

Policy and Advocacy Committee Minutes January 31, 2013

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

Members Present

Renee Lonner, Chair, LCSW Member
Dr. Leah Brew, LPCC Member
Dr. Christine Wietlisbach, Public Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Christina Kitamura, Administrative Analyst

Members Absent

None

Guest List

On file

FULL BOARD OPEN SESSION

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 11:00 a.m. The Committee, Board staff, and meeting attendees introduced themselves. Christina Kitamura took roll, and a quorum was established.

II. Review and Approval of the November 1, 2012 Policy and Advocacy Committee Meeting Minutes

Christina Wong noted an error on page 1: Renee Lonner *LMFT Member* should be corrected to *LCSW Member*.

Dr. Christine Wietlisbach moved to approve the Policy and Advocacy Committee minutes as amended. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.

III. Legislative Update

Steve Sodergren reported that all legislative proposals that Board staff is currently pursuing have authors.

Christina Wong expressed concern that the term "assessment" in spousal or partner abuse assessment may be misinterpreted because it is not as broad as "spousal or partner abuse."

Kim Madsen stated that when the language goes to print, staff will make sure that it is clearly defined.

Ben Caldwell, Association for Marriage and Family Therapy California Division (AAMFT-CA), noted for clarification that the omnibus legislation was approved at the November 2012 Board meeting, not the November 2011 Board meeting as stated in the meeting materials.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), expressed that CAMFT has serious concerns regarding the child custody evaluator legislative proposal.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), expressed that NASW-CA also has concerns regarding the child custody evaluator legislative proposal.

Mr. Caldwell stated that AAMFT-CA shares the same concerns of CAMFT and NASW-CA.

IV. Rulemaking Update

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

- *Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs), and HIV/AIDS Continuing Education Course for LPCCs*
This regulation package has been approved by the Office of Administrative Law (OAL) and will become effective April 1, 2013. Staff is working to inform licensees and registrants of these upcoming changes.
- *SB 1111 - Enforcement Regulations*
The public comment period has ended. The package has been submitted to the Department of Consumer Affairs (DCA) and the State and Consumer Services Agency (SCSA) for review. Once approved by these entities, staff will submit it to OAL for final approval.
- *SB 363 - Marriage and Family Therapist Intern Experience*
The public comment period has ended. The package has been submitted to DCA and SCSA for review.
- *Disciplinary Guidelines*
The public comment period has ended. The package has been submitted to DCA and SCSA for review.
- *SB 1441 - Uniform Standards for Substance Abuse*
This proposal was approved by the Board at its meeting on November 28, 2012. Next, staff will submit it to OAL for publication in its Notice Register, which will begin the 45-day public comment period.
- *Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families*
This proposal was approved by the Board at its meeting on November 28, 2012. Next, staff will submit it to OAL for publication in its Notice Register, which will begin the 45-day public comment period.
- *SB 704 - Examination Restructure*
This proposal is awaiting Board approval.

V. 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, 4999.20, and 4999.46

Mr. Sodergren presented the proposed regulation regarding the omnibus bill.

At its November 2012 meeting, the Board approved several technical and non-substantive amendments to the Business and Professions Code (BPC), and directed staff to sponsor legislation to make the proposed amendments that will be included in the annual omnibus bill.

At the November 2012 meeting, there was a request for Board consideration of an additional omnibus bill amendment. This request was to amend the BPC Section 4999.20, scope of practice for Licensed Professional Clinical Counselors (LPCC). The requested change would make the law regarding scope of practice for LPCCs more consistent with the scope of practice law for the Board's other license types.

A few years back, language was inserted into licensed marriage and family therapist (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.

This year, NASW-CA requested a similar amendment to clarify that the scope of practice of licensed clinical social workers (LCSW) also includes the coursework and experience required of them by law.

The Board approved this proposed amendment to the social work licensing law at its November 2012 meeting. Therefore, the proposal will be sponsored by the Board and included in this year's omnibus bill.

At the November 2012 Board meeting, the California Association for Licensed Professional Clinical Counselors (CALPCC) requested a similar amendment to the licensing law for clinical counselors. This change could be amended into Section 4999.20, which defines the practice of professional clinical counseling.

Christina Wong moved to direct staff to make any non-substantive changes and recommend that the Board sponsor legislation to make the proposed change. Dr. Leah Brew seconded. The Committee voted unanimously (4-0) to pass the motion.

VI. Discussion and Recommendations for Possible Rulemaking Action to Implement Senate Bill 704, Statutes of 2011, Chapter 387 - Examination Restructure

Ms. Madsen presented the background and proposed rulemaking regarding SB 704.

SB 704 restructured the examination process for applicants who are seeking LMFT, LCSW, and LPCC licensure. The restructure becomes effective on January 1, 2014. The Board now needs to revise its regulations so that when the examination restructure goes into effect, the exam process described in regulations is consistent with the examination process authorized by the law.

An earlier version of the exam restructure regulations was approved by the Board at its November 9, 2011 meeting. However, since that time, the effective date of the examination restructure was delayed from January 1, 2013 to January 1, 2014 due to conflicts with

implementing DCA's BreEZe Database System. Due to this change, as well as other technical changes that are now needed, staff is requesting reconsideration of this proposal.

How SB 704 Affects LMFTs, LPCCs, and LCSWs - Effective January 1, 2014, applicants for LMFT, LPCC, and LCSW licensure shall pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams replace the standard written and the clinical vignette exams currently in place for MFTs and LCSWs, and change the exam structure for LPCCs.

Law and Ethics Exam

- A new registrant with the Board would be required to take the law and ethics exam. This exam must be taken within the first year of registration with the Board.
- If the law and ethics exam is not passed within the first renewal period, the registrant must complete a 12-hour law and ethics course in order to be eligible to take the exam in the next renewal cycle. The exam must be repeated in each renewal cycle until passed. In addition, in each year the exam is not passed, the 12-hour law and ethics course must be taken to establish examination eligibility.
- A registration cannot be renewed after six years. If a registrant's registration expires, he or she must pass the law and ethics exam in order to obtain a subsequent registration number.

Clinical Exam

- Once a registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take the clinical exam. This exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the clinical exam.

Examination Restructure Differences for LPCCs - Under SB 704, LPCCs will follow the same examination process as LMFTs and LCSWs for the law and ethics exam, however, the current exam structure for LPCCs differs from LMFTs and LCSWs.

Current law states that once an LPCC registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take a clinical exam administered by the Board, or the national examinations, if the Board finds that one of these examinations meets the prevailing standards for validation and use for the licensing and certification tests in California.

At its meeting in May 2011, the Board accepted the National Clinical Mental Health Counselor Examination (NCMHCE) as meeting California testing standards. This proposed regulation establishes the NCMHCE as the designated examination for LPCCs.

The NCMHCE exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the NCMHCE exam. This is consistent with the structure proposed for LMFTs and LCSWs taking the clinical exam.

Proposed Regulatory Changes - Several sections of the Board's regulations need to be revised in order to be consistent with the changes in SB 704. These changes are as follows:

- Revision of references to examination names in regulations in order to be consistent with the newly required examinations for registrants seeking an LMFT, LCSW, or LPCC license.
- Clarification of the waiting periods to take the new exams.
- Clarification of how to become eligible to take the California law and ethics exam.
- Clarification of the scenarios under which failure to take an exam can lead to abandonment of an application.
- Incorporation of language allowing the Board to accept the national examinations for LMFT and LCSW licensure, if the examinations are determined to be appropriate by the Board. The Board voted on November 4, 2010 to accept the Association of Social Work Boards (ASWB) Clinical Level Examination for those seeking licensure with the Board and is currently working on a contract with ASWB to offer its exam.
- Removal of the associate social worker extension fee.
- Other minor technical amendments such as deleting obsolete language, adding “licensed” to references to marriage and family therapists, and adding and deleting authority and reference citations as needed.

In addition, the passage of SB 274 deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Grandparented LPCCs will now renew biennially, consistent with all other Board-issued licenses. The proposed regulations incorporate this change as well.

Mr. Caldwell referred to Section 1806, Abandonment of Application. He asked if it would be possible that someone could register as an intern and hold the registration for a year, then rather than to sit for the exam, allow the registration to expire and re-register for a new number. Ms. Madsen responded no, the individual would be required to renew the registration and sit for the exam.

Mr. Caldwell requested an update on AMFTRB and the national exam. Ms. Madsen responded that Dr. Tracy Montez will provide an update at the February 2013 Board meeting.

Mr. Wong, NASW-CA, requested clarification regarding the language stating the number of times the law and ethics exam may be taken after it is failed. Ms. Madsen responded that the exam can be taken every 90 days during a renewal cycle, and they are only required to take the law and ethics course once during that renewal period.

Mr. Wong, NASW-CA, requested clarification regarding the language stating that the exam must be passed within 7 years of the first attempt. Ms. Madsen responded that once the individual enters the clinical exam cycle, they have 7 years from the date that they pass their first exam to pass the clinical exam. If the individual reaches the end of the 7-year period, they will be required to go back and pass the law and ethics exam again. If the individual fails the law and ethics exam, they will be required to take the law and ethics course.

Mr. Wong, NASW-CA, stated that this process gives a registrant more time to pass the exam than the current system. Paula Gershon, Program Manager, responded that the standard written exam can be taken into perpetuity as long as the exam is taken once a year. Therefore, this will potentially shorten the current time frame. There are people who have taken the standard written exam up to 20 times.

Ms. Wong asked if the law and ethics exam can be taken simultaneously while they are accumulating their supervision hours. Ms. Madsen responded yes.

Rebecca Gonzales, NASW-CA, asked if there is an 18-hour requirement for the coursework to be taken in school. Ms. Madsen responded that she did not know, but it is required by the Board.

Ms. Gershon responded that there is a requirement for law and ethics except for social workers. Ms. Gonzales asked if there was a minimum hour requirement. Ms. Gershon responded that she did not know.

Mr. Caldwell stated that he does not believe that there are a specific number of units or hours required.

Dean Porter, California Association for Licensed Clinical Counselors (CALPCC) stated that LPCCs have a 3-unit requirement within the degree.

Renee Lonner moved to submit the proposed regulations to the Board for consideration as a rulemaking package. Christina Wong seconded. The Committee voted unanimously (4-0) to pass the motion.

VII. Discussion and Recommendations for Possible Rulemaking Action Regarding Proposed Revisions to California Code of Regulations, Title 16, Division 18, Article 8 Board of Behavioral Sciences Continuing Education Requirements

Mr. Sodergren presented the proposed revisions to the continuing education requirements.

The Board voted at its November 2011 meeting to create a two-member committee to review and discuss the Board's current continuing education (CE) provider requirements and other models of CE in response to a number of issues identified by staff related to CE provider requirements. During 2012, the Continuing Education Provider Review Committee (Committee) met to discuss concerns.

The Committee has drafted suggested language that would revise the Board's CE provider program requirements. The drafted language will remove the Board's authority to directly approve and license providers. This language will also establish the Board's authority to accept CE credits from providers who have been approved or registered by a Board recognized "approval agency" or by an organization, institution, association or entity that has been recognized by the Board as a continuing education provider.

The proposed language outlines 3 ways a licensee would be able to gain CE credit from the following:

1. An accredited or approved postsecondary institution
2. A Board recognized approval agency or a CE provider that has been approved or registered by a Board-recognized approval agency:
 - National Association of Social Workers (NASW)
 - Association of Social Work Boards (ASWB)
 - National Board of Certified Counselors (NBCC)
 - National Association of School Psychologists (NASP)
 - American Psychological Association (APA)
3. One of the following organizations that are recognized by the Board as continuing

education providers:

- American Association for Marriage and Family Therapy (AAMFT)
- American Association for Marriage and Family Therapy, California Division (AAMFT-CA)
- California Association for Licensed Professional Clinical Counselors (CALPCC)
- California Association of Marriage and Family Therapists (CAMFT)
- National Association of Social Workers, California Chapter (NASW-CA)
- California Society for Clinical Social Work (CSCSW)
- California Association of School Psychologists (CASP)
- California Psychological Association (CPA)
- California Counseling Association (CCA)
- American Counseling Association (ACA)

Mr. Sodergren presented the draft language. He noted a correction was made to Section 1887.4(b), and other grammatical corrections were made.

Ms. Epstein asked if there were any CE courses that are specific to LMFTs, and what entity will capture the LMFTs coursework. Dr. Brew responded that NBCC does a lot of LMFT coursework.

Ms. Epstein asked if there were any LMFT CE courses that some of these approval agencies would offer. Dr. Brew stated that anything involving marriage, family therapy and children would be approved under NBCC if they meet their criteria.

Mr. Caldwell stated that the APA only offers courses for psychologists for the purposes of the Board of Psychology. Does this mean that the APA could offer courses for LPCCs, LMFTs, and LCSWs? Ms. Madsen responded yes, they can get the courses now.

Ms. Madsen added that she does not believe there will be any barriers for LMFTs to get their CE courses.

Ms. Epstein referred to Section 1887 and expressed concern regarding the definition of self-study courses. She explained that this definition does not capture online learning. For example, Webinars are offered where people can type questions, receive live feedback, and interact. Ms. Epstein added that within online learning, it would be helpful to distinguish what is limited.

Ms. Epstein expressed that 18 hours of online learning is limiting for some people.

Dr. Brew stated that with Webinar settings, people can run the Webinar and not actually participate in the Webinar. There is a difference when courses are face-to-face rather than an online setting.

Mr. Caldwell explained that there is a clear distinction between a “synchronous” learning environment (interaction, real-time learning, Webinar) and an “asynchronous” learning environment (self-study). This terminology could be an option for the definition.

Mr. Wong, NASW-CA, commented that there are pre-recorded, online lectures offered from institutions such as Harvard University, Yale, and Princeton. These are recorded lectures of the professors at those institutions. Mr. Wong asked if this type of learning is not considered to be good because it is not live or in person.

Ms. Epstein questioned if the archived recorded lectures are considered “asynchronous” because one cannot type questions and interact with the professor.

Dr. Brew commented that there are online CE companies that allow people to take the exam without opening and reading the material. Dr. Brew experimented with this by taking the exam without reading the material, and she passed the exam. She explained that this is the situation that the Committee is trying to avoid.

Mr. Wong, NASW-CA, stated that there are two separate issues here regarding the quality of the provider and the quality of the course. This is being addressed by who can approve courses. The organizations being selected are considered for their quality. This is different from the medium. There should be a distinction between bad quality content and the medium.

Mr. Sodergren stated that the Committee wants to make sure that people are actually taking the courses. This is why the self-study is limited.

Ms. Epstein stated that CAMFT has an issue with the definition of self-study. She stated that if self-study is going to be limited, then there must be a narrow description of what is limited.

Dr. Wietlisbach suggested using the descriptions provided by Mr. Caldwell: synchronous and asynchronous.

Mr. Wong, NASW-CA, stated that by using those descriptions, a third concept is now being introduced: is the person gaining knowledge? That cannot be measured.

Ms. Madsen responded that the law states that the CE must be taken and completed; it does not state that the material must be learned. Therefore, she is less concerned about the third component. Some of the entities listed actually require the method of delivery to be submitted and approved before the CE course can be offered. This is not a question of how the material is learned and what is learned. The question is whether the Board is comfortable with CE being provided on the internet.

Ms. Epstein asked the following questions: 1) What is considered “online?” 2) Is “online” listening to a lecture or reading an article? 3) Does there need to be a distinction? 4) Can we get rid of the 18-hour limit?

Ms. Madsen responded that if this is going to be turned over to the entities, it would seem reasonable to make that determination. You can make the argument to not have that differentiation. In this field, the physical interaction is important. Some people will look for the easiest method; eventually, that will catch up to those people.

Ms. Porter agreed that the available technology must be recognized. What is learned cannot be monitored; the Board can only require that the CE is taken and completed.

Discussion continued about how to construct the draft language pertaining to self-study.

Mr. Caldwell mentioned the DCA directive to move forward with a continuing competency model. He asked how that impacts this discussion. Ms. Madsen responded that the Committee struggled with that. The Committee decided to table that matter, move forward on the current proposal, and evaluate the continued competency model at a later date.

Mr. Caldwell commented that a continuing competency model may address the concerns discussed today.

Ms. Madsen summarized that the term “self-study” and all references to the 18-hour limitation will be removed from the draft language. Ms. Lonner summarized that all 36 hours of CE can be taken online.

Ms. Wong asked if there will be some disciplinary action taken when an approval is revoked. Mr. Sodergren responded that no disciplinary action would be necessary. However, Ms. Madsen and Mr. Sodergren agreed that the Board’s legal counsel will need to provide clarification.

Dr. Brew asked if the entities need to be outlined in the proposed language since this will be a dynamic list of entities. Ms. Madsen stated that the entities could be listed, and if the list changes, the Board can incorporate the change in an upcoming omnibus bill.

Mr. Sodergren responded that he believes that the Board must list the entities, but he will clarify this with legal counsel.

A member from the audience stated that if an approval agency loses its approver status, the providers under that approval agency will also lose their provider status as well. She asked about the process of notifying those providers. Ms. Madsen responded that she will confer with legal counsel and provide clarification on that process.

Ms. Epstein requested that the Committee be aware of the transition period for the providers. She also requested that the word “evidence” be removed from the Section 1887.41(b)(7). Ms. Epstein referred to Section 1887.3 and requested that licensees who serve on their professional organizations’ ethics committees be considered to receive CE credit for serving in that role.

Dr. Brew responded that it makes sense to grant CE credit to licensees who serve on their professional organization’s ethics committees because they are reviewing many cases. Ms. Lonner agrees.

Ms. Madsen agreed, and added that 6 hours of CE granted to those who serve in that capacity would be reasonable.

Ms. Epstein noted a grammatical correction to Section 1887.4(d).

Ms. Epstein referred to part (g) in the same section regarding business, marketing and personal growth. Ms. Epstein expressed that courses relating to advertising and marketing limitations or insurance coding, for example, seem to be acceptable courses to receive CE credit. Ms. Madsen responded that the subject material that the Board received was related to growing a business and farming for clients, for example. The subject material was not related to client care or insurance billing. Ms. Epstein suggested changing the language to state that specifically.

Dr. Brew expressed concern regarding personal growth in this section. Ms. Madsen replied that people are submitting coursework for taking Yoga; it has nothing to do with the client. Ms. Epstein added that CAMFT allows 1 CE credit for Tai Chi because it teaches mindfulness that could then be passed on to the client.

Mr. Wong, NASW-CA, expressed that he would like to see personal growth removed from the language.

Ms. Madsen asked the Committee if the consensus is to eliminate part (g) of Section 1887.4. The Committee agreed to eliminate it.

Ms. Epstein requested a correction under Section 1887.43(a)(3)(e) from NASW to NASW California Chapter.

Ms. Lonner requested a correction under Section 1887.43(a)(3)(f) from SCSW to CSCSW.

Mr. Caldwell requested a correction under Section 1887.41(c) from *shall constitute cause for revocation or recognition by the board* to *shall constitute cause for revocation of recognition by the board*.

Christina Wong moved to make any discussed changes and any non-substantive changes, and submit to the Board. Dr. Leah Brew seconded. The Committee voted unanimously (4-0) to pass the motion.

VIII. Public Comment for Items Not on the Agenda

Rebecca Gonzales, NASW-CA, expressed concern regarding Section 4996.17, experience gained for people outside of California for the law and ethics course and the 18-hour course requirement. This is not consistent with what has been done before. If the law and ethics exam was failed, a 12-hour course was required. An 18-hour course is 2 ½ days, which is difficult for a lot of people to do.

IX. Suggestions for Future Agenda Items

No suggestions for future agenda items were presented.

X. Adjournment

The meeting was adjourned at 12:36 p.m.