonner agreed with Mr. Brooks.

Dr. Judy Johnson agreed that there is a distinction between physical and sexual abuse, and supports an amendment to include "sexual abuse."

***Dr. Judy Johnson moved to support the AB 40 and to recommend an amendment to include "sexual abuse." Karen Pines seconded. The Board voted unanimously (7-0) to pass the motion.***

**b. Recommendation #2 - Support, Assembly Bill 171 (Beall)**

Ms. Helms reported on AB 171, Pervasive Development Disorder or Autism.

Current law 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.

AB 171 expands on current law by requiring every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2013, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism (PDD/A).

The intent of AB 171 is to close loopholes in current law that allowed for denial of coverage to those with PDD/A. This bill would prohibit coverage for PDD/A 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.

At its meeting in April 2012, the Committee recommended that the Board take a support position on this bill and asked that staff work with the author's office to address some minor technical concerns. The bill specifically defines "diagnosis of pervasive developmental disorder or autism" and "treatment for pervasive developmental disorder or autism," citing specific care that these entail. However, there is no definition of "screening of pervasive developmental disorder or autism." It is suggested that "screening of autism spectrum disorders" also be specifically defined.

***Christine Wong moved to support AB 171. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

**c. Recommendation #3 - Support Assembly Bill 367 (Smyth) if amended**

Ms. Helms reported on AB 367, Board of Behavioral Sciences 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. Specified boards are subject to these reporting requirements. This bill would add the Board of Behavioral Sciences to this list.

At its meeting in April 2012, the Committee recommended that the Board support this bill if its implementation is delayed until January 1, 2015 in order to accommodate the BreEZe system implementation.

Ms. Epstein commented that this is a CAMFT-sponsored bill, and this amendment will be introduced at the Senate Business and Professions Committee. The author is in support of the amendment.

***Renee Lonner moved to support his bill if its implementation is delayed until January 1, 2015 in order to accommodate the BreEZe system. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.***

**d. Recommendation #4 - Support Assembly Bill 1588 (Atkins) if amended**

Ms. Helms reported on AB 1588, Professions and Vocations Reservists Licensees, Fees and Continuing Education.

Current 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:

- a. The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces.
- b. 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
- c. The applicant must submit an affidavit stating the date of entrance into the service, whether still in the service or the date of discharge, and he or she must also submit the renewal fee for the current renewal period.

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.

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.

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 of Psychology's licensing law allows for a waiver of the renewal fee when a licensee is in full-time active service in the Army, Navy, Air Force, Marines, United States Public Health Service, the Peace Corps, or Vista.

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.

At its April 2012 meeting, the Committee recommended that the Board take a “support if amended” position on this bill, requesting the bill be amended to include a time limit to pay the renewal fee once active service is complete, and replacing the term “written notice” with “affidavit.” The Committee also directed staff to do further research regarding the current policy of the Board of Psychology, as well as research regarding whether this bill would require additional costs to modify the new BreEZe database system.

The BreEZe team indicated that no additional costs would incur due to this change.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that when a reservist holds a professional license, they usually serve in that capacity in the military. This bill is a “blanket” bill, with the stereotype that the reservist is going to be called to engage in combat and cannot serve in their license capacity.

Ms. Pines inquired if the issue is access to continuing education. Dr. Johnson replied that technology allows for access to online courses. Ms. Pines inquired if the reservist is allowed the time to take the courses. Dr. Johnson replied that is the assumption for anyone engaged in an active service. Unless they are actually engaging in that practice, there is no reason for it to be waived.

Ms. Wong stated that if the language could specify the conditions that they cannot be practicing and they have a time limit, there should be no problems.

Ms. Helms stated that there is already a process to waive the CE requirement. Furthermore, the Board of Psychology and the Medical Board state that the licensee shall not engage in private practice. Working for the military is a government entity, not a private practice.

Mr. Brooks stated that active duty licensees are usually practicing in the military. However, there are some service members that are in the military but not serving in that capacity. The federal government does not require a license to practice; however, the military requires a license.

Marc Mason reminded the Board, and Michael Santiago confirmed, that the bill is limited to reservists.

Mr. Mason suggested that the Board take into consideration those reservists who are affected are in extreme situations, and historically, this affects only a small population.

***Dr. Judy Johnson moved to support this bill if amended to include a time limit to pay the renewal fee and to replace the term “written notice” with “affidavit.” Samara Ashley seconded. The Board voted unanimously (7-0) to approve the motion.***

**e. Recommendation #5 - Support Assembly Bill 1785 (Lowenthal, B.)**

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

Current law establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits and lists the health care providers that are reimbursed on a per-visit basis.

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. This amendment leaves out the Board's newest license type, LPCCs. CAMFT has indicated willingness to consider this amendment.

Staff suggested an amendment be made to include the word "licensed" in front of the term "marriage and family therapist" in the Welfare and Institutions Code. This will clarify that the marriage and family therapist must be licensed by the Board, and it is consistent with the use of the term "licensed clinical social worker" in that code section.

At its April 2012 meeting, the Committee recommended that the Board take a support position on this bill.

Rebecca Gonzales, NASW-CA, expressed that NASW-CA opposes this bill. NASW-CA feels that there is an adequate supply of social workers to fulfill these jobs. Social workers' training is ideally suited to serve the low income populations that frequent FQHCs and RHCs. NASW-CA also feels that this bill can have the unintended consequence of suppressing wages.

Ms. Esptein stated that this is in the Appropriations Committee and is in suspense right now because it has a fiscal impact of \$3 million. Ms. Helms added that any bill that has a financial impact sits in suspense.

***Renee Lonner moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

**f. Recommendation #6 - Oppose Assembly Bill 1864 (Wagner)**

AB 1864 died in committee, therefore, no discussion took place.

**g. Recommendation #7 - Support Assembly Bill 1904 (Block)**

Ms. Helms reported on AB 1904, Military Spouses Temporary Licenses.

This bill allows 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 if specific conditions are met.

The bill provides discretion to the Board on whether to implement this. If the Board decides to implement this process, the Board is required to expedite the issuance of the license.

As written, 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.

At its April 2012 meeting, the Committee recommended the Board take a support position on this bill.

Mr. Wong stated that this bill expands the idea of reciprocity based on individuals associated with a specific population of people.

Ms. Madsen emphasized that this bill gives the discretion to the Board on whether or not to implement this process.

***Christina Wong moved to support this bill. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

**h. Recommendation #8 - Consider Assembly Bill 1932 (Cook)**

Ms. Helms reported on AB 1932, United States Armed Services Healing Arts Boards.

Current law requires healing arts boards under 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.

This bill requires, beginning January 1, 2014, 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.

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. Currently, 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. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience.

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 upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years in his or her current jurisdiction and is in good standing.

Military education and experience is evaluated by the Board on a case-by-case basis if a military applicant applies for licensure or registration. The case-by-case evaluation is needed in order to protect the public by ensuring qualified licensees. The Board would be able to provide the Department of Veterans Affairs and the Legislature with information about findings from past evaluations of military schools and military experience settings, and would also be able to provide information about Board licensing requirements. However, 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.

At its April 2012 meeting, the Committee did not recommend a position to the Board for this bill, but requested that the Board further discuss the policy implications of this legislation.

Erica Eisenlauer, Analyst for DCA Legislative and Policy Review Division, explained that as a result of the May 1<sup>st</sup> hearing, the Assembly Budget Committee presented DCA with supplemental reporting language requiring DCA to prepare a report detailing its implementation of Business and Professions Code Section 35. AB 1932 requires the same of DCA; however, this supplemental reporting requirement is due to the Assembly Budget Committee no later than October 1, 2012. If AB 1932 were to become enacted, the supplemental reporting requirement would be submitted before this legislation was to take effect. The supplemental reporting requirement would require the same information that AB 1932 would require; however, AB 1932 is an annual requirement whereas the supplemental reporting requirement is a one-time requirement. DCA is requesting this information by October 1, 2012.

Ms. Helms stated that the Board can take a position on this bill and it will not affect the matter going on with the Legislature.

Mr. Mason stated that Board staff does not have the expertise or the resources to identify every program out there. It is incumbent for the military to provide this information to the Board. The Board will evaluate anybody's application to determine if the Board's requirements are met; but to do this annually is not wise since it would take up a lot of the Board's resources; and it is unclear what the benefit will come of this.

Ms. Helms emphasized that it would not be effective for the Board to attempt to identify every possible program, especially when getting into the wide variety of military experience and education that could be out there.

Dr. Johnson stated that this is very cumbersome, and there is already a vehicle in place. Dr. Johnson proposed no action.

Ms. Madsen stated that this comes in light of Governor Brown's recent directive to identify non-essential reporting and eliminating those reports.

***Samara Ashley moved to oppose the bill and provide explanation that references lack of staffing and resources, duplicative process, and refers to the Governor's directive to eliminate non-essential reports. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

**i. Recommendation #9 - Support Assembly Bill 2570 (Hill)**

Ms. Helms reported on AB 2570, Licensee Settlement Agreements.

This bill prohibits a licensee regulated by DCA from including or allowing inclusion of the following provisions in a settlement agreement of a civil dispute:

- a. 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
- b. A provision that requires the other party in the dispute to withdraw a complaint from DCA or a board, bureau or program.

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 with the licensee or registrant's regulatory board.

These regulatory gag clauses may prevent a regulatory board from taking disciplinary action against a negligent licensee or registrant.

On March 16, 2012, the Board filed a notice with the Office of Administrative Law to proceed with a regulation package. One of the provisions of this regulation package proposes amending Board regulations to include a provision that would make it unprofessional conduct for a Board licensee to include, or permit inclusion, of a provision in a civil settlement agreement that prohibits another party from contacting, cooperating, or filing a complaint with the Board, or a provision that requires another party to withdraw or attempt to withdraw a complaint that has been filed with the Board. The public hearing for this proposal was held on May 1, 2012.

At its April 2012 meeting, the Committee recommended that the Board take a support position on this bill.

Ms. Epstein expressed that CAMFT supports this bill, and added that this is the appropriate vehicle for this provision as opposed to regulations.

***Renee Lonner moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

**j. Recommendation #10 - Consider Senate Bill 1134 (Yee)**

Ms. Helms reported on SB 1134, Persons of Unsound Mind and Psychotherapist Duty to Protect.

Existing law 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(s).

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, Section 503A, which renamed the therapist's duty a "duty to protect" and eliminated the reference of "duty to warn."

According to the author's office, this clarification is intended to make the law as clear as possible about the duty of a psychotherapist with respect to Civil Code Section 43.92.

This bill was amended on May 8, 2012 to specify that the changes made by this bill are not to be interpreted by the courts to be a substantive change.

At its April 2012 meeting, the Committee decided not to take a position on this bill, but instead wait for further clarification.

Ms. Epstein stated that this is a technical clean-up bill. The Legislature was comfortable with this bill and its intent. It is not changing any duty; it is clarifying and making jury instructions and statute consistent.

Mr. Wong stated that NASW-CA has concerns with this bill. This bill states that the psychotherapist does not have to contact the victim. The psychotherapist may do so, if he/she chooses, but the psychotherapist is not required to. The issue is that there are

some instances that it is dangerous for the licensee to contact the victim. Mr. Wong expressed that the victim should be contacted. His interpretation of the language is the duty to protect means that the psychotherapist contacts law enforcement to protect the victim; the duty to warn means that the psychotherapist must contact the victim.

Ms. Epstein explained that the language in Tarasoff never stated “duty to warn.” Tarasoff language states “duty to protect.” In order to get full immunity, the therapist must contact the victim and law enforcement. The proposed changes do not alter the full immunity. The proposed changes state that the duty to protect might be another form of action instead of contacting the victim.

Ms. Lonner expressed that Tarasoff is a good law and this proposal “tinkers” with that law in a way that will make the law unnecessarily complicated. The burden will fall on the trainers and educators who teach law and ethics courses and who teach in graduate schools.

Ms. Wong stated that the duty to warn is an action that is required; it is very specific and clear. The duty to protect is not clear; it is very passive.

Mr. Mason asked how the disconnect between the civil code and the jury instructions came about. Ms. Epstein replied that she does not know how that happened; however, the jury is instructed to determine if the duty to protect was carried out, not the duty to warn.

Dianne Dobbs stated that there were two Tarasoff cases. It was second Tarasoff case (1976) that made it law for a duty to protect. The first Tarasoff case (1974) made it law for a duty to warn.

Ms. Madsen asked legal counsel if supporting this bill is supporting what is in existing law. Ms. Dobbs replied yes.

Mr. Santiago explained that this bill does not change case law or other statute; it does not change anything on a substantive level.

Mr. Brooks stated that if the Board is not clear on the law, then the licensees will not be clear on the law. He added that the Board should look into ways to better educate the licensees regarding the duty to protect.

Dr. Johnson suggested to not take a position on SB 1134. Ms. Lonner agreed.

**k. Recommendation #11 - Consider Senate Bill 1183 (Lieu)**

Ms. Helms reported on SB 1183, Continuing Education.

This bill amends the law for LMFTs, LEPs, LCSWs, and LPCCs to require that continuing education (CE) must be obtained from either an accredited educational institution, or a CE provider that is approved by an accrediting organization, including, but not limited to, a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution.

This bill removes the Board’s authority to approve providers of CE courses.

Over the past year, questions have been raised concerning the nature of the Board’s CE course content requirements. Board staff has identified a number of issues related to its

CE program, and the Board has committed to taking action to address these problems. At its November 2011 meeting, the Board voted to form a CE committee and mandated this committee to work with stakeholders and interested parties to develop legislation and regulations to address specified areas of concern.

The first public meeting of the Continuing Education Provider Review Committee (Committee) was held in April 2012, with a number of stakeholders in attendance providing valuable input. Additional public meetings of the Committee are set for May 31<sup>st</sup> and July 19<sup>th</sup>.

Staff has a concern about a potential unintended effect that SB 1183 may have on the Board's licensees and registrants. Currently, this bill proposes that CE may either be obtained from an accredited educational institution, or other CE providers "that are approved by accrediting organizations, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a CE unit of an accredited four-year institution of higher learning, or a mental health professional association."

This bill does not specifically define "accrediting organizations". If standards for an accrediting organization remain unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an accrediting organization.

The lack of a definition and standards required of an accrediting entity could have one of two unintended consequences if this bill is implemented as written. It could allow for a broader variety of CE providers to claim they are accredited, resulting in a greater number of unqualified providers offering CE coursework. Conversely, if there are no entities to accredit qualified providers this bill could eliminate qualified providers if they cannot become accredited.

In April 2012, staff sent a letter to the author's office detailing concerns with the current version of this bill and explaining the success the Board has had utilizing the committee process in the past to address complex issues. At a subsequent meeting, the author's office indicated they recognize these concerns and would like to incorporate the findings from the Board's committee into a future version of the bill. They asked that staff assist them in drafting amendments that would achieve this.

At its April 2012 meeting, the Policy and Advocacy Committee did not recommend a position on this bill, but requested that the Board further discuss the policy implications of this legislation

Dr. Wietlisbach expressed her concern about the Legislature interfering with the Board's authority. This bill could have potential consequences for other boards as well. Dr. Wietlisbach feels that the Board's CE Provider Review Committee can address the issues without having this bill.

Ms. Eisenlauer stated that DCA feels that this is excessive. DCA does not have an official position on this bill, but has issues with the bill.

***Christina Wong moved to oppose this bill. Dr. Harry Douglas seconded.***

Mr. Wong stated that the Board does not have a structure to regulate course content. Dr. Wietlisbach responded that the Board is aware of that, and the Board is working on these issues.

Rebecca Gonzales, NASW-CA, stated that NASW-CA wrote to the author and took a position of support if amended. Their requested amendments reflected the Board's requested amendments.

Ms. Epstein stated that CAMFT testified and wrote the same letter to the author.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that AAMFT-CA also wrote a letter to the author requesting an extension and to allow the Board to continue its committee process.

***The Board voted unanimously (7-0) to pass the motion.***

**I. Recommendation #12 - Support Senate Bill 1238 (Price)**

Ms. Helms presented SB 1238, the Board's Sunset Review.

This bill extends the operation of the Board until January 1, 2017, and specifies that the Board is subject to review by the appropriate policy committees of the Legislature.

At its meeting in April 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill.

***Samara Ashley moved to support this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

Dr. Wietlisbach called for a lunch break at 12:29 p.m. The Board reconvened at 1:49 p.m.

**m. Legislative Update**

Ms. Helms referred to legislative update in the meeting materials for the audience to peruse. No action was needed for this summary.

**n. Rulemaking Update**

Ms. Helms briefly reported on the rulemaking update. The enforcement regulations were submitted to the Office of Administrative Law. The Board is also pursuing several other regulatory proposals. No action was needed for this summary.

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

Ms. Helms presented the proposed amendments of the disciplinary guidelines.

At its November 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. The additional amendments are:

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

#### Recommended Language for Tolling of Probation

The Board's Disciplinary Guidelines contain specific language for standard terms and conditions of probation. Two of the standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident."

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 allows probationers to toll their probation indefinitely.

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 combining "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.

#### Recommended Language for 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.

At its April 2012 meeting, the Policy and Advocacy Committee recommended that the Board direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011.

***Samara Ashley moved to direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011. Christina Wong seconded. The Board voted unanimously (7-0) to pass the motion.***

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

Ms. Madsen presented the history, procedure, and issues regarding complaints against licensees who provide confidential child custody evaluations to the courts.

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.

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 plan or recommendation to the court. The time appropriated for this service is not extensive and does not require an in depth assessment of the situation.

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

Conducting an evaluation requires a significant amount of time. 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 the California Family Code, the report submitted by the evaluator is considered 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.

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 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 an SME and at times, assistance from the Division of Investigation (DOI).

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 are 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 are concerned about decreasing resources to perform this service.

In 2011, Board staff initiated discussions with the Administrative Office of the Courts (AOC) to exchange information on each entity's process and to explore possible solutions to resolve the current issues. The Board was informed that current law did not allow the Board access to the evaluator's report. The AOC explained that the report is confidential and could only be released to the Board by the court. To obtain the report, the Board is required to file a petition or subpoena with the court.

Ms. Madsen provided history in one particular case, where the Board received complaints involving a licensee who served as a private child custody evaluator. In these complaints, the licensee was accused of engaging in unprofessional conduct and ethical violations. In these complaints, the Board received documentation to investigate the allegations, including the confidential evaluation report provided the parents as well as the licensee.

The Board's investigation revealed potential violations, and the investigation was forwarded to an SME for review and opinion, and then to the Attorney General for disciplinary action.

The Deputy Attorney General determined it was in the Board's best interest to seek formal release of the report from the court to the Board. A motion was filed in Superior Court seeking the release of the report to the Board for the upcoming administrative hearing. The judge denied the Board's request. Since this report served as the basis for the Board's action against the licensee, the Board had to withdraw its action against the licensee because the report would be inadmissible in the hearing.

The Board met with the AOC to discuss this case and 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 agreed 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 agreed that a solution to this issue requires a legislative proposal to revise existing law.

At its April 2012 meeting, the Policy and Advocacy Committee (Committee) discussed the Board's role in the investigation of complaints involving child custody evaluators. A question was raised regarding the Board's jurisdiction in these matters. A previous opinion from a former Deputy Attorney General stated that the Board does not have jurisdiction based upon the fact that the setting nor the services provided are clinical or psychotherapeutic for which a license is required. The Committee considered this comment.

The Committee recommended that staff draft a legislative proposal that allows the Board access to the confidential report for investigative purposes and if necessary, the jurisdiction to conduct the investigations.

Ms. Pines expressed that some complaints are a result of an angry parent who loses custody of their child, and the parent wants revenge on the evaluator. Therefore, it is very important to have the report right away.

Ms. Epstein stated that CAMFT does not feel it is necessary to seek legislation in this matter. The Deputy Attorney General (DAG) must prove to the judge that confidentiality must be breached for the particular case. In the case where the judge denied the request, the DAG did not convince the judge. The decision to grant the report to the Board should be decided on a case-by-case basis.

Mr. Brooks expressed that the courts want licensed professionals to conduct these evaluations, but the courts do not want the Board to have control over the evaluators. If the courts want licensed clinicians to conduct these evaluations and not be held to the standards of the licensing laws, then there must be a disclaimer that the licensed clinician is not working under their license in this capacity, and that it is clear in the court record that they are not operating under the scope of their license.

Mr. Wong stated that ruling against a licensee could be a strong cause for an attorney to go back to court and have a decision overturned.

Dr. Johnson expressed that there is an elite sense that these evaluators are “above the law” and “untouchable” yet they serve a very significant function. They need to be held accountable. They are dealing with the most vulnerable population. The current process is not working.

Ms. Wong stated that the conversation is really about the Board’s jurisdiction and what to monitor, since the evaluators are not providing psychotherapy.

Ms. Lonner stated that education needs to be provided - it is not psychotherapy, but it is the assessment, interviewing, and intervention which are the highest level of clinical skills. Also, it is not a fact that the resources will decrease if the Board begins to investigate these cases. The group of court evaluators is a tight organization, closed to newcomers in a corrupt system, and is high-fee and money-driven. Establishing jurisdiction and oversight might open the doors to qualified professionals.

***Christina Wong moved direct staff to seek clarification of Family Code Section 3110.5(e) regarding the jurisdiction of Board licensees who provide evaluation services to the court. If it is determined the Board has jurisdiction, direct staff to draft a legislative proposal that allows the Board access to the confidential report for investigative purposes. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

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

Ms. Helms presented the 90-day rule legislative proposal.

Under current law, an applicant for marriage and family therapy (MFT) 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 is referred to as “the 90-day rule.”

There are concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board’s enforcement process.

Under the 90-day rule, 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.

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.

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 unit and, upon further investigation, is denied the registration or issued a restricted registration.

Board staff approached several legislative offices 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 unit raised concerns.

At its February 2012 Board meeting, the Board decided to send this proposal back to the Policy and Advocacy Committee (Committee) for further discussion of available options

At the April 2012 Committee meeting, staff recommended that the enforcement unit 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 unit.
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 unit.
3. Number of instances in which a denial of an application, due to enforcement unit 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 unit findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

Based on the staff recommendation, the Committee recommended that the Board do the following:

- 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 above, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting.

***Karen Pines moved to rescind the November 9, 20011 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

***Karen Pines moved to 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. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

## **X. Other Legislation**

### **a. Discussion and Possible Action Regarding Senate Bill 1172**

Ms. Helms presented SB 1172, Sexual Orientation Change Efforts (SOCE). She stated that this bill was not available for analysis by the Policy and Advocacy Committee's (Committee) deadline, and therefore, not considered by the Committee.

This bill prohibits a psychotherapist from engaging in sexual orientation change efforts without first obtaining the patient's informed consent, prohibits a patient under 18 from undergoing sexual orientation change efforts, and allows a cause of action to be brought against a psychotherapist if sexual orientation change efforts were performed under the certain circumstances outlined in the bill.

Ms. Epstein stated that CAMFT opposes this bill unless amended. CAMFT states that the definition of "sexual orientation change efforts" is overbroad. The bill as written would have unintended consequences. CAMFT's concern is not with intent, but with the language and definitions. CAMFT continues to work with the author's office.

Mr. Wong stated that NASW-CA is concerned with unintended consequences of defining psychotherapists as interns and trainees.

Ms. Gonzales stated that NASW-CA wrote a letter to the author, taking a position of oppose unless amended. There is a concern with the informed consent because it gives this therapy some legitimacy. NASW-CA is also working with the author's office.

Ms. Epstein informed the Board and audience that this bill is getting a lot of national media attention.

***Dr. Judy Johnson moved to oppose this bill. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

### **b. Discussion and Possible Action Regarding Assembly Bill 1976**

Ms. Helms presented AB 1976, Military Experience for Licensure and Certification Requirements.

This bill requires a board to accept education, training, and experience gained in the military toward licensing requirements unless the board determines that the education, training, and experience is not substantially equivalent to those licensing requirements.

This bill as of July 1, 2014, requires a board that accredits or approves schools offering education course credits toward licensing requirements to require schools seeking accreditation or approval to have procedures in place to fully accept an applicant's military education, training and experience toward completion of an educational program designed to qualify a person for licensure.

This bill requires a board to determine whether or not it is necessary to adopt regulations to implement this new requirement.

This bill is part of a larger federal effort to improve the lives of military families. The bill's author notes that lack of health care providers is a significant barrier to access to health care services in underserved areas. Post 9/11 veterans of the military have an unemployment rate of 13.3 percent, but have often gained education, training, and experience in their military service that can be transferred to a licensed profession.

The Board does not accredit or approve schools offering education course credit. Instead, it relies on the accreditations and approvals of other specified entities. Therefore, the main provisions of this bill, as written, would not apply to the Board. However, the Board would need to submit a report to the Governor and the Legislature explaining why the regulations required by this bill are not necessary.

***Christina Wong moved to oppose this bill. Dr. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.***

The Board took a short break at 2:58 p.m. and reconvened at 3:15 p.m. Upon return from break, the Board returned to SB 1172.

**a. Discussion and Possible Action Regarding Senate Bill 1172**

***Dr. Judy Johnson moved to rescind the motion on SB 1172. Renee Lonner seconded.***

Dr. Johnson explained that she does not want it interpreted that the Board is insensitive to this issue. She expressed that amendments should be suggested.

***The Board voted unanimously (7-0) to pass the motion.***

Ms. Loewy, AAMFT-CA, opposed this bill unless amended. AAMFT-CA is also working with the author's office. They do not have proposed language at this point.

Dean Porter, CALPCC, is concerned about the language and definitions also. She provided suggested language:

“SOCE is defined as any therapeutic intervention that is based on a belief that homosexuality is a mental disorder or pathology.”

Ms. Porter also suggested adding the following language:

“Nothing in this chapter applies to transgender individuals.”

Ms. Epstein stated that CAMFT is suggesting language that is closer to the DSM-IV language.

Ms. Helms stated that staff can respond with “oppose unless amended to address the following concerns.” Those concerns can be listed and provided with explanations/definitions.

Further discussion took place over informed consent.

Mr. Mason stated that it must be decided if the Board wants to remove informed consent from the bill and then further define SOCE.

Ms. Epstein clarified that CAMFT is not stating that this therapy is unethical. Ethical practitioners would not provide this type of therapy; however, the therapy is not unethical. Until SOCE is defined, CAMFT opposes the bill unless amended.

Mr. Mason stated that the Board may not want to take a position at this time. Instead, the Board can direct staff to work out the technical issues and revisit the matter in August.

Ms. Pines stated that she is not comfortable with not taking a position. She suggested opposing the bill.

***Dr. Johnson moved to oppose unless amended with a clarification of the definition of Sexual Orientation Change Efforts. Renee Lonner seconded.***

Ms. Wong stated that it is more than just the definition; it’s about the therapy and the potential harm to the consumer.

Dr. Douglas stated that this is not only about ethics; this is also about efficacy.

***The Board voted unanimously (7-0) to pass the motion.***

**c. Discussion and Possible Action Regarding the Board’s Examination Restructure**

Ms. Helms presented the Board’s examination restructure timing. SB 704 restructures the examination process for the Board’s LMFT, LPCC, and LCSW licensees effective January 1, 2013.

The Board will be transitioning to BreEZe, a new database system which will replace the current CAS and ATS database systems. All units of the Board, including licensing, enforcement, examinations, and administration, will be affected. DCA is currently working to implement the database system and will roll out the new system once it ensures it will run smoothly. It is estimated that this will happen in early fall 2012.

The implementation of the BreEZe database system will have a positive impact on Board operations. It will allow Board licensees and registrants to renew online and pay their renewal fees online via credit card. It will also streamline and simplify many tasks for Board staff. However, its successful implementation will require a significant amount of staff resources. Staff has already been continuously involved in the initial testing and design of the system. As the implementation date nears, staff will need to complete extensive training as well as provide feedback to the design team. There will be a learning curve for staff as they transition from the old system to the new system.

Although the roll-out of BreEZe appears to be on schedule, any unforeseen problems could delay the implementation date, and consequently, Board operations.

The examination restructure will also be a complicated and time-intensive transition for staff. The timing of the examinations will change, and there will be new requirements that registrants must meet. In addition, staff will need to undertake a large outreach effort to ensure that applicants are aware of and understand the new process, and to explain to those already in the exam process how the restructure affects them.

Board staff is still trying to overcome backlogs left over from last year's hiring freeze and the implementation of the LPCC program. New staff was recently hired in order to fill vacancies and are in the process of being trained. Staff is concerned that if the BreEZe system needs to be delayed until late fall or beyond, it would coincide too closely with the exam restructure date of January 1, 2013. This could cripple Board operations if staff must learn both a new database system and the complexities of the exam restructure at the same time.

Additionally, if BreEZe is not operational on January 1, 2013, the exam restructure cannot be implemented. The exam restructure changes are being programmed into the BreEZe system. Changes to the current CAS and ATS systems are no longer allowed under any circumstances, as programming changes are very costly, and these systems are about to become obsolete. The department is therefore focusing all of its programming efforts on the implementation of BreEZe.

If BreEZe is not operational on January 1, 2013, the Board cannot continue to administer the current clinical vignette and standard written exams. The code sections granting the authority for the Board to administer these exams expire on January 1, 2013 in order to allow the Board the authority to administer the new exams.

In order to avoid a situation in which the exam restructure cannot be implemented properly due to the implementation of the BreEZe system, staff suggests that the implementation date of the exam restructure be extended from January 1, 2013 to January 1, 2014.

***Christina Wong moved to direct staff to pursue legislation to change the implementation date of the exam restructure from January 1, 2013 to January 1, 2014. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.***

**XI. Update Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008 and SB 1172, Chapter 517, Statutes of 2010**

Ms. Madsen presented an update regarding implementation of SB 1441, Uniform Standards for Substance Abusing Licensees.

At the November 2011 Board meeting, the Board considered proposed regulations to implement the Uniform Standards. Board counsel, Michael Santiago, reported on the legal opinion on SB 1441 provided by the Legislative Counsel. This legal opinion addressed two issues:

1. Was the Substance Abuse Coordination Committee (SACC) required to adopt the Uniform Standards pursuant to the rulemaking procedures under the Administrative Procedure Act? According to the Legislative Counsel, the SACC should have gone

through the regulatory process, rather than directing each individual board to draft its own regulations.

2. Are the healing arts boards required to implement the Uniform Standards? According to the Legislative Counsel, it is mandatory for the healing arts boards to implement the standards that the SACC set forth.

At the November 2011 Board meeting, Board members voted to direct staff to seek guidance from DCA.

On April 5, 2012, the Board received a memo from the DCA Legal Affairs office addressed to all healing arts boards regarding the rulemaking process to implement the Uniform Standards. DCA acknowledged that questions have been raised concerning the Board's discretion to implement the Uniform Standards, and concerning whether or not the SACC was the entity with the rulemaking authority over the Uniform Standards.

DCA requested the Office of the Attorney General to review the Legislative Counsel's opinion. On February 29, 2012 an informal legal opinion was rendered by the Government Law Section of the Office of the Attorney General which addresses the discretion of the boards in adopting the Uniform Standards. According to DCA, both the Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions that make up the Uniform Standards, nor do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case. DCA concurred with these opinions.

The Legislative Counsel and the Attorney General offer differing opinions as to whether or not the SACC has the authority to promulgate regulations to implement the Uniform Standards. The Legislative Counsel concluded the SACC has the authority to promulgate regulations mandating that the boards implement the Uniform Standards.

However, the Attorney General disagreed with the Legislative Counsel, stating that the SACC was not vested with the authority to implement the Uniform Standards. This authority lies with the individual boards. DCA shares the opinion of the Attorney General. DCA recommended that healing arts boards move forward as soon as possible to implement the Uniform Standards.

DCA suggested that the boards work with their assigned legal counsel to determine how best to implement the Uniform Standards. Each Board should determine the following:

1. If the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; and
2. A definition or criteria to determine what constitutes a "substance-abusing licensee", which should be included in the proposed regulations.

Board staff drafted proposed regulations which were presented at the November 2011 Board meeting. Currently, standards 13 through 16 were not incorporated. These standards involve either diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations. Additionally, the regulations do not define the term "substance-abusing licensee."

***Karen Pines moved to direct staff to do the following:***

- **Work with Board counsel to review the proposed regulations and determine if appropriate standards are included;**
- **Work with Board counsel to develop a definition or criteria determining what constitutes a “substance-abusing licensee;”**
- **Submit the proposed regulations to DCA Legal Division for review; and**
- **Make any changes required by DCA Legal Division and submit to the Board for review.**

**Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.**

## **XII. Discussion Regarding the Department of Managed Health Care Autism Advisory Task Force**

Ms. Madsen presented information regarding the Autism Advisory Task Force.

Senate Bill 946 required the Department of Managed Health Care in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012. The purpose of the task force is to provide assistance to the Department of Managed Health Care on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the State of California. The task force must submit a report to the Governor and the Legislature by December 31, 2012.

The bill directs the task force to address the following:

- Interventions that have been scientifically validated and have demonstrated clinical efficacy,
- Interventions that have measurable treatment outcomes,
- Patient selection, monitoring and duration of the therapy,
- Qualifications, training and supervision of providers,
- Adequate network of providers, and
- Recommendations regarding the education, training and experience requirements those unlicensed individuals providing autism services shall meet in order to secure a license from the state.

The task force is comprised of 18 members and is a group of researchers, providers, advocates and experts charged with developing recommendations. A total of eight public meetings are scheduled to complete the work of the task force.

To date the task force has had four public meetings. Thus far the task force discussions have focused on the developing an overall scope of work, defining parameters, criteria, and processes for assuring effective treatment, and the roles and qualifications of the various providers. Beginning in July the task force will discuss the requirements that unlicensed individuals providing autism services shall meet for licensure in California.

Board staff has been following this very closely because several bills in the past have attempted to license practitioners providing this type of treatment, and the bills have proposed the Board as the regulatory agency to provide oversight.

It is not the role of the task force to determine which agency will provide the regulatory oversight. However, considering previous efforts, Board staff is attending these meetings to monitor the discussions and provide public comment as appropriate.

**XIII. Discussion Regarding Establishing a Two Member Executive Committee**

Dr. Wietlisbach tabled this agenda item.

**XIV. Election of Board Officers 2012-2013**

Renee Lonner nominated Dr. Christine Wietlisbach as Board Chair. Dr. Judy Johnson seconded. Dr. Wietlisbach accepted the nomination.

***The Board voted unanimously (7-0) to elect Christine Wietlisbach as Board Chair.***

Dr. Christine Wietlisbach nominated Karen Pines as Board Vice-Chair. Renee Lonner seconded. Karen Pines accepted the nomination.

***The Board voted unanimously (7-0) to elect Karen Pines as Board Vice-Chair.***

**XV. Suggestions for Future Agenda Items**

No suggestions were made for future agenda items.

**XVI. Public Comment for Items Not on the Agenda**

No public comments were made.

Dr. Johnson's term on the Board expires on June 1, 2012; however, she may continue to serve on the Board until the end of her grace period which is August 1, 2012. She has served on the Board since 2005. Ms. Madsen presented Dr. Johnson with a Resolution for her service to the Board. Dr. Wietlisbach expressed her gratitude to Dr. Johnson.

**XVII. Adjournment**

The meeting was adjourned at 4:21 p.m.

**Thursday, May 17<sup>th</sup>**  
**8:30 a.m.**

**Members Present**

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

**Members Absent**

Patricia Lock-Dawson, Public Member  
Sarita Kohli, LMFT Member

**Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Christina Kitamura, Administrative Analyst  
Julie McAuliffe, Probation Monitor  
Dianne Dobbs, Legal Counsel

**Guest List**

On file

**FULL BOARD OPEN SESSION**

**XVIII. Introductions**

Dr. Christine Wietlisbach, Board Chair, called the meeting to order at 8:41 a.m. Christina Kitamura called roll, and a quorum was established. Board members and Board staff introduced themselves.

**XIX. Petition for Early Termination of Probation for Cassandra Kendall, ASW 21095**

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, Deputy Attorney General (DAG), represented the State of California. Cassandra Kendall represented herself.

Judge Frink opened the hearing at 8:42 a.m. DAG Crawford presented the matter. Ms. Kendall presented her request to terminate her probation early and information to support her request. DAG Crawford cross-examined Ms. Kendall. Board members also posed questions to Ms. Kendall. After answering all questions, Ms. Kendall presented closing remarks.

Judge Frink called for a recess at 9:25 a.m. The hearing reconvened at 9:37 a.m.

Judge Frink closed the hearing at 9:41 a.m.

**XX. Petition for Early Termination of Probation for John McGinnis, MFC 47040**

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, Deputy Attorney General (DAG), represented the State of California. John McGinnis represented himself.

Judge Frink opened the hearing at 9:42 a.m. DAG Crawford presented the matter. Mr. McGinnis presented his request to terminate his probation early and information to support his request. DAG Crawford cross-examined Mr. McGinnis. Board members also posed questions to Mr. McGinnis. After answering all questions, Mr. McGinnis presented closing remarks.

Judge Frink closed the hearing at 10:49 a.m.

Dr. Wietlisbach took suggestions for future agenda items (agenda item XXIII) and public comment (agenda item XXIV) before closing the meeting to the public.

The Board took a break at 10:50 a.m. and reconvened in closed session at 11:03 a.m.

### **FULL BOARD CLOSED SESSION**

**XXI. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters**

**XXII. 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**

**XXIII. Suggestions for Future Agenda Items**

Dr. Wietlisbach took this item was taken out of order. This item was taken prior to entering in closed session. No suggestions for future agenda items were made.

**XXIV. Public Comment for Items Not on the Agenda**

Dr. Wietlisbach took this item was taken out of order. This item was taken prior to entering in closed session. No public comments were made.

**XXV. Adjournment**

After the Board met in closed session, the meeting was adjourned.