

Policy and Advocacy Committee Minutes October 30, 2013

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

Members Present

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

Staff Present

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

Members Absent

None

Guest List

On file

I. Call to Order and Establishment of Quorum

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 10:03 a.m. Christina Kitamura took roll, and a quorum was established.

II. Introductions

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

III. Review and Approval of the April 18, 2013 Policy and Advocacy Committee Meeting Minutes

The following corrections were suggested:

- Page 2, 9th paragraph, 2nd bullet: change *transcriptions* to *transcripts*.
- Page 4, 10th paragraph: correct *Gonzalez* to *Gonzales*.
- Page 4, 12th paragraph: change *if county agencies* to *unless county agencies*.
- Page 7, 4th paragraph: add *Wietlisbach* after *Dr. Christine*.
- Page 9, 5th and 8th paragraphs: reword paragraphs.

Renee Lonner moved to approve the Policy and Advocacy Committee minutes as amended. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (3-0) to pass the motion.

IV. Discussion and Recommendations for Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 27, 4980, 4980.41, 4980.45, 4980.55, 4987.5, 4987.7, 4987.8, 4988, 4988.1, 4988.2, 4990.20, 4996.23, 4998, and 4999.123, and Chapter 13 Title; 4980.36, 4980.37, and 4980.78; 4980.72, 4999.58, 4999.59, and 4999.60; and to Add Section 4990.33

Rosanne Helms presented the proposed omnibus bill amendments to the following sections of the Business and Professions Code (BPC):

1. Amend BPC Sections 27, 4980, 4980.41, 4980.45, 4980.55, 4987.5, 4987.7, 4987.8, 4988, 4988.1, 4988.2, 4990.20, 4998, and 4999.123, and Chapter 13 Title – Use of the Term “Licensed Marriage and Family Therapist”

At its August 2011 meeting, the Board voted to gradually phase in the reference “licensed marriage and family therapist” in place of “marriage and family therapist” in the statutes and regulations. Staff has identified several places where this change is appropriate.

Recommendation: Make the change in the identified sections.

2. Amend BPC Sections 4980.36, 4980.37, and 4980.78 – USDE Recognition of COAMFTE

AAMFT has issued a memo to state licensing programs asking them to review their licensing laws to see if there is a requirement that degrees from COAMFTE (Commission on Accreditation of Marriage and Family Therapy Education) accredited institutions also require USDE (United States Department of Education) recognition.

At this time, COAMFTE is recognized by the USDE. However, there have been discussions of COAMFTE discontinuing its renewal of USDE recognition. AAMFT points out that this should not cause concern about the quality of a COAMFTE-accredited education, as the role of COAMFTE is to ensure the quality of LMFT graduate programs, while the purpose of USDE is to ensure accreditors are able to appropriately monitor the federal funding process.

However, as a precaution, AAMFT has reviewed each state’s licensing laws to make sure that the law is not written to require COAMFTE accredited programs to also have USDE recognition of COAMFTE. This could create an unintended consequence that graduates of these COAMFTE programs are unable to obtain a license.

AAMFT’s review of licensing laws found that this is not going to be an issue in California. However, AAMFT is still recommending some technical, clarifying amendments in order to make it clear that COAMFTE degrees do not require USDE recognition in order to be accepted for licensure by the Board.

Recommendation: Make the recommended changes to identified BPC Sections.

3. Amend BPC Sections 4980.43 and 4996.23 – Private Practice Settings

These sections discuss private practice settings and when they are or are not appropriate work settings for Board trainees or associates. Both sections list licensed marriage and family therapists (LMFTs), licensed clinical social workers (LCSWs), licensed psychologists, and licensed physicians and surgeons as acceptable owners of a private practice setting where psychotherapy is performed. Both of these sections fail to include licensed professional clinical counselors (LPCCs) in the list of acceptable owners.

Recommendation: Amend the identified sections to include LPCCs in the list of professionals who may own a private practice setting where psychotherapy is performed.

4. Amend BPC Sections 4980.72, 4999.58, 4999.59, and 4999.60 – Clinical Exam Exemption

These sections allow an applicant for LMFT or LPCC licensure, who already holds a license in another state, to be exempt from re-taking the clinical exam in order to obtain their California license if they meet certain conditions. The conditions are as follows:

- They must have already taken and passed the national licensing exam that the Board is accepting as the clinical exam; and
- Their license or registration in the other jurisdiction is in good standing and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

There is a concern that the term “as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction” is unnecessarily restrictive to only discipline brought by the licensing authority; in reality, another entity could have brought forth discipline affecting the license status.

Recommendation: To strike the term “as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction” in the identified sections.

5. Amend BPC Sections 4987.5 and 4998 – LMFT and LCSW Corporations

Current law allows LMFT and LCSW corporations to have other mental health license types as shareholders, officers, directors and employees. For example, an LMFT corporation may have some LCSW shareholders or directors. However, LPCCs are not included in the list of allowable mental health licensees.

LPCC licensing law allows LMFTs and LCSWs to be shareholders, officers, directors, and employees of an LPCC corporation. In addition, Section 13401.5 of the Corporation Code permits LPCCs to have such roles in LMFT and LCSW corporations.

Recommendation: Add LPCCs to the list of mental health professionals allowed to be a shareholder, officer, director, and employee of LMFT and LCSW corporations.

6. Add BPC Section 4990.33 – Jurisdiction of the Board and Change in Status of License or Registration

This new section is proposed to clarify that the Board has jurisdiction to investigate and/or take disciplinary action even if the status of a license or registration changes or the license or registration expires. This is being proposed for the following reasons.

- a. The California Medical Board recently lost a court of appeal case where it was attempting to take disciplinary action against a licensee who held a retired license. The court ruled that a retired license status is not considered a licensee under the Medical Board’s jurisdiction, and that the disciplinary authority is valid “only if and when the retired licensee seeks to return to the practice of medicine and files an application” with the Medical Board.

Because of this ruling, in 2012 the Medical Board sought an amendment to one of its statutes related to enforcement via the omnibus bill. The amendment added retired and inactive license statuses within that board’s authority to investigate and take disciplinary action.

BPC Section 118 is the statute that provides the Board with authority to continue a disciplinary proceeding or take disciplinary action even if a license is expired, suspended,

or forfeited. However, there is a loophole in Section 118 that only allows this authority during the period of time during which the license is able to be renewed, restored, reissued, or reinstated.

- b. The Board's enforcement unit is running into a problem with taking disciplinary action on registrants with an expired or expiring registration number. Under the law, a registration number is only valid for six years. After six years the registration expires and cannot be renewed, so the applicant must apply for a new registration number.

This is creating a situation where the Board cannot proceed with any disciplinary action once a registrant needs a new registration number. The registrant can then wait for the statute of limitations to run out on his or her violation, and then apply for a new number.

Recommendation: Add section 4990.33 so that the Board may take disciplinary action on its licensees and registrants regardless of the status of a license or registration. This section would apply to the Board's LMFT, LEP, LCSW, and LPCC licensees and registrants.

Ben Caldwell, American Association for Marriage and Family Therapy, California (AAMFT-CA), made the following comments on the amendments:

Item 1 - In regards to MFT corporations, there are a few instances where there are some inconsistencies between the professions in how those corporations are labeled: LCSW corporations, LPCC corporations, MFT corporations. Corporations are more concerned about the practice and not necessarily the license. It may be appropriate to omit the term "licensed" in this particular instance.

Item 2 - Mr. Caldwell noted some minor grammar corrections.

Item 4 - Expressed concerns that the language would be too broad by striking "as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction" from the language. He recommended the following in place of the stricken language : "as a result of any disciplinary proceeding."

Item 6 - Concerned that this change could be construed as a substantive change, and questioned whether this belongs in the omnibus bill or separate legislation.

In response to item 6, Ms. Helms explained that since the Medical Board pursued this legislation through an omnibus bill, the Board chose to pursue the change under the omnibus bill as well.

In response to item 6, Sara Kashing, California Association of Marriage and Family Therapists (CAMFT), stated that according to CAMFT's lobbyist, this change could be substantive.

In response to item 4, Dianne Dobbs responded that a license could be revoked for not paying taxes, for example. The revocation is not disciplinary, but it results in a revoked license. This is the reason why staff recommended to strike that language.

Mr. Caldwell referred to the language "the applicant's license or registration in that jurisdiction is in good standing." He asked if the example provided by Ms. Dobbs would be covered under that statement. Ms. Dobbs responded that she would need more time to consider Mr. Caldwell's recommendation before making the change.

Rebecca Gonzales, National Association of Social Workers, California Chapter (NASW-CA), suggested the following language: "The applicant's license or registration in that jurisdiction is in good standing and/or has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered." Ms. Dobbs agreed that this language would work.

Christina Wong moved to direct staff to make changes to the proposed language as discussed and to recommend that the Board sponsor legislation to make the proposed changes. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (3-0) to pass the motion.

V. Discussion and Recommendations for Possible Action Regarding Legislative Amendments to Support the Examination Restructure

Board staff is in the process of implementing the examination restructure, which will change the examination process for applicants who are seeking licensure as an LMFT, LCSW, or LPCC. Recently, SB 821 changed the implementation date of the examination restructure from January 1, 2014 to January 1, 2016.

In order to implement the examination restructure effectively, staff has found the need for additional technical legislative amendments. Staff has confirmed with the Senate Business, Professions, and Economic Development Committee that they are willing to include these amendments in their omnibus bill.

The need for amendments is based on questions staff has received regarding renewal of intern and associate registrations in the months after January 1, 2016. Currently, the law related to the exam restructure states that a registrant shall take the California law and ethics examination prior to registration renewal. In addition, the law also states that the Board shall not issue a subsequent registration number to someone whose registration is expiring until they have passed the California law and ethics exam.

This raises two potential problems:

1. An intern or associate renewing a registration in the months after January 1, 2016 will not have had much time to attempt the California law and ethics exam, as the exam will not be offered until January 1, 2016.
2. As of January 1, 2016, an intern or associate who has an expiring registration will be required to pass the California law and ethics exam prior to being issued their second registration number. However, this is a new requirement, leaving those with a registration that expires after January 1, 2016 with little time to prepare.

Staff proposes the following two amendments:

1. Allow an applicant who holds an active registration and applies for renewal between January 1, 2016 and January 1, 2017, to be allowed to renew the registration without first participating in the California law and ethics examination. The registrant will be required to participate in the California law and ethics examination when they apply for their 2017 renewal.
2. Allow an applicant who holds an active registration and applies for a subsequent registration number between January 1, 2016 and January 1, 2017, to be allowed to obtain the subsequent registration number without first passing the California law and ethics examination.

These registrants will still be required to take the examination in order to renew their registration each year and will still be required to pass the examination before obtaining either a license or another registration number.

Mr. Caldwell expressed that 90 days to 6 months is adequate time for those who are renewing their registrations in January or February to take the exam. There is an awareness among registrants regarding the exam restructure.

Ms. Kashing concurred with Mr. Caldwell.

Ms. Lonner explained that with 6 months to pass the exam, the registrant whose registration expires in January or February would actually have about 90 days to apply for a new registration number. Therefore, a registrant would have to pass the exam within 90 days. Other registrants, whose registrations expire later, could have up to 3 times in the year to take the exam.

Ms. Madsen explained that registrants renewing their registrations only need to attempt the exam. Registrants applying for a new registration number must pass the exam before the new registration number will be issued.

The Committee agreed to allow 6 months (June 30, 2016) for registrants renewing their registrations that expire in January and February to take the exam. The Committee agreed to allow one year for registrants applying for a new registration number to pass the exam.

Dr. Christine Wietlisbach moved to direct staff to make changes to the proposed language as discussed and to recommend that the Board sponsor legislation to make the proposed changes. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

VI. Discussion and Recommendations for Possible Action Regarding Continuing Education Regulations

This item was removed from the agenda.

VII. Legislation Update

Ms. Helms presented 4 bills signed into law:

- AB 404 – This bill states that a licensee is eligible for a retired license if the licensee holds a current, active license or an inactive license, and if the license is in good standing. It also reduces the timeline allowed to restore a retired license to active status from five years to three years.
- AB 428 - This bill amends 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. It also amends LCSW licensing law to clarify that LCSW applicants may also remediate a deficiency in the spousal or partner abuse assessment coursework.
- AB 451 - This bill extends the effective date of the new education requirements for out-of-state licensees from January 1, 2014 to January 1, 2016.
- SB 821 - This bill makes technical and non-substantive amendments to add clarity and consistency to current Board licensing law. It also extends the effective date of the exam restructure from January 1, 2014 to January 1, 2016.

AB 958 regarding child custody evaluators is a 2-year bill.

SB 243 regarding professional clinical counselors was signed into law.

VIII. Regulation Update

Christy Berger provided a brief update. The following regulatory proposals went into effect:

- Regulations to implement SB 363 regarding MFT Intern experience, effective October 1, 2013;
- Enforcement regulations, effective July 1, 2013; and
- Disciplinary guidelines, effective July 2, 2013.

IX. Suggestions for Future Agenda Items

Mr. Caldwell requested the Committee to consider whether it should be concerned with a non-professional conduct by a licensee in another state, and denying licensure in California based on the non-professional conduct (not paying state taxes, for example).

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), would like to discuss the 2012 requirements and how the requirements are impacting California residents who are not allowed to make up deficiencies outside of their degrees. She also wants to discuss how to educate people on the 2012 requirements.

X. Public Comment for Items not on the Agenda

There were no public comments.

XI. Adjournment

The meeting was adjourned at 11:12 a.m.