

## **BOARD MEETING MINUTES November 28-29, 2012**

DoubleTree Hotel by Hilton  
555 W. Foothill Blvd.  
Claremont, CA 91711

### ***Wednesday, November 28<sup>th</sup>***

#### **Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Dr. Leah Brew, LPCC Member  
Deborah Brown, Public Member  
Betty Connolly, LEP Member  
Dr. Harry Douglas, Public Member  
Linda Forster, Public Member  
Sarita Kohli, LMFT Member  
Patricia Lock-Dawson, Public Member  
Renee Lonner, LCSW Member  
Christina Wong, LCSW Member

#### **Members Absent**

Samara Ashley, Public Member  
Eileen Colapinto, Public Member  
Karen Pines, Vice Chair, LMFT Member

#### **Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Christina Kitamura, Administrative Analyst  
Dianne Dobbs, Legal Counsel

#### **Guest List**

On file

### **FULL BOARD OPEN SESSION**

#### **I. Introductions**

Dr. Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 9:45 a.m. Christina Kitamura called roll. A quorum was established.

Board members, Board staff, and public attendees introduced themselves.

#### **II. Approval of the August 22-23, 2012 Board Meeting Minutes**

Kim Madsen requested the following changes:

- Page 4, Personnel Update: the minutes should reflect that Terri Maloy was promoted to a Staff Services Analyst to evaluate Licensed Professional Clinical Counselor (LPCC) applications.
- Page 5, item VII: *the task force has been meeting* should be corrected to *the task force began meeting*.

- Page 7, 6<sup>th</sup> paragraph: *Of the MFC/LCS Grandparent applications, 30% of the 2,196 applications received should be corrected to Of the MFC/LCS Grandparent applications received, 30% of the 2,196 applications have been processed.*
- Page 7, 8<sup>th</sup> paragraph: *Staff ensured should be corrected to Staff assured.*
- Page 9, 5<sup>th</sup> paragraph: *This would give the Board an additional tool to assist in meeting its mandate should be corrected to This would give the Board an additional tool to assist the Board in meeting its mandate.*
- Page 9, 6<sup>th</sup> paragraph: *This would cost the Board \$9.50 per applicant should be corrected to This would cost the applicant \$9.50.*

Renee Lonner requested a correction on page 7, 5<sup>th</sup> paragraph: *The LPCC Grandparent period ended on December 31, 2012.* The date should be corrected to *December 31, 2011.*

Dianne Dobbs listed the following corrections:

- Page 5, 4<sup>th</sup> paragraph under item VII: *the task force has convened should be corrected to the task force convened.*
- Page 5, 6<sup>th</sup> paragraph under item VII: *Board staff has provided comment should be corrected to Board staff has provided comments.*
- Page 6, 2<sup>nd</sup> paragraph: *One level is the “front line” individual, which has should be corrected to One level is the “front line” individual, who has. Another level is the mid-level practitioner that has should be Another level is the mid-level practitioner who has.*
- Page 6, 3<sup>rd</sup> paragraph: *testimony was heard from individuals in the field and providing should be corrected to testimony was heard from individuals in the field who are providing.*
- Page 7, 6<sup>th</sup> paragraph: *MFC/LCS should be corrected to MFC/LCSW.*

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), requested a spelling correction on page 13, 6<sup>th</sup> paragraph: *occassions should be occasions.*

***Patricia Lock-Dawson moved to adopt the Board meeting minutes as amended. Christina Wong seconded. The Board voted (10-0) to pass the motion.***

### **III. Approval of the November 8, 2012 Board Meeting Minutes**

***Patricia Lock-Dawson moved to adopt the Board meeting minutes. Linda Forster seconded. The Board voted (10-0) to pass the motion.***

### **IV. Executive Officer’s Report**

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

Ms. Madsen provided a brief overview of the budget process.

The 2012/2013 budget for the Board is \$8,153,000. As of September 30, 2012, the Board has spent \$ 2,038,779 reflecting 25% of the total budget. Total revenues collected to date are \$2,601,394.23.

The Board’s fund condition reflects a five-month reserve. This figure assumes a General Fund loan repayment of \$2 million dollars. Without the General Fund loan repayment the Board’s reserve decreases to 1.9 months.

Currently, the Board has a total of \$12.3 million dollars in loans to the General Fund. The Board was informed last spring that it may receive some monies towards this loan in 2012/2013. Although the Board has not received the monies to date, any repayment the Board receives will be reported at a subsequent meeting.

**b. Operations Report**

Ms. Madsen presented the Operations Report.

The Board was recently permitted to recruit for the 1.5 positions previously eliminated under Budget Letter BL12-03. The full time position will be utilized in the Enforcement Unit and the half time position will assist the License Clinical Social Worker (LCSW) unit.

The Department of Consumer Affairs (DCA) and Board staff discussed options to assist the Board with the Licensed Professional Clinical Counselor (LPCC) Grandparenting Application backlog. As a result of these discussions, a Memo of Understanding (MOU) was initiated. The MOU permits the temporary transfer of an employee from a DCA unit to the Board. This employee will assist the LPCC unit for one year.

The third quarter statistics continue to reflect an overall increase in application volume. The Board's current processing times have increased. Board staff is exploring options in an effort to reduce the Marriage and Family Therapy (MFT) exam application processing time.

The increased processing times reflect Board staff's efforts to assist with the BreEZe testing and a decrease in staff within the LCSW unit.

A total of 2,125 examinations were administered in the second quarter. Two examination development workshops were conducted in July through September. Six examination workshops were canceled and rescheduled due to staff vacancies at Office of Professional Examination Services (OPES). OPES reported that these vacancies are now filled.

The cashiering unit is currently processing renewal applications within 7 days of receipt. All other applications are processed within 5 days of receipt.

The Enforcement staff received 274 consumer complaints and 330 criminal convictions representing an 8% and 2% increase respectively from the previous quarter. During the third quarter 574 cases were closed and 23 cases were referred to the Attorney General's office for formal discipline.

Enforcement staff continues to meet or exceed the established performance measures (PM) with the exception of PM 4, Formal Discipline. DCA established the performance target for PM 4 at 540 days (18 months). The Board's current quarterly average is 760 days, which represents a reduction of 98 days from the previous quarter report. This performance target is dependent upon the staffing and workload of outside agencies, such as the Attorney General's (AG) Office and the Office of Administrative Hearings.

The third quarter reflects an increase in overall satisfaction, accessibility, and courtesy. Successful service decreased slightly. However, all the ratings reflect an increase since last year's third quarter ratings. Board staff also observed that the number of respondents to the survey in third quarter decreased by 26%.

Dr. Harry Douglas asked how the Customer Satisfaction Survey was developed, and who took part in developing the survey. He expressed that the categories were too general. He also asked if providers assisted in developing the survey. Ms. Madsen

responded that she will research the methodology of the survey and provide that information.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), expressed disappointment regarding the increase in processing times for MFT exam applications, especially since the volume of applications has dropped by 11%. Ms. Epstein asked what options are left to be explored when Board staff has been denied additional staffing to address the increase in processing times.

Ms. Madsen responded that depending on existing staff workload, staff could be redirected. Another option is to pursue an MOU with DCA.

Ms. Epstein commented on the regulations being proposed to address enforcement issues, specifically performance targets established by DCA. She stated that enforcement issues are being mitigated without those regulations in place. CAMFT is not supportive of those regulations that are being promulgated.

**c. Personnel Update**

Ms. Madsen presented the Personnel Update.

Gena Beaver was promoted to an Associate Governmental Program Analyst (AGPA) within the Enforcement Unit on October 31, 2012. Gena will function as the Lead Enforcement Analyst over three Staff Services Analysts (SSA), one Management Services Technician (MST), and one Office Technician (OT).

As discussed in the Operations Report, DCA and Board staff initiated an MOU to assist the Board with the LPCC Grandparenting Application backlog. The MOU permits the temporary transfer of an employee from a DCA unit to the Board.

The Board has begun recruitment for the following vacancies:

- Management Services Technician (part-time) in the Licensing Unit to perform the duties of an LCSW and Associate Social Worker (ASW) evaluator.
- Staff Services Analyst (full-time) in the Enforcement Unit to fill behind Gena Beaver.

There were no departures last quarter.

**d. BreEZe Update**

Ms. Madsen presented the BreEZe Update.

As of November 13, 2012, a firm go-live date has not been announced. The BreEZe team continues to work with the vendor to resolve issues identified during data validation and preliminary system testing. The resolution of these issues is critical to ensure system stability and ultimate performance of the new data system. A firm date will not be announced until the BreEZe team is confident that the new date is attainable.

Despite these challenges, staff continues to prepare for formal User Acceptance Testing (UAT). Thirteen staff members are participating in weekly data verification and preliminary system testing. The time commitment for these tasks has impacted their daily workload. However, the time investment is vital to the ultimate success of the new data system for the Board. As a result of their collective efforts, numerous issues were identified.

One benefit of the Board's significant participation prior to the "go-live" date is that nearly one-third of the staff will be familiar with the BreZE system once it is released. This will decrease the number of staff requiring training. Additionally, the Board will have a large number of "experts" to provide assistance to staff.

## **V. Update on the Continuing Education Committee**

Steve Sodergren gave a brief overview of the current continuing education provider approval process.

Since its creation in November 2011, the Continuing Education Provider Review Committee (Committee) has been meeting in order to address concerns related to the Board's Continuing Education Provider requirements. Professional organizations that represent the Board's licensees have been actively participating in the discussions. The Committee reviewed the draft language presented by Board staff at its October 2012 meeting.

The draft language removes the Board's authority to directly approve and license providers, but establishes the authority of the Board to accept continuing education (CE) credits from providers who have been approved or registered by a Board-recognized approval agency. It also establishes the authority of the Board to accept CE credits from organizations, institutions, associations or entities that have been recognized by the Board as continuing education providers. This change in the regulation will entrust the review and approval of continuing education providers, coursework and instructors to professional associations and other entities recognized by the Board.

Board-recognized "approval agencies" named in the suggested language have established stringent requirements for CE provider applicants, including administrative and financial accountability, program development and implementation criteria, and established performance measures for determining program effectiveness. Many of these accrediting entities also perform periodic reviews of approved sponsors or providers. By accepting CE from approval agencies and accrediting entities, the Board will not be involved in the approval or maintenance of the CE providers. Rather, the Board will rely on accrediting entities' standards to ensure the quality of CE provided to licensees.

While the Board will not directly approve CE providers, it will have the authority to audit coursework providers and coursework. The approving agency and the provider must be able to deliver the specific coursework and provider material when requested by the Board. This language will also give the Board authority to revoke the approving agencies Board recognition if they fail to ensure that the providers that they approve meet the Board's requirements.

Some of the concerns expressed at the last Committee meeting were:

- How will agencies or entities not listed in the language be granted status as an approval agency?
- How will the Board ensure that the content of courses is valid?
- The term "best practices" is not a current term. Terms that should possibly be considered are "professionally accepted", "evidence based", "evidence-based practices" or "generally accepted standard of practice."

Board staff is revising the draft language to address these concerns that were raised at the last Committee meeting.

Mr. Sodergren pointed out that the draft language included in the Board meeting packet was the language reviewed at the last Committee meeting. Staff is revising the draft language, which will be very different from the version provided to the Board.

Mr. Sodergren noted that the American Counseling Association will be added to the list of continuing education providers outlined in the language.

Ms. Forster requested more clear language regarding audits. Ms. Madsen stated that staff will work with counsel on the language.

Ms. Wong asked what will happen with the existing CE provider population. Ms. Madsen responded that the existing CE provider population will be required to obtain approval from one of the entities named in the draft language.

Betty Connolly asked if it would be appropriate to add the California Association of School Psychologists (CASP) to the list of CE providers recognized by the Board, since they are a professional association and meet the standards of a CE provider. Ms. Madsen responded that it would be appropriate to add CASP to the list.

Ms. Wong asked if the Committee will consider how to monitor or accept the applications from out-of-state providers or from online CEU providers. Ms. Madsen responded that those providers will have to be associated through the approval agencies or one of the entities already identified as a provider. The Board is moving away from approving individuals and entities as CE providers.

Dr. Douglas stated that these organizations were very involved in this process. The Committee is concerned that there are other organizations that may qualify; there needs to be a pathway so that those organizations can demonstrate the ability to meet the criteria and also be recognized. This is an open-ended process, and other organizations are welcomed to participate.

Sarita Kohli noted that NASW is listed as an approval agency, but NASW is also a CE provider. Ms. Madsen stated that the language should be updated to list NASW California Chapter as an approved CE provider. Ms. Madsen also noted that there should be a correction made to NASW listed as an approval agency; it should be listed as NASW California Chapter.

Ms. Lonner commended the Committee, stating that this is a vast improvement over the process that is currently in place. This is quality control, which is what is needed.

Dr. Wietlisbach also commended the Committee and the stakeholders on their work.

Ms. Connolly stated that she is hearing concerns from Licensed Educational Psychologists (LEP) that specific content areas of the required CE courses (courses mandated by the Board) do not necessarily relate to the scope of practice. She asked if mandated CE coursework will still be determined by the Board. Ms. Madsen replied yes.

Dr. Brew stated that there are many organizations that are not listed in the draft language as CE providers. NBCC is the certifying agency for CE in the field of counseling. ACA does not need to be listed because they have NBCC approval. LPCCs have to go through NBCC for their CE. Listing every organization that is a recognized CE provider may get risky, and the list may be quite long. She suggested looking at each profession and determining if there is a central organization that is the approving agency so that the Board does not have to list each approved CE provider.

Ms. Epstein responded that there is not a nationwide MFT-equivalent. AAMFT (National) does not certify other CE providers. This is why there is a list of Board-approved CE providers for LMFTs. CAMFT is approved through the APA, but CAMFT can only offer courses that within the scope of practice of a psychologist. CAMFT cannot offer MFT

courses for credit through the APA. Listing Board-approved CE providers is necessary for this reason.

Ms. Epstein stated that the definition of self-study is an issue that is still unresolved.

Ms. Epstein also noted that the California Psychological Association (CPA) was not listed in the draft language and asked if the CPA would be added as either an approval agency or a CE provider, or both. Mr. Sodergren responded that the California Psychological Association was recently added to the draft language.

Ms. Epstein asked if more Board staff would be available for other duties once the Board gets out of the CE provider approval business. Ms. Madsen responded the Board's CE audits will increase, however, this may potentially free up some staff time to perform other duties.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), asked how the term "evidence-based practices" is being used in relation to CE. Mr. Sodergren responded that it is one of the criteria for course content. He noted that the application of that term must be discussed more at the Committee level.

Dr. Brew explained that "evidence-based" means that there is some research to support the practice and show that it is effective.

Ms. Loewy stated that the term "evidence-based practices" needs to be well defined. Although Dr. Brew's explanation makes sense, the term is taking on a whole different meaning in regards to specific ways of treatment, which can be limiting for potential providers.

Mr. Wong, NASW-CA, stated that an entity with approval from a national continuing education provider agency will have approval in most states, which is not the case now. This will be a tremendous improvement.

Ms. Kohli suggested adding language clarifying where licensees can obtain their CE credit.

The Board took a break at 11:17 a.m. and reconvened at 11:35 p.m.

## **VI. Update on the Department of Managed Health Care Autism Task Force Meetings**

Ms. Madsen provided an update on the Autism Task Force meetings.

Senate Bill 946 required the Department of Managed Health Care (DMH) in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force. The purpose of the task force is to provide assistance to the DMH 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 specified members of the Legislature by December 31, 2012.

The task force has been holding meetings since February 2012. The Board has been in attendance at these meetings since March 2012.

The task force held its final public meeting on October 5, 2012. The purpose of this meeting was to discuss the draft report, which reflected the task force's recommendations specific to the treatment of autism. The draft report provided guidelines for treatment, interventions, care coordination, and qualifications, education, training and supervision of individuals providing treatment.

The draft report included recommendations for licensure and suggested an agency, such as the Board, to provide the regulatory oversight. In the event regulatory oversight could not be provided by an entity such as the Board, the task force suggested an “interim entity” with similar functionality be considered. Finally, the report included guidelines for unlicensed individuals who provide autism treatment.

Public comments were made at the October task force meeting. The public expressed concern regarding the “interim entity” and that the report seemed to only address one treatment modality – behavior analysis. The final report is due to the legislature December 2012.

The Board anticipates that a bill based upon the task force recommendations will be introduced in the upcoming legislative session. The specifics of this bill are unknown at this time. During recent discussions with legislative staff, Board staff raised concerns regarding the challenges it will face if a new licensure category is placed within its jurisdiction.

The new legislation session will begin after January 1, 2013. Bill introductions will conclude late February 2013.

Ms. Epstein asked if Board staff made any public comments at these meetings. Ms. Madsen confirmed that staff made public comments. Ms. Epstein asked if written comments were submitted. Ms. Madsen replied that written comments were not submitted.

Ms. Porter stated that CALPCC made comments at the meetings and provided written comments as well. Ms. Porter expressed CALPCC’s concern that the requirements do not meet the rigor of licensure.

Dr. Douglas asked why the profession wants to create a new practitioner-level license. Ms. Madsen responded that she believes it is because there is a desire to professionalize this practice as well as to ensure third party reimbursement.

Ms. Madsen noted that the Board has the support of the associations; they share the same concerns as the Board. Board staff is waiting to see what the legislation will look like.

## **VII. Update on the Licensed Professional Clinical Counselor Program**

Ms. Madsen provided an update on the LPCC program. When the Board last met, Ms. Madsen reported that it would take the Board about two years to process all of the LPCC Grandparent applications received by December 31, 2011. As discussed earlier, a new staff person came to the Board to assist in the workload. Ms. Madsen reported that the estimated timeline to process those applications is now 12 months.

Ms. Madsen also noted that a new Subject Matter Expert has been hired to look at the coursework and curriculum from some of the schools. That individual will start sometime between December and the beginning of 2013.

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

Ms. Madsen reported briefly on the joint MFT Occupational Analysis with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) in an effort to assess the viability of the AMFTRB exam for licensure in California. Dr. Tracy Montez is conducting the assessment. Dr. Montez recently received the AMFTRB’s Practice Analysis. The Office of Professional Examination Services is concluding their survey of the California licensees for the Board’s examination development. Dr. Montez will compare the two documents and provide an update at the February 2013 meeting. This effort is moving forward.

The Board took a break for lunch at 11:54 a.m. and reconvened at 1:10 p.m.

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

### **a. Recommendation #1 – Possible Rulemaking Action Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008**

Rosanne Helms presented the proposed regulations regarding uniform standards for discipline in cases of substance abuse by licensees or registrants.

This is a regulatory proposal that the 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 licensee or registrant substance abuse.

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.

SB 1441 was signed in September 2008. The bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA's healing arts boards, was tasked with formulating, by January 1, 2010, 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. 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.

The resulting "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" consists of four parts:

1. **Uniform Standards Related to Substance Abuse:** This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. **Penalty Guidelines:** This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. **Disciplinary Orders:** This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new uniform standards related to substance abuse.
4. **Board Policies and Guidelines:** Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

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 ones to implement these regulations, the Board directed staff to seek further guidance from DCA before considering the regulations.

In April 2012, the Board received a memo from 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 to be used by the healing arts boards. These questions emerged following receipt of a Legislative Counsel Bureau's opinion on the matter.

DCA requested the Office of the Attorney General review the Legislative Counsel's opinion. 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. DCA indicated that 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 concurs with these opinions.

The Legislative Counsel and the Attorney General offer differing opinions as to whether or not the SACC, or the individual boards, have 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 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.

- As the Uniform Standards directly affect the Disciplinary Guidelines, staff recommends that they remain one document.
- 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.

At its meeting in November 2012, the Policy and Advocacy Committee (Committee) directed staff to bring the proposed regulations to the Board for consideration as a regulatory proposal.

Ms. Epstein pointed out that the Uniform Standards only refer to licensees, yet the version presented to the Board includes licensees and registrants. She stated that it is her understanding that no modifications could be made to the Uniforms Standards as they were drafted by the SACC.

Ms. Helms responded that the definition of “licensee” in the Business and Professions Code includes “registrant” in that definition; however, she was unsure of the exact code section.

Ms. Forster stated that there must be language in existence that describes one having a substance abuse problem. She asked why would there need to be a different definition. Ms. Madsen stated that there is a variation of definitions, including a medical component. Now the Board is being asked to make that judgment, and there is concern that the Board does not have the skills and knowledge to make that judgment.

Ms. Kohli commented on the staff recommendation to define a substance abuse violation for which the Uniform Standards would apply. She indicated that the term “substance abuse violation” should not be used because “substance abuse” is a diagnosis.

Ms. Madsen referred to the California Code of Regulations Section 1888(a) and stated that the language does not indicate that the Board is making a diagnosis. Dianne Dobbs, the Board’s Legal Counsel, agreed. Ms. Dobbs explained if the violation involves the abuse of these substances, then that is the first criteria for determining whether or not it is a substance abuse violation.

***Renee Lonner moved to direct staff to make any discussed or any non-substantive changes and to pursue as a regulatory proposal. Sarita Kohli seconded. The Board voted unanimously (10-0) to pass the motion.***

- b. Recommendation #2 – Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 4980.36, 4999.33, 4980.43(b), 4996.9, 4996.23, 4999.47(a), 4980.54, 4980.72, 4999.60, 4989.68, 4996.3, 4996.18, and 4999.46**

Upon review, staff has determined that several sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences require amendments. Ms. Helms reported on the following:

1. Amend BPC Sections 4980.36 and 4999.33 – Instruction in Severe Mental Illness

Sections 4980.36(e) and 4999.33(d)(6) 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.

At its November 2012 meeting, the Committee, staff suggested 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 the degree-granting school.

However, at the meeting, a question was raised about the original intent of the law in allowing an extension program offered by the degree granting institution. Was the intent to ensure that coursework addressing severe mental illness was taken at the same time the degree was being earned, but for some reason the schools were better able to offer this coursework through extension?

The Committee chose to accept the amendment, and staff agreed to look further into this matter.

After looking at meeting minutes from 2006 when this language was formulated, it is apparent that the intent was to have the coursework taken at the same time as the degree program. It was noted in the minutes that sometimes courses are offered through extension for financial aid reasons. Increasing the number of required units by adding new course requirements increases student costs, and financial aid is not necessarily enough to cover the increased costs. Therefore, the schools can offer extension courses to students, at a lower student rate, which they can take while obtaining their degree.

Given this new information, staff no longer recommends the suggested amendment.

## 2. Amend BPC Section 4996.9 – Practice of Clinical Social Work

This item resulted from an issue that was raised recently and not discussed at the Policy and Advocacy Meeting on November 1, 2012. NASW-CA requested this amendment to clear up some confusion about the scope of practice of LCSWs.

Section 4996.9 defines the practice of clinical social work. A few years back, language was inserted into LMFT law stating that the practice of marriage and family therapy includes the use, application, and integration of the coursework and experience required by law for licensure.

This language makes it clear that LMFTs are able to practice what they are taught. NASW-CA would like to have this clarification for LCSWs as well.

Staff recommends amending BPC Section 4996.9 to specify that the practice of clinical social work includes the use, application, and integration of the coursework and experience required by Sections 4996.2 and 4996.23.

At its November 2012 meeting, the Policy and Advocacy Committee recommended that the Board sponsor legislation to make the proposed changes to the omnibus bill.

Patricia Lock-Dawson expressed concern regarding experience gained as an independent contractor. She stated that in the current economy, many people are not being employed; and many people are going towards the independent contractor status. This doesn't seem current with the economic reality.

Mr. Wong, NASW-CA, explained that one can become a W-2 employee and scale down the exemptions so that there is no withholding, which could be a way to address the 1099 issue. The employer can do that; it's up to the employee to pay taxes.

Mr. Wong explained that there are two tax consequences: the tax that the employee pays and the tax that the employer pays. Employers can be subject to employment taxes depending on how much money the employee earns. He explained that

employers use the 1099 as a way to avoid paying employment taxes; however, an independent contractor by definition is not subject to supervision or direction by their employer. If the employer is providing supervision to a 1099 employee, the employer is in violation of the employment law and could be subject to fines and penalties. If this law were to change, registrants could provide therapy without supervision.

Ms. Lock-Dawson stated that there must be some way to address this somehow. Perhaps the Board can track this and determine if there is an increase in employers hiring independent contractors; and if that is the case, the Board could address the supervision requirements.

Ms. Kohli stated that an independent contractor by definition is capable of providing a service. She does not believe that was the intent for registrants. If a person is a registrant, not licensed, they are not capable of providing the service without supervision. To imply that a registrant is independently able to practice would put the consumer at risk.

Ms. Lonner agreed with Ms. Kohli.

Ms. Dobbs reminded the Board that this is not a proposed change to the law; this is to clarify that hours cannot be gained as an independent contractor.

Ms. Madsen stated that it is rare that staff will receive a 1099 for a registrant. In most cases, the employer received a stipend for that employee but there is no way to track that stipend to the employee; therefore, a 1099 is used for that purpose. In those cases, staff discovers that the employee is a volunteer.

***Christina Wong moved to direct staff to make any non-substantive changes to the proposed language and sponsor legislation to make the proposed amendments. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.***

**c. Recommendation #3 – Possible Rulemaking Action to Require All Applicants to Submit a National Data Bank Inquiry Result**

Mr. Sodergren presented the proposal to require applicants to submit a National Data Bank Inquiry result.

The data bank, consisting of the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank (HIPDB), is a confidential clearinghouse created by Congress to improve health care quality. The Board has been considering utilizing the data bank to perform background checks on licensees coming from out of state.

During the November Policy and Advocacy Committee meeting, the proposal to require all out-of-state licensees to provide the Board with a self-query when applying of licensure was met with concern. It was expressed that limiting the submittal of a self-query to out-of-state applicants would be inequitable. The possibility of requiring all applicants to submit a self-query in addition to licensees at their renewal period was discussed.

Mr. Sodergren stated that Board staff is currently conducting further research to determine how many state applicants apply for licensure in California each year, the cost to licensees, and the effectiveness of the tools currently being used, such as fingerprinting.

Dr. Wietlisbach recalled that this issue came up at the Sunset Review Hearing. The Board was asked why it was not using the data bank. The Committee has been trying to decide if the Board should participate in the data bank query. Since this was a concern

at the Sunset Review Hearing, the Committee feels that it needs to respond to this. Dr. Wietlisbach asked who should be subjected to the query.

Ms. Lonner responded that everybody should be subjected to the query. The Board does not know which licensees began their business in another state, and that information will not be provided through fingerprinting.

Dr. Wietlisbach asked how many people are coming from other states and how many came from another state in the past years. It's possible that it is a very low number.

Ms. Madsen stated that staff has no way of verifying prior practice. Asking the applicant to provide a self-query would be one more verification and confirmation of the information they are providing to the Board. With a new licensing program, it is highly probably that the Board will see more portability into California. Ms. Madsen advised the Board to consider requiring out-of-state applicants to submit a self-query.

Ms. Wong suggested "test driving" the self-query for out-of-state applicants for a period of time.

Ms. Lock-Dawson stated that a statistical analysis could be performed to determine if the amount of information received is enough to justify utilizing the data bank.

Ms. Madsen offered to bring back more information to the February Board meeting, specifically the number of out-of-state applicants the Board received over the last couple of years. She also offered conducting random queries.

Dr. Brew suggested looking at licensees that were adjudicated over the past 2-5 years, and how many of those licensees held out-of-state licenses. If none of them were out-of-state, it probably wouldn't be prudent to add the additional work.

Ms. Connolly asked how many states are reporting to the National Data Bank; she requested that this information be brought back to the February Board meeting.

Ms. Madsen stated that there is a requirement for all states to report to the National Data Bank.

**d. Recommendation #4 – 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**

Under current law, LPCCs, professional clinical counselor interns (PCC interns), and trainees may not treat couples or families unless they complete certain specified additional training and education. Ms. Helms presented the additional training and education as follows:

1. Either six semester or nine quarter units specifically focused on theory and application of marriage and family therapy, or a named specialization or emphasis area of the qualifying degree in marriage and family therapy, marital and family therapy, marriage, family, and child counseling, or couple and family therapy;
2. At least 500 hours of documented supervised experience working directly with couples, families or children; and
3. In each renewal cycle, completion of at least six hours of continuing education specific to marriage and family therapy.

In addition, Section 1820.5 of the CCR outlines exemptions for LPCC 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 or if they are gaining these hours as part of their practicum requirement.

The Board is now in the process of issuing its first LPCC licenses and PCC intern 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:

1. What documentation of the additional education and experience is needed?
2. Does an LPCC licensee need to meet the additional education and experience requirements in a particular order?
3. Must the supervised experience be obtained from an approved supervisor?

Documentation of the additional education and experience

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 in 4999.20. A licensee or registrant may decide at any time that they would like to pursue the additional education and experience. Once they are finished, there is no form that they need to send to the Board; they may simply begin treating couples or families.

Currently, 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.

In order to provide a clear process for consumers, licensees and registrants to know for sure which licensees and registrants meet the requirements to treat couples and families, staff recommends a process through which the Board would verify that the requirements have been met. Under this proposal, CCR Section 1820.5 would expand into three separate sections:

- a) Section 1820.5, Experience Working Directly with Couples, Families or Children–Clinical Counselor Trainees: This new section would state that trainees are only exempt from the requirements to treat couples and families if they are gaining their practicum hours which require them to counsel individuals, families, or groups.
- b) Section 1820.6, Experience Working Directly with Couples, Families or Children–PCC Interns and LPCCs: This new section outlines the requirements PCC interns and LPCCs must meet while gaining their experience to treat couples and families. It is very similar from the current Section 1820.5; however, references to trainees have been removed for clarity.
- c) Section 1820.7, Treatment of Couples and Families: This section outlines a process by which LPCCs and PCC interns receive Board confirmation that they have met the requirements to treat couples and families. Staff proposes the following:
  - LPCCs and PCC interns who have met the requirements must maintain records of completion, and submit them to the Board on a designated form.
  - Beginning January 1, 2014, before treatment of couples or families, the LPCC or PCC intern must receive written confirmation from the Board that he or she meets the requirements.

- The licensee or intern must then provide a copy of this written confirmation to the clients prior to beginning any couple or family treatment.
- Beginning January 1, 2014, an LPCC who is supervising an MFT intern or an LPCC or PCC intern gaining experience hours to treat couples or families, must obtain this written confirmation from the Board, and provide it to the supervisee prior to the commencement of supervision.

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

Currently, CCR §1820.5 states that an LPCC is exempt from the additional requirements to treat couples or families if certain criteria is met. One of those requirements is:

“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;...”

The term “has completed” 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 §1820.5 makes no specification of the order of this requirement for PCC interns; the requirement is only for licensees.

It seems inequitable to allow a 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 a licensed 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 MFT coursework. In such a case, the LPCC would technically meet the requirements, but would need to re-do the supervised experience because it was not completed in the “correct” order.

If it is not the intent of the Board that LPCCs must gain supervised experience to treat couples or families after completing the required education, staff suggests that the phrase currently in CCR §1820.5(b)(3)(A) be amended from “has completed” to “completes.”

Supervised experience obtained from an approved supervisor

CCR Section 1820.5 currently states that the supervised experience that is required for an LPCC, 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 §4999.20.

Comments were made that it was not clear what type of supervisor could provide supervision. The law defines a “supervisor;” however, the regulation does not specify whether this supervisor must be a Board-approved supervisor. The Committee suggested that the supervisor should be a Board-approved supervisor.

Ms. Forster asked what the impact will be on the Board in terms of volume and resources. Ms. Madsen replied that the applicants will provide the letters from the supervisors, and the evaluators would verify the information. This would be another step in the evaluation process.

***Christina Wong moved to direct staff to make any discussed changes and any non-substantive changes to the proposed amendments, and run the amendments as a regulatory proposal. Dr. Leah Brew seconded. The Board voted unanimously (10-0) to pass the motion.***

The Board took a break at 2:42 p.m. and reconvened at 2:57 p.m.

**e. Recommendation #5 – Possible Action to Sponsor Legislation to Allow Licensed Marriage and Family Therapist Applicants to Remediate Specific Coursework**

Ms. Helms presented this proposal that would allow an LMFT applicant to remediate certain coursework deficiencies, and would clarify that LCSWs are also allowed to remediate certain coursework deficiencies.

Under current law, an LMFT applicant who applies for licensure with a degree earned in the State of California 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 can be summarized, by license type, as follows:

1. Existing Law for LMFT Applicants – Graduate Study Begun After August 1, 2012  
This subgroup of LMFT applicants must obtain a degree that meets certain specified content area requirements. This is called a “single integrated degree program.” The Board will verify that degree programs in California meet the integrated degree requirements. Under this system, because the Board will be working with the school to ensure the degree includes the appropriate content, no remediation option is needed.
2. Existing Law for LMFT Applicants – Graduate Study Begun Before August 1, 2012  
This subgroup of LMFT applicants must obtain a degree that meets certain specified content area requirements. In addition, there are 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. Existing Law for 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 does state 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. Recently questions have been raised regarding remediation of the spousal and partner abuse coursework through CE providers.
4. Existing Law for LPCC Applicants – Graduate Study Begun After 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 will be integrated into the degree program.

5. Existing Law for LPCC Applicants – Graduate Study Begun 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 two 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.

The proposed amendments fall into two categories:

LMFT Applicant Remediation of a Deficient Degree – Graduate Study Begun Before August 1, 2012: Amend Sections 4980.41 to allow an LMFT applicant whose degree is deficient in alcoholism and other chemical substance dependency, or spousal or partner abuse assessment, to remediate those deficiencies. Remediation may be from a Board-accepted continuing education provider, or an accredited or approved institution as defined in law.

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

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, the law is less clear about whether the instruction and training must be part of the degree program. Although the law does not specifically state that the required 15 contact hours of coursework must be part of the degree program as LMFT law, it states that required coursework may be taken either in fulfillment of other educational requirements for licensure or in a separate course. 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-approved continuing education provider.

Staff recommends that the language requiring certification from the chief academic officer of the school that the required coursework is included within the institution's required curriculum for graduation, be removed from both LMFT and LCSW law. Removal of this sentence will allow both LMFT and LCSW applicants to remediate this coursework. Remediation may be either from an accredited or approved educational institution, or from a Board accepted continuing education provider.

***Patricia Lock-Dawson moved to direct staff to make any discussed changes and any non-substantive changes and sponsor urgency legislation to make the***

***suggested amendments. Sarita Kohli seconded. The Board voted unanimously (10-0) to pass the motion.***

**f. Recommendation #6 – Possible Action to Sponsor Legislation to Revise Licensure Requirements for Out-of-State Licensed Marriage and Family Therapists and Licensed Professional Clinical Counselor Applicants**

Ms. Helms presented proposed amendments to revise licensure requirements for out-of-state applicants.

Licensing requirements for out-of-state LMFT and LPCC applicants are set to change on January 1, 2014. 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. This bill 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. Major changes made by this bill were as follows:

- Increases the degree's total unit requirement from 48 to 60 semester units (72 to 90 quarter units).
- Provides 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.
- Infuses the culture and norms of public mental health work and principles of the Mental Health Services Act throughout the curriculum
- Changes the requirements for LMFT applicants who earned a degree outside of California effective January 1, 2014. 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.

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

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.

At the time that the Board considered changing the out-of-state requirements for LMFT applicants, 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.

Without having the option to make up coursework from CE 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.

Staff is proposing two separate Board actions:

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 address various issues. The proposed amendments do the following:

- a. Extends the implementation date of the new out-of-state requirements until January 1, 2015.
- b. Continues 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 by LMFT law and LPCC law.

For LMFTs, the law has been amended to allow them to remediate any missing course content requirements from either an accredited or approved school, or from a CE provider that is approved by the Board.

The amendments would allow LPCCs to remediate up to three of the core content areas 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 approved CE provider.

- c. Allows an applicant for registration to complete any deficient units and course content requirements while registered as an intern.
- d. Continues to require that out-of-state applicants 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; instead, their 48 semester/72 quarter unit degree would be sufficient.

Ms. Madsen stated that this is an unintended consequence. If the Board does not act before 2014, out-of-state applicants, who are licensed in other states, will be required to get another master's degree. That is cost-prohibitive and a barrier to licensure in California. Extending the effective date allows time to form a committee to address these issues.

***Patricia Lock-Dawson moved to sponsor legislation to extend the effective date of the new education requirements for out-of-state applicants to January 1, 2015, and to direct staff to conduct research to address this matter. Christina Wong seconded.***

Ms. Porter stated that she approves of the staff's suggestion.

Ms. Loewy commented that she agrees with the proposal to delay implementation. She expressed concern regarding the anticipated provider shortage, which will be increasing. She added that the new curriculum was "innovative, cutting-edge, and outstanding." This is not just about the Mental Health Services Act (MHSA), but this is also about national health care reform. California is leading the nation in health care reform and new treatments.

***The Board voted (9-1) to pass the motion.***

**g. Recommendation #7 – Possible Action to Sponsor Legislation to Review the California Family Code to Allow the Board to Receive Confidential Child Custody Reports for Investigative Purposes**

Ms. Madsen presented the background and proposed legislation to amend Family Code Sections 3111 and 3025.5

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

A child custody recommending counselor may be a member of the professional staff of the family court, probation department, or mental health services agency or any other person or agency designated by the court. The child custody recommending counselor is not required to possess a license with the Board. However, they must meet specific educational and training requirements set forth in Family Code.

The role of the child custody recommending counselor is to assist parents in resolving their differences and to develop a plan agreeable to both parties. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation 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 an LMFT, LCSW, a licensed Psychologist, or a licensed 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, also referred to as an evaluation, to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation (report) 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. The evaluation is submitted to the court, and the court bases their decision on the evaluation.

Pursuant to Family Code Section 3025.5, 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.

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

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. 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 receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a mediator, due their limited role. The Board will investigate complaints involving evaluators.

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

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

Board staff observes significant challenges associated with these cases. The inability to obtain all of the relevant documentation requires the Board to close an investigation. These complaints make up 30% of the complaints received by the Board.

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

In the summer of 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. During the initial meeting, 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.

At subsequent meetings, the Board was provided with contact information for each court to provide to individuals who had a complaint about an evaluator and their report.

Ms. Madsen cited examples of two separate cases in which the Board received the confidential reports and ultimately had to close the cases.

In the first case, allegations were made against a licensee engaging in unethical conduct. The Board moved forward in its investigations after it received the evaluator's report. The Board's investigation revealed potential violations of the Board's statutes and regulations. The investigation was forwarded to an SME for review and opinion. The SME opined that the licensee provided inaccurate and incomplete information to the court.

The Board referred the case to the Attorney General for disciplinary action. The Deputy Attorney General assigned to the case determined it was in the Board's best interest to seek formal release of this document from the court to the Board. Therefore, a motion was filed in Superior Court seeking the release of this document to the Board for the upcoming administrative hearing. The judge denied the Board's request.

As a result, the document that served as the basis for the Board's action against the licensee would be inadmissible in the upcoming administrative hearing. The Board had no other alternative than to withdraw its action against the licensee.

In the second case, the Board received complaints regarding a licensee who conducted custody evaluations for two separate families. In the first complaint, it was alleged that the licensee entered into a dual relationship, in addition to preparing the custody evaluation, the licensee also provided supervision during parental visitation. Furthermore, the licensee overcharged the parent for the evaluation in addition to charging the parent for supervision.

The second complaint alleged the licensee provided a biased custody evaluation report to the court. The licensee did not review all the documents obtained during the evaluation. Rather, the licensee randomly selected the documents to review and based the custody evaluation on these limited documents. Moreover, the licensee omitted positive statements regarding one parent as well as misrepresented the comments of interviewees in the report. As a result, an unbalanced and subjective evaluation of one parent was submitted to the court.

The Board received sufficient documentation to investigate both cases. In the second complaint, the Board also received the custody evaluation. The Board's investigation revealed several potential violations of law. Although some of the violations were based on the custody evaluation report, clear and convincing evidence existed to proceed with the remaining violations. The Board proceeded with formal disciplinary action and the matter was referred to the Attorney General's office.

An administrative hearing was conducted in which testimony and evidence was submitted. During the hearing, the confidential custody evaluation was provided to the court by the licensee. The Administrative Law Judge reviewed this report and concluded that the report demonstrated bias. A proposed decision for discipline was issued for all of the alleged violations.

In February 2012, the Board met with the AOC to discuss the inability to fully investigate allegations of licensee misconduct if the Board cannot obtain the relevant documentation to use in an administrative hearing. Both the Board and the AOC agree that it is essential that the courts receive accurate information from the child custody evaluator in order to determine the best interest of the child. Further, the AOC and the Board agree that a solution to this issue requires a legislative proposal to revise existing law.

At its meeting in April 2012, 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. The Committee directed staff to draft language to allow the Board access to the confidential report for investigative purposes.

Following the April 2012 meeting, Board staff met with the AOC to develop language that allows the Board access to the report. Specifically, the AOC suggested language that would allow any of the parties to provide the report to the Board for investigative purposes.

Release of the report under this circumstance would not be considered an unwarranted disclosure. Thus, the party who released the report would not be subject to sanctions from the court. In the event the Board believed it was not provided the full report, the Board may then submit a written request to the Court for the report.

Dr. Ian Russ, LMFT and custody evaluator, wrote a letter to the Board regarding his concerns and professional opinion in support of the proposed legislation. Ms. Madsen read the letter aloud to the Board members and audience. This letter was submitted to the Board members and made available to the audience.

Ms. Epstein expressed that there is a reason for this report to remain confidential. The Board may get the confidential report by petitioning to the court and showing good cause.

Ms. Epstein stated that the courts can take action on these evaluators. She asked if the only recourse is removing the evaluators from the court system, could the Board use that as grounds to initiate an investigation. The courts do not have a lot of resources, and the solution is not to compromise these confidential reports.

Ms. Madsen stated that if the Board could get the report on the onset of the investigation, staff could determine if there is merit to the allegations. Currently, the Board cannot do anything with these complaints because they are related to the report.

Ms. Lonner recalled addressing this issue over 3 years ago. The Board began meeting with the AOC, and it was the Board's hope that the court would take on this responsibility. The Board felt that the AOC, a panel, was "taking care of its own." Furthermore, each county in California is autonomous and has their own methods of addressing complaints. Most of the counties do not deal with the complaints because they do not have enough staff.

Ms. Madsen added that she appreciates the concern regarding confidentiality of the reports. However, the Board always receives confidential information. Staff treats it respectfully and protects identities.

***Dr. Leah Brew moved to direct staff to pursue legislation to revise Family Code section 3111 and 3025.5. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.***

#### **h. Legislative Update**

Ms. Helms reported that all of the bills sponsored by the Board were signed into law and will be effective January 2, 2013, with the exception of the urgency measure that became effective in July 2013.

**i. Rulemaking Update**

Ms. Helms reported that the regulation package for Title 16, CCR Sections 1811, 1870, 1887.3: Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs), and HIV/AIDS Continuing Education Course for LPCCs was submitted to the Office of Administrative Law for final approval.

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

Ms. Helms presented the proposed regulations to revise the Disciplinary Guidelines.

The Board approved this regulatory proposal at its meetings on November 9, 2011 and May 16, 2012. The proposal was then submitted to the Office of Administrative Law (OAL), and opened to public comment for a 45-day period. A public hearing was held on October 16, 2012.

This regulatory proposal amends the Disciplinary Guidelines. These changes are based on suggested adjustments from the Board's enforcement unit for clarity. One of the items that staff is requesting clarity on is the Rehabilitation Program: The Board may require a respondent to participate in a rehabilitation program as one of the terms of his or her probation. These regulations propose an amendment requiring a rehabilitation program to submit to the Board quarterly written reports addressing the respondent's progress in the program.

Although this requirement is currently written in the instructions and the approval letter of the rehabilitation program, staff requested its addition to the Disciplinary Guidelines for further clarity.

The Board received a public comment letter from the CAMFT. After reviewing the letter, staff is proposing a modification to the language in the Disciplinary Guidelines on page 19. The proposed change affects Optional Term and Condition of Probation #7: Rehabilitation Program.

CAMFT asked that the following sentence of this optional term be changed:

*"The respondent shall ensure that the Board receives quarterly written reports from the rehabilitation program addressing the respondent's progress in the program"*

CAMFT is concerned that the use of the term "ensure" implies that the respondent is able to control the rehabilitation program and its staff.

In response, staff proposes modifications to this sentence to increase clarity and to make the language consistent with Optional Term and Condition of Probation #3. The above sentence was deleted and replaced with the following sentence:

*"The respondent shall take all necessary steps to ensure that the rehabilitation program submits quarterly written reports to the Board addressing the respondent's treatment and progress in the program."*

It is ultimately the responsibility of the respondent to make sure that the rehabilitation program sends the report to the Board. The Board currently requests this report and has not encountered a situation where the rehabilitation program refused to send reports, as long as they have the signed released form authorizing them to do so.

***Sarita Kohli moved to direct staff to take all steps necessary to finalize the rulemaking process, including modifying the text as approved, submitting modified text for a 15-day public comment period, making any non-substantive changes to the rulemaking***

***package, and submitting the final package to OAL to promulgate the regulations. Christina Wong seconded. The Board voted unanimously (10-0) to pass the motion.***

**XI. Suggestions for Future Agenda Items**

Dr. Brew made the following suggestions:

- MFTs can double count family and couple hours. However, there is nothing in legislation to allow LPCCs to do the same. Dr. Brew would like to see this changed.
- Dr. Brew asked if licensees who are teaching courses, as opposed to taking courses, can count that as credit.

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

There were no public comments.

**XIII. Adjournment**

The Board moved to closed session at 4:25 p.m. for discussion and possible action on disciplinary matters. The meeting was adjourned at the end of closed session at 5:42 p.m.

**Thursday, November 29<sup>th</sup>**

**Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Dr. Leah Brew, LPCC Member  
Deborah Brown, Public Member  
Betty Connolly, LEP Member  
Dr. Harry Douglas, Public Member  
Linda Forster, Public Member  
Sarita Kohli, LMFT Member  
Patricia Lock-Dawson, Public Member  
Renee Lonner, LCSW Member  
Christina Wong, LCSW Member

**Members Absent**

Samara Ashley, Public Member  
Eileen Colapinto, Public Member  
Karen Pines, Vice Chair, LMFT Member

**Staff Present**

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

**Guest List**

On file

**FULL BOARD OPEN SESSION**

**XIV. Introductions**

Dr. Christine Wietlisbach, Board Chair, called the meeting to order at 8:45 a.m. Christina Kitamura called roll, and a quorum was established.

Board members and Board staff introduced themselves.

**XVI. Petition for Early Termination of Probation for James Pannell, Jr., MFC 40612**

Christopher Ruiz, Administrative Law Judge (ALJ), presided over the hearing. Christina Thomas, Deputy Attorney General (DAG), and Zackary Fanselow, DAG, represented the Board of Behavioral Sciences. James Pannell was not represented by an attorney.

Judge Ruiz opened the hearing. Mr. Pannell was sworn in. DAG Thomas presented the background of Mr. Pannell's probation. Mr. Pannell presented his request for early termination of probation and information to support the request. DAG Thomas cross-examined Mr. Pannell. Board members also posed questions to Mr. Pannell.

After Mr. Pannell answered all questions, Judge Ruiz closed the hearing at approximately 9:46 a.m. and called for a short break. The Board reconvened at approximately 9:58 a.m.

Renee Lonner excused herself from the remainder of the meeting. A quorum of the Board remained.

**XVII. Petition for Early Termination of Probation for Jordan Perzik, IMF 67104**

Christopher Ruiz, ALJ, presided over the hearing. Christina Thomas, DAG, and Zackary Fanselow, DAG, represented the Board of Behavioral Sciences. Jordan Perzik was represented by his attorney, David Manning Chodos.

Judge Ruiz opened the hearing. Mr. Perzik was sworn in. DAG Thomas presented the background of Mr. Perzik's probation. Mr. Perzik presented his request for early termination of probation and information to support the request. DAG Thomas cross-examined Mr. Perzik. Board members also posed questions to Mr. Perzik.

After Mr. Pannell answered all questions, Judge Ruiz closed the hearing at approximately 10:21 a.m. and called for a short break. The Board reconvened at approximately 10:26 a.m.

**XVIII. Petition for Early Termination of Probation for Rachel Sherwyn, IMF 56287**

Christopher Ruiz, ALJ, presided over the hearing. Christina Thomas, DAG, and Zackary Fanselow, DAG, represented the Board of Behavioral Sciences. Rachel Sherwyn was not represented by an attorney.

Judge Ruiz opened the hearing. Ms. Sherwyn was sworn in. DAG Thomas presented the background of Ms. Sherwyn's probation. Ms. Sherwyn presented her request for early termination of probation and information to support the request. DAG Fanselow cross-examined Ms. Sherwyn. Board members also posed questions to Ms. Sherwyn.

After Ms. Sherwyn answered all questions, Judge Ruiz closed the hearing at approximately 10:44 a.m.

**XIX. Petition for Early Termination of Probation for Edward Tovar, MFC 48554**

Christopher Ruiz, ALJ, presided over the hearing. Christina Thomas, DAG, and Zackary Fanselow, DAG, represented the Board of Behavioral Sciences. Edward Tovar was not represented by an attorney.

Judge Ruiz opened the hearing. Mr. Tovar was sworn in. DAG Thomas presented the background of Mr. Tovar's probation. Mr. Tovar presented her request for early termination of probation and information to support the request. DAG Fanselow cross-examined Mr. Tovar. Board members also posed questions to Mr. Tovar.

After Mr. Tovar answered all questions, Judge Ruiz closed the hearing at approximately 11:18 a.m. and called for a short break. The Board reconvened at approximately 11:30 a.m.

The Board moved to closed session.

**FULL BOARD CLOSED SESSION**

**XXII. 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**

The Board returned to open session at 1:33 p.m.

**FULL BOARD OPEN SESSION**

**XV. Ethical Decision Making – Dianne Dobbs, DCA Senior Legal Counsel**

Dianne Dobbs, DCA Senior Legal Counsel, presented Ethical Decision Making to the Board. Ms. Dobbs discussed the Bagley-Keene Open Meeting Act and explained the responsibilities of the Board and its members.

**XX. Suggestions for Future Agenda Items**

There were no suggestions for future agenda items.

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

There were no public comments.

**XXIII. Adjournment**

The meeting was adjourned at 2:23 p.m.