

BOARD MEETING MINUTES July 11, 2014

Department of Consumer Affairs
Hearing Room
1625 N. Market Blvd., N220
Sacramento, CA 95834

The Board of Behavioral Sciences met via teleconference from the following locations:

Eisenhower Medical Center
39000 Bob Hope Dr.
Delores Hope Rehab Clinic
Rancho Mirage, CA 92270

2400 Moorpark Ave., #300
San Jose, CA 95128

8559 Nephi Wy.
Fair Oaks, CA 95628

6405 S. Halm Ave.
Los Angeles, CA 90056

800 State College Blvd
Education Classroom Bldg., #422
Fullerton, CA 92834

5506 Ranchito Ave.
Sherman Oaks, CA 91401

11470 Henley Ln.
Bel Air, CA 90077

5060 Castille Wy.
Riverside, CA 92507

Members Present

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

Members Absent

Samara Ashley, Public Member
Dr. Peter Chiu, Public Member

Staff Present

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

Public Attendees

Cathy Atkins, California Association of Marriage and Family Therapists
Pete Nielsen, California Association of Drug and Alcohol Counselors (CADAC)
Sherry Daily, CADAC

Louie Brown, Law Offices of Kahn Soares & Conway
Rebecca Gonzales, National Association of Social Workers (NASW)
Janlee Wong, NASW
Ashley Jones, NASW
Additional attendee representing NASW
Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC)

Christina Wong, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 11:34 a.m. Christina Kitamura called roll, and a quorum was established.

I. Introductions

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

II. Discussion and Possible Action Regarding Senate Bill 570 (DeSaulnier) Advanced Alcohol and Drug Licensing Act

Rosanne Helms presented SB 570, which establishes the Advanced Alcohol and Drug Counselor Licensing Board (board) within the Department of Consumer Affairs (DCA) for the purposes of licensing and regulating Advanced Alcohol and Drug Counselor Interns (AADCI) and Licensed Advanced Alcohol and Drug Counselors (LAADCs).

The Assembly Committee on Business, Professions, and Consumer Protection suggested at its hearing in June 2014 that it may be more efficient to create a committee within the Board of Behavioral Sciences (BBS).

This bill has not been amended to place this license type under the jurisdiction of BBS at this time. For now, the bill still creates a separate licensing board under DCA. If this bill is amended to create a subcommittee under BBS, such amendments will likely not be published until the Legislature reconvenes from summer recess on August 4th. The last day for the Legislature to amend bills is August 22nd.

Existing law:

- Requires the Department of Health Care Services (DHCS) to review and certify alcohol and other drug programs as meeting state standards.
- Requires individuals providing alcohol and drug counseling in an alcohol and drug program licensed or certified by DHCS to be certified by a DHCS-approved certifying organization.
- Requires all alcohol and drug (AOD) counselors employed by DHCS licensed or certified alcohol and drug programs to register to obtain certification as an AOD counselor with one of the approved certifying organizations within 6 months of their hire date. Certification must be completed within 5 years.
- Sets the following minimum education and experience requirements that the certifying organizations must require:
 - At least 155 hours formal AOD education;
 - At least 160 hours supervised AOD training;
 - At least 2,080 hours of work experience providing AOD counseling;
 - Passage of a written or oral exam.
- Prior to certifying a registrant as an AOD counselor, the certifying organization must contact all other DHCS-approved certifying organizations to determine if the registrant's certification was ever revoked.

SB 570 sets the following requirements for the issuance of an intern registration (AADCI) beginning January 1, 2017:

- a. Possession of a masters or doctoral degree from a board-recognized accredited or approved school in a relevant field;
- b. Completion of 315 clock hours of alcohol and drug-specific education from an accredited or approved school recognized by the board;
- c. Completion of 315 performance/experience hours, including 45 classroom instruction hours and 255 practical experience hours; and
- d. Passage of a state and federal criminal background check.

SB 570 sets the following requirements for the issuance of a license (non-grandparent method):

- a. Possession of a masters or doctoral degree from a board-recognized accredited or approved school in a relevant field;
- b. Completion of 315 clock hours of alcohol and drug-specific education from an accredited or approved school recognized by the board;
- c. Completion of 315 performance/experience hours;
- d. Completion of 2,000 hours of work experience as an alcohol and drug counselor;
- e. Passage of a nationally recognized licensing exam designated by the board; and
- f. Passage of a state and federal criminal background check.

SB 570 sets requirements for the issuance of a license (Grandparenting, Option 1) if the applicant applies between January 1, 2017 and June 30, 2018 and meets the following requirements on or before January 1, 2017:

- a. Holds a current, valid advanced alcohol and drug counseling certification or clinical supervision certification, issued by a certifying organization recognized by the DHCS. This certification must include the following minimum requirements:
 - 315 hours alcohol and drug counseling education;
 - A 45-hour practicum course;
 - 6,000 hours of work experience as an alcohol and drug counselor;
 - Passage of a test approved for certification by the International Certification & Reciprocity Consortium (IC&RC) or board-recognized equivalent;
 - A letter from a certifying organization affiliated with the IC&RC and recognized by DHCS, or equivalent, confirming the applicant is an advanced-level counselor in good standing.
- b. Passage of a state and federal criminal background check;
- c. Provides a letter from a certifying organization affiliated with the IC&RC, or equivalent, and recognized by DCA, confirming 10,000 documented hours of experience in alcohol and drug abuse counseling within the past 10 years, consistent with IC&RC standards for advanced certification; and
- d. Holds one of the following degrees to be counted in lieu of experience, toward the 10,000 required hours, if the degree is substantially related:
 - An associate's degree may count for 2,000 experience hours;
 - A bachelor's degree may count for 4,000 experience hours;
 - A master's degree may count for 6,000 experience hours.

SB 570 sets requirements for the issuance of a license (Grandparenting, Option 2) if the applicant applies between January 1, 2017 and June 30, 2018 and meets the following requirements on or before January 1, 2017:

- a. Practices alcohol and drug counseling and is licensed to practice marriage and family therapy, psychology, clinical social work, clinical counseling, or medicine; and

- b. Provides documentation of 6,000 experience hours providing direct alcohol and drug counseling.

SB 570 specifies the scope of practice.

- a. Defines “alcohol and drug counseling” as a process involving a psychotherapeutic relationship between a client experiencing addiction, dependence, abuse of alcohol or drugs, or other symptoms related to substance abuse, and a counselor or therapist trained to provide help to address these issues.
- b. Provides that alcohol and drug counselors must understand their limited scope and refer a client assessed as needing the services of another licensed professional, in a timely manner. The bill has been amended to define “a timely manner” as within 14 days, if in a private practice.

SB 570 specifies Exemptions from Licensure/Registration:

- A person engaging in alcohol and drug counseling exclusively for in-custody services of the Department of Corrections and Rehabilitation, or as an employee or volunteer of the State of California or the government of the United States;
- An unpaid member of a peer or self-help group, as long as this person does not use a title stating or implying licensure or registration;
- A cleric or religious leader providing spiritual advice/guidance free of charge;
- A director, officer, or staff member of a program described in Section 8001 of the Penal Code (PC); and
- A director, officer, or staff member of a program described in Health and Safety Code Section 11752.1(l) or (m).

SB 570 also states that this bill shall not be construed to constrict, limit, or withdraw the licensing acts of LMFTs, LCSWs, or LPCCs.

SB 570 requires the board to revoke or deny a license or registration if the person meets one or more of the following:

- a. Has been convicted of five or more criminal offenses within a 30 month period within the past two years or less;
- b. Is required to register as a sex offender;
- c. Has been convicted of a violent felony, as defined in law, within the past three years. After the expiration of three years, if on parole, he or she may be licensed or registered by the board if the parole officer or the Board of Parole Hearings provides written approval.

The Board of Parole Hearings may withdraw this written approval. In this case, the license or registration shall be revoked by the board. However, if the Board of Parole Hearings reinstates the approval, then the board shall reinstate the license or registration.

This provision also applies to a person convicted of a crime that the board determines is substantially related to the practice of alcohol and drug counseling.

SB 570 states that the startup funds to implement this licensing program shall be derived, as a loan, from the reserve of the fund.

Background:

Although the regulations promulgated by the DHCS require AOD counselors working within its licensed or certified facilities to become certified, this requirement does not apply outside its licensed or certified facilities. As a result many practitioners of drug and alcohol treatment are not regulated.

In May 2013, the California Senate Office of Oversight and Outcomes (SOOO) published a report. The report presents evidence that California's system for addiction treatment allows registered sex offenders and other serious felons, as well as counselors facing current drug and alcohol charges and those already revoked for misconduct, to provide treatment. The report finds that counselors can easily flout education and training requirements; that the system does not allow for criminal background checks for counselors; and that the system contains gaps that can be exploited by counselors who move between private organizations that register and certify counselors. The SOOO report recommends that drastic changes to California's counselor certification system should be considered. Among a list of many recommendations, the report recommends a requirement for fingerprint-based criminal background checks for anyone working as a counselor.

The author's office stated the following:

"The Affordable Care Act (ACA) requires participating exchange members to maintain accreditation by the National Committee for Quality Assurance (NCQA). The NCQA requires behavioral health practitioners to be licensed in order for a plan to maintain accreditation. Because California is one of the minority of states without licensure for AADC, patients are being referred to other licensed professionals with little training or education in alcohol and drug treatment."

This bill proposes to regulate the practice of drug and alcohol counseling in both licensed facilities and private practice by creating standards for certification and licensure as an alcohol and other drug counselor. Alcohol and drug counseling as defined in this bill, is a number of specified activities performed for the purpose of treating alcohol or other drug problems only.

This bill would create a license to treat only one diagnosis. An LAADC would therefore have to be able to differentiate between an issue that is solely attributed to alcohol and drug abuse problems and symptoms and issues that may be attributable to a diagnosis outside the scope of practice of the LAADC.

Concerns:

- A licensee under this bill must refer any client assessed as needing additional services not within the scope of their practice to another licensed professional. Because alcohol and other drug treatment relates to a single diagnosis, it is likely that a patient will have other diagnoses outside of their practitioner's scope of practice. This raises a concern about continuity of care, as patients will likely need to seek out a new practitioner at some point within their treatment, which may be disruptive to their treatment and progress.
- A concern raised by the California Association of Drug and Alcohol Educators (CAADE) in their opposition letter to the bill was that an LAADC with a master's degree would be licensed to the same level as a counselor with a GED or High School Diploma.

BPC §4453.1 is the language that could pave the way for a high school graduate to become licensed. However, this is language grandfathering in people who may be practicing as certified counselors already. It is an attempt to deal with the subset of counselors who have been doing this kind of work for a long time, but who lack a masters or doctoral degree. After June 30, 2018, the provisions in Section 4453.2, which require a masters or doctoral degree in a related field, would apply.

- Although the bill does not place LAADCs and AADCIs under BBS's jurisdiction at this time, there has been significant recent discussion at the Legislature about the possibility of doing

so. Unlike the BBS's current license types, LAADCs and AADCIs are not required to have a master's degree if they gain licensure during the grandparenting period.

- The disciplinary standards for LAADCs and AADCIs are significantly different than the disciplinary standards for LMFTs, LEPs, LCSWs, and LPCCs. Under this bill, LAADCs and AADCIs would be permitted to have up to five convictions of criminal offenses within a 30-month period within the past two years, before their license could be revoked or denied. It also permits licensure for persons with a violent felony conviction as long as it occurred over three years ago and the person's parole officer approves.

Placing these license types under BBS would require the board to hold these license types to vastly different standards than its LMFT, LEP, LCSW, and LPCCs, who, with these same convictions, would either be denied licensure or placed under significant probation terms in order to ensure public protection.

- SB 1441 required DCA to establish uniform and specific standards that each board would be required to use in dealing with substance abusing licensees. Each healing arts board under DCA either has, or is in the process of, running regulations to establish the uniform standards.

Some of the requirements of the uniform standards are:

- Clinical diagnostic evaluation (estimated cost: \$1,000 - \$3,000);
- Supervision (estimated cost: \$200-\$400 per month);
- Required Drug Testing (52-104 times per year for first year; 36-104 times per year in years 2-5; estimated cost: \$70 per test).

AADCIs and LAADCs practice a healing art and would therefore be subject to the Uniform Standards. Due to the nature of this profession, many AADCIs and LAADCs would have past substance abuse convictions and would therefore qualify as substance abusing licensees subject to the uniform standards.

Although this may place a substantial financial hardship on a large number of these licensees, the uniform standards must be applied equally to all healing arts licensees under DCA. Exempting them from the uniform standards could create an incentive for other licensed healing arts professionals, who abuse substances and are disciplined, to become alcohol and drug counselors in order to avoid high-cost disciplinary actions required of them in order to keep their license.

- These two new license types represent an estimated 36,000 new licensees and registrants. The BBS is in the process of recovering from the hiring freezes, furloughs, and lack of resources of the past five years. Currently, the BBS is experiencing significant backlogs in its processing of LMFT, LCSW, and LPCC applications.

In addition, over the next two years, the BBS is legislatively mandated to implement several new processes that will require a significant amount of staff time and outreach to implement correctly. These include the following:

- Examination restructure
- New out-of-state requirements for LMFT and LPCC applicants
- New continuing education programs; and
- Changes to LMFT/LPCC supervision requirements to streamline the licensing process and reduce processing times.

In addition, a significant amount of staff resources are still being utilized to work out issues with the new Breeze database system.

A mandate to create a new licensing program, coupled with a year-and-a-half grandparenting period, would effectively halt all of the above operations.

- There are several instances in this bill which require the licensing entity to determine if an applicant's education or experience is "equivalent" to a third party's standard. There are numerous methods of certifying alcohol and drug counselors across the country. These requirements set an expectation that, if it receives an application with experience, education, test scores, or an internship that is not approved for certification by the IC&RC, then the board must be able to determine whether or not it is "equivalent."

This will require employment of and extensive reliance on subject matter experts to do an in-depth analysis of the programs providing the experience, education, tests, etc., for each grandparenting applicant, to determine equivalency.

- Staff is estimating a total cost of approximately \$8.7 million to start up the licensing program. This includes the following:
 - 36 additional positions (majority in enforcement to handle the increased number of convictions/disciplinary actions of this licensing population);
 - Additional furniture and office space for the new positions;
 - Additional fingerprinting costs;
 - Additional investigative costs (Attorney General and Office of Administrative Hearings);
 - Examination costs;
 - IT costs to program a new license type into the Breeze database.

Renee Lonner expressed that the Board of Behavioral Sciences is not a good fit for the proposed drug and alcohol licensing program. Ms. Lonner is curious to know why this program continues to be presented to the BBS, and why the Board's suggestions are not satisfactory. The Board could be helpful in locating a different venue for this program.

Dr. Leah Brew agrees that there needs to be regulation of this profession. However, she noted concerns regarding the scope of the license, the inability for the Board to take on a new licensing program at this time, dual-diagnosis, education, and grandparenting.

Sarita Kohli agreed with Dr. Brew's comments. She noted concerns regarding education, background information and convictions, and hardships that this will create for the Board.

Dr. Harry Douglas noted concerns regarding the undertaking to implement this licensing program.

Dianne Dobbs explained that as the bill is written, it does not contemplate placing this licensing program under the BBS. However, there is an indication that the bill may be amended to place the licensing program under the BBS. The Board is not meeting again until after the amendments are made. Therefore, the Board should vote on the bill as written and have an alternate vote, as well.

Patricia Lock-Dawson noted concerns regarding training and education.

Betty Connolly noted concerns regarding a single-diagnosis license. However, she supports the concept of regulating this profession.

Deborah Brown noted concerns with co-occurring disorders that cannot be treated by LAADCs.

Karen Pines noted concerns with possible criminal convictions of LAADC applicants and the impact it will have on the Enforcement Program.

Sherry Daily, CADAC, stated that the sponsor of the bill does not support placing this licensing program under BBS. A package of amendments will be coming out. Those amendments will not use staff, resources, or funding from the BBS to implement the licensing program. Ms. Daily stated that the applicants that would be grandparented are well trained and educated in the referral process and in their scope of practice. She agreed that people with co-occurring disorders need to be referred.

Ms. Daily estimated that there are 36,000 counselors who want to give back to the community, but they are not peer counselors yet and are not candidates for licensure. But these counselors would be registered so that the board knows who they are.

Ms. Daily provided some numbers of advanced-level certified counselors in California. Taking into consideration the 70% exam pass rate, she estimated that the number of counselors would be less than 3,300 statewide. Therefore, the \$8.7 million estimate to start up the program is inaccurate.

Ms. Daily stated that the next set of amendments will require grandparent candidates to sit for or provide proof of passing a master's level exam. Twenty-eight states require this master's level exam.

Ms. Daily explained that the profession has a steeper penalty for relapse versus regulations implemented by SB 1441, and the general requirement for employment is 2 years of sobriety. She feels that SB 1441 might assist in some fairness and rehabilitation efforts that are not currently provided for counselors.

Ms. Daily stated that issues regarding background checks have been an issue in every state. Typically the trend has been that some states do not order an automatic revocation or denial of an application; instead, they leave it under the purview of the licensing board. She would like to see this process implemented when denying or granting an application.

Ms. Daily stated that if it is necessary to push the implementation date out, the sponsor will agree to that.

Ms. Daily also agreed that BBS is not the place for this license program; however, DCA is the department that is equipped to regulate this profession. DCA is the first best fit for this profession in regards to consumer protection. The Department of Public Health, which is a smaller department, is the next best fit.

Cathy Atkins, CAMFT, expressed that this profession needs regulation. She noted concerns regarding this program falling onto BBS.

Dean Porter, CALPCC, noted concerns regarding grandparenting, independent practice versus supervised practice, and putting other professionals out of work if this license program is implemented.

Janlee Wong, NASW, expressed that mental health treatment and addiction treatment is merging. These services will eventually be integrated, which will impact the BBS.

Rebecca Gonzales, NASW, noted concerns regarding the grandparenting language.

After further discussion, the general consensus was that the profession should be regulated. However, there are several concerns with the bill as written.

Louie Brown, attorney from Law Offices of Kahn Soares & Conway, stated that the associations initially expressed that they opposed the earlier version of the bill because it was not under DCA. The BBS and associations are now expressing that they do not want the profession under DCA.

Ms. Daily added that CADAC did not oppose placing this profession under DCA; they opposed placing it under BBS.

Ms. Helms responded that the Board of Psychology has expressed an interest in placing this profession under their board.

Renee Lonner moved to support AB 570 if amended and to authorize staff to provide technical support to the sponsors. Deborah Brown seconded. The Board voted unanimously (10-0) to pass the motion.

Ms. Gonzales noted that the associations took positions of oppose unless amended.

Ms. Wong presented the second position to place the program under BBS and requested a motion and vote.

Dr. Leah Brew moved to oppose AB 570 if amended to place the program under the Board of Behavioral Sciences. Sarita Kohli seconded. The Board voted unanimously (10-0) to pass the motion.

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.

V. Adjournment

The Board adjourned at 1:29 p.m.