

Policy and Advocacy Committee Minutes

April 3, 2014

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

Members Present

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, Regulatory Analyst
Dianne Dobbs, Legal Counsel
Christina Kitamura, Administrative Analyst

Members Absent

Renee Lonner, Chair, LCSW Member

Guest List

On file

I. Introductions

Dr. Christine Wietlisbach, Policy and Advocacy Committee (Committee) Acting Chair, called the meeting to order at 9:05 a.m. Christina Kitamura took roll, and a quorum was established.

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

Dr. Wietlisbach announced that the following items would not be discussed: III.e., III.f., III.j.

II. Approval of the February 6, 2014 Committee Meeting Minutes

Correction made on page 11, line 50: add "as the child's therapist" to the end of the sentence.

Christina Wong moved to approve the Policy and Advocacy Committee minutes as amended. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

III. Discussion and Recommendations for Possible Action Regarding Pending Legislation

a. Assembly Bill 1702 (Maienschein) - Professions and Vocations: Incarceration

AB 1702 would:

- Prohibit a board under the Department of Consumer Affairs (DCA) from denying or delaying an application solely on the grounds that the applicant was incarcerated, and

- Allow for delay in processing, or denial of licensure, if the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession.

Current law permits a board to deny a license on the grounds that the applicant has been convicted of a crime, only if the crime is substantially related to the qualifications of the profession for which they are applying for licensure. A crime is substantially related to the qualifications, functions, or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by his or her license in a manner consistent with public health, safety, or welfare.

The author's office is running this bill in an effort to reduce crime and reward rehabilitation. The author notes studies that show if an inmate learns vocational skills in prison, he or she is less likely to re-offend upon release. However, if the inmate learns vocational skills that require a license, he or she often must wait longer to receive a license, because the law allows licensing boards to impose licensing restrictions on those who have criminal convictions.

The author's office cites a problem with the law giving licensing boards the power to impose additional restrictions on those who have been convicted of a crime. However, the Board may only do this if the conviction is substantially related to the practice of the profession. This bill does not remove the provision that discipline can be taken if the conviction was substantially related to the profession.

This bill prohibits a board from delaying the processing of an application based on the fact that the applicant was incarcerated. All applicants with a conviction or other disciplinary action are automatically routed to the Board's Enforcement Unit for further investigation. For these applicants, there will be a delay because additional staff time is needed to determine if the crime was substantially related and to determine if disciplinary measures are necessary. Delays due to the enforcement process can vary from weeks to several months, depending on the complexity of the case.

Dr. Wietlisbach stated that the Board does not deny licensure because the applicant has been incarcerated. The applicant can be denied if the crime was substantially related to the profession; however, the bill does not address that. There is an inherent delay in processing because the Board is mandated to ensure consumer protection.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), asked if this would create more workload for Board staff. Kim Madsen confirmed that this would create a need for more staff.

Christina Wong moved to recommend to the Board to oppose AB 1702. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

b. Assembly Bill 2058 (Wilk) - Open Meetings

AB 2058 would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if the body is a standing committee with a continuing subject matter jurisdiction or a has a meeting schedule fixed by formal action of a state body.

Current law:

- Establishes the Bagley-Keene Open Meeting Act, which requires that actions and deliberations of state agencies be conducted openly, and defines a state body as an

advisory board, commission, committee, or subcommittee that consists of three or more persons and is created by formal action by the state body or any of its members.

- Requires that all meetings be open and all members of the public permitted to attend.
- Requires a state body to provide notice, which includes an agenda for that meeting, at least 10 days prior to the meeting.

This bill revises the definition of a state body subject to the Bagley-Keene Open Meeting Act. Under the proposed change, an advisory body consisting of less than three members would be subject to Bagley-Keene if they are standing committees with a continuing subject matter jurisdiction or a meeting schedule fixed by formal action of a state body.

Current law allows standing committees of a state entity to hold closed door meetings as long as they contain fewer than three members and do not vote to take action on items of discussion. The author's office is concerned that some state agencies are conducting meetings with two or fewer members specifically to avoid open meeting requirements. The author notes it is the intent of the Legislature and the public for government to conduct its business visibly and transparently.

Local government entities must abide by the Brown Act, which is an open meeting act similar to Bagley-Keene. In the early 1990s, the Brown Act contained a similar allowance as Bagley-Keene. The Brown Act was corrected as soon as the Legislature discovered it; however, a conforming change was not made to the Bagley-Keene Act at that time.

The Board commonly utilizes two-member standing committees to address issues requiring in-depth discussion and analysis. The intent is to create an environment that encourages discussion and sharing of ideas between Board members, staff, and interested stakeholders, which may eventually be used to generate a legislative or regulatory proposal. No votes are taken at these meetings; any action must be approved by the Board at a Board meeting.

If this bill is signed by the Governor, it will become effective immediately.

Christina Wong moved to recommend to the Board to support AB 2058. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

c. Assembly Bill 2165 (Patterson) - Professional Vocations: Licenses

AB 2165 would:

- Require licensing boards to review licensing applications within 45 days of the filing date.
- Require the licensing board to issue the license within the same 45-day period if the applicant has satisfied all requirements for licensure.
- Require a licensing board to offer each required examination a minimum of six times per year.

The author's office introduced this bill because professional and vocational applicants are currently experiencing major delays in licensure application processing times. They are also concerned that several professions do not allow for testing upon graduation from school. Instead, the applicant must wait for their application to be processed before he or she obtains approval to take the test.

The purpose of this bill is to decrease application processing delays so that applicants are not forced to be unemployed while waiting for their application process to be completed.

The Board is currently experiencing significant backlogs in license processing times. This is due to several factors, including mandatory furloughs and hiring freezes that took place over the last several years, an increase in the licensing population, and the introduction of the new licensed professional clinical counselor (LPCC) license type.

The Board staff is beginning to recover from these setbacks and is attempting to reduce the current backlog. Furloughs and hiring freezes are no longer in effect, and the LPCC program has been implemented. However, recovering from the effects of the furloughs and hiring freezes will not happen immediately.

The Governor's 2014-2015 Budget includes eight additional positions for the Board's licensing and enforcement units. The Board has been authorized to hire seasonal help as well. DCA recently granted the Board's request to hire some of the 8 authorized positions early, before the 2014-2015 budget takes effect. The newly authorized positions in the licensing unit are expected to be in place shortly.

Any requirements placed upon the Board specifying time frames to process applications are problematic because the flow of applications is never constant. This would require an increased number of positions to meet the processing time requirement, as well as a guarantee that those positions could be replaced regardless of the economic condition of the state.

The author's office notes the intent of this bill is to allow all applicants to test upon graduation from an accredited school. However, this is not consistent with the Board's licensing process, which requires applicants for each of the Board's license types to complete supervised post-graduate experience before taking an examination. Allowing testing prior to all qualifications for licensure being met exposes confidential material on licensing exams to potentially unqualified applicants. Although allowing testing upon graduation is a stated intent, the bill does not require it at this time.

This bill requires licensing boards to offer required licensing exams a minimum of six times per year. This requirement will not affect the Board's testing process.

The Board does require a 180-day waiting period between re-exams to ensure candidates do not take the same version of the exam twice.

Ms. Wong expressed that 45 days to review an application and issue a license is impossible due to the licensing process and considering the additional process if an applicant has a criminal background.

***Christina Wong moved to recommend to the Board to oppose AB 2165.
Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.***

d. Assembly Bill 2198 (Levine) - Mental Health Professionals: Suicide Prevention Training

AB 2198 would:

- Require a mental health professional, commencing January 1, 2015, to complete a training program in suicide assessment, treatment, and management.

- Require this training to be administered by the relevant board or state entity responsible for licensure and regulation of the mental health professional.
- State that a “mental health professional” includes, but is not limited to, a psychologist, marriage and family therapist, and clinical social worker.
- Require DCA to conduct a study evaluating the effect of evidence-based suicide assessment, treatment and management training on the ability of licensed health care professionals to identify, refer, treat, and manage patients with suicidal ideation.

The intent of this bill is to ensure mental health professionals have concentrated training in suicide assessment, treatment, and management. In 2008, over 36,000 people died by suicide in the U.S. making it the 10th leading cause of death nationally. Several organizations have indicated a need for improved education and training in suicide assessment.

There is currently no specific requirement that a licensee of the Board must have coursework in his or her degree, or complete continuing education (CE), which covers suicide assessment. However, the Board’s LPCC licensees have “crisis intervention” specifically listed in their scope of practice. They are required to complete coursework in crisis or trauma counseling.

The Board has several one-time CE requirements that must be completed by its LMFT, LCSW, and LPCC licensees. These additional courses must be completed prior to licensure or at the first renewal, depending on when the applicant began graduate study. These courses are as follows:

- Spousal/partner abuse (7 hours);
- Human Sexuality (10 hours);
- Child Abuse (7 hours);
- Substance Abuse (15 hours);
- Aging/long term care (3 hours); and
- HIV/AIDS (7 hours)

All licensees must take a six-hour law and ethics course every renewal period. In total, a licensee must complete 36 hours of CE every renewal period.

This bill requires the suicide assessment course to be administered by the board or state entity responsible for the licensure and regulation of the mental health professional. This implies that the Board itself must develop and offer the course to its licensees. The Board does not currently develop and administer required coursework, and does not have the resources and expertise to do so.

As written, a mental health professional subject to the training requirement “includes, but is not limited to” a psychologist, a marriage and family therapist (MFT), and a clinical social worker. The Board also licenses LPCCs and educational psychologists, both of which are mental health professionals.

Staff recommends that the bill be amended to list all types of mental health professionals; otherwise, it is unclear to licensees and Board staff exactly which licenses are subject to the requirement.

Currently, the bill does not specify the length of the required course. Typically, coursework requirements specify a certain number of units or hours, so that it is clear to applicants, licensees, and Board evaluators if the requirement is met.

Staff recommends adding a compliance date by which licensees must complete this newly required coursework. It is unclear when this coursework must be completed. A phase in date is recommended, so that licensees have sufficient time to find and complete a course.

The bill requires that DCA submit a study to the Legislature by January 1, 2016 that evaluates the effect of the training on the ability of licensees to identify, refer, treat, and manage suicidal patients. The Board does not have the technical expertise to conduct this type of study.

Ms. Helms stated that this bill may change.

Victor Ojakian, a mental health advocate, provided some statistics. Data from a study conducted in California shows that deaths related to suicide are increasing in California. Non-fatal injuries are also significant in California. At least 40% of people who committed suicide were receiving mental health treatment. Adult individuals represented the largest category of individuals who committed suicide.

Mr. Ojakian stated that the intent is to guarantee that the mental health professional, who is treating an individual at risk of hurting himself/herself, has this training.

Ms. Wong stated that the ongoing education in suicide prevention is very important. The question is how to integrate this into the licensing process.

Ms. Madsen expressed concern because the Board is moving away from the CE approval business and was also concerned about implementation.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), asked if this coursework is proposed as a one-time requirement. Ms. Helms responded that as it is proposed, it is a one-time requirement. Suicide prevention is not covered in LPCCs crisis and trauma coursework.

Jill Epstein, California Association of Marriage and Family Therapy (CAMFT), expressed concern regarding adding another course to the list of courses already required.

Mr. Wong, NASW-CA, shares CAMFT's concerns. NASW-CA supports the concept. However, there is a vast difference between the 2-day course and the 6-hour course. Mr. Wong explained that suicide is very complex, and he does not believe that a 6-hour course will cover the subject matter appropriately. There are problems with the bill as written; therefore, NASW-CA does not support the bill.

Dr. Wietlisbach suggested watching this bill as it evolves.

Ms. Wong agreed with Dr. Wietlisbach and expressed that she can offer feedback regarding the course content.

Christina Wong moved to recommend to the Board to watch AB 2198 and direct staff to provide technical assistance to the bill sponsor. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

e. Assembly Bill 2374 (Mansoor) – Substance Abuse: Recovery and Treatment Services

Not discussed.

f. Assembly Bill 2598 (Hagman) – DCA Administrative Expenses

Not discussed.

g. Senate Bill 909 (Pavely) – Dependent Children: Health Screenings

This bill makes it clear in law that a social worker may authorize an initial medical, dental, and mental health screening for a child taken into temporary custody by a county welfare agency due to an immediate danger.

Current law:

- Requires that when a minor is taken into temporary custody due to an immediate danger, the social worker may authorize the performance of medical, surgical, dental, or other remedial care only if recommended by the attending physician and surgeon or dentist, and if the parent or guardian is notified and does not object.
- Provides that if the parent or guardian is notified and objects to the care, the care shall only be given if the court orders it.
- Provides that if a child is placed under the supervision of a social worker and there is no parent or guardian available to authorize medical, surgical, dental or other remedial care, that the court may order that the social worker may authorize the care.
- Provides that if a child taken into temporary custody appears to require immediate medical, surgical, or remedial care in an emergency situation, the care may be provided by a licensed physician and surgeon, or a licensed dentist, if applicable, without a court order upon authorization of a social worker.

SB 909 does the following:

- Allows a social worker to authorize an initial medical, dental, and mental health screening for a child taken into temporary custody due to an immediate danger. The screening may be prior to the required detention hearing, and may be for any of the following reasons:
 - a. To determine if the child has an urgent medical, dental, or mental health need requiring immediate attention;
 - b. To determine if the child poses a health risk to others; and
 - c. To determine an appropriate placement to meet the child’s medical and mental health care needs identified in the initial health screening.
- Adds mental health care to the types of care that can be authorized for a child taken into temporary custody.

The author’s office states that there is no clear statutory authority for a social worker to provide consent for initial health screenings when a child is taken into temporary custody by a county welfare agency. Such screenings are important because these children sometimes have health conditions that may not be immediately evident to the social worker. The purpose of this bill is to grant social workers authority to provide consent to initial health screenings so that health issues can be identified.

Dr. Wietlisbach supports the concept of the bill. However, she questioned whether the term “social worker” was intended to include licensed clinical social workers. Ms. Wong clarified that this bill pertains to the county agency social workers.

Ms. Madsen noticed that the term “licensed” was stricken from the term “licensed clinical social worker” with the bill’s language.

Mr. Wong, NASW-CA, shares the Committee's concern. NASW-CA supports the concept, but is concerned about "who" the bill refers to. NASW-CA is concerned about a person without a college education or an undergraduate education making a determination to authorize mental health or medical treatment. The bill does not provide that the person authorizing treatment must have some type of education.

Ms. Dobbs referred to Section 369(3)(k) of the Welfare and Institutions Code. It states that the term "mental health provider" has the same meaning as defined in Section 865(a) of the Business and Professions Code (BPC). Ms. Dobbs read the BPC definition, which included "licensed clinical social worker" as a mental health provider.

Ms. Wong expressed that when looking at the needs of a child who has experienced a crisis or traumatic experience from the removal, treatment for that child can be stabilizing.

Dr. Wietlisbach expressed that she wants to ensure that children are getting the medical or mental health treatment that they need.

Mr. Wong responded that there should be a professional person making these decisions, and that should be written in the language. Dr. Wietlisbach responded that the person providing the treatment would be a mental health provider – a licensed individual – as pointed out by the definition in the BPC.

Ms. Dobbs explained that there is a short period of time in which a child is removed from the home and is waiting to come before the court to determine if the removal was appropriate and if protection of the child is warranted. During that period of time, the child may not receive care that is immediately necessary.

Christina Wong moved to recommend to the Board to support SB 909. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

h. Senate Bill 1012 (Wyland) – Marriage and Family Therapists: Trainees

Current law allows an MFT intern to count no more than 5 hours of supervision gained per week toward the 3,000 hours of experience required for licensure. This bill would remove the 5-hour supervision limitation.

SB 1012 does the following:

- Requires an applicant for licensure as a marriage and family therapist (LMFT) to complete a minimum of 3,000 hours of supervised experience over a period of at least 104 weeks.
- Allows no more than 40 hours of supervised experience to be obtained in any seven consecutive days.
- Allows no more than a combined total of 1,000 hours of the required supervised experience to be direct supervisor contact and professional enrichment activities.
- Requires supervision to include at least one hour of direct supervisor contact for each week for which experience is credited in each work setting.
- Defines "one hour of direct supervisor contact" as one hour per week of face-to-face contact on an individual basis, or two hours per week of face-to-face contact in a group.
- Requires an intern to receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting.

- Allows no more than 5 hours of supervision, whether individual or group supervision, to be credited toward the required experience hours in any one week.
- Requires the applicant to have a minimum of 52 weeks of supervised experience in which at least one supervised hour was individual, face-to-face supervision.

Currently, MFT interns are limited to counting five hours of supervision per week toward their required experience hours for licensure. MFT interns are working in a number of settings simultaneously in order to gain the experience hours required for licensure. Interns working in multiple settings may be required by law to have more than five supervised hours per week. Therefore, these individuals may be required to obtain some hours of supervision that they cannot count.

CAMFT notes that many worksites are only offering their interns group supervision. Therefore, an intern may easily be required to have more than 5 hours of supervision, as one unit of supervision equals two hours of supervision in a group.

For experience gained prior to January 1, 2010, the law required an intern to receive an average of at least one unit of direct supervisor contact for every 10 hours of client contact in each setting.

Current law limits hours of direct supervisor contact and professional enrichment activities to a combined total of no more than 1,000 hours. Of these 1,000 hours, no more than 550 may be professional enrichment activities. The Board's LMFT evaluator reports that most applicants are already at or very close to this 1,000 hour limit.

The Board has formed the Supervision Committee (Committee), which is tasked with conducting an in-depth review of the requirements for supervised work experience and the requirements for supervisors. The first meeting of the Committee is April 4, 2014.

The title of this bill, "Marriage and Family Therapists: Trainees" may need to be revised. The changes proposed by this bill would affect interns, not trainees.

Ms. Wong would prefer to wait for the Supervision Committee to address this issue because this is only one part of the bigger picture.

Ms. Madsen agreed with Ms. Wong. However, CAMFT wants this issue addressed immediately. Ms. Madsen feels that 6 hours would be reasonable if the Board wants to increase the limit.

Dr. Wietlisbach asked Ms. Epstein if CAMFT can wait since the Supervision Committee will be discussing these issues.

Ms. Epstein responded no, and that CAMFT's desire is to increase the limit above 6 hours, not to eliminate the requirement.

Christina Wong moved to recommend to the Board to watch the bill and direct staff to work with CAMFT. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

i. Senate Bill 1148 (Yee) – Marriage and Family Therapists: Records Retention

SB 1148 would require an LMFT to retain a patient's records for a minimum of seven years from the date that therapy is terminated. It would also require an LMFT to retain a minor patient's records for a minimum of seven years from the date the patient reaches age 18.

This bill seeks to clarify the length of time an LMFT must retain his or her patient records. There is no state or federal law that requires LMFTs to keep patient records for a specified length of time. This results in non-standardized record retention among LMFTs, and opens these licensees up to the possibility of inconsistent expectations of record retention from the Board and the court system.

The Board's enforcement statute of limitations requires an accusation be filed within three years from the date of Board discovery, or within seven years of the act occurring, whichever occurs first.

The current law sets the following statutes of limitations for enforcement actions:

- There is no statute of limitations for an allegation that a license was obtained by fraud or misrepresentation.
- An accusation alleging sexual misconduct must be filed within three years from the date of Board discovery, or within ten years of the act occurring, whichever occurs first. However, if certain acts of sexual contact with a minor are alleged after the statute of limitations expires, an accusation shall be filed within three years of the date of Board discovery if there is independent evidence corroborating the allegation.
- Provides that if the act involves a minor, the seven- and ten-year limitations discussed above are tolled until the minor reaches age 18.

Allegations of a license obtained by fraud (no statute of limitations) or sexual misconduct (potential ten-year statute of limitations, which may be longer for minors in certain circumstances) could potentially have statutes of limitations which exceed the seven-year recordkeeping requirement. However, according to Board's Enforcement Unit, the treatment records are not used when proving cases of fraud or sexual misconduct.

Ms. Madsen suggested adding other professions to the bill. Ms. Epstein agreed.

Mr. Wong, NASW-CA, supports the bill; however, he wants to clarify that licensees are not required to destroy records after a specified number of years.

Christina Wong moved to recommend to the Board to support SB 1148 if amended to include other license types. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

A meeting attendee indicated that she does not know how this will affect Licensed Educational Psychologists (LEP). She stated that she will look into it and get back to the Committee.

Ms. Wong rescinded her motion.

Christina Wong moved to recommend to the Board to support AB 1148 and request the author to consider including other license types. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee took a break at 11:06 a.m. and reconvened at 11:22 a.m.

j. Senate Bill 1256 (Mitchell) – Medical Services: Credit

Not discussed.

IV. Discussion and Recommendations for Possible Action Regarding Other Pending Legislation Affecting the Board

Ms. Helms presented AB 1505, Child Abuse: Mandated Reports. This bill would specify that consensual acts of sodomy and oral copulation are not acts of sexual assault that must be reported by a mandated reporter, unless one party is over age 21 and the other is under age 16.

Existing law:

- Establishes the Child Abuse and Neglect Reporting Act (CANRA), which requires a mandated reporter to make a report in instances in which he or she knows or reasonably suspects that a child has been the victim of child abuse or neglect.
- Defines “sexual abuse” as sexual assault or exploitation consisting of any of the following: rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, or child molestation.
- Except under certain specified circumstances, declares any person who participates in an act of sodomy or oral copulation with a person under age 18 shall be punished by up to one year in state prison or county jail.
- Except under certain specified circumstances, declares any person over age 21 who participates in an act of sodomy or oral copulation with someone under age 16 is guilty of a felony.
- States that any person age 21 or older who engages in unlawful sexual intercourse with a minor under age 16 is guilty of either a misdemeanor or a felony.

The author’s office cites complaints from mandated reporters of child abuse that the current reporting requirements are confusing and inconsistent. They cite current law as stating that consensual sodomy and oral copulation is illegal with anyone under age 18, and that it requires a mandated report under CANRA. However, consensual sexual intercourse is only reportable if one person is 21 or older and the other is under age 16. The author is attempting to make the law consistent by ensuring that all types of consensual activities are treated equally for purposes of mandated reporting under CANRA.

The Board examined this issue last year when stakeholders expressed concern that consensual oral copulation and sodomy among minors were mandated reports under CANRA, while other types of consensual sexual activity were not.

Staffers at the Legislature contacted Board staff to caution that there had been past legal opinions stating that this interpretation of CANRA was incorrect, and that amendments could potentially have ramifications for family planning agencies.

The Board was concerned about a potential legal misinterpretation of CANRA, but saw this as a valid effort. Therefore, it directed staff to obtain a legal opinion from DCA Legal Affairs.

DCA Legal Affairs 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 Penal Code Section 11165.1, unless there is reasonable suspicion of force, exploitation, or other abuse. DCA also found 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.

The Board of Psychology recently reviewed this issue. The Board of Psychology specifically asked the Attorney General (AG) to resolve the following questions:

- What instances of non-abusive sexual conduct involving minors must a mandatory reporter report to child protective agencies under CANRA?
- Does CANRA require a distinction be made in reporting sexual conduct depending on the nature of the conduct suspected?

In their request for the AG opinion, the Psychology Board included several continuing education resources and guidelines that provide conflicting information.

Ms. Dobbs agreed that there is confusion, and opined that it would be best to clarify in law.

Ms. Epstein expressed that CAMFT supports AB 1505, but has some minor changes to the language.

Christina Wong moved to recommend to the Board to support AB 1505. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (2-0) to pass the motion.

V. Update Regarding Consideration of English as a Second Language as the Basis for Additional Time to Take Board Examinations

Marc Mason presented the issue regarding consideration of English as a second language (ESL) as an accommodation for additional time to take Board examinations.

From at least the year 2000 up to July 2011, candidates who requested an ESL accommodation were granted extra time to take the Board examinations. However, ESL is not identified as a disability under the Americans with Disabilities Act (ADA).

There are two possible accommodations that the Board could make. The first option is to translate the Board's exams into languages other than English. 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.

The second option is allowing candidates extra time to take the exam. This is the option the Board has used in the past. If the Board did choose this option, criteria for how to decide who would be granted an ESL accommodation would need to be developed and placed in regulations.

The Board of Psychology uses the following guidelines to grant an ESL accommodation:

- The candidate submits proof that original entry into the United States occurred within the last ten years, and
- Original entry into the United States did not occur prior to the candidate's beginning of University session.

At its last board meeting, the Board of Psychology's staff recommended ending the ESL accommodation since it is not considered a reasonable accommodation under the ADA. The majority of boards and bureaus under DCA do not offer ESL accommodations.

Dr. Wietlisbach expressed concern regarding the population that speaks languages other than English and requires mental health services. She asked how often the Board gets a licensure candidate who practiced in another country.

Ms. Madsen responded that it is rare; schools that are overseas will not meet California criteria. For those who received their degrees in the United States, it is reasonable to conclude that a candidate should be proficient enough to take the examination in English.

Ms. Madsen recognizes the anxiety that ESL candidates experience in taking examinations. Her challenge is establishing criteria that would be equitable, while not giving an unfair advantage to any individuals.

Mr. Mason provided that a preliminary review of OPES statistics on pass rates from the time when ESL accommodations were provided versus the time when ESL accommodations were eliminated. The review showed that there were no difference in pass rates.

Ms. Wong agreed that test anxiety for ESL candidates exists, and perhaps just a small amount of extra time would help the candidate. Ms. Wong also understands the administrative issue in making the accommodation equitable.

Ms. Wong suggested setting the date of entry into the country to less than 10 years. She also suggested allowing less than time-and-a-half to take the exam.

Ms. Dobbs would have to determine that the criteria is defensible, if the Board moves forward with this.

Ms. Madsen noted that there is a pool of candidates who are still trying to pass the exam and received ESL accommodations in previous years. Currently, these candidates are provided with those same accommodations, and they are still failing the exam with the granted ESL accommodation. There is another issue going on; it is not a language issue.

Dr. Wietlisbach does not see a way in which the Board can do this in a manner that is defensible.

Ms. Dobbs responded that it would be very difficult to find a way to do this in a manner that is defensible.

Ms. Madsen added that a document showing date of entry into the country does not document English fluency.

Mr. Mason suggested using the Test of English as a Foreign Language (TOEFL) scores as a criterion. Mr. Mason will discuss this with OPES.

Ms. Madsen suggested bringing this back to the Board after staff conducts further research. The Committee agreed.

VI. Legislation Update

The Board is sponsoring 3 bills: AB 2213, SB 1466, and AB 1843.

AB 2213 will adjust the LMFT and LPCC out-of-state application requirements. This bill will be heard in the Business and Professions Committee On April 8th.

The Omnibus Bill was recently assigned a bill number, SB 1466. This bill provides for minor technical clean-up.

AB 1843 regarding Child Custody Evaluations: Confidentiality. Ms. Helms provided some information regarding this bill.

The Board is seeking statutory authority to access a child custody evaluation report for the purpose of investigating allegations that one of its licensees, while serving as a child custody evaluator, engaged in unprofessional conduct in the creation of the report. Currently, the law does not give the Board direct access to the child custody evaluation report.

The Board conducted a series of stakeholder meetings in early March. At these meetings, there was general consensus that licensees acting unprofessionally or unethically should be subject to discipline, and that the confidentiality of the child custody evaluation reports is essential. There were differing opinions on the conditions under which the report should be made available.

At the stakeholder meetings, two questions were raised that Board staff is now investigating with the AG's office:

1. Family Code Section 3025.5(b) states a federal or state law enforcement officer is one of the parties the report may be disclosed to. The stakeholders inquired if a Division of Investigation (DOI) investigator could be used to obtain the report for the boards. DOI is a unit within DCA that employs peace officers for investigative purposes. The Board is currently seeking guidance from the AG's office to determine if DOI investigators qualify as state law enforcement for purposes of receiving the reports; and if so, if the Board could legally use this report for investigative purposes and in a subsequent disciplinary action.
2. While the Board was advised by the Administrative Office of the Courts that it may not legally have access to the report. The Board of Psychology has been advised that if a party provides the report, they may use it in their investigation. The Board of Psychology is required to use a different unit within the AG's office (Health Quality Enforcement Unit). Board staff has asked the AG's office for a clarification of why this direction is not consistent.

The AG's office is currently looking into these issues. While staff waits for their answers, the Assembly Judiciary Committee has recommended the bill proceed with two technical clean-up provisions that are needed in Family Code Sections 3111 and 3025.5:

1. Add a cross reference to Section 3111 regarding "who" may have access to the child custody evaluator's report, so that it is clear that the parties in specified in Section 3025.5 may have access to the report.
2. Amend Section 3025.5 to delete a reference that no longer exists.

If the AG's office advises that DOI investigators may access the report as state law enforcement officers, it is possible that no further amendments are needed, or the AG's office may suggest clarifying amendments. If the AG's office determines DOI investigators may not access the reports, additional meetings with stakeholders and the Assembly Judiciary Committee will be needed to determine how to proceed with gaining access to the reports.

Ms. Epstein stated that CAMFT is concerned about subject matter experts on these review panels and emphasized the confidentiality issue.

VII. Rulemaking Update

Ms. Berger provided a brief update.

Continuing Education Regulations: These proposed changes are based on the recommendations of the Board's Continuing Education Committee. This proposal is currently under review by the Business, Consumer Services, and Housing Agency (Agency).

Disciplinary Guidelines and SB 1441 - Uniform Standards for Substance Abuse: This proposal was approved by the Board at its meeting in March 2014. Next, staff will submit the proposal to OAL for publication in the California Regulatory Notice Register, which will begin the 45-day public comment period.

Implementation of SB 704, Examination Restructure: A revised proposal was approved by the Policy and Advocacy Committee (Committee) at its meeting in February 2014. Staff plans to bring this proposal for consideration back to the Committee at its next meeting once additional details have been worked through.

VIII. Suggestions for Future Agenda Items

Ms. Epstein announced that AB 1775 is a CAMFT-sponsored bill that would bring CANRA up-to-date and provide for mandatory reporting of the downloading of child pornography. Ms. Epstein requested that the analysis of this bill be added to the next Board agenda.

IX. Public Comment for Items not on the Agenda

Mr. Wong, NASW-CA, announced that Each Mind Matters, California's Mental Health Movement is sponsoring the Mental Health Matters Day on May 13, 2014 in Sacramento.

Dr. Wietlisbach announced that the Policy and Advocacy Committee scheduled on September 26, 2014 has been rescheduled to September 18, 2014.

X. Adjournment

The meeting was adjourned at 12:10 p.m.