

Policy and Advocacy Committee Minutes July 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. Christine Wietlisbach, Public Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Marc Mason, Administrative Manager
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst

Members Absent

Dr. Judy Johnson, LEP Member

Guest List

On file

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 1:45 p.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and public attendees introduced themselves.

II. Review and Approval of the April 19, 2012 Policy and Advocacy Committee Meeting Minutes

Ben Caldwell noted a correction on page 25, agenda item XI. "Concerns about child abuse neglect reporting act" should be corrected to "concerns about the Child Abuse and Neglect Reporting Act."

Jill Esptein, California Association of Marriage and Family Therapists (CAMFT), noted a correction on page 23, "from the Attorney General (AG) can go to the judge and obtain the reports" to "the Attorney General (AG) can go to the judge and petition to obtain the reports."

Dr. Christine Wietlisbach moved to approve the April 19, 2012 Policy and Advocacy Committee meeting minutes as amended. Christina Wong seconded. The Committee voted unanimously (3-0) to pass the motion.

III. Discussion and Possible Action Regarding Possible Revisions to the Retired License Statute

Rosanne Helms reported on restoring a retired license to active status.

AB 2190 gave the Board the authority to issue retired licenses effective January 1, 2011. As of June 2012, the Board has issued 561 retired licenses.

Licenses may request a retired license if they complete the required application, pay the required fee, have a current and active license or have a license that is capable of being renewed, and is not under any type of disciplinary action by the Board.

The use of the term “current and active or capable of being renewed” has been a source of confusion for Board staff and licensees since the retired license law went into effect. For example, a suspended license is capable of being renewed; however, the disciplinary action would make the licensee ineligible for a retired license.

The intent of the phrase “capable of being renewed” was to allow a licensee on inactive status to apply for a retired license without having to first renew their license to active status. An inactive license is capable of being renewed. Furthermore, it would be burdensome to require an inactive licensee to complete continuing education and pay a renewal fee for an active license in order to immediately request a retired license.

Due to this confusion, staff recommends consideration of an amendment to delete the term “capable of being renewed” and instead states that the license must be current and active or inactive.

Current law allows a holder of a retired license to apply to restore his or her license to active status if he or she was issued the retired license less than five years ago. This law is inconsistent with the law regarding renewal of an expired license. An expired license may only be renewed within three years of its expiration.

Staff recommends consideration of an amendment to reduce the timeline to restore a retired license from retired to active status from five years to three years.

Ms. Wong asked if staff knows how many of the 561 retired licensees were actually on inactive status. Ms. Helms responded that she does not have those statistics.

Ms. Madsen added that many of those licensees were a result of the retroactive fingerprint requirement. She explained that when the retroactive fingerprint requirement went into effect, a number of licensees were inactive. But because their license was capable of being renewed to an active status, they were subject to the fingerprint requirement. Many of the licensees were contacting the Board and stating that their licenses were inactive, that they are not practicing, and that they do not want to practice; therefore, why are they required to fingerprint. Those licensees were offered the opportunity to retire their licenses.

Dr. Christine Wietlisbach moved to recommend to the Board to adopt language proposed by staff and reduce the timeline to restore a retired license to active status from 5 to 3 years. Ms. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

IV. Discussion and Possible Action Regarding the Use of Electronic Means to Provide Psychotherapy

Ms. Helms reported on therapy via electronic means.

Board licensing law requires a valid state license in marriage and family therapy, clinical social work, educational psychology, or clinical counseling, respectively, before a person can engage

in the practice of any of these professions in this state. This implies that a licensee in another state may not counsel an individual located in the state of California unless the licensee holds a California license. If the client is not located in California, the state where the client is located would have jurisdiction. As therapy via telehealth is becoming more common, the Board is receiving an increasing number of questions about this issue. Therefore, clarification in regulations may be helpful.

The California Board of Psychology, also under the Department of Consumer Affairs (DCA), is also considering clarifying telehealth guidelines in regulation. This board is awaiting recommended guidelines from two national organizations currently examining the issue: the American Psychological Association (APA), and the Association of State and Provincial Psychology Boards (ASPPB).

The goal of the Board of Psychology is to have guidelines that are in line with the policies of other states. They expect completed models from these associations will be available for review in the fall.

The Massachusetts Office of Consumer Affairs and Business Regulation licenses mental health professionals in that state. There is currently no language in statute or regulations that specifically discusses therapy performed via telehealth. However, their licensing board has adopted a policy guideline to address questions about the practice of telehealth.

The policy states that therapy via electronic means is considered to occur in both the location of the client and the location of the therapist. Therapy to clients located in Massachusetts falls under the jurisdiction of the Board, regardless of the location of the therapist. If the therapist is not licensed in Massachusetts and the client is located there, it would be considered unlicensed practice.

The policy encourages Massachusetts licensees who would like to perform telehealth services to a client in another jurisdiction to check the practice requirements in the jurisdiction where the client is located.

The Texas Department of State Health Services licenses marriage and family therapists, social workers, and professional counselors in that state. A Texas license is required to counsel any clients in Texas.

The Washington State Department of Health licenses mental health counselors, marriage and family therapists, and social workers. The department indicates they currently do not have specific clarifying regulations, but are looking at the regulations of other states as a possible model.

At this time, when a licensee inquires about telehealth they tell them that they must meet all disclosure and confidentiality requirements. They would also recommend the licensee use an encrypted computer program for online therapy. If they were to receive a complaint about Skype therapy, they may investigate as Skype is not a secured network.

The provider must be credentialed in the state in which they are providing services, and if the client is located in another jurisdiction, they would advise the licensee to contact that jurisdiction for guidance.

Mental health practitioners in Ohio are regulated by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board. The Ohio Administrative Code (OAC) requires

practitioners providing services to citizens of Ohio to be licensed in Ohio. It also requires an Ohio licensee who is providing services to a client outside of Ohio to comply with the laws and rules of that jurisdiction.

The OAC also specifies a number of safeguards that its licensees providing services via telehealth must utilize:

- Licensees are required to use encrypted methods of service delivery;
- Licensees must have an initial face-to-face meeting with the client, which may be via electronic communications to verify the client's identity;
- Licensees must identify an appropriately trained local professional to provide crisis intervention for the client, if needed; and
- Licensees must provide the client with the telephone numbers of the local crisis hotline and the local emergency mental health hotline.

The Arizona Board of Behavioral Health Examiners licenses mental health professionals in that state. According to the department, in Arizona, mental health services are assumed to take place in the jurisdiction where the client lives. Licensees are required to comply with the laws of that jurisdiction.

Arizona does have some exemptions to licensure that a behavioral health professional from another state who wants to perform services in Arizona may utilize. A non-resident is exempt from licensure if the following conditions are met:

1. The person performs the behavioral health services for no more than 90 days in any year;
2. Is licensed to perform those services in the state or country where they reside; and
3. Informs the client of the limited nature of the services and that they are not licensed in Arizona.

A practitioner performing services under this law is considered under the jurisdiction of the board and bound by the laws of Arizona. Under this law, a licensee from another state could counsel a client via telehealth without an Arizona license if the duration of the counseling was less than 90 calendar days and the conditions listed above are met. A licensee of another state whose client was temporarily travelling to Arizona could do the same.

The Arkansas Board of Examiners in Counseling requires a counselor or a marriage and family therapist licensed in Arkansas who wishes to perform counseling via electronic or technology-assisted mediums to obtain a "Technology-Assisted Distance Counseling or Marriage and Family Therapy Specialization License". This specialization requires specific training approved by the board.

Any telehealth counseling that occurs in Arkansas, whether by a Arkansas counselor or an out of state counselor, is considered to occur in Arkansas and the practitioner must hold the valid specialized license.

The Arkansas Board of Examiners has adopted the National Board of Certified Counselors (NBCC) document titled "The Practice of Internet Counseling" as part of its rules to clarify standards related to counseling via telehealth. This document defines various types of counseling, and outlines standards for ethical practice of internet counseling.

Based on these findings, the Board has a number of options for clarifying the law for therapy via telehealth:

1. Status Quo: The Committee could decide to make no clarifying changes to current law or regulations. Current law requires a valid state license to practice marriage and family therapy, clinical social work, educational psychology, or clinical counseling in California. A therapist must have a valid California license to perform therapy on a client in California. A California licensed therapist would need to check licensing requirements with the other jurisdiction if performing therapy on a client in that jurisdiction.
2. Incorporate National Model or Guidelines: The Committee could direct staff to research models and guidelines of various national associations. The Board could then adopt the model or guideline it found most appropriate, and incorporate it either directly into regulations, or by reference.
3. Draft Regulations: The Committee could direct staff to draft regulations clarifying its policy on telehealth. The draft regulations could specify certain safeguards, if desired by the Board.

Dr. Wietlisbach expressed that it is unclear if, for example, if a person was traveling out-of-state for a week. Which jurisdiction does this fall under? Ms. Helms responded that it is the jurisdiction of the state he/she is located.

Mr. Caldwell commented that his understanding of “located” has a specific meaning that is different from “residing” or “resident.” The term “resident” is used in the elder abuse reporting statutes. “Located” is where the client is at that moment; not where the client lives.

Mr. Caldwell was impressed with the research conducted of other states, and suggested that Board staff provide information regarding the particular ethical codes of the different organizations.

Dr. Wietlisbach stated that there are so many variables and it is not clear.

Ms. Wong stated that whatever is defined as telehealth, the Board needs to look at how to ensure the quality of the mental health service is being provided and that the client will be protected.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that it is important not to interchange the idea of consumer protection and quality. He also added that it doesn't matter where the client is located because the Board cannot regulate that. The Board can only regulate the licensee located in California.

Ms. Wong would like to draft language that captures informed consent and confidentiality.

Ms. Lonner stated that the language would also have to differentiate between online therapy versus Skype, where one is able to identify the client.

Ms. Helms stated that language would be drafted that would incorporate some of those features of other states and bring it back to the Committee. She will also prepare a comparison chart of the associations' and NBCC's policies and guidelines.

V. Discussion and Possible Rulemaking Action to Require All Applicants to Submit a National Data Bank Inquiry Result

Steve Sodergren reported on the national data bank inquiry result.

During the 2012 Sunset Review process, the Senate Business, Professions and Economic Development Committee requested an explanation from the Board as to why the Board was not currently using the National Data Bank to conduct background checks on applicants.

The Data Bank, consisting of the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB), is a confidential information clearinghouse created by Congress to improve health care quality. This clearinghouse was established to receive and disclose certain final adverse actions against health care practitioners, providers, and suppliers.

The Board has a statutory mandate to enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners. In order to comply with this mandate the Board requires both a Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure. Currently, the Board does not conduct a review of the applicant's employment background and disciplinary history. The Board indicated that it has an interest in using this resource as another tool to conduct background checks and was exploring options to best incorporate its use.

While the Board has the ability to query individuals, this may not be feasible because (1) it would increase the time it would take the board to process an application for licensure and (2) licensure could be delayed and additional deficiencies could be generated if the applicant did not provide the Board with the exact name under which any discipline had been reported to the NPDB-HIPDB. Also, the current fee for each query is about \$6.00 per practitioner for each Data Bank: the NPDB or the HIPDB. This fee is assessed even if the query is improperly submitted or lacks information.

One option for the Board would be to require applicants to submit a Self Query Report. The requirement for applicants to submit a Self Query Report would further assist the Board in determining if an applicant has been the subject of discipline in another state prior to making a license decision to grant or deny a license. This would give the Board an additional tool to assist in meeting its mandate to protect the public.

The NPDB-HIPDB Web site guides a practitioner on how to request a Self-Query. According to the NPDB-HIPDB main Web page, a person would select services for a "Practitioner" or for an "Organization." The practitioner must print the self-query request, sign and date it in the presence of a notary public, and mail the notarized self-query to the address specified by the NPDB-HIPDB. Upon receipt of the notarized self-query request, the NPDB-HIPDB would then process, in approximately two business days, the self-query and electronically alert the practitioner via e-mail that the self-query is available for on-line viewing. Also, if so elected, the NPDB-HIPDB would issue a paper copy of the self-query to the practitioner. The current fee for each Self-Query is \$8.00 per practitioner for each Data Bank: the NPDB or the HIPDB.

The Health Resources and Services Administration (HRSA) has developed a list of current State Agencies and Licensing Boards responsible for licensing or certifying health care professionals and is actively monitoring those agencies and boards reporting compliance. The Data Bank will add the status of Behavioral Health professions to the Reporting Compliance Status review on July 1, 2012.

Mr. Wong, NASW-CA, stated there is a question on the applications that ask if the applicant has been disciplined by another agency. The query would catch those who do not answer the question honestly, which could be a workload issue if something comes up on the query. He asked if staff knows what percentage of applicants does not answer the question truthfully and how much workload could this generate. Ms. Madsen responded that there are applicants that do not answer truthfully, but she does not know the percentage.

Mr. Wong stated that this could generate a lot of workload because currently, the Board captures only the criminal aspect through the fingerprinting process.

Ms. Madsen stated that this proposal provides another layer of consumer protection, it addresses Board resources; it puts the responsibility on the applicant, but that cost is relatively small considering that this is for licensure.

Ms. Epstein asked why the Board is not doing this now. Ms. Madsen replied that it is a resource issue and a cost issue.

Mr. Caldwell asked if staff will go back and make this retroactive for the licensees. Ms. Madsen responded that she does not know at this time. Mr. Caldwell stated that it is a good consumer protection piece, but is a concern regarding staff resources and workload. He requested that the Board remain cognizant about the added cost to the applicants.

Ms. Lonner suggested making this requirement apply to new applicants. As resources develop over the next few years, begin applying the requirement to licensees, if possible. The retroactive fingerprint model can be used for this process.

Christina Wong moved to direct staff to draft regulations to require all applicants for licensure to submit a National Data Bank Self Query to the Board. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

VI. Legislative Update

Ms. Helms briefly reported on a few changes to the legislative update that was provided.

SB 632 regarding marriage and family therapist trainee practicum was an urgency measure. It was signed into law and became effective on July 3, 2012.

SB 1134, CAMFT's bill regarding a psychotherapist's duty to protect, was signed by the Governor.

VII. Rulemaking Update

Ms. Helms briefly reported. The Board will hold a public hearing on two regulation packages. One regulation package is the revision of advertising regulations, two-year practice requirement for supervisors of ASWs, and HIV/AIDS continuing education course for LPCCs. The next regulation package is to implement SB 363 regarding MFT intern experience. The hearing will be held on August 14, 2012.

VIII. Public Comments for Items Not on the Agenda

No public comments were provided.

IX. Suggestions for Future Agenda Items

Mr. Caldwell stated that AAMFT-CA is interested in working with the Committee to make possible changes to the Child Abuse and Neglect Reporting Act. AAMFT-CA hopes to see this matter on the November agenda. Mr. Caldwell suggested inviting a representative from Department of Children and Family Services (DCFS) to give a presentation about how DCFS handles child abuse reports dealing with consensual same-sex activity among adolescents.

Mr. Wong suggested contacting the County Welfare Directors Association of California.

The meeting was adjourned at 3:00 p.m.