

## Board Meeting Minutes May 22-23, 2013

Embassy Suites Anaheim South  
11767 Harbor Blvd.  
Garden Grove, CA 92840

### ***Wednesday, May 22nd***

#### **Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Dr. Leah Brew, LPCC Member  
Deborah Brown, Public Member  
Eileen Colapinto, Public Member  
Betty Connolly, LEP Member  
Dr. Harry Douglas, Public Member  
Sarita Kohli, LMFT Member (arrived at 9:33 a.m.)  
Renee Lonner, LCSW Member

#### **Members Absent**

Samara Ashley, Public Member  
Karen Pines, Vice Chair, LMFT Member  
Patricia Lock-Dawson, Public Member  
Christina Wong, LCSW Member

#### **Staff Present**

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

#### **Guest List**

On file

### **FULL BOARD OPEN SESSION**

Dr. Christine Wietlisbach, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 9:25 a.m. Christina Kitamura called roll, and a quorum was established. Board members and the Administrative Law Judge introduced themselves.

#### **II. Petition for Modification of Probation for Troy Nickell, IMF 70464**

David Roseman, Administrative Law Judge (ALJ), changed the schedule of the petition hearings. Troy Nickell's petition was heard first.

Judge Roseman opened the hearing at 9:27 a.m. Christina Thomas, Deputy Attorney General (DAG), presented the facts of the case on behalf of the Board of Behavioral Sciences. Mr. Nickell was not represented by an attorney.

DAG Thomas presented the background of Mr. Nickell's probation. Mr. Nickell was sworn in. Mr. Nickell presented his request for modification of probation and information to support the request. DAG Thomas cross-examined Mr. Nickell. Board members also posed questions to Mr. Nickell. After Mr. Nickell answered all questions, Judge Roseman closed the hearing at approximately 10:01 a.m.

Sarita Kohli arrived during the petition hearing at 9:33 a.m. Judge Roseman informed Ms. Kohli that she will not participate in the vote of this particular matter during closed session.

David Roseman, ALJ, presided over the hearing. Christina Thomas, DAG, represented the Board of Behavioral Sciences. Maria Valle was not represented by an attorney.

### **III. Petition for Modification of Probation for Maria Valle, IMF 67932**

David Roseman, ALJ, presided over the hearing. Christina Thomas, DAG, presented the facts of the case on behalf of the Board. Maria Valle was not represented by an attorney.

Judge Roseman opened the hearing at 10:05 a.m. DAG Thomas presented the background of Ms. Valle's probation. Ms. Valle was sworn in. Ms. Valle presented her request for modification of probation and information to support the request. DAG Thomas cross-examined Ms. Valle. Board members also posed questions to Ms. Valle. After Ms. Valle answered all questions, Judge Roseman closed the hearing at approximately 10:52 a.m.

A recess was called at 10:53 a.m. The Board reconvened at 11:06 a.m.

### **I. Petition for Early Termination of Probation for Patricia Lee, MFC 39362**

David Roseman, ALJ, presided over the hearing. Board member Dr. Leah Brew recused herself from this hearing because the petitioner participated in Dr. Brew's class. A quorum remained with the recusal. Christina Thomas, DAG, presented the facts of the case on behalf of the Board. Patricia Lee was not represented by an attorney.

Judge Roseman opened the hearing at 11:06 a.m. DAG Thomas presented the background of Ms. Lee's probation. Ms. Lee was sworn in. Ms. Lee presented her request for early termination of probation and information to support the request. DAG Thomas cross-examined Ms. Lee.

Judge Roseman closed the record at 11:36 a.m. to handle administrative matters. The record was reopened at 11:39 a.m.

Board members posed questions. After Ms. Lee answered all questions, Judge Roseman closed the hearing at approximately 11:56 a.m.

### **VI. Suggestions for Future Agenda Items**

Dr. Wietlisbach requested suggestions for future agenda items before entering into closed session. There were no suggestions.

### **VII. Public Comment for Items Not on the Agenda**

Dr. Wietlisbach requested public comments before entering into closed session. There were no comments.

The Board took a break for lunch at 11:58 a.m. and reconvened in closed session at 1:00 p.m.

## **FULL BOARD CLOSED SESSION**

### **II. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and Take Action on Disciplinary Matters**

### **III. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board's Executive Officer**

### **VIII. Adjournment**

The Board adjourned immediately following the closed session.

**Thursday, May 23<sup>rd</sup>**

**Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Dr. Leah Brew, LPCC Member  
Deborah Brown, Public Member  
Eileen Colapinto, Public Member  
Betty Connolly, LEP Member  
Dr. Harry Douglas, Public Member  
Renee Lonner, LCSW Member  
Christina Wong, LCSW Member

**Staff Present**

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

**Members Absent**

Samara Ashley, Public Member  
Sarita Kohli, LMFT Member  
Karen Pines, Vice Chair, LMFT Member  
Patricia Lock-Dawson, Public Member

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**FULL BOARD OPEN SESSION**

**IX. Introductions**

Dr. Christine Wietlisbach called the meeting to order at 8:40 a.m. Christina Kitamura called roll, and a quorum was established. Board members, Board staff, and audience members introduced themselves.

**X. Approval of the February 27-28, 2013 Board Meeting Minutes**

Kim Madsen noted the following corrections:

Page 9 - Correct *9 month fund reserve* to 1.9 month fund reserve.

Page 15 – Correct *rational* to *rationale*.

Renee Lonner noted the following corrections:

Page 4 – Correct *one who substance abuse* to *one who abuses substances*.

Page 5 – Correct *maintaining structurally balanced budget* to *maintaining a structurally balanced budget*.

Page 11, last paragraph – Correct *an application shall not* to *an applicant shall not*.

Page 12, first paragraph – Correct *that could be made available to the candidate* to *that information could be made available to the candidate*.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), suggestion a correction on page 11, 5<sup>th</sup> paragraph: *an applicant could take three difference versions* to *an applicant could take three different versions*.

***Christina Wong moved to approve the minutes as amended. Dr. Harry Douglas seconded. Board voted (7 ayes, 1 abstention) to pass the motion.***

**XI. Chairperson's Report**

Dr. Wietlisbach stated that the Board will drop agenda item XVI b.

Dr. Wietlisbach announced the creation of two new committees: the Supervision Committee and the Out-of-State Education Review Committee. Dr. Leah Brew and Betty Connolly will serve on the Supervision Committee; Dr. Brew will chair this committee.

Patricia Lock-Dawson, Christina Wong, and Deborah Brown will serve on the Out-of-State Education Review Committee; Ms. Lock-Dawson will chair this committee.

Renee Lonner, Christina Wong, and Dr. Christine Wietlisbach will serve on the Policy and Advocacy Committee; Ms. Lonner will chair this committee.

## **XII. Executive Officer's Report**

### **a. Budget Report**

Ms. Madsen reported that the 2012/2013 budget is \$8,077,669. As of March 31, 2013, the Board has spent \$5,289,333 reflecting 65% of the total budget, and collected a total \$5,880,835.95 in revenues. The Board's fund condition as of January 29, 2013 reflects a reserve balance of 1.9 months.

The Governor's proposed 2013/2014 budget projects the Board's 2013/2014 budget at \$8,063,000 and does not reflect any additional staffing.

The Board will exceed the Attorney General line item budget.

In mid May, the Department of Finance will release its May Revision adjustments. This document provides an update on the state's revenues and expenditures which allows the Governor to make the appropriate adjustments to the upcoming budget.

Although the receipt revenues thus far have exceeded projections, the Governor's priority to maintain a structurally balanced budget remains. Therefore, any significant changes in funding are unlikely.

Ms. Wong inquired on the status of the Board utilizing AARP-recruited individuals. Ms. Madsen confirmed that a member from AARP is currently working 20 hours per week in the office. This is a federally funded program, and the Board does not incur any cost for this service.

***Deborah Brown moved that agenda item XXII be heard before item XIII. Dr. Leah Brew seconded. The Board voted unanimously (8-0) to pass the motion.***

### **b. Operations Report**

Ms. Madsen reported that the Board has one vacancy in the Enforcement Unit and one position in the Licensing Unit. Efforts to fill these positions are underway.

The first quarter statistics reflect an overall decrease in application volume. However, the Licensed Clinical Social Worker (LCSW) and Licensed Educational Psychologist (LEP) examination applications increased 23% and 78% respectively. The next report, which will be provided at the August Board meeting, will reflect an increase in Marriage and Family Therapist Intern applications and Associate Clinical Social Worker (ASW) applications due to graduations.

The Marriage and Family Therapist (MFT) examination applications and LCSW examination applications reflect excessive delays in processing times due to lack of staffing. The Board recently hired a person to work in the LCSW licensing unit; however, the position is a half-time position. The Board is conducting interviews to fill a full-time MFT evaluator position.

A total of 2,090 examinations were administered in the first quarter. Sixteen examination development workshops were conducted January through March.

The cashiering unit is currently processing renewal applications within 7 days of receipt. All other applications are processed within 9 days of receipt.

The Enforcement staff received 228 consumer complaints and 200 criminal convictions, representing a 9% and 33% decrease respectively from the previous quarter. The Enforcement staff closed 433 cases this quarter and referred 23 cases 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. The Department of Consumer Affairs (DCA) established the performance target for PM 4 at 540 days (18 months). The Board's current quarterly average is 855 days. It is important to note that this performance measure relies on the efficiency of outside state agencies such as the Office of Attorney General and the Office of Administrative Hearings.

The first quarter reflects an increase in all categories of the Customer Satisfaction Survey from the last quarter as well as from the same period last year.

Dr. Wietlisbach inquired about the issues with answering phone calls received at the Board. Ms. Madsen gave a brief overview of the plans to address issues with phone calls. Staff will evaluate the phone system to ensure that it is functioning properly, as well as reminding staff of the importance of answering phone calls and returning calls promptly.

Ms. Madsen reported that much of the feedback concerning accessibility to staff is that applicants cannot talk to a "live person" or voicemail boxes are full. Unfortunately, staff has been put in situations where they must choose to field a call or process an application. With staff triaging these situations, managers and executive staff have been fielding many calls to take that burden off of staff so that they can continue to process applications.

Ms. Brown suggested using resources, such as YouTube, to provide tutorials on how to complete applications and forms, thus reducing phone calls. Ms. Madsen stated that conversations have taken place with DCA regarding outreach videos on YouTube and on the Board's website; however, the current constraint is the lack of available resources, especially with the BreEZe project underway.

#### **c. Personnel Update**

Ms. Madsen provided an update on Board personnel.

Guillermo Tapia was hired in the Enforcement Unit as an Office Technician (OT), replacing Michelle Eernisse-Villanueva. The Board has decided to downgrade this vacancy from a Management Services Technician (MST) to an OT to better suit the current business needs of the Board. Guillermo will provide enforcement support to the Enforcement analysts.

Crystal Martinez, the Board's Fingerprint Technician, has left the Board. The Board is recruiting to fill this position. This was a full-time position which was reduced to a half-time position due to the Governor's budget letter.

#### **d. BreEZe Update**

Ms. Madsen reported that the efforts to launch the BreEZe database continue. In mid-April, boards and bureaus in Release 1 were notified that the May "go-live" date was not possible. Noting that the fiscal year end was nearing, DCA committed to the boards and bureaus that Release 1 will not launch in June.

Board staff continues to test the system and verify that the existing data will convert over correctly. The level of staff commitment to the BreEZe project has increased as a result of the reduction of time permitted to complete the BreEZe tasks. Numerous errors and corrections to

the database configuration have been identified. Board staff and DCA are firm in their resolve that BreEZe will not be released until its functionality is acceptable.

Dr. Harry Douglas requested a presentation of the BreEZe system and its functionality. He also requested a cost benefit analysis to implement and utilize the BreEZe system.

Ms. Lonner responded that since BreEZe is led by DCA, not the Board, perhaps DCA could provide the analysis.

Ms. Madsen also responded that at a previous Board meeting, DCA provided figures and the costs that each board/bureau will incur, which is based on licensee population. Ms. Madsen outlined the drivers to the BreEZe system:

- Current databases – it is a matter of time “when it fails.”
- Current databases and the programming to continue to make them operational are outdated.
- There is a strong need and desire from the Legislature and the public for standardized reporting for accountability purposes.
- Current databases do not have the capability to link boards/bureaus together in order to generate comparisons.
- Some boards/bureaus have the ability to allow licensees to renew licenses online; most boards/bureaus do not have this ability.

BreEZe will change all of the current issues Ms. Madsen outlined, allowing for more consistency and efficiency. A presentation will take place at the August Board meeting.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), asked what the ideal timeframe is to process applications and renewals, and how many staff would be needed to reach those processing times.

Ms. Madsen responded that renewal processing has increased from 4 days to 7 days, due to a staff person within that unit taking part in BreEZe testing. As for examination eligibility applications, 30-60 days is a reasonable time frame. To achieve this benchmark, the Board would require one additional staff person in the MFT unit, one additional staff person in the LCSW unit, one additional MFT Intern evaluator, and one additional support staff person.

David Chinot, Director of the Social Work Department at California State University, Fullerton and California Association of Deans and Directors of Social Work Programs (CADD), expressed concerns from CADD regarding the time frame it will take for students to become registered. He also stated that CADD is willing to help with any advocacy on the Board's behalf to obtain additional resources.

#### **e. LPCC Program Update**

Ms. Madsen reported on the suspended LMFT Gap Exam, stating that the exam will become available on July 31<sup>st</sup>. Staff is currently notifying 669 candidates that were affected by the suspension.

It is taking approximately 6 weeks to evaluate a Professional Clinical Counselor Intern (PCI) application. The PCI evaluator is currently evaluating applications received in late March. To date, 140 PCI registrations and 381 LPCC licenses have been issued.

It is taking approximately 60 days to evaluate out-of-state traditional applications. Staff is currently evaluating applications received in March 2013.

The Board received 3,433 applications for the two grandparent programs.

The Board now has a total of 4 evaluators in the Licensed Professional Clinical Counselor (LPCC) Licensing Unit. Staff has made tremendous progress in the last few months resulting in a decrease in the estimated time it will take to complete the evaluations of the LPCC Grandparent applications.

## **XXII. Election of Board Members 2013-2014**

***Deborah Brown nominated Dr. Christine Wietlisbach for the position of Board Chairperson. Renee Lonner seconded. Dr. Wietlisbach accepted the nomination. The Board voted unanimously (8-0) to elect Dr. Wietlisbach as Board Chair.***

***Renee Lonner nominated Christina Wong for the position of Board Vice Chairperson. Dr. Leah Brew seconded. Ms. Wong accepted the nomination. The Board voted unanimously (8-0) to elect Ms. Wong as Board Vice Chair.***

## **XIII. Update on Examination Restructure and ASWB Contract**

### **a. Discussion and Possible Action Regarding Proposal to Delay Implementation of the Board's Examination Restructure**

Rosanne Helms reported that the Board is currently going through its examination restructure process for the LMFT, LPCC and LCSW licensees. The exam restructure requires applicants for licensure to pass two new exams: a California law and ethics examination and a written clinical examination. These new exams will replace the standard written and the clinical vignette exams currently in place. The effective date of the exam restructure is January 1, 2014.

Staff is concerned that if the BreEZe system needs to be delayed until fall or beyond, it would coincide too closely with the exam restructure effective date of January 1, 2014. In addition, if BreEZe were not operational on January 1, 2014, the exam restructure could not be implemented. The exam restructure changes are being programmed into the BreEZe system.

If BreEZe is not operational on January 1, 2014, the Board would not be able to continue to administer the current clinical vignette and standard written exams. The code sections granting the authority for the Board to administer these exams expire on January 1, 2014. In order to allow the Board the authority to administer the new exams, staff suggests that the implementation date of the exam restructure be extended to January 1, 2016.

Mr. Wong, NASW-CA, stated that NASW-CA has been informing potential applicants that the new exam would take effect in 2014. He is concerned about how he can inform people that there is a delay. He expressed concern regarding the lack of communication between the Board and the people who need to know. These people are currently preparing for the national exam.

Dr. Wietlisbach asked Ms. Madsen if an alert can be placed on the Board's website. Ms. Madsen responded that staff can update the website; however, until the legislation is signed, the proposed 2016 implementation date is not effective. Ms. Madsen urged the public to sign up on the Board's website subscriber list. She also stated that staff can work with the associations and the schools to get information out.

Mr. Chinot suggested sending information to him at CADD, and CADD will forward this information to the Social Work Departments/Schools of the California State University and the University of California systems.

***Christina Wong moved to direct staff to pursue legislation to change the implementation date of the exam restructure from January 1, 2014 to January 1, 2016. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.***

## **b. Update on ASWB Contract**

Ms. Madsen reported on the progress of the Association of Social Work Boards (ASWB) Contract.

As part of the upcoming examination restructure, the Board initiated the contract process to use ASWB national examination for licensure in California. However, due to the delays associated with BreEZe, the Board must postpone its examination restructure. Accordingly, the Board has suspended the contract process with ASWB.

Ms. Madsen contacted ASWB's Executive Director Mary Jo Monahan to inform Ms. Monahan of this recent development. Ms. Monahan was assured that the decision to postpone the Board's examination restructure and use of the ASWB national examination was an unforeseen delay. The Board remains committed to the examination restructure and use of the ASWB national examination. As the new date to implement the examination restructure nears, the contract process with ASWB will resume.

Ms. Monahan will attend the 2014 spring Board meeting to provide a presentation regarding the ASWB national examination.

## **XIV. Out-of-State Education Review Committee Update**

On April 26<sup>th</sup>, the Out-of-State Education Review Committee (Committee) held its first meeting. The Committee was established to consider the potential barrier to licensure that out-of-state applicants may face after January 1, 2014.

After January 1, 2014, out-of-state applicants are required to enroll and complete graduate level coursework to remediate educational deficiencies. These applicants are no longer able to remediate coursework deficiencies through continuing education classes. Consequently, an out-of-state applicant may incur several thousands of dollars to become licensed in California. It is estimated that the cost will exceed \$10,000.

The Committee, stakeholders, and Board staff discussed the current and future educational requirements as well as the current and future options to remediate coursework. From this discussion, areas of concerns were identified by the group. These concerns will be discussed at the upcoming meetings.

The committee will meet on June 28<sup>th</sup> and September 6<sup>th</sup>. Both meetings will be held at DCA's El Dorado Room in Sacramento.

Dr. Wietlisbach called for a break at 9:57 a.m. The Board returned at 10:18 a.m.

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

### **a. Recommendation #1 - Support Assembly Bill 186, if amended**

Rosanne Helms presented AB 186, Temporary Licenses for Military Spouses. This bill would require a board within DCA to issue a temporary license to a spouse of a military member who is already eligible for an expedited license.

Currently, the law requires a board within DCA to expedite the licensing process for an applicant who is married to or in a domestic partnership with a member of the U.S. military who is assigned to active duty in California. The law also states that in order for the license to be expedited, the military spouse must hold a current license in another state in the same profession for which he or she is seeking a California license.

The bill allows the Board to conduct an investigation and a criminal background check of the applicant before issuing the temporary license. Before receiving the temporary license, the applicant must provide specified documentation.

The bill states that the temporary license expires 12 months after issuance or upon denial of the expedited license, whichever occurs first.

Ms. Helms explained that the Board does not currently have a temporary license status. An applicant who has an out-of-state license can submit an application for examination eligibility. As written, this bill requires that to obtain a temporary license, the military spouse must hold a current license in the same profession in another state. It does not require that the licensing requirements in the other state be substantially equivalent to the requirements in California; and it does not require that the applicant passes the required Board-administered exams.

Each applicant's education and experience is examined by the Board licensing evaluator during the review of the application. Bypassing this review and the requirement to pass an examination tailored to address the unique mental health environment in California, could jeopardize consumer protection.

This bill also raises concerns regarding continuity of care. This bill would create a temporary license that is valid for a 12-month period or until the expedited license is issued or denied, whichever occurs first. If the Board finds that the temporary licensee does not qualify for licensure, then the provisional license expires. In addition, if the applicant has not passed the required Board licensing exams during the 12-month period, then the temporary license would expire. If this happened, the applicant would no longer be able to see his or her patients.

In addition, staff is already experiencing licensing backlogs. Adding a new license type would increase staff workload, and therefore would likely create a need for new staff.

At its April 2013 meeting, the Policy and Advocacy Committee (Committee) recommended that the Board take a "support if amended" position on this bill. This bill was amended after the Committee meeting. The amendments narrowed the timeframe for a temporary license from 18 to 12 months. Other amendments that the Committee requested but were not added to the bill:

- An amendment requiring the applicant to provide a transcript to the Board;
- An amendment allowing delayed implementation to accommodate DCA's transition to the BreEZe database system; and
- An amendment requiring the applicant to pass the California law and ethics examination prior to issuance of a temporary license.

Dr. Leah Brew expressed concerns regarding law and ethics, and suggested an amendment to require an 18-hour continuing education course in California law and ethics.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that AAMFT-CA took a position of "oppose unless amended." AAMFT-CA shares the same concerns with the Board.

Ms. Lonner agreed that the law and ethics exam as well as delayed implementation are serious concerns.

***Dr. Leah Brew moved to support AB 186 if amended. Deborah Brown seconded. The Board voted unanimously (8-0) to pass the motion.***

**b. Recommendation #2 - Neutral AB 213**

Ms. Helms presented AB 213, Licensure and Certification Requirements: Military Experience.

This bill would require a school seeking accreditation/approval to submit proof of its procedures to evaluate an applicant's military education, training and experience toward completion of an educational program to qualify a person for licensure. The proof would be submitted to the board that accredits/approves schools offering course credits toward licensing requirements. This bill would also require the Department of Veterans Affairs to provide technical assistance to boards in determining equivalency of education, training, and practical experience.

The Board has specific requirements for education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board would conduct a review to determine if it was substantially equivalent to current licensing requirements. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience. The Board is not aware of specific circumstances in which an individual had military education or experience.

The U.S. Army lists certain types of mental health occupations on its website:

- Social Workers - Appointment as a social worker requires a master's degree in social work from a program accredited by the Council on Social Work Education. The social worker must also have a current and unrestricted state license in social work.
- Mental Health Specialist: Serving as a mental health specialist in the army requires 10 weeks of basic combat training, and 20 weeks of advanced individual training practicing in-patient care. The army does not offer any specifics on its website about what the 20 weeks of advanced in-patient care entails.

The Board does not accredit or approve schools offering education course credit. Instead, it relies on the accreditations and approvals of other specified entities. However, the Board does review a school's curriculum, and determines whether or not that curriculum meets all of the Board's requirements for licensure.

At its April 2013 meeting, the Committee decided not to take a position on this bill.

Ms. Wong stated that the Council on Social Work Education is the primary accreditation body of the social work curriculum. This does not apply to the Board because the Board does not evaluate the curriculum of individual colleges or universities.

The Board directed staff to provide technical assistance to the author's office.

**c. Recommendation #3 - Support AB 252, if amended**

Ms. Helms presented AB 252 regarding title protection for social workers.

This bill:

- Would limit the use of the title "social worker" to only those who hold a degree from an accredited school of social work.
- States this title restriction does not apply to a person who held a "social worker" job classification prior to January 1, 2014.
- States that a social worker shall not use the titles "Licensed Clinical Social Worker" or "Associate Clinical Social Worker" unless they hold the appropriate license or registration with the Board.
- Applies this protection of the "social worker" title to all individuals, including those who work in exempt settings.
- Restricts an employer from representing employees as social workers unless the workers have degrees from an accredited school of social work.

- States that use of the title “social worker” without the appropriate degree is a misdemeanor punishable by imprisonment in county jail for up to six months, and/or a fine of up to \$1,000.

According to the author’s office, many public agencies refer to and classify their caseworkers as social workers, even if the employee does not have a degree in social work from an accredited school. Hiring individuals as caseworkers who do not have an accredited degree in social work allows the agencies to cope with their large workloads and limited resources. However, they note that giving these caseworkers a “social worker” title is misleading to consumers, because it implies that the individual has completed the education and experience that an accredited degree in social work requires.

The author’s office stated that the intent of this bill is to require either a bachelor’s degree or a master’s degree in social work. They note that the bachelor’s degree students are required to complete at least 400 hours of supervised practicum in the field.

According to the author’s office, this bill would give the Board the authority to enforce title protection for social workers because it is written under a code that is within the Board’s jurisdiction. However, the language is permissive; it states that the Board may apply for an injunction with superior court. As written, the bill does not require any enforcement of the social work title by the Board.

The author’s main intent of this bill is to focus on agencies misusing the social worker title. The bill would allow, but not require, the District Attorney or Attorney General to apply for an injunction to stop misuse of the title.

At its April 2013 meeting, the Committee recommended that the Board take a “support if amended” position on this bill. The Committee recommended the following amendments:

- Include a delayed implementation date to allow agencies time to revise position titles;
- Include language stating that it is not the intent of this bill to exclude the hiring of other professionals such as LPCCs and LMFTs;
- Clarify that an employer who gives an employee a prohibited job title would be the one subject to disciplinary action;
- Remove the “grandfather clause” stating that the law would not apply to a person who held a “social worker” job title prior to January 1, 2014;
- Include language clarifying that the “social worker” title does not necessarily refer to a Board licensee; and
- Remove the Board from the enforcement element of the bill.

Rebecca Gonzales, NASW-CA, informed the Board that this bill is currently in the Appropriations Committee and is on a suspense calendar because they determined that the bill is going to cost over \$150,000. NASW-CA has been working with the author’s office and the Appropriations Committee to come up with amendments to address concerns involving those costs. To address the Board’s concerns, the following amendments were submitted:

- Delay implementation date based on counties’ bargaining agreements, which occurs every 2-5 years;
- Included language clarifying that this is a title act only; it does not deal with hiring practices and does not heighten any requirements;
- Removed language regarding misdemeanor and unfair practice violation provisions for individuals, and instead allow the Board to mail cease and desist letters;

- State that use of the title “social worker” without the appropriate degree is a misdemeanor punishable by imprisonment in county jail for up to six months, and/or a fine of up to \$1,000;
- Modify language regarding the grandfather clause to clarify that the grandfather clause applies only to those who are continuously employed in the same classification by their employers;
- Included language clarifying that the “social worker” title does not necessarily refer to a Board licensee;

Ms. Gonzales explained that these proposed amendments are not in the bill at this time, and she is hoping that the bill gets out of Appropriations Committee so that the bill can be amended.

According to Ms. Lonner, the Committee feels that the grandfather clause creates a large loophole and feels strongly that the language needs to be omitted. The grandfather clause protects the issue that the bill is intended to address.

Ms. Gonzales responded that including this language was politically driven and that NASW-CA is doing what is necessary to get the bill through the process. Once the bill gets through the Appropriations Committee, NASW-CA will fix the grandfather clause language.

Ms. Madsen informed Ms. Gonzales that since this bill is permissive, and the Board is facing other enforcement priorities, it is likely that the Board will not be issuing cease and desist letters.

Dr. Brew expressed that this does not protect consumers; this potentially eliminates the ability for many people to get jobs and creates job vacancies that cannot be filled. Furthermore, the people working at the agencies do not have time or resources to make the changes required by the bill. Dr. Brew opposed AB 252.

Ms. Lonner informed Dr. Brew that this is the 3<sup>rd</sup> title protection attempt within the last 10-15 years. AB 252 would help to protect consumers, and maybe it will push governmental agencies to professionalize these positions.

Mr. Wong, NASW-CA, stated that if there is misuse of other titles, AB 252 would be an important first step to address those misuses. The agencies and unions have made this a cost issue; however, this is a consumer protection issue. AB 252 will help licensed professionals keep their jobs.

Mr. Caldwell is concerned that if counties/employers are not able to make the change in their titles to more generic titles, this then becomes a title protection act. Anyone who is an MFT or LPCC who doesn't have a social work degree, but is well qualified for the position, would no longer be able to be hired into that position. This bill could become a very different measure than what is intended.

Mr. Caldwell suggested a long implementation deadline to address concerns. The challenge is how to motivate the systems to make the changes and not to make them low priority. AAMFT-CA is willing to work with the sponsors on language.

Jill Epstein, California Association of Marriage and Family Therapy (CAMFT), also expressed concerns regarding the implementation time frame.

Mr. Wong stated that the contracted agencies have flexibility in changing the titles because the counties have control over those positions. In the past, many counties have changed their titles. Titles can be changed easily, and legislation should not be crafted based upon assumptions of what counties will or will not do.

Ms. Gonzales cited the political reasons that the grandfather clause was written into the bill. The main reason to include the grandfather clause was specifically for the unions that support the bill and for the unions that are opposed to the bill.

***Christina Wong moved to support AB 252 if amended according to the Policy and Advocacy Committee's suggestions. Renee Lonner seconded. The Board voted (7 yeas, 1 nay) to pass the motion.***

**d. Recommendation #4 - Oppose AB 376**

Ms. Helms presented AB 376 regarding notices of regulations. Beginning January 1, 2014, this bill would require a state agency enforcing a new regulation to notify all affected businesses 30 days before a regulation goes into effect.

Existing law requires a state entity proposing a regulation to provide a 45-day public comment period, before which notice of the proposed regulation must be mailed to specified groups and individuals, published in the California Regulatory Notice Register, and posted on the state agency's website.

This bill would require the state agency to send notice via email, or if that is not possible, via U.S. Mail, and it would require the state agency to cooperate with the Secretary of State to access business records to obtain the business contact information needed to provide the notice.

The author notes that a number of businesses are leaving this state, and California is ranked as having one of the worst business climates in the country. This bill is an attempt to ease the regulatory burden on businesses by notifying affected businesses of any new regulations ahead of time, thus giving them time to comply.

The Board already puts considerable effort into ensuring that affected licensees are notified of pending regulations that affect them. All regulatory proposals currently go before the Board, and the Board's Policy and Advocacy Committee before they are approved, which allows feedback from the Board's professional associations, as well as any interested parties that would like to attend and provide feedback.

Once a regulatory proposal is approved by the Board, a 45-day public comment period is held. The Board mails a notice to interested parties as well as contacts at the Board's professional associations and contacts at the educational institutions within California that offer degree programs intended for licensure. The notice is also posted on the Board's website, and an email notification is sent to those who subscribe to the Board's notification service through its website.

The Board has the ability to send email alerts of major changes to persons who visit its website and sign up for email notifications. Applicants are not currently required to provide an email address to the Board, and the Board does not track applicant or licensee emails. Therefore, even if the Board started collecting emails of new licensees, there would be a large number of those for which an email address had not been obtained.

Staff has concerns this bill would affect the Board's ability to run regulations when they are needed, because the bill requires a notification email be sent to all affected parties. First, it would require a significant amount of staff resources to collect and maintain current email addresses for all license types. Second, as currently written, if staff found that upon sending, an email address was no longer valid, a letter would need to be mailed. Tracking this effort would require a significant amount of staff time.

The Board has approximately 81,119 licensees and registrants. If the Board ran a regulation package that affected all of its license and registration types, postage costs to mail a letter to all those affected would be approximately \$37,314. This does not include costs of materials, printing, or staff time.

This bill is now a two-year bill; it will be considered early next year. At its April 2013 meeting, the Committee recommended that the Board take an “oppose” position on this bill.

***Christina Wong moved to oppose AB 376. Dr. Leah Brew seconded. The Board voted unanimously (8-0) to pass the motion.***

**e. Recommendation #5 - Oppose AB 512, unless amended**

Ms. Helms presented AB 512, Healing Arts Licensure Exemption. This bill would extend provisions allowing a health care practitioner who is licensed out-of-state to participate in a free, sponsored health care event in California. The provisions currently expire January 1, 2014 and would be extended to January 1, 2018.

Existing law allows a health care provider who is not licensed in this state to participate in a health care sponsored event in this state without a California license if the health care provider is licensed or certified in good standing in the other state and other specified conditions are met.

The health care services provided pursuant to the provisions of this bill must meet the following conditions:

- The services are provided to uninsured or underinsured persons;
- The services are on a short-term, voluntary basis not to exceed 10 days per sponsored event;
- It is in association with a non-profit or community-based sponsoring entity; and
- It is without charge to the recipient or to a third party on behalf of the recipient.

This bill would extend the provisions of AB 2699, which expire on January 1, 2014 until January 1, 2018. AB 2699 became effective on January 1, 2011, and its intent was to allow out-of-state healing arts practitioners to participate in government or non-profit sponsored health care events to provide health care services to the uninsured.

The author notes that there are two million uninsured people living in Los Angeles County. At a recent four-day annual health care event, approximately 4,900 people received free medical, vision, and dental care, which was provided by 800 doctors, dentists, optometrists, nurses, and other volunteers.

In the past, events like these have experienced a shortage of volunteer medical, dental and vision providers because of restrictions in state licensing laws which prohibit volunteer out-of-state medical personnel from providing short-term services. As a result, thousands of residents needing service were turned away. The intent of AB 2699 was to resolve this issue by allowing out-of-state practitioners to volunteer for this type of event.

As part of AB 2699, healing arts boards were required to promulgate regulations in order to implement this program. As of August 2012, the medical board's regulations were not yet in effect, and therefore, out of state physicians were not able to volunteer at last fall's event. As the provisions of AB 2699 are set to expire before many boards have had a chance to promulgate regulations, the author's office is seeking to extend its provisions to allow more time to demonstrate the potential for the program's success.

Due to the immediate staffing needs related to the Board's new LPCC license, the examination restructure, and the new Breeze database system, staff has not been able to complete the AB 2699 regulations at this time. However, the Board anticipates submitting the regulations to the Office of Administrative Law (OAL) in April 2013.

The Board has not had any requests from out-of-state practitioners for permission to participate in any non-profit health care events. A representative from the sponsor of the bill, Los Angeles County, noted that on occasion, prior events have utilized the services of the Los Angeles County Department of Mental Health, which qualifies as an exempt setting, as well as a substance abuse agency located in Los Angeles. There is currently no license in California for individuals who serve as substance abuse counselors.

At its April 2013 meeting, the Committee recommended that the Board take an "oppose unless amended" position on this bill, and requested that the Board be removed from this bill.

Betty Connolly expressed her concerns about opposing an event that has great potential for consumers.

***Renee Lonner moved to support AB 512 if amended to remove the Board of Behavioral Sciences from the bill. Eileen Colapinto seconded. The Board voted (7 yea, 1 nay) to pass the motion.***

**f. Recommendation #6 - Neutral AB 790**

Ms. Helms presented AB 790, Child Abuse Reporting. This bill deletes the provision that allows a team of mandated reporters to designate one member to make a single mandated report. Therefore, all mandated reporters who obtain knowledge of suspected child abuse or neglect would be required to make their own report.

Currently, the law states that when two or more mandated reporters jointly have knowledge of a known or suspected instance of child abuse or neglect and are in agreement, that the telephone report may be made by a mutually designated reporter on behalf of the group. One written report may then be made and signed by that designated member. If any member learns that the member designated to make the mandated report did not do so, then they must make the report.

The author's office reports that allowing a team of mandated reporters to make a single report about a case of suspected child abuse creates an opportunity for such abuse to go unreported. They note that this reporting exemption also delays immediate reporting by implying that the team of mandated reporters may first meet to discuss the situation and decide who is to report the known or suspected instance. This would be harmful to the child who is potentially being abused.

In addition, the author indicates that agencies that receive the mandated reports benefit from multiple reports, because it allows them to compile a list of all witnesses, and provides different perspectives from the various mandated reporters that can be helpful in an investigation.

Finally, there is a concern that having only one designated reporter may allow that reporter, if he or she is personally involved in the abuse or has a personal relationship with the abuser, an opportunity to conceal or cover up that involvement.

At its April 2013 meeting, the Committee decided to not take a position on this bill.

Ms. Epstein commented that CAMFT opposes this bill unless amended due to the duplicative process. This places a burden on the team of reporters as well as the agencies that receive multiple reports on the same incident.

Betty Connolly expressed her concern that appointing a “designation person” does not absolve one’s personal responsibility as a mandated reporter, which is existing law.

Ms. Lonner explained that whether it is a team or an individual, there is a time frame to report abuse. The time frame to report is immediately or no later than 24 hours.

Deborah Brown stated that existing law is very clear. This bill is allowing the mandated reporter to pass on the responsibility to another person. The person who has knowledge of the abuse should be the person who makes the report.

Ms. Connolly stated that initially she opposed this bill, but has concerns going on record opposing the bill. The bill has flaws that could have a negative impact on an already over-burdened system and possibly cause more harm than good. She asked if commentary could be provided to the authors. Ms. Helms responded that staff could offer technical assistance to the authors.

The Board requested that the following points be forwarded to the author:

- Requiring an entire team to report may burden an already over-burdened system; however, the Board acknowledges that there are reporting issues.
- Current law states that all team members are responsible for reporting; emphasize that each individual is accountable if the incident is not reported.
- Require every member of the team to sign the written report prepared by the designee.

Ms. Epstein stated that the Board’s suggestions would address CAMFT’s concern.

There was no action taken. Staff will express concerns to the author’s office and work with the author’s office to provide technical assistance.

**g. Recommendation #7 - Support AB 1057**

Ms. Helms presented AB 1057 regarding licenses and military service. This bill would require all boards under DCA to ask on licensing applications if the applicant is serving in or has served in the military.

While licensing boards under DCA are required to have a process for methods of evaluating education, training, and experience obtained in the military, the boards do not ask on the licensing application whether or not the applicant is or has been in the military. The intent of this bill is to make it easier for boards to identify applicants who may have applicable military training or experience.

This bill was written to accommodate the new information in the BreZE system and to include a delayed implementation date.

At its April 2013 meeting, the Committee recommended that the Board take a “support” position on this bill.

No comments were made.

***Christina Wong moved to support AB 1057. Dr. Leah Brew seconded. The Board voted unanimously (8-0) to pass the motion.***

**h. Recommendation #8 - Support SB 22**

Ms. Helms presented SB 22 regarding Mental Health Parity. This bill requires health care plans and insurers to submit an annual report certifying that the plan is compliant with the mental health

parity act. The report is submitted to the Department of Managed Health Care or the Department of Insurance.

Existing law:

- Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses.
- Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs.
- Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract.
- The Pall Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is a federal law that requires group health plans that offer mental health or substance use disorder benefits to ensure financial requirements and treatment limitations for mental health or substance use disorders are not more restrictive than the requirements on all other covered medical benefits.

This Bill:

- Beginning January 1, 2014, requires every health care service plan and contractor of a health care service plan, and health insurer to submit an annual report to the Department of Managed Health Care or Department of Insurance, as applicable. The report must certify that the plan is compliant with applicable state law, and the MHPAEA.
- Requires the report to contain an analysis of the plan's compliance with state law and the MHPAEA regarding mental health parity, as well as the plan's compliance with specified standards set forth in the American Accreditation HealthCare Commission's (URAC) Health Plan Accreditation Guide.
- Requires the report to contain a survey of plan enrollees regarding their experiences with mental health and substance use care, and a survey of plan providers regarding their experience with providing mental health and substance use care.

The author's office notes that state and federal parity laws that mandate mental health coverage are a good first step, but that in California, these laws are not being enforced sufficiently. This is because enforcement of the laws is based on complaints. If mental health providers and patients don't complain, there is no way to ensure compliance.

At its April 2013 meeting, the Committee recommended that the Board take a "support" position on this bill.

No comments were made.

***Dr. Leah Brew moved to support SB 22. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board took a lunch break 12:00 and reconvened at approximately 12:35 p.m.

#### **i. Recommendation #9 - Support SB 126**

Ms. Helms presented SB 126, Health Care Coverage for Autism. This bill extends the operation of the law that requires health care service plan contracts and health insurance policies to provide benefits, including coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). This provision becomes inoperative on July 1, 2014, and the bill seeks to extend it until July 1, 2019.

According to the author's office, this bill is necessary to ensure that treatment for individuals with PDD/A remains covered under insurance plans that are regulated by the state of California.

At its April 2013 meeting, the Committee recommended that the Board take a "support" position on this bill.

No comments were made.

***Deborah Brown moved to support SB 126. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.***

**j. Recommendation #10 - Support SB 282, if amended**

Ms. Helms presented SB 282, Confidential Medical Information, Required Authorization to Disclose.

Current law requires that when a patient makes a complaint against a physician or surgeon that demands a settlement or includes an offer to compromise, the demand or offer must be accompanied by the patient's authorization to disclose medical information to the organizations insuring or defending the physician or surgeon.

This bill proposes an amendment to also apply this requirement to settlement or compromise offers against an LMFT.

According to the author's office, this bill seeks to protect LMFTs from claims of breaching confidentiality under the Confidentiality of Medical Information Act when they provide patient medical information to their medical malpractice insurer in order to defend themselves in a demand for settlement or offer of compromise. This protection is already allowed to physicians and surgeons in the law, and the author sees no reason why LMFTs should not be included as well.

The author's office further notes that requiring the patient's authorization to release these records to the insurer will allow the insurer to evaluate and respond to claims in a timely manner.

At its April 2013 meeting, the Committee recommended that the Board take a "support if amended" position on this legislation. The Committee requested an amendment to include the Board's other license types in addition to LMFTs.

Ms. Epstein updated the Board on this bill. The bill passed the Committee on Consent and the Senate Floor on Consent. There haven't been any concerns raised about the bill. CAMFT has not amended the bill.

Ms. Helms stated that once the Board takes a position, staff will send a formal letter to the author's office requesting the amendment.

***Renee Lonner moved to support SB 282 if amended. Christina Wong seconded. The Board voted unanimously (8-0) to pass the motion.***

**k. Recommendation #11 - Oppose Senate Bill 578**

Ms. Helms presented SB 578, Marriage and Family Therapists, Unprofessional Conduct. This bill adds engaging in certain types of dual relationships with a patient to the list of provisions that may be considered unprofessional conduct for an MFT licensee or registrant.

Currently, the Board takes disciplinary action on MFT licensees or registrants for unprofessional conduct if it determines that they have engaged in an inappropriate dual relationship. Current law does not define an inappropriate dual relationship; instead, the Board typically cites unprofessional conduct already in law. If the dual relationship involved sexual conduct, the Board would cite the provision citing sexual relations with a client.

This bill:

- Clarifies that dual relationships that constitute unprofessional conduct are relationships that are likely to impair professional judgment or lead to exploitation of the client.
- Defines a dual relationship as one where the therapist and the client engage in a separate and distinct relationship at the same time as the therapeutic relationship or following its termination.
- Specifies that if a dual relationship cannot be avoided, the therapist must take appropriate precautions to ensure his or her judgment is not impaired and the client is not exploited. This includes documenting the dual relationship.
- Specifies that a violation of this provision is not subject to Business and Professions Code (BPC) Section 4983, which states that a violation of the Licensed Marriage and Family Therapist Act is a misdemeanor punishable by imprisonment in county jail for up to six months, a fine of \$2,500, or both.

The author's office notes that since the Board takes disciplinary action against licensees for inappropriate dual relationships, the law should state specifically that certain types of dual relationships are unprofessional conduct, and should also clarify which types of dual relationships are considered inappropriate.

The author's office refers to a recent disciplinary case as an example of the need to clarify in law that certain types of dual relationships constitute unprofessional conduct. During this case, which occurred in 2011, the licensee had allegedly engaged in an inappropriate dual relationship. However, the presiding administrative law judge dismissed the case partially because the Board's subject matter expert testified that he believes all dual relationships are unethical and could not think of any dual relationship that did not harm a client. The administrative law judge stated that this testimony contradicted professional standards.

The current version of the CAMFT code of ethics, dated June 2011, contains language addressing dual relationships that is very similar to the language proposed by this bill.

A recent amendment to this bill exempts a violation of this proposed dual relationship unprofessional conduct subsection from BPC Section 4983. Section 4983 states that a violation of the Licensed Marriage and Family Therapist Act is a misdemeanor punishable by imprisonment in county jail for up to six months, a fine of \$2,500, or both. None of the other marriage and family therapy code sections are exempt from Section 4983; therefore, it is unclear why a dual relationship violation should be.

At its April 2013 meeting, the Committee recommended that the Board take an "oppose" position on this bill.

Ms. Lonner referred to the Mental Health Services Act (MHSA), which provides for mental health services in communities with seriously mentally ill people. Every clinician has "dual relationships" with clients, and these "dual relationships" are not inappropriate. These types of relationships are seen especially in rural areas.

Ms. Epstein stated that the language regarding exemption from BPC Section 4983 will be removed. She acknowledged that the language needs to be revisited and reworked, and urged the Board to take no action until the language is reworked. Ms. Epstein also stated that the

Board's counsel stated that a definition of dual relationships could alleviate confusion and would not hinder the Board in other enforcement actions.

Olivia Loewy, AAMFT-CA, agreed with Ms. Lonner's comment, stating that client-therapist relationships are changing with recovery orientation where the therapist meets the client at the client's location.

***Dr. Leah Brew moved to support SB 578 if amended to strike the language that pertains to exemption from BPC Section 4983. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.***

## **I. Legislative Update**

Ms. Helms reported that AB 428 is now at the Senate.

Ms. Helms briefly presented AB 451. Licensing requirements for out-of-state LMFT and LPCC applicants are set to change on January 1, 2014. However, the Board has concerns that the new out-of-state requirements may be too stringent, restricting portability of these license types to California.

AB 451 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 which would increase portability of licenses while maintaining public protection. The Board has formed a special committee, which met for the first time on April 26, 2013, to discuss this issue further.

***Christina Wong moved to extend the Board's examination restructure effective date of the new out-of-state requirements from January 1, 2015 to January 1, 2016. Dr. Leah Brew seconded. The Board voted unanimously (8-0) to pass the motion.***

## **m. Rulemaking Update**

Ms. Helms reported that the Advertising, Supervision and Continuing Education regulation package was approved and became effective April 1, 2013.

The Enforcement regulations and the Disciplinary Guidelines regulations will become effective July 1, 2013.

## **XVI. Other Legislation**

### **a. Discussion and Possible Action Regarding AB 809, Healing Arts – Telehealth**

Ms. Helms presented AB 809 regarding Healing Arts, Telehealth. AB 415 updated the law by removing the term "telemedicine" and replaced it with "telehealth."

Prior to AB 415 changing the telehealth law, a practitioner performing telemedicine was required to obtain both a verbal and written informed consent from the patient. AB 415 deleted these provisions, and the law currently just requires a patient's verbal consent to telehealth.

Since AB 415 became effective, two unintended consequence have arisen:

- The law states that "Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use."

The term "originating site" is defined as the location of the patient. This implies that if the health care provider does not physically go to the site where the patient is located to obtain the patient's verbal consent, then he or she is guilty of unprofessional conduct.

- BPC Section 2290.5(b) is also written to require that a health care provider must obtain verbal consent for telehealth prior to every visit with the patient. Several physicians have complained that this requirement is burdensome to their treatment of patients.

The current version of this bill corrects the problem of requiring consent prior to every instance of telehealth by making an amendment that states that the initial consent applies to subsequent instances of telehealth. However, it does not correct the other problem, which requires the health care provider to obtain the verbal consent at the originating site.

In a conversation with the author's office, a staff member noted that they are still working with stakeholders on the originating site consent issue. There are some differing opinions about who should be required to obtain consent, for example, the referring provider, or the actual provider who will provide treatment.

This bill is an urgency measure; it would become effective immediately upon signature by the Governor.

Ms. Madsen stated that although a part of the language was corrected, the definition of the originating site must be corrected. This does not have an impact on the Board.

Issues of confidentiality were discussed. Dr. Brew stated that confidentiality cannot be guaranteed when therapy is provided via telehealth, and the client must be informed of this.

Ms. Connolly stated that there is a need for telehealth. Mental health providers have unique issues that medical providers do not experience. She asked that until there is more clarification or until the unique issues are addressed, could mental health providers be excluded from this bill.

Ms. Madsen responded that would do more damage than good. She explained that this bill is addressing verbal consent and how it is obtained. Discussing confidentiality in delivering mental health services via telehealth is a different subject.

No action was taken.

**b. Discussion and Possible Action Regarding SB 131, Childhood Sexual Abuse – Statute of Limitations**

This item was dropped.

**c. Discussion and Possible Action Regarding SB 243, Licensed Professional Clinical Counselors**

Ms. Helms presented SB 243 regarding LPCCs. This bill was amended after the analysis was prepared. This bill amends the requirements for an LPCC who opts to treat couples and families.

Current law states that in order to assess or treat couples or families, a professional clinical counselor must complete specified amount of additional training and education beyond the minimum training and education requirements for licensure.

The author believes this was an unintended consequence of the LPCC licensing law. Although the law states that the education and experience must be in addition to, and not part of, what is required for licensure, this was not the intent when the law was drafted. The intent was that this training and coursework may be taken as part of the education and experience required for a license. However, unless the law is changed, the Board must follow the law as written.

Staff has provided technical assistance to the California Association for Licensed Professional Clinical Counselors (CALPCC) in drafting this bill. Staff has requested one additional amendment to the BPC relating to the supervised experience requirements in order to qualify for the LPCC license exam. The code changes “direct counseling with individuals and groups” to “direct counseling with individuals, groups, couples, or families.” CALPCC has agreed to include this amendment.

There was no discussion.

***Dr. Leah Brew moved to support SB 243. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.***

The Board took a break at 1:53 p.m. and reconvened at 2:06 p.m.

Upon return, Dr. Wietlisbach announced that Item V to evaluate the performance of the Board’s Executive Officer, which was discussed in closed session on Tuesday, May 22nd is still in process and will be discussed again at the August 2013 Board Meeting.

## **XVII. Discussion and Possible Rulemaking Action Regarding Revision to the Board’s Continuing Education Program**

Ms. Madsen presented the proposed draft language for continuing education (CE) requirements. The draft was established by stakeholders and staff through a series of committee meetings.

The draft provides for:

- A transition period regarding the approval process of new accrediting agencies,
- A transition period for CE provider renewals that are currently approved, and
- A timeframe for the Board to cease accepting applications for new CE providers.

The Board intends to transition to the new CE program effective January 1, 2015.

Ms. Madsen and Dr. Wietlisbach thanked Dr. Douglas, the Committee, and stakeholders involved in this process.

Dr. Porter suggested typing edits to the proposed draft language.

Ms. Epstein pointed out that most of the approval agencies meet quarterly to approve new providers. She expressed an urgency to expedite this regulation because it will give CE providers more time to become approved prior to the proposed effective date of January 2015.

Concerns were expressed regarding notifying CE providers of the upcoming changes. Ms. Madsen assured that all CE providers will be notified via mail, and alerts will be posted on the Board’s website once it is appropriate to do so.

***Renee Lonner moved to direct staff to initiate the rulemaking process with the amendments proposed and to make non-substantive changes to the Board’s continuing education program. Dr. Leah Brew seconded. The Board voted unanimously (8-0) to pass the motion.***

## **XVIII. 90-Day Rule and Enforcement Action Research Update**

Ms. Madsen presented the findings in a research conducted by Board staff regarding the 90-Day Rule.

Under current law, an applicant for MFT or PCC intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised

experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern. This is referred to as “the 90-day rule.”

There were concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board’s enforcement process.

Under the 90-day rule, an applicant who has a previous conviction can submit an application for intern registration within 90 days of the degree being granted. They then have up to one year to submit their conviction records, considered a deficiency, to the Board for review. Although most submit the information quickly, an applicant with a serious conviction will occasionally try to delay, taking their one-year period to submit the requested information.

If a consumer or the supervisor were to file a complaint against such a practitioner during this time, the Board would have no jurisdiction to investigate the complaint and take action, as they are not yet a registered intern.

Based upon these concerns, in 2011 the Board directed staff to seek a legislative change to the current law. Board staff approached several legislative offices about authoring the 90-day proposal. Several offices expressed interest in this proposal, but also expressed the same concern expressed by Board stakeholders. Specifically, the lack of statistics to demonstrate how often an applicant who follows the 90-day rule and is gaining hours is referred to the Board’s enforcement unit and, upon further investigation, is denied the registration or issued a restricted registration.

During the May 2012 meeting, the Board directed staff to gather data for a period of one year to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule. Board staff was directed to gather data on the following circumstances:

1. Number of applicants with a criminal conviction who, while gaining hours, wait until the end of their one-year deficiency period to submit any information requested by the Board’s enforcement unit.
2. Number of instances in which an applicant follows the 90-day rule and begins gaining hours, only to have their registration denied due to the findings of the enforcement unit.
3. Number of instances in which a denial of an application, due to enforcement unit findings, is appealed and the applicant subsequently is granted a registration with restrictions.
4. In cases where a registration was denied or restricted due to enforcement unit findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

The one-year review period revealed the following information:

- None of the 179 applicants tracked waited the full year to submit any information requested by the Board’s enforcement staff.
- Of the 10 applications denied, nearly all the applicants responded within 54 days. One applicant responded in 57 days, but submitted follow-up information to bring this applicant’s response total to 141 days.
- To date, none of the cases denied and subsequently appealed have resulted in the issuance of a registration with restrictions. These cases are either pending at the AG’s office or the Board is waiting for a response from the applicant following the issuance of the denial letter.
- The nature of the offense that led to denial of the application is as follows: Driving Under the Influence (6 cases), Theft/Sale of Narcotics (1 case), Transport Drugs (1 case), Disorderly Conduct (1 case), and Embezzlement (1 case).

Ms. Madsen concluded that these results do not support pursuing legislation to change the law regarding the 90-day rule.

Dr. Brew agreed. No action was taken.

#### **XIX. Discussion and Possible Action Regarding Revising the Board's 2010 Strategic Plan**

Ms. Madsen presented information regarding the Board's Strategic Plan revision.

The Board is beginning the process of developing a strategic plan that will assist in guiding and managing efforts and resources in the years ahead. The last strategic plan was adopted in December 2010. The Board will be collaborating with DCA's SOLID Planning Solutions staff to coordinate the planning process.

The strategic planning process will span from May 2013 to December 2013 and will include input from Board staff, members, and outside stakeholders.

The following outline of the specific proposed strategic planning activities was provided:

- May: SOLID will facilitate a 3-4 hour meeting with chosen members of the Board's staff to discuss internal and external program threats and opportunities as well as gather views on the Board's strategic focus for the upcoming years.
- June: SOLID will schedule and conduct interviews with Board members regarding the climate of the industry as well as their view on the Board's strategic focus for the upcoming years.  
SOLID will create an online survey to be sent to external stakeholders to provide input on the strategic direction of the Board.
- July: SOLID will compile and analyze the data and produce a draft document of trends and recurring themes
- August: SOLID will conduct a strategic plan development session at the Board meeting; the Board will determine the strategic direction for the upcoming years.
- September: SOLID will create a draft copy of the Board's 2014–2017 Strategic Plan.
- October: Board staff will work with SOLID to finalize the strategic plan document.
- November: The finalized strategic plan will be presented to the Board for adoption at the Board meeting.
- December: SOLID will facilitate a 6-hour meeting with Board managers and staff to create an action plan for the completion of the strategic objectives by establishing due date, identifying major tasks, and assigning responsible parties.

#### **XX. Discussion and Possible Action Regarding Practice in Exempt Settings**

Ms. Madsen presented the background and issues regarding exempt setting.

Current laws for LMFTs, LCSW and LPCCs specify certain types of organizations whose employees are not required to have a license or a registration in order to perform clinical social work, marriage and family therapy or clinical counseling within the scope of their employment. This is known as exempt settings. The law also specifies certain types of professions, known as exempt professions, which can perform counseling or work of a psychosocial nature consistent with the standards and ethics of their respective professions.

While the statutory language that defines the exempt setting/professions differs for each regulated Board license, the exempt settings/professions are the same. Under the current laws, any employee/volunteer would be considered exempt if their work was performed solely under the supervision of the employer within the following settings:

- A governmental entity;
- A school, college, or university; and
- An institution that is both nonprofit and charitable.

Any of the following persons would be exempt if they perform counseling services or work of a psychosocial nature as part of their professional duties or practice:

- Priests, rabbis, or ministers of the gospel on any religious denomination;
- Any person admitted to practice law in the state; and
- Any person who is licensed to practice medicine.

Board staff has recognized an increasing trend in individuals whom have been licensed with the Board as an intern or associate, or who have the necessary education and/or qualifications for licensure, that are opting to work within an exempt/profession instead of pursuing full licensure. Consumer complaints regarding services provided by an individual in an exempt setting are usually deemed non-jurisdictional because the oversight of individual's practice is the responsibility of the employer and not the Board. Also, it has been difficult for Board staff to make a determination of unlicensed activity in complaints regarding individuals who claim to be practicing within an exempt profession.

Staff recommends that the Board conduct an open discussion as to whether Board staff should further research and analyze the issues regarding "exempt settings" and "exempt professions."

Dr. Wietlisbach acknowledged an exempt setting entity that provided counseling to victims of sexual abuse/assault. Counseling is provided by unlicensed individuals. She is concerned that these services are provided by non-trained individuals and that these services may be provided to an underprivileged population. Dr. Wietlisbach expressed that this population should be afforded the same quality of treatment as a paying client who can afford to pay for counseling.

Ms. Connolly expressed concern regarding possible unintended consequences; this could harm credentialed school psychologists. Some entities that serve functions, such as suicide hotlines, rape hotlines, etc., could not staff the entities with licensed professionals. Ms. Connolly agreed that this is a consumer protection issue, but the Board must proceed with caution.

Dr. Brew suggested looking into addiction agencies and "coaching." She agreed that the Board should research this and determine the depth of this problem.

Ms. Madsen stated that more research can be conducted for further discussion at the August Board meeting.

Ms. Loewy stated that this will be a huge and complex project. She listed several points to consider:

- The boundaries of the Board;
- The scope of the employees providing service;
- The structure of the entity;
- The lines of responsibility;
- Internal grievance procedures;
- Alcohol and drug counselors –unlicensed individuals; and
- MHSA's pursuit to employ consumers.

Ms. Lonner also noted the para-professional movement in California. These unlicensed, para-professionals are providing counseling services.

***Dr. Leah Brew moved to direct staff to conduct research on this issue and report its findings at the November Board meeting. Christina Wong seconded. The Board voted unanimously (8-0) to pass the motion.***

#### **XXI. Update and Discussion Regarding Mandated Reporting of Sexual Activities of Minors**

Ms. Helms provided background information regarding mandated reporting of sexual activities of minors.

At the February 2013 Board meeting, Ben Caldwell, professor at Alliant University and member of the AAMFT-CA, gave a presentation on therapist mandated reporting of sexual activity of minors. He reported that there are specific guidelines in law outlining circumstances when consensual, heterosexual intercourse is not reportable. However, he believes that the law may not treat other types of sexual activity in the same manner. Mr. Caldwell would like to sponsor legislation, with the Board's support, to correct this.

The Board directed staff to prepare a legal opinion on current law and to research past efforts to reform the California Child Abuse and Neglect Reporting Act (CANRA). This opinion was discussed at the April 2013 Policy and Advocacy Committee meeting.

In its legal opinion, DCA found that CANRA does not require a mandated reporter to report incidents of consensual sex between minors of a similar age for any actions described in the Penal Code unless there is reasonable suspicion of force, exploitation, or other abuse.

Dianne Dobbs, DCA Legal Counsel, explained the following, based on past court cases:

- Courts have found that the legislative intent of the reporting law is to leave the distinction between abusive and non-abusive sexual relations to the judgment of professionals who deal with children.
- Review of other legal cases has found that the law does not require reporting of consensual sexual activities between similarly-aged minors for any sexual acts unless there is evidence of abuse.

Ms. Dobbs stated that based on this research, it is determined that changing the law is not necessary.

#### **XXII. Election of Board Officers 2013-2014**

This item was heard after item XII.

#### **XXIII. Suggestions for Future Agenda Items**

Ms. Porter shared a discussion that she had with the Mental Health Directors Association. She learned that county agencies are developing new job descriptions/classifications to include LPCCs and PCC Interns. The county agencies are having issues with scope restrictions. The restriction does not allow LPCCs or PCC Interns to see couples or families unless they had additional coursework and 500 hours of supervision with couples, families, or children. The county agencies indicate that they cannot develop a job classification for those who have completed the additional requirements and another job classification for those who have not completed the additional requirements. The county agencies also indicated that they could not be involved in determining if an LPCC or a PCC Intern has completed the additional requirements. Several counties have stated that they will not hire any LPCCs or PCC Interns due to these issues.

Based on this conversation, Ms. Porter suggested revisiting the regulations that require an LMFT to supervise a PCC Intern to gain the 500 required hours. Since an MFT Intern is not required to be supervised by an LMFT to gain those hours, Ms. Porter would like this requirement to be more equitable.

Ms. Porter also suggested that the Board consider a certification or designation to the LPCC that would indicate those who have completed the MFT requirements.

Ms. Brown stated that she would like to learn more about BreZE.

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

There were no public comments.

**XXV. Adjournment**

The Board adjourned at 3:17 p.m.