

BOARD MEETING MINUTES February 27-28, 2013

Department of Consumer Affairs
Hearing Room
1625 North Market Blvd, 1st Floor
Sacramento, CA 95834

Wednesday, February 27th

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Karen Pines, Vice Chair, LMFT Member
Samara Ashley, Public Member
Dr. Leah Brew, LPCC Member
Deborah Brown, Public Member
Betty Connolly, LEP Member
Dr. Harry Douglas, Public Member
Sarita Kohli, LMFT Member (arrived at 8:58 a.m.)
Patricia Lock-Dawson, Public Member
Renee Lonner, LCSW Member
Christina Wong, LCSW Member

Members Absent

Linda Forster, Public Member
Eileen Colapinto, Public Member

Staff Present

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

Guest List

On file

FULL BOARD OPEN SESSION

I. Introductions

Dr. Christine Wietlisbach called the meeting to order at 8:40 a.m. Christina Kitamura called roll, and a quorum was established. Introductions were not made due to the schedule of petitions.

II. Petition for Early Termination of Probation for Anthony Edell, MFC 32926

Jonathan Lew, Administrative Law Judge (ALJ), presided over the hearing. Karen Denvir, Deputy Attorney General (DAG), represented the Board of Behavioral Sciences. Anthony Edell was not represented by an attorney.

Judge Lew opened the hearing at 8:44 a.m. DAG Denvir presented the background of Mr. Edell's probation. Mr. Edell was sworn in. Mr. Edell presented his request for early termination of probation and information to support the request. DAG Denvir cross-examined Mr. Edell. Board members also posed questions to Mr. Edell. After Mr. Edell answered all questions, Judge Lew closed the hearing at approximately 9:08 a.m.

Sarita Kohli arrived during the petition hearing at 8:58 a.m. Judge Lew informed Ms. Kohli that she will not participate in the vote during closed session regarding Mr. Edell's petition.

III. Petition for Early Termination of Probation for Gabriela Galindo, MFC 40229

Jonathan Lew, ALJ, presided over the hearing. Karen Denvir, DAG, represented the Board of Behavioral Sciences. Gabriela Galindo was not represented by an attorney.

Judge Lew opened the hearing at 9:12 a.m. DAG Denvir presented the background of Ms. Galindo's probation. Ms. Galindo was sworn in. Ms. Galindo presented her request for early termination of probation and information to support the request. DAG Denvir cross-examined Ms. Galindo. Board members also posed questions to Ms. Galindo. After Ms. Galindo answered all questions, Judge Lew closed the hearing at approximately 9:52 a.m.

A recess was called at 9:53 a.m. The Board reconvened at 10:09 a.m.

IV. Petition for Early Termination of Probation for Elena Labastida, IMF 66102

Jonathan Lew, ALJ, presided over the hearing. Karen Denvir, DAG, represented the Board of Behavioral Sciences. Elena Labastida was not represented by an attorney.

Judge Lew opened the hearing. DAG Denvir presented the background of Ms. Labastida's probation. Ms. Labastida was sworn in. Ms. Labastida presented her request for early termination of probation and information to support the request. DAG Denvir cross-examined Ms. Labastida. Board members also posed questions to Ms. Labastida. After Ms. Labastida answered all questions, Judge Lew closed the hearing at approximately 10:39 a.m.

V. Petition for Modification of Probation for James McLindon, MFC 50610

Jonathan Lew, ALJ, presided over the hearing. Karen Denvir, DAG, represented the Board of Behavioral Sciences. James McLindon was not represented by an attorney.

Judge Lew opened the hearing at 10:53 a.m. DAG Denvir presented the background of Mr. McLindon's probation. Mr. McLindon was sworn in. Mr. McLindon presented his request for modification of probation and information to support the request.

Judge Lew closed the hearing to the public at 11:03 a.m. Judge Lew closed the hearing at approximately 11:27 a.m.

The Board returned to open session at 11:30 a.m.

Julie McAuliffe, the Board's Probation Monitor, was called as a witness to answer questions from the Board.

VI. Suggestions for Future Agenda Items

No suggestions were made.

VII. Public Comments

No public comments were made.

The Board took a break for lunch at 11:35 a.m. and reconvened in closed session at approximately 1:20 p.m.

FULL BOARD CLOSED SESSION

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.

FULL BOARD OPEN SESSION

VIII. Adjournment

The Board adjourned at 3:50 p.m.

Thursday, February 28th

Members Present

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

Members Absent

Linda Forster, Public Member
Eileen Colapinto, Public Member
Samara Ashley, Public Member

Staff Present

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

Guest List

On file

FULL BOARD OPEN SESSION

Dr. Christine Wietlisbach called the meeting to order at 9:10 a.m. Christina Kitamura called roll, and a quorum was established. Board Members, Board staff, and audience members introduced themselves.

IX. Approval of the November 28-29, 2012 Board Meeting Minutes

Kim Madsen noted the following corrections:

- Page 8, 7th paragraph - *Dr. Douglas asked why profession...* to *Dr. Douglas asked why the profession.*
- Page 17, part (e)(2), - *Therefore, and in-state applicant missing one of these areas...* to *Therefore, an in-state applicant missing one of these areas.*

Betty Connolly noted the following corrections:

- Page 6, 4th paragraph - removed "Dr." from the first sentence.
- Page 6, 10th paragraph, 1st sentence - *Licensed Education Psychologists* to *Licensed Educational Psychologists.*

Renee Lonner noted the following corrections:

- Page 7, 3rd paragraph - *California Psychological Association (CPA) was not listed in the draft language and if the CPA would be added...* to *California Psychological Association (CPA) was not listed in the draft language and asked if the CPA could be added.*
- Page 11, 5th paragraph - *Ms. Forster stated that there must be language in existence that describes one who abuses substances* to *Ms. Forster stated that there must be language in existence that describes one having a substance abuse problem.*

Christina Wong moved to approve the November 28-29, 2012 Board meeting minutes as amended. Dr. Leah Brew seconded. The Board voted (9 yea, 1 abstention) to pass the motion.

X. Executive Officer's Report

a. Budget Report

Ms. Madsen reported that as of December 31, 2012, the Board spent about 42% of the current budget. The largest percentage of the expenditures is related to operating expenses and equipment. Revenue collected as of December 31, 2012 is over \$4.2 million. There was a spike in revenues due to the receipt of LPCC applications.

As a result of spending cuts and the passage of Proposition 30, which provides new temporary revenues, the Governor's 2013/2014 budget is projected to remain balanced for the foreseeable future. Although this is good news for California, the Governor's primary budget priority continues to be maintaining a structurally balanced budget.

The expectation is that departments will continue to control costs, increase efficiencies, and refrain from creating new or expanding existing programs. The only way the Board can get additional staffing is through a Budget Change Proposal (BCP). The Board must be able to demonstrate that statutory changes occurred and additional staffing is needed to meet its mandate. Obtaining additional staff will be a challenge, but Board staff will continue to make those efforts.

New to the Governor's budget is the inclusion of performance based budgeting. Executive Order B-13-11 directed the Department of Finance (DOF) to work with various departments to utilize performance-based budgeting to increase efficiency and focus on accomplishing program goals. The Department of Consumer Affairs (DCA) is one the entities selected for this project.

Several years ago, DCA developed performance measures for the Boards and Bureaus' enforcement program. The measures were developed in response to reports that the enforcement process often exceeded 3 years. The goal of these measures is to reduce the overall enforcement process to 18 months. This information is reported quarterly and posted on the DCA website. Currently, only the enforcement performance measures are reported.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), asked for a status update of the Board's efforts to pursue additional staff to process the exam applications, such as "borrowing" a staff person from DCA.

Ms. Madsen responded that in order to "borrow" a DCA staff person, the Board would incur the costs of employing that individual. Currently, projections reflect an unencumbered amount of about \$70,000 at the end of the fiscal year. Ms. Madsen is hesitant in bringing on a DCA staff person due to the tight budget. An option that is being considered is to recruit a member from AARP. This is a federally funded program, and the individual can work up to 20 hours a week. Additionally, a Board staff person will be retiring in April, which will give Board staff an opportunity to look at the position that will be vacated, determine where the greatest need is and reassign the position.

b. Operations Report

Ms. Madsen provided the operations report.

Quarterly performance statistics were provided in the meeting materials. Processing times on this report reflect an average for the quarter.

The Board has one vacancy in the Enforcement Unit. Efforts to fill this position are underway.

Effective January 1, 2013, the incumbent in the fingerprint technician position is now working half time. Therefore, some of the duties on this desk have been reassigned to another staff member.

In the licensing program, fourth quarter statistics reflect an overall decrease in application volume, which is not unusual. The Board's current processing times are increasing. The increased processing times reflect Board staff's efforts to assist with the BreZE testing, decrease in staff within the LCSW unit, and reassignments.

In the examination program, a total of 2,511 examinations were administered in the fourth quarter. Seven examination development workshops were conducted October through December.

In the administrative program, the cashiering unit is currently processing renewal applications within 10 days of receipt. All other applications are processed within 6 days of receipt.

In the enforcement program, staff continues to meet or exceed the established performance measures (PM) with the exception of PM 4, Formal Discipline. The Board's current quarterly average is 786 days to complete an investigation. This quarter saw a significant reduction in the average days to complete a formal investigation. The average reduced from 858 days in October to 688 days in December. This is reflective of the additional staffing to the Attorney General's Office and the Office of Administrative Hearings.

As for the customer satisfaction survey, the fourth quarter reflects a slight decrease in overall satisfaction, accessibility, and courtesy from the third quarter. Successful service increased slightly. Ratings for overall satisfaction, successful service, and accessibility reflect an increase since last year's fourth quarter rating. The Board's courtesy rating was equivalent to last year's fourth quarter rating.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), noted that the examination data on the Board's website has not been updated since early 2012. Schools and students rely on this data. Specifically, schools rely on the data for their accreditation process. Mr. Caldwell expressed appreciation for any efforts that can be made towards updating this information.

Mr. Caldwell also noted that transition to DSM-V is taking place this year. He asked when this diagnostic information will be included in the exams.

Ms. Madsen referred to Dr. Tracy Montez. Dr. Montez did not have the information on hand. Ms. Madsen stated that the DSM-V will be incorporated over a period of time, but she did not have the specific details on hand.

Ms. Epstein and Ms. Madsen recalled previous discussions regarding the DSM-V. To Ms. Epstein's recollection, questions related to the DSM-V would occur during the 2014 exam development workshops.

c. Personnel Update

Ms. Madsen provided the personnel update.

Effective January 1, 2013, Michelle Eernisse-Villanueva was promoted to a Staff Services Analyst (SSA) within the Enforcement Unit. Ms. Eernisse-Villanueva is responsible for the Subsequent Arrest Notification Review and Disciplinary Case Management.

Patricia (Trish) Winkler joined the Board as a Management Services Technician (part-time) in the Licensing Unit. She will perform the duties of a Licensed Clinical Social Worker and Associate Social Worker Evaluator. Trish transferred from the Medical Board of California Licensing Unit where she was an Office Technician who prepared the initial physician application packets for evaluation by the Licensing Analysts.

Because of Ms. Eernisse-Villanueva's promotion, there is one vacancy. The Board is currently recruiting to fill this vacancy.

XI. BreEZe Update

Ms. Madsen provided an overview of staff involvement in the BreEZe project. Since July 2012, the time that the Board has contributed towards the BreEZe project is about 2.5 full-time positions. These efforts have been directed to testing the BreEZe system and data verification, both time intensive processes.

Testing involves staff following a script (or a roadmap) and performing that function in the BreEZe system. Any errors discovered during this process are reported to the vendor for correction. After the correction is made, staff must re-test the script.

Data verification involves staff taking the data in the current system, transferring it to the BreEZe system, ensuring that the data is transferring correctly, and ensuring that it is functioning properly.

In January, staff began training on the BreEZe system. After completing the training, staff was directed to participate or “play” in the BreEZe “sandbox.” The sandbox is a BreEZe environment where staff can use the system and become proficient with the system.

Ms. Madsen introduced Amy Cox-O’Farrell, Deputy Director of the Office of Information Services Division. Ms. Cox-O’Farrell gave an overview of the BreEZe implementation.

Ms. Cox-O’Farrell stated that BreEZe will be implemented in 3 phases. She gave a brief overview of BreEZe. BreEZe is an online license and enforcement system which will offer online renewal, original exam app, online complaints. It will interface with exam vendors and after the exam is taken, the record will be updated and sent electronically to the BreEZe system.

Data verification and validation, as Ms. Madsen mentioned, is the process of ensuring the data from the Legacy system will be converted properly in the BreEZe system. The data is being standardized across the boards and bureaus.

BreEZe is being released in 3 phases: Phase 1 is the healthcare boards and bureaus; phase 2 is a mixture, and phase 3 has some large entities including Contractors State License Board, Bureau of Automotive Repair and 8 other entities.

DCA and Accenture are currently working to establish a “go-live” date. May was the anticipated month to implement phase 1. However, as of this report, this implementation date is being reevaluated.

Ms. Lock-Dawson requested a demonstration of the BreEZe system on a future agenda. Ms. Cox-O’Farrell agreed that this can be done.

Karen Pines asked if requested upgrades or changes incur the Board additional costs. Ms. Cox-O’Farrell responded yes. If there is a break in the system or it does not work as defined, the vendor fixes it; however, if the change is a new requirement, the Board would incur the additional costs.

Dr. Douglas asked how this system will improve efficiency. Ms. Cox-O’Farrell replied that staff may not see a faster turnaround in processing the workload; however, staff will notice a smoother/more standardized process and there will be additional services/functions that the current system does not have such as on-line applications, renewals, and complaints. Dr. Douglas requested to discuss the cost analysis in the future.

The executive officers of the boards and bureaus, Accenture, and Ms. Cox-O’Farrell have met to discuss Request for Changes (RFC). In these meetings, they document the issues and consequences of not going forward. About 75% of the requests have been denied. The 25% of requests that were approved were critical changes and did incur costs. There was a budget of

about \$2 million for unanticipated changes. Typically, 10% of the total budget is allowed for unanticipated tasks (UT) such as changes or missed requirements. Currently, about 75% of the UT budget has been expended. DCA is running out of money for unanticipated tasks. Currently, DCA has approximately \$200,000 left for UT for phases 2 and 3. DCA, via a special project report, is requesting additional funding for UT; roughly \$3 million.

Sarita Kohli asked Ms. Cox-O'Farrell to describe the process to get input from boards and bureaus. Ms. Cox-O'Farrell explained that the boards and bureaus were asked to document their business requirements. This process was repeated a 2nd time to better document the business requirements.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), asked how much this system costs and will there be a reduction in processing times.

Ms. Madsen anticipates changes in streamlining some of the processes, especially for renewals. Most of those results will not be seen for at least a year after the system is implemented. She anticipates efficiencies seen in other applications processed online as well.

Ms. Cox-O'Farrell responded that the total system costs is roughly \$50 million. To date, the department has not gone over budget.

Dr. Douglas requested the best estimate for improvement time. Ms. Cox-O'Farrell responded that staff may not notice a decrease in transaction processing time.

Ms. Madsen indicated that the immediate efficiency will be in renewals. The BreEZe system is designed to reject an incomplete renewal. Incomplete renewals are the main reason for delays in renewal processing.

Ms. Cox-O'Farrell indicated that there may be an increase in online complaints because it will be easier to file a complaint. She added that the Board may need to place staff in positions to answer phone calls regarding questions regarding this online system and troubleshoot problems that users may experience.

Ms. Lonner expressed that this transition can be very stressful and asked if staff will be assisted with this transition through consulting or training. Ms. Madsen replied that staff will go through a training session addressing changes in the work environment.

XII. Budget Presentation – Analysis of the Board of Behavioral Sciences Fund Condition – Brian Skewis, Budget Analyst

Brian Skewis, Department of Consumer Affairs (DCA) Budget Analyst, presented an overview of DCA's budget process. Mr. Skewis discussed the Board's budget and the budget process, the fund condition, expenditures and answered questions.

All programs under DCA participate in incremental budgeting as opposed to zero-based budgeting. This means that the starting point of the current year's budget is the prior year's budget act.

The fund condition document provided at all Board meetings shows one year of active data, the current year, authorized expenditures and projected revenue, proposed budget years, several years of formula-driven expenditures and revenue projections beyond the budget year. The document is used to assess the cash fund at the beginning and end of each fiscal year, factoring in projected revenue and expenditures. The document also shows loans to the General Fund and loan repayments, and is used to forecast any upcoming fund issues.

The Board has \$12.3 million in General Fund loans. Repayment of those loans will begin in fiscal year 2013.

Although there are budgeted amounts for each line item, the Board cannot expend the bottom line budget at the end of the year.

Mr. Skewis meets with Ms. Madsen and Board staff several times during the year to ensure that the Board is maintaining the proper level of expenditures.

Mr. Skewis talked about the General Fund Loan. He explained that DCA determines if there are programs within DCA that can loan funds to the General Fund. The Board was identified as one of those programs. A loan was taken out from the Board, and a repayment date was established. As the repayment date approaches, if there is not an immediate need for the funds, the repayment date is pushed out until there is a need. This has been the case for the Board since 2002-2003. Generally, there is a need when the fund reserve reaches 3 months of operating expenses. The Board should see some repayment in the 2014-15 fiscal year since its fund will reach its 3 months reserve of operating expenses. The Board will not see 100% repayment; only the amount needed is what will be repaid.

Ms. Madsen stated that the Board is currently within a 1.9-month fund reserve.

XIII. Update on the Licensed Professional Clinical Counselor Program

Ms. Madsen reported on the Licensed Professional Clinical Counselor (LPCC) Program and provided some statistics.

It is taking approximately 6-8 weeks to evaluate a Professional Clinical Counselor Intern (PCI) Application. The increase in time is due to the volume of information from applicants whose files were previously evaluated. These applicants are submitting information to satisfy deficiencies the evaluator identified in their applications.

To date the Board has issued 183 PCI registration.

It is taking approximately 6-8 weeks to evaluate out-of-state traditional applications. The Board is currently evaluating applications received in January 2013.

The Board received nearly all of the Grandparent applications on the last day the applications were due, which was on December 31, 2011. Although these applications were postmarked by the due date, the applications were not received in our office until January 3, 2012. The LPCC staff reports that they are now evaluating applications received on January 3, 2012. There is an estimated 1,500 applications.

To date, about 40% of the MFT/LCSW Grandparent Applications have been evaluated, about 56% of the non-BBS licensed Grandparent Applications have been evaluated, and 254 LPCC licenses have been issued.

Ms. Wong requested numbers of the out-of-state applicants versus applicants that are in California.

Ms. Epstein, CAMFT, asked why the GAP examination was suspended and when the GAP examination will resume. Ms. Madsen replied that she does not anticipate the GAP examination to be available before June 1st. She also stated staff is coordinating workshops to redevelop the exam. Applicants who are in this process will have their time extended for the period of time that the GAP exam is not available. Ms. Madsen stated that she cannot speak on the reasons why the GAP exam was suspended at this time.

Dr. Wietlisbach called for a recess at 10:34 a.m. The Board reconvened at 10:52 a.m.

XIV. Policy and Advocacy Committee Report

a. Recommendation #1 – Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 4980.36, 4999.33, 498043(b), 4996.9, 4996.23, 4999.47(a), 4980.54, 4980.72, 4999.60, 4989.68, 4996.3, 4996.18, and 4999.46

Rosanne Helms reported on the proposed 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. This legislation will be included in the Senate Business, Professions, and Economic Development Committee's annual omnibus bill, which is typically used for these types of technical and non-controversial changes.

At the November 2012 meeting, there was a request for Board consideration of an additional omnibus bill amendment regarding the scope of practice for LPCCs. 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, the National Association of Social Work California Chapter (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 the November 2012 meeting.

Staff is requesting to amend BPC Section 4999.20 to specify that the practice of professional clinical counseling includes the use, application, and integration of the coursework and training required by Sections 4999.32 and 4999.33.

At its January 2013 meeting, the Policy and Advocacy Committee recommended that the Board sponsor legislation to make the proposed change.

Mr. Caldwell suggested adding additional language to avoid conflict of law. Ms. Dobbs stated that since the code sections are listed as required, there is no conflict.

Patricia Lock-Dawson moved to direct staff to make any non-substantive changes to the proposed language and submit to the Legislature for inclusion in the 2013 omnibus bill. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.

b. Recommendation #2 – Possible Rulemaking Action to Implement Senate Bill 704, Statutes of 2011, Chapter 387 – Examination Restructure

Ms. Helms reported on proposed regulation to implement the exam restructure.

SB 704, sponsored by the Board, 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 regulation was approved by the Board at its November 2011 meeting. However, since that time, the examination restructure effective date 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.

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.
- 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.
- Removal of the associate social worker extension fee in Section 1816, as the authority for the Board to issue extensions was removed from law as of 2008.
- Delete 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.

At its January 2013 meeting, the Policy and Advocacy Committee directed staff to bring the proposed regulations to the Board for consideration as a regulatory proposal.

Mr. Caldwell referred to Section 1805.01 Reexamination, "applicant shall not take the same version of any board-administered exam." He suggested adding "more than once" to the end of that sentence.

Ms. Madsen expressed concern that an applicant could take three different versions of the exam, and may have to cycle back and repeat one of those versions again. The language proposed by Mr. Caldwell would suggest that the applicant could not do that. Dianne Dobbs, legal counsel to the Board, agreed.

Ms. Madsen suggested the following language: "An application shall not take the same version of any board-administered exam more than once during the same release time period."

Mr. Caldwell asked if this could be resolved through a tracking mechanism so that an applicant could not be given the same exam version twice.

Dr. Tracy Montez, not speaking for the Office of Professional Examination Services, replied that the candidates would not be taking a version of an exam more than once in the time period. It is possible that the version could be used again in the future. If candidates were to take the same version, it will be in such a manner that the time frame is extended so that they are not tested on recall. There will be tracking mechanisms.

Ms. Helms suggested the following language: "An applicant shall not take the same version of any board-administered exam more than once during the same examination release period."

Ms. Kohli asked how a candidate will know when there is a new released version of the exam and the specified time that the candidate must wait to take the new version. Ms. Madsen replied that the current structure is set at 180 days. With more frequent testing in law and ethics, new versions can be released every 90 days. However, a candidate may not know when there is a new exam version released. That information could be made available to the candidate, but Ms. Madsen was not sure about it at this time.

Ms. Lonner suggested the following language: "An applicant for reexamination shall take a different version of the board-administered examination from the version of the applicant's most recent prior exam."

Mr. Caldwell asked if an intern whose registration expires at the end of January 2014 would have to take the law and ethics exam within one month of renewing the registration. Ms. Madsen responded, no, the intern would have up to January 2015 to take the exam.

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

c. Recommendation #3 – Possible Rulemaking Action Regarding Proposed Revisions to California Code of Regulations, Title 16, Division 18, Article 8 Board of Behavioral Sciences Continuing Education Requirements

Steve Sodergren presented the proposed regulations

During 2012 the Continuing Education Provider Review Committee met to discuss concerns regarding continuing education and current Board processes. The following concerns were:

- Current scope of approval authority
- Review of coursework/content
- Expired provider approval
- Self-study vs. online learning
- Cite and fine CE providers
- CE credit for examination development
- CE provider approval through an accrediting body
- Continuing competency

The proposed amended language would remove the Board's authority to directly approve and license CE providers. The "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 performance measures for determining program effectiveness.

If the proposed amended language is adopted, a Board licensee would now be able to gain CE credit through one or more of the following entities:

- An accredited or approved postsecondary institution that meets the requirements set forth in Sections 4980.54(f)(1), 4989.34, 4996.22(d)(1), or 4999.76(d) of the Code.
- A Board recognized approval agency or a continuing education provider that has been approved or registered by a Board recognized approval agency. The recognized approval agencies are outlined in the proposed language.
- One of the following organizations that are recognized by the Board as continuing education providers. The recognized continuing education providers are outlined in the proposed language.

Ms. Epstein expressed concern regarding the language that requires Board-recognized approval agencies to conduct periodic reviews of courses offered by providers. Mr. Sodergren stated that according to staff's research, the agencies are conducting periodic/annual reviews. Ms. Epstein requested inserting "annual reviews" to the language.

Ms. Epstein requested the following amendments to the proposed language:

- Page 8 (b)(3), correct *practices* to *practice*.
- Page 9 (b)(2), for consistency, correct *organization* to *entity*.

Ms. Epstein referred to page 9 (b)(4) and asked how an entity can document their means to avoid a conflict of interest between provider and approval functions. She understood the intent, but suggested revising the language. Mr. Sodergren agreed that this needs some work.

Mr. Caldwell asked if the currently approved CE providers renewing in March or April 2014 would be authorized to provide CE until the changes take effect on July 1, 2014, or will their renewals be good for 2 years.

Ms. Madsen replied that the Board will not accept CE from a Board-approved provider after July 1, 2014. At some point, the Board will stop issuing renewals in advance of that date. She doesn't have all answers yet due to the implementation of the new BreZE system and the constraints to stopping renewal notices.

Mr. Sodergren summarized the discussed amendments:

- Grammatical corrections,
- Section 1887.42(a)(5) changing *periodic reviews* to *periodic or annual reviews*,
- Section 1887.41(b)(4) to provide clarifying language, and
- Section 1887.3 adding language to allow CE credit units when participating in an association's law and ethics committee.

Renee Lonner moved to direct staff to make any discussed changes, and any non-substantive changes, and to pursue a regulatory proposal. Karen Pines seconded. The Board voted unanimously (10-0) to pass the motion.

Dr. Wietlisbach changed the order of the agenda items, taking item XV (closed session) before item XIV.d.

The Board took a recess at 12:03 p.m. and reconvened in closed session at 12:33 p.m. to discuss item XV.

FULL BOARD CLOSED SESSION

XV. Pursuant to Section 11126(c)(1) of the Government Code, the Board Will Meet in Closed Session Regarding the Possible Use of the Association of Marital and Family Regulatory Board Examination for Licensure in California

Dr. Tracy Montez met with the Board regarding the possible use of the Association of Marital and Family Regulatory Board Examination for licensure in California.

FULL BOARD OPEN SESSION – The Board returned to open session at 1:32 p.m.

XIV. Policy and Advocacy Committee Report (continued)

d. Legislation Update

Ms. Helms provided an update on legislation that the Board is pursuing:

LMFT and LCSW Applicant Remediation of Coursework - AB 428

This bill proposal would amend LMFT licensing law to allow an LMFT applicant whose degree is deficient in the alcoholism and other chemical substance dependency requirement, or the spousal or partner abuse assessment requirement, to remediate those deficiencies. Current law does not allow remediation.

LMFT and LPCC Out-of-State Applicant Requirements - AB 451

Licensing requirements for out-of-state LMFT and LPCC applicants are set to change on January 1, 2014. This bill proposal extends the effective date of the new education requirements for out-of-state licensees from January 1, 2014 to January 1, 2015. This allows the Board additional time to carefully consider solutions to this problem.

Retired Licenses - AB 404

This bill proposal would clarify the law regarding eligibility for a retired license.

Omnibus Legislation (no bill number assigned at this time)

This bill will be introduced in March.

Child Custody Evaluators - AB 958

This bill proposal would specify that the Board may access a child custody evaluation report for the purpose of investigating allegations that one of its licensees, while serving as a child custody evaluator, engaged in unprofessional conduct in the creation of the report.

Two versions of this bill were presented to the Board and to the audience. The first version is the language that the Board approved at its November 2012 meeting, which would allow the Board to access a child custody evaluation report.

The second version is the language provided from the Legislative Counsel, which addresses concerns regarding confidentiality. Board staff made suggested changes to the Legislative Counsel's version.

A discussion regarding language on AB 958 took place.

Dr. Brew referred to the Legislative Counsel's language: "If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the licensing board decided that no further action will be taken in the matter of suspected licensing violations." In regards to this statement, if additional evidence is submitted to the Board several years later regarding a previous suspected licensing violation, Dr. Brew expressed that she would want the confidential information to be available.

Ms. Madsen explained that if this information is used in a matter where the Board could not substantiate a violation of law, the Board could not use that evidence in another proceeding where a violation of law was found. Therefore, this sentence in the Legislative Counsel's language is reasonable because it's consistent with what the Board is currently doing.

Dr. Wietlisbach asked why staff suggested deleting the sentence "Except as otherwise provided in this subdivision, confidential information in the possession of the licensing board may not contain the name of the minor."

Ms. Madsen did not know the rationale as to why this sentence was introduced in the language. She explained that whenever a Board investigation involves a minor, the minor is never identified. Ms. Madsen also explained that a problem with keeping this sentence is the minor's name would have to be redacted throughout the report before providing the report to the Board. That would be a burden put upon the court, which is not the Board's intent.

Ms. Helms also noted that if a complainant provided the report, the complainant will most likely not redact the minor's name.

Ms. Lonner preferred the language approved by the Board at its November 2012 meeting, and indicated that the Board may still have problems getting the report through the Legislative Counsel.

Jill Epstein, CAMFT, and Janlee Wong, NASW-CA, both expressed opposition to AB 958.

Ms. Dobbs provided a legal opinion. She stated that Board staff has valid concerns for striking the red highlighted sentences. The yellow highlighted language that was provided by the Legislative Counsel is to make it clear that these reports remain confidential, and that they do not lose any protection that the current law provides. Ms. Dobbs suggested working with the author's office on the language to ensure that the Board's proposed bill does not compromise the confidentiality of these reports and to ensure that the Board can truly be able to use the documents only for investigative purposes and if a case goes to hearing. Ms. Dobbs stated that she is comfortable with including the yellow highlighted language and striking the red highlighted language.

Dr. Wietlisbach summarized that the version provided by the Legislative Counsel is closer to where the Board needs to be in working with the author.

Ms. Kohli requested to hear objections from CAMFT and NASW-CA.

Ms. Epstein stated that CAMFT has several objections. One objection is in regards to confidentiality issues. Second, there is a process in place to address bias by the evaluator. The Board's responsibility is to evaluate the process, not the content of the report. Furthermore, there is already a process in place to obtain the report.

Mr. Wong, NASW-CA, shares CAMFT's concerns. He stated that the timing sequence of this bill was not thought out. Custody hearings are contentious, and parties will use anything to seek their goals. The timing where the custody evaluation is concerned, can affect the outcome of the custody decision. This should not be done until the Board knows what the impact will be.

Ms. Lonner replied to the concerns expressed by CAMFT and NASW-CA. She explained that when Board members and Board staff participated in meetings with the judicial council, they learned that there truly is no court "system." Instead, there are 58 separate counties in California, and each has its own process in family law and child custody investigations. Most of them have no "viable" venue for parents. Ms. Lonner shares Mr. Wong's concern that children come first, and that is the basis of this bill. Ms. Lonner also explained that the Board members and staff offered alternative ways that the judicial council could monitor the situation; however, they do not have the resources or motivation.

Ms. Lonner replied in response to the Board receiving confidential records. The Board always receives confidential records known as treatment records. Treatment records are highly confidential and they typically provide tremendous details.

Dr. Brew asked who the report belongs to, and can the parents request to release the report to the Board. Ms. Madsen responded that the report is the property of the court. The parent(s) have the option to release the report through the subpoena process, which means they would have to retain the services of an attorney.

Ms. Helms pointed out that the Family Code states that the Board *shall* investigate a case of unprofessional conduct on a child custody evaluator. The way the law is written, it is a mandate for the Board to investigate; it is not permissive.

Ms. Epstein asked if there are other documents, such as treatment notes, that can be used in the investigation other than the evaluation report. Ms. Lonner responded that it is not a treatment relationship. Ms. Helms also responded that the complaints are based specifically on the evaluation reports.

Ms. Madsen provided examples of information that can only be obtained in the report to investigate the matter. For example, witness statements were misrepresented in the report, a parent was diagnosed in the evaluation report, or the evaluator engaged in the services of an evaluator and a supervising monitor (a dual relationship).

Patricia Lock-Dawson moved to direct staff to work with the author's office, to amend Family Sections 3025.5 and 3111 with the Legislative Council's language and the Board's suggested modifications. Christina Wong seconded. The Board voted unanimously (10-0) to pass the motion.

Ms. Madsen stated that the Board will work with the stakeholders and the author's office to craft language that satisfies the concerns.

e. Rulemaking Update

Ms. Helms provided a brief update on rulemaking.

Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs), and HIV/AIDS Continuing Education Course for LPCCs
This proposal was approved by the Office of Administrative Law (OAL). It becomes effective on April 1, 2013. Staff is working to inform licensees and registrants of these upcoming changes.

Disciplinary Guidelines and Enforcement Regulations

Both of these regulations have been submitted to OAL for final approval. OAL has 45 days to issue a decision on these proposed regulations.

Regulations to Implement SB 363 - Marriage and Family Therapist Intern Experience

OAL is currently reviewing SB 363. OAL brought an issue to Board staff's attention. There is a form incorporated by reference in that regulation. The form on file with OAL was filed in 1999. That form has since been updated, and the updated version must be incorporated with the regulation. Board staff is seeking the Board's approval since this is a change.

Sarita Kohli moved to adopt the proposed changes. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.

XVI. Update on the California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Board

Dr. Tracy Montez, Applied Measurement Services, concluded her assessment but cannot release it publicly due to confidentiality parameters outlined in the Association of Marital and Family Therapy Regulatory Board (AMFTRB) Non-Disclosure and Confidentiality Agreement.

Dr. Montez provided some general information. She looked at several components of examination validation:

- Practice analysis,
- Examination development,
- Passing scores,
- Test administration,
- Test security, and
- Transparency of examination program.

Dr. Montez found some technical issues that the Board needs to follow-up. She recommended to the Board to continue working with AMFTRB to address the technical issues and follow along with recommendations that its own vendor made for other examination services, and therefore, to ensure that they meet the standards that would be expected in California.

The Board took a recess at 2:23 p.m. and reconvened at 2:33 p.m.

XVII. Discussion Regarding Therapist Mandated Reporting of Sexual Activity of Minors

Benjamin Caldwell, AAMFT-CA, presented information regarding reporting consensual sexual activity among minors.

California's Child Abuse and Neglect Reporting Act (CANRA) define the types of sexual contact that must be reported by mandated reporters. They must report some instances of consensual heterosexual intercourse among minors depending on their ages. However, mandated reporters must report all cases of consensual oral sex, anal sex, or object penetration as child abuse regardless of age. Issues with this mandate are: 1) it is discriminatory against gay and lesbian adolescents, 2) there are unintended consequences for religious adolescents, and 3) it is not consistent with adolescents' normal sexual development.

Mr. Caldwell provided definitions of sexual assault defined by CANRA, quotes from BBS licensees, information on current science regarding adolescent sexual development and religious adolescents, and information on prior efforts to amend the law.

Mr. Caldwell presented a proposed amendment to Penal Code Section 11165.1. This amendment would not require mandated reported to report oral sex, anal sex, or object penetration involving a minor if:

- The act was consensual,
- There was no coercion or intimidation involved, and
- Both persons were at least 14 years old.

AAMFT-CA is creating a coalition with mandated reporters and stakeholders interested in amending CANRA's language, and they are searching for an author this year or in 2014.

Mr. Caldwell is requesting that the Board support the concept of CANRA reform and direct staff to participate in future discussions with the coalition, and perhaps co-sponsor legislation with the Board of Psychology and other state agencies that govern licenses and registrations of mandated reporters.

Patricia Lock-Dawson moved to refer this matter to the Policy and Advocacy Committee. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.

XVIII. Suggestions for Future Agenda Items

Dr. Wietlisbach suggested a discussion to create new committees based on current issues that the Board is facing.

XIX. Public Comment for Items Not on the Agenda

There were no public comments.

XX. Adjournment

The meeting was adjourned at 3:12 p.m.