

Policy and Advocacy Committee Minutes November 1, 2012

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

Members Present

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
Dianne Dobbs, Legal Counsel

Members Absent

Renee Lonner, Chair, LCSW Member

Guest List

On file

FULL BOARD OPEN SESSION

I. Call to Order and Establishment of a Quorum

Due to Renee Lonner's absence, Dr. Christine Wietlisbach served as acting Chair to the Policy and Advocacy Committee (Committee). Dr. Wietlisbach called the meeting to order at 1:37 p.m. Kim Madsen took roll, and a quorum was established.

The Committee, Board staff, and meeting attendees introduced themselves.

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

Dr. Wietlisbach referred to the following sentence on page 3 and requested clarification: This implies that a licensee in another state may not counsel an individual while located in the state of California, unless they hold a California license.

Ms. Madsen explained that a person licensed in another state cannot provide services to anyone in California. The following language was suggested to clarify the meaning of the sentence: 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.

Dr. Wietlisbach referred to the following paragraph on page 3: The Texas Department of State Health Services licenses marriage and family therapists, social workers, and professional counselors in that state. A license is required to counsel any clients in Texas.

Dr. Wietlisbach suggested the following change to the last sentence of that paragraph: A Texas license is required to counsel any clients in Texas.

Christina Wong moved to approve the Policy and Advocacy Committee minutes as amended. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

III. Legislative Update

Ms. Helms presented the following legislative updates:

- The Board's sponsored bill, SB 1527, was signed into law. This bill requires social workers to have training in California Law and Ethics. It also clarifies the acceptability of older exam scores.
- The Board's Omnibus Bill, SB 1575, was signed into law. This bill extended the date of the exam restructure from January 1, 2013 to January 1, 2014.
- The Board's Sunset Bill was signed to extend the sunset date to January 1, 2017.

Other bills that were signed into law and become effective January 1, 2013:

- SB 1172, Sexual Orientation Change Efforts - This bill states that it is unprofessional conduct to provide services related to sexual orientation change efforts on a person under the age of 18.
- AB 1904 regarding military spouses – This bill will require the Board to expedite the license of an applicant whose spouse is a military member in the state of California.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), provided clarification regarding SB 1051. He stated that SB 1051 included the same changes as AB 40 (Elder and Dependent Adult Abuse Reporting), but it was tagged as emergency legislation and took effect immediately upon signing in September. Those changes are currently in effect.

IV. Rulemaking Update

Ms. Helms provided the updates on the following regulatory packages:

- SB 1111, Enforcement Regulations – The Board must set a second notice for a 15-day public comment. This proposal will be presented to the Board on November 8, 2012.
- Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASW), and HIV/AIDS Continuing Education Course for Licensed Professional Clinical Counselors (LPCC) - The Board is close to submitting the proposal to the Administrative Office of Law (AOL).
- SB 363, Marriage Family Therapist Intern Experience – This proposal is behind the advertising package by a couple of procedural steps.
- Disciplinary Guidelines Regulations – The Board set a second notice for a 15-day public comment. The proposal will be presented to the Board on November 28, 2012.

V. Discussion and Recommendations for Possible Regulatory Action Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008

Ms. Helms presented the proposed regulation regarding the implementation of SB 1441.

SB 1441 is a regulatory proposal that the Department of Consumer Affairs (DCA) and the Legislature is asking all healing arts licensing boards to run. It creates uniform standards for discipline that the boards must abide by in cases of substance abusing licensees or registrants. This proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for dealing with licensees or registrants who abuse drugs and alcohol.

This bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC was tasked with formulating uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees. The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

SB 1441 outlined 16 separate topic areas for which the SACC formulated uniform standards. Based on the standards created by the SACC, Board staff drafted amendments which incorporated the uniform standards into the Disciplinary Guidelines, as appropriate.

An earlier draft of these proposed regulations was presented to the Board at its November 2011 meeting. Due to legal questions that were raised about whether the SACC or the DCA boards should be the entities to implement these regulations, the Board directed staff to seek further guidance from DCA before considering the regulations.

Legal opinions were received by the Legislative Counsel and the Office of the Attorney General. The Attorney General stated that the SACC was not vested with the authority to implement the Uniform Standards, and that this authority lies with the individual boards. DCA shares the opinion of the Attorney General.

DCA recommends 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."

Staff has made modifications to the previous version of the regulations and asked DCA Legal to review them in order to verify compliance.

1. As the Uniform Standards directly affect the Disciplinary Guidelines, staff recommends that they remain one document.
2. Rather than specifically defining a "substance-abusing licensee," which can be difficult to define, staff recommends defining a substance abuse violation for which the Uniform Standards would apply. This is defined as the following circumstances:
 - The Board finds conduct which is a violation that involves drugs and/or alcohol; and

- The licensee or registrant does not rebut that the violation is a substance abuse violation; and
- The licensee, registrant, or the Board does not establish that appropriate public protection can be provided with modification or omission of any of the Uniform Standards.

Staff recommended that the Uniform Standards be placed in a regulation together with the disciplinary guidelines. Staff recommended a definition of a violation instead of labeling a registrant/licensee as a “substance-abusing registrant/licensee.”

Additional changes were recommended by legal counsel. It was recommended that any references to “controlled substance” within the Disciplinary Guidelines should be changed to “controlled substance and/or use of alcohol.”

Ms. Helms referred to the following sentence on page 29, #9 of the Disciplinary Guidelines: The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse. Legal counsel suggested inserting “listed herein.”

Christina Wong moved to direct staff to make any discussed or any non-substantive changes and submit to the Board for approval as a regulatory proposal. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

VI. Discussion and Recommendations for Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 4980.36, 4999.33, 4980.43(b), 4996.23, 4999.47(a), 4980.54, 4980.72, 4999.60, 4989.68, 4996.3, 4996.18, and 4999.46

Ms. Helms presented several sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences that require amendments. These amendments are as follows:

1. Amend BPC Sections 4980.36 and 4999.33 – Child Abuse Assessment and Reporting
 These sections describe the qualifying degree program required to obtain licensure as a Licensed Marriage and Family Therapist (LMFT) or an LPCC, if the applicant began graduate study after August 1, 2012. Unlike the requirements for graduate study prior to August 1, 2012, these sections do not specify that the instruction in child abuse assessment and reporting must be at least seven hours in length, and must meet the requirements of BPC Section 28.

Because the requirements of BPC Section 28 are still in effect, staff recommends an amendment to Sections 4980.36 and 4999.33 that will clarify that the course must be seven hours in length and meet certain other requirements specified in Section 28.

2. Amend BPC Sections 4980.36 and 4999.33 – Instruction in Severe Mental Illness
 These sections state that coursework addressing severe mental illness is required for licensure. The law specifies that this coursework may be provided either as credit-level coursework, or through extension programs offered by the degree-granting institution.

Using the term “the degree-granting institution” implies that if the applicant chooses to take this course through an extension program, it must be the extension program of the same school which grants his or her degree. Staff suggests the Board consider an amendment to use the term “an accredited or approved degree granting institution.”

This would allow an applicant to take this course from the extension program of a degree granting institution other than his or her own school.

3. Amend BPC Sections 4980.43(b), 4996.23, and 4999.47(a) – Experience Gained as an Independent Contractor

The law allows LMFT, Licensed Clinical Social Worker (LCSW), and LPCC applicants to gain experience hours as a W-2 employee or a volunteer, but not as an independent contractor. However, the Board gets a significant number of applications for exam eligibility from individuals who are contracting and receiving a 1099 tax form. Some applicants think that because the statute says “employed”, they can be 1099 employees, which is incorrect.

Staff recommends an amendment to the law to clarify that experience gained as an independent contractor and/or reported on an IRS Form 1099 does not count toward licensure.

4. Amend BPC Sections 4980.72 and 4999.60 – Out-of-State Licensee Experience

These sections set examination eligibility requirements for out-of-state LMFT and LPCC licensees. One of the requirements for examination eligibility is that the applicant’s supervised experience is substantially equivalent to the Board’s experience requirements. It states that the Board will consider out-of-state experience obtained during the six-year period immediately preceding the date the applicant obtained his or her out-of-state license.

If a licensee has been licensed for many years out-of-state, it may not be appropriate to look only at experience obtained prior to licensure. The Board’s out-of-state LCSW applicants are permitted to count time actively licensed at a rate of 100 hours per month, up to a maximum of 1,200 hours, if they are short hours of supervised experience. This method takes into account experience as a licensee in addition to pre-licensure experience.

Staff recommends amending the out-of-state licensee experience requirements for LMFT and LPCC applicants to count time actively licensed as experience at a rate of 100 hours per month, up to 1,200 hours.

5. Amend BPC Sections 4989.68 and 4996.3 – LEP and LCSW Delinquency Fee

These sections state that the delinquent renewal fee for a license is \$75. However, this is intended to be a maximum amount; Section 1816.7 of the California Code of Regulations (CCR) set the delinquency fees for LEPs and LCSW licensees at \$40 and \$50, respectively. It is standard practice for maximum fee rates to be established in statute, and then to have the current rate to be charged established through regulations. Therefore, clarification is needed that the delinquency fees referenced in 4989.68(a)(4) and 4996.3(a)(9) are maximum fee amounts.

Staff recommends amending BPC Section 4989.68(a)(4) and 4996.3(a)(9) to state that the delinquency fee shall be a maximum amount of \$75. The Board would continue to charge the current, lower delinquency fees as established in regulations.

6. Amend BPC Section 4996.18 – ASW Supervision

The LMFT and LPCC statutes each have a subsection which states that all applicants and interns must always be under the supervision of a supervisor who is responsible to

the Board for compliance with all laws and regulations. This implies that an applicant who is finished gaining hours and is in the exam cycle must continue to be supervised. While this is also true for ASWs, there is no similar language in statute to clarify this.

Staff recommends amending Section 4996.18 to clarify that applicants and associates must at all times be under the supervision of a supervisor who is responsible to the Board.

7. Amend BPC Section 4999.46 – Telephone Counseling Experience Hours

This section allows an LPCC applicant to count up to 250 hours of experience providing crisis counseling over the telephone.

Staff believes this reference to telephone counseling needs to be updated. LMFT law now references telehealth instead of simply telephone counseling, and allows up to 375 hours to be gained to account for various possible mediums (telephone, internet, etc.) Staff recommends an amendment allowing up to 375 experience hours to be gained counseling via telehealth, as this is already allowed for LMFT applicants.

8. Amend BPC Section 4999.46 – LPC Intern Supervision

This section outlines the requirements for direct supervisor contact for LPC interns. In general, an LPC intern must have at least one hour of direct supervisor contact during each week that experience is credited.

This statute is also in place for MFT interns. In last year's omnibus bill, the LMFT statute was amended to exclude professional enrichment activities, such as attendance at workshops, seminars, training sessions, or conferences, from the direct supervision requirement.

Staff recommends amending Section 4999.46(g) so that LPC interns are also not required to have direct supervision for attendance at workshops, seminars, training sessions, or conferences.

Dr. Wietlisbach referred to #3 and asked why a 1099-employee cannot count their hours.

Janlee Wong, National Association of Social Workers California Division (NASW-CA), responded that there is a technical reason for this. He explained that employers use this to avoid paying employment taxes; however, the Franchise Tax Board views the employee as an independent contractor not subject to supervision or direction by their employer. If they are subject to supervision, then the employer is in violation of the employment law.

Mr. Wong added that legally, a 1099 employee can refuse the supervision of their employer.

Mr. Caldwell referred to #2, and stated that it was odd that a degree program would not offer coursework in severe mental illness.

Dean Porter, California Association for Licensed Professional Counselors (CALPCC), referred to Section 4999.33. This section outlines a list of coursework that must be integrated in the degree. Ms. Porter referred specifically to Systems of Care for the Severely Mental III. This is the only coursework that is allowed to be made up outside of the degree program. Ms. Porter asked why this coursework is allowed to be taken through extension. She asked if there would be coursework in this area since the section does not outline the number of hours required for

this coursework. She also asked if this extension credit would need to be graduate credit or extension credit.

Ms. Helms stated that perhaps the schools did not offer the coursework through the degree program and somehow the schools were able to offer it through an extension program.

Mr. Wong, NASW-CA, stated that the definition of severe mental illness is vague. This definition refers typically to people in state mental hospitals, for example; not those typically seen in an LMFT or LPCC private practice.

Mr. Caldwell stated that in a diagnosis class, it would seem very unusual that a student would not have any instruction in severe mental illness. But it doesn't seem to come up in the applications received by the Board.

Ms. Madsen replied that it does not come up. The coursework that is most likely deficient is Spousal Abuse and Chemical Dependency.

Mr. Caldwell referred to #4, and expressed on behalf of AAMFT-CA, this proposal is in the interests of being equal among the professions and is reasonable for those who have been licensed for a long time. Being licensed does not guarantee experience. He suggested adding some language to the application, attesting that the applicant has been in practice for at least half-time so that the 100 hours they are receiving credit for matches up to about half of the actual experience.

Mr. Caldwell referred to #8. He stated that it would be more appropriate to address Professional Clinical Counselor Interns as PCC Interns instead of LPC (Licensed Professional Counselor) Interns. Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), agreed.

Mr. Caldwell added a recommendation for the Omnibus Bill. He stated that the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), which is named in section 4098.36(b), may be dropping its U.S. Department of Education recognition next year. Currently, the way the law is written, there is no need for COAMFTE to be recognized by the U.S. Department of Education for a COAMFTE degree to be recognized in California. The AAMFT central office has recommended some minor changes to that section of law. AAMFT-CA will send the specific proposal to Board staff.

Christina Wong moved to direct staff to make any non-substantive changes to the proposed language and recommend that the Board sponsor legislation to make the proposed changes. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee took a break at 2:56 p.m. and reconvened at 3:07 p.m.

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

Steve Sodergren presented the proposed rulemaking action relating to the National Data Bank Inquiry Result.

This item has been discussed at previous Committee meetings. During the July 2012 Committee meeting, it was decided that it would be beneficial to require applicants to submit a NPDB self-query to the Board when applying for licensure.

At the August 2012 Board meeting, concern was expressed in regards to the possibly increased workload for Board staff. Initially, this would require the Board to establish regulations and create or amend application forms. Once established, the procedure for reviewing the query results would follow the same enforcement procedures that exist for the fingerprinting review. Determining the extent as to how this could increase staff workload is difficult because it is unknown how many queries the Board might receive which would reveal an adverse action. The Board directed staff to perform additional research in order for the Policy and Advocacy Committee to continue this discussion.

An initial survey of the healing arts boards within DCA confirmed that out of the nine boards which responded, only four boards currently utilize the NPDB. Staff expressed that utilizing the NPDB would be beneficial. Mr. Sodergren would make a recommendation to utilize the NPDB for out of state applicants, requiring those applicants to submit for a self-query when applying for licensure or exam eligibility.

Ms. Epstein asked what is to be gained from requiring this from out of state applicants and not from California applicants. Ms. Madsen replied that the NPDB would provide information on adverse actions from out of state agencies. As for California applicants, adverse actions from California agencies are reported to the Board. Furthermore, the Board has resources available to staff to research adverse actions taken by California agencies.

Marc Mason recommended further consideration of utilizing the NPDB for all applicants, not just out-of-state applicants, because it will appear to law makers that this is a restriction for out-of-state applicants.

Mr. Caldwell added that AAMFT-CA will want an explanation as to why out-of-state applicants are subjected to the added costs and requirements.

Mr. Wong, NASW-CA, expressed his concern for increased workload on Board staff. He suggested utilizing the easiest, least intensive process. He expressed that the self-query will be a lot of additional work for Board staff. However, this addresses a concern in the Sunset Review. If legislatures have concerns about that, they can be reminded that this came about through the Sunset Review.

Dianne Dobbs asked if staff is also proposing to take a look at licensees who are currently in California that hold another professional license in California. Ms. Madsen replied that would be equitable. Mr. Sodergren agreed.

Mr. Caldwell asked if that would apply to only new applicants or to existing licensees as well. Ms. Madsen replied that it would apply to existing licensees as well.

Ms. Wong asked if this would apply to licensees that hold inactive licenses, moved out-of-state, that held a license in another state but no longer holds that license. Ms. Madsen replied that these are good points to consider.

Dr. Wietlisbach stated that this is about consumer protection, not about staff workload.

Christina Wong moved to recommend the Board sponsor legislation that would require a self-query from every applicant and licensee who has had or currently holds another professional license in California or a license from another jurisdiction from the date of the inception of the NPDB. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

VIII. Discussion and Recommendations for Possible Rulemaking Action Regarding Revisions to California Code of Regulations, Title 16, Section 1820.5, Licensed Professional Clinical Counselors: Requirements to Work with Couples and Families

Ms. Helms presented the proposed rulemaking regarding revisions to LPCC requirements to work with couples and families.

Under current law, LPCCs, interns (PCC interns), and trainees may not treat couples or families unless they complete certain specified additional training and education.

In addition, Section 1820.5 of the California Code of Regulations (CCR) outlines exemptions for LPC licensees, interns and trainees to allow them to treat couples or families if they are in the process of gaining their required 500 hours of supervised experience in order to do so.

The Board is now in the process of issuing its first Professional Clinical Counselor licenses and registrations. As these new practitioners attempt to gain the experience and education necessary to treat couples or families, the following questions have been frequently posed to staff regarding the requirements of Section 1820.5.

1. What documentation of the additional education/experience is needed?

There is no procedure outlined in statute for a licensee or registrant to apply to be able to treat couples or families based on their completion of the requirements.

The Board may choose to audit a licensee or registrant who is treating couples or families in certain cases to see if they meet the requirements.

These scenarios raise the question of how a LPCC licensee or intern who has met the requirements to treat couples or families should document their experience and training, in case they are ever asked to provide it as evidence to the Board.

Board staff is currently working on a voluntary form that the practitioner may fill out and keep for his or her records.

In addition, staff recommends an amendment to CCR Section 1820.5. This amendment would state that LPCC licensees, interns, and trainees must maintain records of their additional education and experience. Placing this requirement in regulation clarifies that the practitioner is responsible for keeping such records. This requirement is similar to the current requirement that licensees maintain records of their continuing education coursework in case of a Board audit.

2. Does an LPCC licensee need to meet the additional education and experience requirements in a particular order?

Currently, CCR Section 1820.5 states that an LPCC is exempt from the additional requirements to treat couples or families if:

- a. He or she is in the process of gaining supervised experience to comply with the additional requirements;
- b. He or she is gaining supervised experience from an LMFT or an LPCC who already meets the additional requirements;
- c. He or she *has completed* the required six semester/nine quarter units focused on the theory and application of marriage and family therapy or a named specialization or emphasis area in marriage and family therapy, marital and

family therapy, marriage, family and child counseling, or couple and family therapy; and

- d. Completes at least six hours of continuing education specific to marriage and family therapy in each renewal cycle.

The term “has completed” in item (c) implies that an LPCC licensee gaining the supervised experience required to treat couples or families must *first* complete the additional required education specific to marriage and family therapy. However, CCR Section 1820.5 makes no specification of the order of this requirement for PCC interns or trainees; the requirement is only for licensees.

It seems inequitable to allow an PCC intern to gain experience working with couples or families either before or while he or she is obtaining the required additional education, but require an LPCC to wait until completing the education before beginning to gain the experience. In addition, it may create a hardship for LPCCs who had earned the supervised experience in the past, if they had not first completed the required marriage and family therapy coursework. In such a case, the LPCC would technically meet the requirements, but would need to make up the supervised experience because it was not completed in the “correct” order.

3. Must the supervised experience be obtained from an approved supervisor?

CCR Section 1820.5 states that the supervised experience that is required for an LPCC or PCC intern or trainee to treat couples or families must be gained under the supervision of either a marriage and family therapist or under a licensee who meets all of the requirements to treat couples or families specified in BPC Section 4999.20.

The code is silent on whether this supervisor must be a Board-approved supervisor.

It is not known if the law’s intent was for the supervised experience required to treat couples or families be gained under an approved supervisor, or if the intent was to only require that the supervisor be able to treat couples or families.

Mr. Caldwell commented on item (1) stating that a document for additional education/experience is appropriate. He commented on item (2) stating the intent was to allow people to gain education and experience concurrently. Mr. Caldwell commented on item (3) stating that the intent was to require an approved supervisor.

Ms. Porter commented on item (3) stating that at the time, the definition of an “approved supervisor” was not discussed. She does not want that time to not count if this language were to change. She commented on item (2) stating that some people may already be getting that supervision based on current law. For those who have already completed their supervision but it included families and children, and to require them to take another course in marriage and family therapy and another 500 hours with couples and families is difficult. She requested that the Board be flexible in this.

Ms. Wong expressed that supervision is the most important thing; sequence is probably not as important.

After some discussion regarding the language of the proposed amendments, a change was recommended on Section 1820.5(b)(2): The supervised experience is gained under the direct supervision of a marriage and family therapist or a *licensed professional clinical counselor* who

meets all requirements specified in Section 4999.20 (a)(3) of the Code, and who is an approved supervisor, as defined in Section 4999.12 of the Code.

Regarding item (2), Mr. Caldwell stated that he was not concerned with the sequence. He was more concerned with all of the experience gained and then taking the classes at the end. He does not have an issue with gaining experience and taking the classes concurrently.

Dr. Wietlisbach requested that the associations take a look at the sequence and provide feedback before a recommendation be made.

Ms. Helms summarized the changes as follows:

- Item (3) – Section 1820.5(b)(2), striking the term “licensee” and replacing it with “licensed professional clinical counselor.”
- Item (2) - CCR Section 1820.5(b)(3)(A), amending the term “has completed” to “completes.”

As for item (1), Ms. Madsen suggested further discussion with the full Board.

Christina Wong moved to direct staff to bring a recommendation to the Board for a discussion regarding the documentation of additional education or experience, and to recommend to the Board to make any discussed changes and any non-substantive changes to the following: (1) completing education and experience without specifying a sequence, and (2) clarify that a supervisor must be an approved supervisor. Dr. Christine Wietlisbach seconded.

Mr. Caldwell offered the option of requiring the supervisor to document the couple and family experience for the supervisee.

The Committee voted unanimously (2-0) to pass the motion.

IX. Discussion and Recommendations for Possible Action to Sponsor Legislation to Allow Licensed Marriage and Family Therapist Applicants to Remediate Specific Coursework

Ms. Helms presented.

This proposal would allow an LMFT applicant to remediate one course work deficiency and would clarify that LCSWs are also allowed to remediate certain coursework deficiencies.

Under current law, an LMFT applicant who applies for licensure must demonstrate that the degree covers specific topic areas. Similar requirements are in place for LPCC and LCSW applicants. However, the law makes it more difficult for LMFT applicants to remediate deficiencies in the degree. Therefore, staff is proposing amendments to make the law for remediation of deficient coursework more equitable across the Board’s license types.

Current law for degree content is summarized as follows:

1. LMFT Applicants – Graduate Study Begun After August 1, 2012

This group of LMFT applicants must obtain a degree that meets certain specified content area requirements. This is called a “single integrated degree program.” If the applicant is deficient in one of the content areas, the applicant must return to graduate study and obtain an entirely new degree.

2. LMFT Applicants – Graduate Study Begun Before August 1, 2012

This group of LMFT applicants must obtain a degree that meets certain specified content area requirements. In addition, in order to sit for the licensing examinations, there are additional coursework requirements, some of which must be completed within the degree, and some of which may be remediated outside of the degree either through graduate-level work or from a CE provider. However, the areas of alcoholism and other chemical substance dependency, and spousal or partner abuse, must be obtained within the degree program. Although an out-of-state MFT applicant may remediate this coursework, an in-state applicant cannot. Therefore, an in-state applicant missing one of these areas must return to graduate study and obtain an entirely new degree.

3. LCSW Applicants

LCSW applicants must obtain a degree from an accredited school of social work. Because the accreditation standards specify standard coursework, LCSW law does not list as many specific coursework requirements as the LMFT and LPCC laws. LCSW law states that the applicants must have coursework in alcoholism and chemical substance dependency, spousal or partner abuse, human sexuality, and child abuse assessment and reporting. All of this coursework may be completed through graduate-level work or from a CE provider. However, recently questions have been raised regarding remediation of the spousal and partner abuse coursework through CE providers.

4. LPCC Applicants – Graduate Study Begun After August 1, 2012 and Before August 1, 2012

This subgroup of LPCC applicants must obtain a degree that contains a specified number of units in each of several core content areas. Up to three of these core content areas may be remediated with post-master's level coursework if missing from the degree. In addition, several other areas of instruction are required that can be remediated either through post-master's level coursework or from a CE provider.

Staff has decided not to propose an amendment regarding current LMFT applicants whose graduate study began after August 1, 2012. Staff is working with the schools to make sure that everything is integrated into the degree program.

Staff is proposing the following amendments:

1. LMFT Applicant Remediation of a Deficient Degree – Graduate Study Begun Before August 1, 2012

Current law allows an LPCC applicant whose degree is deficient in no more than two core content areas to remediate those areas of study by completing post-master's or postdoctoral degree coursework from an accredited or approved institution.

The "core content areas" required of LPCC applicants do not exist for the LMFT applicants who began graduate study prior to August 1, 2012. However, the LMFT degree must contain specific instruction in alcoholism and other chemical substance dependency, as well as a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, with no exceptions. While an LMFT licensee from out of state could apply and then remediate this coursework, the law does not allow this option for California graduates seeking a license.

Staff proposed to amend Sections 4980.41 to allow an LMFT applicant whose degree is deficient in alcoholism/other chemical substance dependency and spousal/partner abuse

assessment to remediate those two deficiencies, and the coursework can be taken through a continuing education provider.

2. Spousal or Partner Abuse Coursework Requirements for LCSW Applicants, and for LPCC and LMFT Applicants who Began Graduate Study Before August 1, 2012

LMFT, LPCC, and LCSW laws currently require coursework in spousal or partner abuse assessment as follows:

- LMFT law states that the qualifying degree shall include at least 15 contact hours of coursework, and that the applicant must provide a certification from the chief academic officer of their school that the required coursework is included within the institution's required curriculum for graduation.
- LPCC law requires 15 contact hours of coursework, but this coursework does not have to be part of the degree program. The Board has historically interpreted the law to allow the course be taken from either an accredited or approved educational institution or from a Board accepted continuing education provider.
- LCSW applicants must also complete instruction and training in spousal or partner abuse assessment. However, for LCSW applicants, the law is less clear about whether the instruction and training must be part of the degree program. Although the law does not specifically say the required 15 contact hours of coursework must be part of the degree program as LMFT law does, it states that required coursework may be taken either in fulfillment of other educational requirements for licensure or in a separate course. However, it also states that the chief academic officer of the school must certify that such coursework is in the curriculum required for graduation.

Because the law does not specifically state that the qualifying degree must contain this coursework, the Board has historically interpreted the LCSW law to allow the applicant to remediate any deficiency in this requirement by completing coursework either from an accredited or approved educational institution, or from a Board accepted continuing education provider. However, recently questions have been raised as to whether this interpretation is correct.

Mr. Caldwell and Ms. Epstein expressed appreciation for the proposed amendments.

Christina Wong moved to direct staff to make any discussed changes and any non-substantive changes, and bring to the Board for consideration as Board-sponsored legislation. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

X. Discussion and Recommendations for Possible Action to Sponsor Legislation to Revise Licensure Requirements for Out-of-State Marriage and Family Therapist and Licensed Professional Clinical Counselor Applicants

Ms. Helms presented proposed legislation to revise licensure requirements for out-of-state marriage and family therapists and LPCC applicants.

Licensing requirements for out-of-state LMFT and LPCC applicants are set to change on January 1, 2014. At this time, out-of-state applicants will need to complete all of the coursework topic areas and units that an in-state applicant would need to complete, in addition to their qualifying degree, before obtaining a license or registration. All of this coursework would need to be completed at a graduate level.

Recently, concerns have been raised that the manner in which the coursework must be remediated is so strict that it creates a barrier to licensure for out-of-state applicants. This proposal makes amendments that provide additional remediation options for out-of-state applicants.

SB 33 became law on January 1, 2010 and made a number of changes to the required curriculum to become licensed as a LMFT for persons who begin graduate study on or after August 1, 2012. This bill:

- Increased the degree's total unit requirement from 48 to 60 semester units.
- Provided more flexibility in the curriculum requirements, such as fewer requirements for specific hours or units for particular coursework, to allow for innovation in curriculum design.
- Infused the culture and norms of public mental health work and principles of the Mental Health Services Act throughout the curriculum.
- Changed the requirements for LMFT applicants who earned a degree outside of California effective January 1, 2014. Instead of requiring specific hours or units for particular coursework (which may be completed as graduate level coursework or from a continuing education (CE) provider), the out of state applicant will be required to complete all units and coursework listed under BPC Section 4980.36(d). This subsection consists of an extensive list of requirements for a degree begun after August 1, 2012, all of which must be graduate level coursework and must consist of at least 60 semester or 90 quarter units.

SB 33 was the result of an extensive committee process and public discussion by the Board and its stakeholders. As the implementation date draws closer, however, concerns are being raised about how the changes will affect the portability of licenses for out-of-state applicants.

At the time that the Board considered changing the out-of-state requirements for LMFT applicants in 2007-2008, there was discussion that schools would be able to adjust to offer programs of coursework specifically aimed at out-of-state applicants. However, the economic climate was different during that time. Today, many of the public-run colleges and universities are overcrowded and facing strict budgetary constraints. They are not able to offer coursework to students who have not been accepted as part of their master's degree programs.

LPCC out-of-state applicant requirements were mirrored after LMFT law and contain similar changes in the out-of-state applicant requirements effective January 1, 2014. Therefore, the LPCC requirements pose the same portability issues.

Staff is concerned that requiring out-of-state applicants to complete such a large number of additional graduate level units, much of which consists of coursework specifically addressing California cultures, will create such a barrier to out-of-state licensees that they won't be able to obtain a license without significant additional cost.

Without having the option to make up coursework from continuing education providers, the only option for out-of-state applicants would be to turn to private colleges and universities, which may offer graduate level coursework to individuals not enrolled in their master's degree program, but at a very high price-per-unit. Remediating a 48-unit out-of-state degree to reach 60 units and completing a large number of deficient topic areas, when the applicant had already completed a master's degree and may have been practicing in another state, could cost the applicant several thousand dollars if the only option is to complete the program through a private university.

Staff is proposing two separate Board actions in order to address this situation:

1. Pursue legislation to extend the effective date of the new education requirements for out-of-state applicants for licensure from January 1, 2014 to January 1, 2015. Pursuing this legislative proposal this year would push the implementation date of the new out-of-state requirements out one year. This would allow the Board time to carefully consider how to best address the problems posed by the new out-of-state requirements.
2. Pursue legislation to change the education requirements for out-of-state applicants for licensure, effective January 1, 2015. This proposal could either be pursued this year, as an amendment to the bill mentioned above, or the following year, if more time is needed to iron out various issues. The proposed amendments would do the following:
 - a. Extend the implementation date of the new out-of-state requirements until January 1, 2015.
 - b. Continue to require that unlicensed out of state applicants for licensure or registration have a degree that contains at least 48 semester/72 quarter units and the 6 semester/9 quarter units of practicum. They would still need to make up any deficiencies in the 60 semester/90 quarter units required.

For LMFTs, the law would be amended to allow them to remediate any missing course content requirements in 4980.36(d)(2) from either an accredited or approved school, or from a continuing education provider that is accepted by the Board.

The amendments would allow LPCCs to remediate up to three of the core content areas listed from an accredited or approved school. They could also remediate any missing course content requirements from either an accredited or approved school or from an accepted continuing education provider.

- c. Allow an applicant for registration to complete any deficient units and course content requirements while registered as an intern.
- d. Continue to require that out of state applicants for licensure who are licensed in another state have a degree that contains at least 48 semester/72 quarter units and the 6 semester/9 quarter units of practicum. They would not make up any deficiencies in the 60 semester/90 quarter units required; instead, their 48 semester/72 quarter unit degree would be sufficient.

Dr. Wietlisbach favored the proposals listed. Ms. Wong agreed. There were no objections from members of the public.

Christina Wong moved to direct staff to make any non-substantive changes, and bring both proposals to the Board for consideration as Board-sponsored legislation. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

XI. Discussion and Recommendations for Possible Action to Sponsor Legislation to Revise the California Family Code to Allow the Board to Receive Confidential Child Custody Reports for Investigative Purposes

Ms. Madsen presented the history and proposed legislation to revise the family code regarding confidential child custody reports.

At the April 2012 Committee meeting, the Committee and staff discussed the roles of Board licensees and 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.

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. Although the child custody recommending counselor must meet specific criteria, he or she is not required to be licensed by the Board. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation. The child custody recommending counselor is permitted to submit either the plan or the 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 Marriage and Family Therapist, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry. The evaluator has the task of conducting a comprehensive assessment (commonly referred to as an evaluation) to determine the best interest of the child in disputed custody or visitation rights.

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

Pursuant to Family Code Section 3025.5, the report submitted by the evaluator is considered confidential. The report may only be disclosed to specified persons.

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

The individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board. The Board of Behavioral Sciences is one of the state licensing boards listed.

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

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

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

During series of discussions with the Administrative Office of the Courts (AOC), the Board was informed that it should not proceed with its investigation despite receiving the confidential report since the Board is not permitted access under current law. The inability to obtain all of the relevant documentation requires the Board to close its investigation. This outcome increases the individual's frustration not only with the courts, but also the Board.

At the April 2012 Committee meeting, the Committee and stakeholders discussed whether or not to pursue a legislative change to allow the Board access to this confidential report for investigative purposes. Following the discussion, the Committee directed staff to draft language to allow the Board access to the confidential report for investigative purposes.

Since the April 19, 2012 meeting, staff met with the Administrative Office of the Courts to develop language that allows the Board access to the report, either from one of the parties currently permitted to have access to the report or directly from the court upon request from the Board.

Staff is proposing two revisions to the Committee. The recommendation is to revise Family Code sections 3111 and 3025.5 to allow the Board access to the confidential report for investigative purposes and to allow the court to provide the report to the Board upon request.

Ms. Epstein expressed that CAMFT continues to have concerns with this. There is a process in place where the Board can request a copy of the report from the court upon good cause. CAMFT is concerned about the privacy of the children, and stated that the reports are confidential for specific reasons.

Ms. Madsen emphasized that the report and the investigative documents do not become public record.

Mr. Wong, NASW-CA, agreed with Ms. Epstein. He expressed that the courts should be allowed to manage this issue, and the Board should find a way to work with the courts. He also expressed that working with the AOC is not the same as working with the courts.

Christina Wong moved to direct staff to bring the proposed revisions to the Board for consideration. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

XII. Public Comment for Items Not on the Agenda

No public comments were presented.

XIII. Suggestions for Future Agenda Items

No suggestions for future agenda items were presented.

XIV. Adjournment

The meeting was adjourned at 5:07 p.m.