

BOARD MEETING MINUTES November 20-21, 2013

The Mission Inn
3649 Mission Inn Avenue
Riverside, CA 92501

Wednesday, November 20th

Members Present

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

Members Absent

Samara Ashley, Public Member
Dr. Harry Douglas, Public Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Dianne Dobbs, Legal Counsel
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 10:00 a.m. Christina Kitamura called roll, and a quorum was established. Board members and Administrative Law Judge Roy Hewitt introduced themselves.

I. Petition for Modification of Probation for James Greene, IMF 69024

Roy Hewitt, Administrative Law Judge, opened the hearing at 10:04 a.m. Erin Sunseri, Deputy Attorney General (DAG), presented the facts of the case on behalf of the Board of Behavioral Sciences. James Greene was not represented by an attorney.

DAG Sunseri presented the background of Mr. Greene's probation. Mr. Greene was sworn in. Mr. Greene presented his request for modification of probation and information to support the request.

DAG Sunseri cross-examined Mr. Greene. Board members also posed questions to Mr. Greene. After Mr. Greene answered all questions, DAG Sunseri presented a closing argument. Judge Hewitt closed the hearing at approximately 10:51 a.m.

Judge Hewitt called for a recess at 10:51 a.m. The Board reconvened at 11:05 a.m.

II. Petition for Modification of Probation for Kalie McCormack, IMF 71076

Karen Pines was not present at the opening of the hearing of Kalie McCormack. Judge Hewitt opened the hearing at 11:06 a.m. and stated that any Board members not present for the hearing will not participate in the closed session decision.

DAG Sunseri presented the facts of the case on behalf of the Board of Behavioral Sciences. Kalie McCormack was not represented by an attorney. DAG Sunseri presented the background of Ms. McCormack's probation. Ms. McCormack was sworn in. Ms. McCormack presented her request for modification of probation and information to support the request. DAG Sunseri and Board members posed questions to Ms. McCormack. DAG Sunseri presented a closing argument. Judge Hewitt closed the hearing at approximately 11:58 a.m.

III. Suggestions for Future Agenda Items

There were no suggestions for future agenda items.

IV. Public Comment for Items Not on the Agenda

There were no public comments. The Board took a lunch break at 12:00 p.m. and reconvened at 1:23 p.m.

FULL BOARD CLOSED SESSION

V. 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

VI. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Discuss Revision of the Board's Executive Officer Performance Evaluation Tool

FULL BOARD OPEN SESSION

VII. Adjournment

The Board adjourned at approximately 4:08 p.m.

Thursday, November 21st

Members Present

Dr. Christine Wietlisbach, Chair, Public Member
Christina Wong, Vice Chair, LCSW Member
Dr. Leah Brew, LPCC Member
Deborah Brown, Public Member
Dr. Peter Chiu, Public Member
Eileen Colapinto, Public Member
Betty Connolly, LEP Member
Patricia Lock-Dawson, Public Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member

Staff Present

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

Guest List

On file

Members Absent

Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Sarita Kohli, LMFT Member

FULL BOARD OPEN SESSION

Dr. Christine Wietlisbach called the meeting to order at 10:15 a.m. Christina Kitamura called roll, and a quorum was established.

VIII. Introductions

The Board Members, Board staff, and guests introduced themselves.

IX. Approval of the August 21-23, 2013 Board Meeting Minutes

The following corrections were made:

Page 2, line 25: Stack presented *her* request for modification.

Page 4, line 39: Revenues collected as of June 30th *were* estimated at \$7,938,000.

Page 5, line 6: costs can be attributed *to* the slight decrease.

Page 5, line 18: an overall increase in *marriage and family therapist intern (IMF) and associate social worker (ASW)* application volume.

Page 6, line 11: Ben Caldwell from the American Association *for* Marriage and Family Therapy.

Christina Wong moved to approve the minutes as amended. Renee Lonner seconded. The Board voted (9 yea, 1 abstention) to pass the motion.

X. Executive Officer's Report

a. Budget Report

Kim Madsen provided a summary of the Board budget report.

The 2013/2014 budget is \$8,063,000. As of September 30, 2013, the Board spent \$1.7 million, which was 21% of the total budget. Revenues collected as of September 30, 2013 total \$2.8 million. The fund condition reflects 3.3 months in reserve.

The Board's loan balance to the General Fund is \$12.3 million. The Board is scheduled to receive a \$1.4 million dollar loan repayment this fiscal year.

b. Operations Report

Ms. Madsen provided a summary of the Operations Report.

The Board currently has one vacancy in the licensing unit and two vacancies in the enforcement unit.

The third quarter statistics reflect an overall increase in application volume, specifically with the Associate Clinical Social Worker (ASW) Registration Applications and the Marriage and Family Therapist (MFT) Intern Registration Applications. The increases are attributed to graduation dates. Decreases are reflected with the Licensed Clinical Social Worker (LCSW) Examination Applications and the Licensed Educational Psychologist (LEP) Examination Applications.

As of today, the staff is processing the following applications according to receipt dates:

- MFT Intern Registration Applications received September 15, 2013;
- MFT Examination Applications received April 1, 2013;
- ASW Registration Applications received September 12, 2013;
- LCSW Examination Applications received May 1, 2013;
- LEP Examination Applications received September 19, 2013;
- Licensed Professional Clinical Counselor (LPCC) Intern Registration Applications received September 2, 2013;
- Continuing Education (CE) Provider Applications received September 30, 2013.

A total of 2,214 examinations were administered in the first quarter. Eleven examination development workshops were conducted July through September.

The cashiering unit is currently processing renewal applications within 9 days of receipt. All other applications are processed within 11 days of receipt.

The enforcement staff received 206 consumer complaints and 315 criminal convictions representing a 12% decrease and 28% increase respectively from the previous quarter. Staff closed 534 cases this quarter and referred 29 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. DCA established the performance target for PM 4 at 540 days (18 months). The Board's current quarterly average is 718 days. This figure represents a 230 day decrease from the previous quarter. 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 Customer Satisfaction Survey third quarter statistics reflects an increase in all categories from the previous quarter and 66% decrease in total number of survey responses.

On October 1, 2013, the Board began using the services of the Department of Consumer Affairs (DCA) Call Center to answer incoming phone calls. This change was made to improve the Board's customer service. Prior to this change, Board staff created a list of the most commonly asked questions and responses. This information was provided to the Call Center staff during training sessions.

The Call Center is the first point of contact for the public seeking to speak to Board staff. Call Center staff responds to routine questions and refers questions requiring further expertise and

knowledge to Board staff. During the month of October, Call Center staff received a total of 4,419 calls and answered a total of 3,768 calls with an average wait time of 0.82 seconds.

The Board may use this service at no charge through June 30, 2014. After June 30, 2014, the Board will be charged for this service. The fee will be based on call volume.

Ms. Madsen noted that a request for additional staffing was submitted. She will know if that request will be granted when the Governor's budget is announced in January.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), stated that the delay in processing applications is creating a hardship for its members causing some to move out of state. He asked if the repayment of the loan will create new positions. Ms. Madsen responded that the repayment will not create additional positions.

Ms. Madsen provided a brief year-end summary. As of November 1st, the Board has 86,364 licensees and registrants. The Board has received over 12,000 applications, and approved nearly 10,000 applications. Annually, the DCA Cashiering Unit processes about 48,000 renewals. However, over 8,700 renewals are received and processed at the Board office. Over 4,300 candidates were eligible for examination, and over 9,000 examinations were administered.

The Enforcement Unit received nearly 1,000 complaints and over 1,000 subsequent arrest notifications. Over 2,000 cases were assigned to the Board's investigative staff. Nearly 2,000 cases were closed. The Board assigned 9 cases to the Board's field investigator and referred 20 cases to the Division of Investigation (DOI). Ninety-five (95) final orders were adopted and 101 final citations were issued.

Last year, 48 new probationers were added to the Board's probation program. The Board has a total of 123 probationers; 90 are active probationers and 33 are tolled. Ten probationers requested modification or termination of their probation. The Board Members granted 8 probationers their request.

Last year, the Board sponsored 5 bills, identified 12 bills impacting Board licensees, and proposed 4 regulation packages.

Dr. Wietlisbach introduced new Board Member, Dr. Peter Chiu. Dr. Chiu provided a brief summary of his background.

c. Personnel Update

Ms. Madsen provided a summary of the Personnel Update.

Effective October 1st, Christy Berger has accepted a promotion to an Associate Governmental Program Analyst to perform the duties as the Board's Regulation Analyst. She has been appointed as a permanent intermittent staff member. This promotion has created a vacancy in the Licensing Unit.

Lupe Baltazar accepted a full-time Office Technician position in the Licensing Unit, effective October 31, 2013. Lupe will act as the Licensed Educational Psychologist (LEP) Evaluator and will also function as a Licensing Support Technician. This transfer has created a vacancy in the Enforcement Unit.

Margaret Rockenbach transferred to the Department of Forestry and Fire Protection on October 31st. Her departure has created a vacancy in the Enforcement Unit.

d. BreEZe Update

Ms. Madsen provided an update on the BreEZe system.

On October 9th, the BreEZe system was released to eleven DCA boards and central cashiering. In preparation for the transition, a staggered shut down of functions in the previous database was necessary. This shut down impacted all cashiering, applications, and examination eligibility in that the Board could not process incoming work for a period of at least 7 days. Board staff is working diligently to reduce the accumulated workload due to the transition. Additionally, Board staff is striving to become proficient in the new system.

As with any new system, some adjustments to functionality are to be expected. In the coming weeks, these adjustments will be made. Board staff will be able to recognize the full functionality of BreEZe once the changes are made. Once the adjustments are completed, the Board anticipates resuming activities that are currently suspended, such as posting current processing times and statistical reporting.

BreEZe offers numerous online capabilities. The Board opted for a delayed release of the online features to minimize the impact to staff and stakeholders. After January 1, 2014, Board licensees and registrants will be able to renew online using a credit card. Other online features will be released as appropriate. Currently, consumers may file a complaint online and Board licensees and registrants may create an account on BreEZe.

e. LPCC Program Update

Ms. Madsen provided a brief summary of the LPCC Program. As of October 1, 2013, all grandparent applications for licensure as a clinical counselor have been evaluated.

XI. Out-of-State Education Review Committee Update

Ms. Madsen provided a summary of the Out-of-State Education Review Committee (Committee) meeting held in September. The Committee continued discussions related to the challenges out-of-state applicants will encounter after 2014 and possible solutions for these challenges.

The Committee met earlier in the day (November 21st). Board staff was directed to make additional revisions to draft language and present the recommendations and draft language to the Policy and Advocacy Committee in February.

Dr. Leah Brew noted some language that needed either clarification or correction within the draft LPCC language.

XII. Policy and Advocacy Committee Report

a. Discussion and Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 27, 4980, 4980.41, 4980.43, 4980.55, 4987.5, 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 Add Section 4990.33

Ms. Helms presented the suggested amendments to the following sections of the Business and Professions Code (BPC):

1. Amend BPC Sections 27, 4980, 4980.41, 4980.55, 4987.5, 4987.7, 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.

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

AAMFT-CA requested state licensing programs to review their licensing laws to confirm if there is a requirement that degrees from an institution accredited by the Commission on Accreditation of Marriage and Family Therapy Education (COAMFTE) also require United States Department of Education (USDE) 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 a couple of minor clarifying amendments in order to make it clear that COAMFTE degrees do not need to be recognized by USDE in order to be accepted for licensure by the Board.

Staff recommends making minor changes to the BPC Sections suggested by AAMFT.

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 LMFTs, 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 LPCCs in the list of acceptable owners.

Staff recommends making changes to both of the BPC 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:

- a) They must have already taken and passed the national licensing exam the Board is accepting as the clinical exam; and
- b) 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.

At the October 30th Policy and Advocacy Committee (Committee) meeting, an additional concern was raised that a license could be considered in good standing, but could have restrictions or a suspension against it due to failure to pay taxes or child support. These types of sanctions are not typically considered disciplinary action. Therefore, the Committee decided to amend the language to read as follows:

The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and/or has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered.

Staff recommends making the amendments suggested by the Committee.

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. 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. Therefore, staff believes that LPCCs being left out of the Business and Professions Code is an oversight.

Staff recommends making changes to 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 expires. This is being proposed for two 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, 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.

- b) 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.

The Board's enforcement division is experiencing 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; therefore, 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 registration number.

Staff recommends making changes to 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.

Staff discovered the need for an additional amendment that was not discussed at the Committee meeting.

LPCC licensing law, and LMFT licensing law for degrees begun prior to August 1, 2012 require an applicant to complete coursework in aging and long term care, which must include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

The BPC Section that applies to LMFT applicants who began their degree program after August 1, 2012 requires instruction in aging and long-term care. However, it does not mention any coursework requirement for elder and dependent adult abuse and neglect.

Staff believes this is an oversight that occurred when SB 33 was written. This coursework was previously required for the old LMFT degree programs and is required for all LPCC degree programs. BPC Section 28 states the intent of the legislature is that the Board is encouraged to include coursework in the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care.

Staff recommends amending Section 4980.36(d)(2)(B)(iii) to require instruction on elder and dependent adult abuse and neglect.

Mr. Caldwell responded on item #4. He suggested the following language (omitting "and/or" and replacing it with "and"):

The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered.

Mr. Caldwell also suggested the verb tense of "has not been" to be changed to "is not."

Dianne Dobbs stated that Mr. Caldwell's suggestions are acceptable.

Dr. Leah Brew moved to direct staff to make any discussed changes as well as any non-substantive changes to the proposed language and recommend that the Board sponsor legislation to make the proposed changes. Christina Wong seconded. The Board voted unanimously (10-0) to pass the motion.

b. Discussion and Possible Action Regarding Legislative Amendments to Support Examination Restructure

Board staff is in the process of implementing the examination restructure. 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 when the examination restructure becomes effective. 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 begin to be offered until January 1, 2016.
2. As of January 1, 2016, an intern or associate who has an expiring registration number (because they have held it six years) 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.

In order to address these potential problems in an equitable manner, staff proposes the following two amendments:

1. Allow an applicant who holds an active registration, who applies for renewal of that registration between January 1, 2016 and June 30, 2016 to be allowed, if eligible, to renew his or her registration without first participating in the California law and ethics examination.

Under this scenario, these registrants will be required to participate in the California law and ethics examination when they apply for their next renewal. This will ensure they have adequate advance notice to sign up for and prepare for the exam.

2. Allow an applicant who holds an active registration, who applies for a subsequent registration number between January 1, 2016 and January 1, 2017, to be allowed, if eligible, 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.

At its October 2013 meeting, the Policy and Advocacy Committee (Committee) discussed concerns that the proposal of waiving the requirement for renewing registrants for a full year seemed excessive. The Committee believes a six-month waiver period is sufficient.

The Committee decided that the waiver timeframe from January 1, 2016 to January 1, 2017 was reasonable for those applying for a subsequent registration. Instead of attempting the California law and ethics exam, those seeking a subsequent registration are required to pass the exam before they receive their subsequent registration.

Legal counsel recommended an additional amendment, which was not presented to the Committee. This amendment adds language stating that the exam must be taken at the next renewal period (for renewals) and that the exam must be passed at the next renewal period or

prior to licensure, whichever occurs first (for subsequent registration numbers). The purpose of this amendment is to make it clear that even though the Board is allowing a delay in the California law and ethics exam for those renewing or obtaining a subsequent registration shortly after the exam restructure becomes effective, these subgroups will still be required to take and pass the exam.

Dr. Leah Brew moved to direct staff to make any discussed changes and any non-substantive changes to the proposed language, and submit to the Legislature as a legislative proposal. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.

c. Legislative Update

Ms. Helms reported on the Board-sponsored bills. Four board-sponsored bills were signed into law this year:

1. AB 404 – This bill states that a licensee is eligible for a retired license if he or she holds a current, active license, or an inactive license, 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.
2. 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.
3. 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. This allows the Board additional time to consider solutions to this problem which would increase portability of licenses while maintaining public protection.
4. 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 928 regarding child custody evaluators is a two-year bill.

SB 243 was signed into law. This bill amends the requirements for an LPCC who opts to treat couples and families so that the required training and education in order to do this does not need to be in addition to the minimum training and education required for licensure.

d. Rulemaking Update

Christy Berger reported on the following regulations:

- Continuing Education regulations - Staff is currently considering comments received during the public comment period.
- Implementation of SB 363 – This proposal became effective on October 1, 2013.
- Enforcement regulations – This proposal became effective on July 1, 2013.
- Disciplinary Guidelines regulations – This proposal became effective on July 1, 2013.

The Board took a break for lunch at 11:47 a.m. and reconvened at 1:15 p.m.

XIII. Discussion and Possible Action Regarding the Board's Strategic Plan

On August 23, 2013 and September 27, 2013, board members, board staff, and stakeholders met to develop the Board's Strategic Plan. The meetings were facilitated with the assistance of DCA's

SOLID Planning Solutions. The group worked together to set the Board's goals for the next 3 years. Ms. Madsen presented the draft of the Board's 2014 Strategic Plan.

Mr. Sodergren noted a correction on 3.1. The goal should be "Establish a recruitment process for Subject Matter Experts to ensure a diverse pool on which to draw for expert witnesses."

Dr. Chiu suggested adding "licensing" to the Mission Statement and creating more symmetry within the Mission Statement. He suggested the following:

Protect and serve Californians by setting, communicating and implementing enforcement and licensing standards for safe and competent mental health practice.

Dr. Chiu stated that the original Mission Statement is more encompassing than the proposed Mission Statement. He asked why the original Mission Statement was changed.

Ms. Madsen explained that setting, communicating, and implementing standards encompassed licensing without having to list each program within the Board.

Dr. Brew explained that the Board is not solely charged with licensing. The Board decided to leave it broad enough so that the Mission Statement would still apply as future changes take place.

Karen Pines agreed with Dr. Chiu.

Ms. Madsen explained that the direction in setting the Mission Statement was to create a brief statement about what the Board does. There was some consideration given to retaining the current Mission Statement, but there was a desire to refresh it.

Ms. Wong and Dr. Brew noted the following corrections under Members of the Board:

- Christina Wong's title is LCSW Member,
- Sarita Kohli's title is LMFT Member, and
- Add Dr. Peter Chiu, Public Member.

Patricia Lock-Dawson moved to adopt the Strategic Plan as amended and direct Board staff to initiate the steps to establish the objectives to achieve the Strategic Plan goals. Dr. Peter Chiu seconded. The Board voted unanimously (10-0) to pass the motion.

XIV. Licensed Professional Clinical Counselors Presentation by the Office of Statewide Health Planning and Development Career Pathways Subcommittee – Rowena Gillo, LCSW and Adrienne Shilton, MPPA

Rowena Gill, LCSW and Adrienne Shilton, MPPA, members of the Office of Statewide Health Planning and Development Career Pathways Subcommittee, gave a presentation. They presented the results from a survey of County Mental Health Agencies regarding employment of LPCCs in county mental health facilities. Forty-four counties responded. Points of discussion were:

- What LPCCs do.
- How LPCCs are utilized.
- Statistics on the numbers of LPCCs nationwide and in California.
- Statistics on the numbers of LMFTs nationwide and in California.
- Statistics on the numbers of LCSWs nationwide and in California.
- How LPCCs are qualified.
- LPCC requirements, core competency areas, supervision requirements.
- Scope of practice in California; what the scope does not include.
- Future need, pathway barriers and recommendations.

A recommendation made to the Board was to develop an informative guide or FAQ. Ms. Madsen expressed that she would like to work with the presenters to develop a FAQ, with the Board's permission.

The Board directed staff to work with the presenters.

Deborah Brown left at 1:58 p.m. A quorum remained.

The Board took a break at approximately 2:15 p.m. and reconvened at 2:33 p.m.

XV. Presentation of Electronic Service to Provide Therapy – Heather Wall, Google

Mr. Sodergren introduced Heather Wall, Google New Business Development Manager, and Sophie Gasee, Google Category Manager. Board staff met with Google representatives regarding a service that Google will be providing. Google will provide a web portal titled Helpouts to provide "real time help" from service providers, such as therapists.

Ms. Wall and Ms. Gasee gave a presentation regarding this electronic service to provide therapy. Some of the key points were:

- The website is HIPAA compliant;
- Sessions cannot be recorded;
- Notifications for appointments will be generic notifications; notifications will not indicate that it is for a therapy session;
- "Geo-restrict" function: Users in California can only locate therapists in California;
- Users under the age of 18 cannot utilize the services; and
- All credentials will be verified; a provider with a valid, current license without sanctions will be allowed to provide services.

Ms. Wong expressed concerns regarding crisis situation, and asked how Google will manage this type of situation. Google representatives responded that they were not giving legal opinions on how it would handle certain situations, but commented that they would probably handle it as if it were the same situation over the phone (they would ask the caller where they are from and get the contact information; they have the ability to add disclaimers to listings).

Ms. Lonner expressed concerns regarding people with unrestricted licenses that become restricted shortly after becoming listed on the Helpouts website. She asked about the frequency of the verification and updating process. Google representatives responded that a third party will handle the verification process. The third party adheres to its guidelines regarding the frequency of when providers need to be rechecked. As for the frequency of the verifications, representatives could only specify that the guidelines are similar to hospital guidelines.

Dr. Brew asked how the "Geo tracking" actually works. Google representatives responded that they use technological means to determine the location of the user. Dr. Brew asked how Google guarantees age restriction. Google representative responded that the user must create a profile where the user must indicate their age. Dr. Brew expressed that the user can lie about their age on the profile.

Dr. Brew expressed that there are several items that the Board must define, for example, engaging in telehealth and limitations in telehealth, confidentiality, and informed consent. She is concerned about users lying about their location or their age, and a crisis situation where a user is suicidal.

Dr. Wietlisbach stated that the Policy and Advocacy Committee will address these issues.

Ms. Dobbs asked if there is a mechanism in place where the user can verify the provider's license status at the moment they are receiving real time therapy. Google representatives responded that they are currently working on that piece. Google's policy states that a provider must confirm to the user that his/her license is current, and wherever possible, to direct the user to the appropriate place to verify their license.

Ms. Madsen clarified that interns and registrants will not be participating in this service.

Ms. Madsen indicated that questions were posed to Google regarding informed consent. She stated that the Board can begin their conversation with Google regarding informed consent. She also indicated that it is important that the consumers know where to go if they have an experience with a provider that would cause them to file a complaint.

After further discussion, Google representatives agreed to be available to the Policy and Advocacy Committee to continue future discussions.

XVI. Discussion and Possible Action Regarding Exempt Setting Practice

Mr. Sodergren presented the history regarding exempt setting practices. Certain types of organizations, referred to as "exempt settings," are those whose employees are not required to have a license or a registration in order to perform marriage and family therapy, clinical social work or clinical counseling within the scope of their employment. Certain types of professions, referred to as "exempt professions," are those which can perform counseling or work of a psychosocial nature consistent with the standards and ethics of their respective professions.

Concern has been expressed that allowing people to perform services in exempt settings without a license or registration could be a consumer safety issue. There has also been an expressed concern that the standard of care delivered to consumers in exempt settings may be of a lower standard than services delivered by entities under the Board's purview.

Exempt settings have been listed in statute from the time the Board began licensing clinical social workers in 1968. In 2007, the language was amended in order to standardize exempt setting between the LMFT and LCSW statutes. The amendment removed family/children services, private psychiatric clinics and nonprofit organizations engaged in research and education as exempt settings in the LCSW statutes.

Two types of exempt settings were listed in the LMFT statutes when the Board began licensing LMFTs in the late 1960's. These were institutions both nonprofit and charitable, and accredited educational institutions. However, such institutions were required to apply to the Board for a biennial waiver. These institutions were also required to demonstrate adequate supervision of non-licensed counseling personnel as well as community or training need. In 1976, governmental agencies were added to the list of exempt settings in the LMFT statutes. These agencies were not required to obtain a waiver from the Board. In 1986, the LMFT statute was amended to remove the need for any setting to obtain a waiver.

For both the LMFT and LCSW, the exempt professions have been consistent through the years. These professions include: priests, rabbis, or ministers of the gospel of any religious denomination; any person admitted to practice law in the state; and any person who is licensed to practice medicine. There is a difference in the statutes in that the LMFT statute exempts these professions when they are performing "counseling service as part of his or her professional practice" and the LCSW statute exempts these professions when they are "doing work of a psychosocial nature consistent with the standards and ethics of their respective professions."

There is no mechanism for the Board to ensure the protection of a consumer who is receiving services at these exempt settings or from exempt professionals. Consumer complaints regarding services provided by an individual in an exempt setting are usually deemed non-jurisdictional because the oversight of the individual's practice is the responsibility of the employer and not the Board. Complaints against exempt professionals are also deemed non-jurisdictional because of the difficulty in determining whether they were acting within the scope of their professional standards and ethics when counseling or performing services of a psychosocial nature.

If the Board desires to explore this issue further, staff recommends forming a committee using the following list to guide the committee's work:

- The current environment of exempt settings and professions;
- The risk, if any, that exempt settings present to the consumers;
- Whether current statutes regarding exempt settings allow the Board to effectively protect the consumer from unlicensed practitioners;
- If current statutes should be amended in order to strengthen consumer protection;
- If the term "counseling services" or "work of a psychosocial nature" need to be better defined.

Ms. Lock-Dawson supports the idea of forming a new committee to address these issues.

Mary Rawlings expressed that this is a very important matter and a thorough evaluation is needed. She requested that the Board consider the impact on internships, should any recommendations or changes come out of this discussion. Quality internships are becoming harder to find in agencies facing budget cuts.

Rebecca Gonzales, NASW-CA, stated that in regards to child welfare services, if a complaint is filed against a non-licensed individual, the agency will not be able to obtain the confidential information to make a proper assessment. In regards to the comparison between "counseling" and "psychosocial", the term "psychosocial" is very specific and important for social workers and recommends keeping that terminology.

Patricia Lock-Dawson moved to form a committee to study exempt settings and determine if the Board needs to take action on the rules and regulations surrounding exempt settings. Karen Pines seconded. The Board moved (9-0) to pass the motion.

XVII. Update Regarding Special Accommodations for Examinations

Ms. Madsen provided some history and the legal code regarding special accommodations for examinations, and the reason why the Board terminated English as Second Language (ESL) testing accommodation.

During the August 2013 Board Meeting, LMFT examination candidate, Cecilia Pinhel, requested that the Board consider reinstating the ESL testing accommodation. The Board directed staff to research the ESL testing accommodation.

Pursuant to the Federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act, the Board will provide testing accommodations or auxiliary aids or services for applicants who can substantiate the need for accommodation due to a physical or mental disability or a qualified medical condition.

Title 28, Code of Federal Regulations Part 35 defines the term "disability." Specifically, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Title 28, Code of Federal Regulations Part 35 further defines the following phrases.

- (i) The phrase *physical or mental impairment* means -
 - (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;
 - (B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- (iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.
- (2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) The phrase *is regarded as having an impairment* means -
 - (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;
 - (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.
- (5) The term *disability* does not include -
 - (i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
 - (ii) Compulsive gambling, kleptomania, or pyromania; or
 - (iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Upon receipt of documentation from the candidate that substantiates the request for the testing accommodation, the Board evaluates each request, in order to provide an appropriate and effective testing accommodation.

Board records indicate that from at least 2000 up to July 1, 2011, candidates who requested an ESL accommodation were granted extra time to take the board examinations. It should be noted that ESL is not identified as a disability under the ADA.

Prior to making the decision to end the ESL accommodation, the Board contacted the Office of Professional Examination Services (OPES) for information. OPES indicated that they reviewed the readability of the Board's examination as well as other ESL issues. OPES considered that prior to

entering a bachelor's program or master's program, ESL candidates take the Test of English as a Foreign Language (TOFEL). Further, the candidate receives the master's degree in English. Based on this information, it is reasonable to conclude that a candidate should be proficient enough to take the examination in English.

During her presentation to the Board in August, Ms. Pinhel asked if the cancellation of the ESL accommodation is in the best interest of the culturally diverse population in California. Ms. Madsen expressed that the current research suggests that California's diverse population will continue grow.

Serving California's diverse population and allowing an ESL candidate extra time to take the test are different topics. The Board addressed the needs of California's diverse population through the revisions of the educational requirements for licensure mandating cultural competency education.

Based on a review of several DCA Boards' examination accommodation policies, it does not appear that any of these boards offer an ESL accommodation. Each of these boards uses a national examination for licensure. Review of these national examination accommodation policies did not reveal that an accommodation was available for ESL candidates.

The Board is currently using the National Clinical Mental Health Counselor Examination (NCMHCE) for licensure as a professional clinical counselor in California. Candidates may apply for an ESL accommodation. However, candidates must submit verification from their graduate program that they received an ESL accommodation in their graduate program. All approved candidates must pay \$60 for the extra two hours of time for the ESL accommodation.

In 2016, the Board will use the Association of Social Workers Board (ASWB) clinical examination for licensure as a social worker. A review of ASWB's accommodation policy reveals that candidates who desire an ESL accommodation must be approved by the jurisdiction in which they are applying for licensure. Both NBCC and ASWB adhere to the disability policies outlined in the ADA.

In lieu of reinstating the ESL accommodation, the Board could consider translating its examinations. OPES published an informational sheet regarding the translation of examinations. The examination adaptation process provides for recognition of cultural, content, and language differences so that the intended meaning is retained.

OPES notes that when a licensing board, bureau, or committee under DCA is faced with the decision whether or not to adapt an examination, the following must be taken into consideration:

- If a language survey has been conducted and a target language group has been identified to have a substantial number (5%) of non- or limited English-speaking candidates, an examination may be adapted.
- If English is an essential aspect of a profession, an examination will not be adapted.

A translated examination must adhere to the current standards and guidelines for testing. Further, the cost to translate an examination ranges from \$25,000 up to \$75,000 per exam, per language. The Board currently develops 6 examinations; two different versions of each examination.

Ms. Madsen explained that the candidate who brought this matter to the Board received a psychology degree in Mexico. Now that she is in the United States and attempting to pass the examination, she is finding it difficult in a timed environment to translate the questions during the examination.

Ms. Madsen expressed that an accommodation is reasonable if the individual gained their education outside of the United States. An accommodation is also reasonable for those individuals who gained their degree in the United States and had an accommodation in their graduate program. Absent

these two exceptions, bilingual candidates would have an unfair advantage in the testing environment.

Ms. Madsen replied to questions regarding the elimination of the ESL testing accommodation. Her research did not provide any information as to why it was eliminated.

Ms. Lonner expressed that allowing extra time to take the exam is a reasonable request under the conditions that Ms. Madsen stated.

Dr. Chiu questioned whether allowing the accommodation would be defensible. Ms. Dobbs stated that she would have to do some research and determine what some of the implications might be.

Dr. Chiu suggested extending time to take the examination to all candidates to make it fair for everyone.

Dr. Brew stated that she would not be in favor of a translated exam because in order to do this work, one has to be able to work with all populations. She would be comfortable with an accommodation instead of translation.

Ms. Connolly expressed that the Board would have to ensure that it could withstand a legal challenge.

Ms. Pinhel agreed with much of what was discussed. She stated that she is only asking for a small amount of time added in order to be able to take a short break during a 4-hour exam.

The Board took a break at 4:09 p.m. and reconvened at 4:19 p.m.

Olivia Loewy, AAMFT-CA, expressed that if these candidates cannot get licensed, there would be a loss of cultural sensitivity and background that these candidates can offer. Therefore, she would like to see an accommodation for extra time to be allowed.

After some discussion and questions, the Board decided to forward this matter to a committee.

Christina Wong moved to forward this matter to the Policy and Advocacy Committee. Dr. Leah Brew seconded. The Board voted unanimously (9-0) to pass the motion.

XVIII. Suggestions for Future Agenda Items

There were no suggestions for future agenda items.

XIX. Public Comment for Items Not on the Agenda

There were no public comments.

XX. Adjournment

The Board adjourned at 4:25 p.m.

Friday, August 23rd
Department of Consumer Affairs
Emerald Room
1747 N. Market Blvd.
Sacramento, CA 95834

Members Present

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

Members Absent

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

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Paula Gershon, Licensing Manager
Pearl Yu, Enforcement Manager
Marc Mason, Administration/Exam Manager

Guest List

On file

FULL BOARD OPEN SESSION

Dr. Wietlisbach called the meeting/strategic planning session to order at approximately 8:30 a.m. Ms. Madsen called roll, and a quorum was established.

XXI. Strategic Planning Session with SOLID Planning Solutions

Board Members, Board executive staff and managers participated in a Strategic Planning Session conducted by DCA's SOLID Planning Solutions.

XXII. Suggestions for Future Agenda Items

There were no suggestions.

XXIII. Public Comment for Items Not on the Agenda

There were no public comments.

XXIV. Adjournment

The Board adjourned at approximately 3:30 p.m.