

Policy and Advocacy Committee Minutes September 18, 2014

Department of Consumer Affairs
2450 Del Paso Rd., #109
Sacramento, CA 95834

Members Present

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

Staff Present

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

Members Absent

None

Guest List

On file

I. Call to Order and Establishment of Quorum

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 9:17 a.m. Kim Madsen took roll, and a quorum was established.

II. Introductions

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

III. Approval of the August 6, 2014 Committee Meeting Minutes

Renee Lonner moved to approve the Policy and Advocacy Committee meeting minutes. Christina Wong seconded. The Committee voted (3 yea, 1 abstention) to pass the motion.

IV. Discussion and Recommendations for Possible Rulemaking Action Regarding Proposed 2015 Omnibus Bill Amending Business and Professions Code Sections 4980.43, 4984.01, 4996.2, 4996.28, 4999.45, 4999.46, and 4999.100

Rosanne Helms presented the suggested amendments to the Business and Professions Code (BPC):

- Amend BPC §4984.01, §4996.28, §4999.45, and §4999.100 – Prohibited Work Settings for a Subsequent Registration Number

Staff has expressed that some registrants with a subsequent registration number are confused about the section in the law that prohibits them from working in a private practice. Staff suggested clarifying language to these sections by stating the prohibition more directly.

- Amend BPC §4996.2 – Qualifications for a License

BPC §4996.2 lists the requirements for an applicant, including being at least 21 years old, having earned a master’s degree from an accredited school of social work, and having 2 years of supervised post-master’s degree experience. However, the section does not specifically state whether these requirements pertain to an applicant for licensure or to an applicant for registration.

Since the requirements are intended for applicants for licensure, staff recommends that the section be amended to indicate so.

- Amend BPC §4980.43 and §4999.46 – 90-Day Rule for Intern Applicants

BPC §4999.46(d) allows an applicant for a PCI Intern registration to credit post-degree hours of experience toward licensure experience requirements, as long as the applicant applies for the intern registration within 90 days of the granting of the qualifying degree.

A stakeholder has pointed out that the current language is confusing. Currently, the language allows the counting of the hours as long as the applicant applies for intern registration “within 90 days of the granting of the qualifying degree and is registered as an intern by the board.”

By definition, an applicant applying within 90 days of the degree being granted is not yet registered as an intern by the Board. Staff recommends clarifying this language so that it is similar to the language for MFT Interns in §4980.43(g)

Mr. Montgomery, California Association of Marriage and Family Therapists (CAMFT), requested alternate language to the term “subsequent” in the first proposed amendment, stating that the term could be misunderstood. Christy Berger referred to §4984.01(c), which puts the term in good context. Dianne Dobbs agreed.

Ms. Madsen suggested using the term “a subsequent intern registration number.”

Christina Wong 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. Renee Lonner seconded. The Committee voted unanimously (4-0) to pass the motion.

V. Discussion and Recommendations for Possible Action Regarding Legislative Amendments to Support Board’s Continuing Education Program

The Board conducted an extensive committee process to revise its regulations related to continuing education (CE). Those regulations were recently approved and will be effective on January 1, 2015.

The regulations removed the Board's authority to directly approve and license CE providers. Instead, the Board proposes recognizing "approval agencies" that have already established stringent requirements for CE providers.

The Board's licensing law contains several references to the Board "approving" CE providers. However, under the new CE regulations, the Board will no longer approve CE providers. Therefore, this language is obsolete.

Staff proposed the following technical amendments to update the Board's licensing law so it is consistent with the CE regulations:

- Amend BPC §28 - Training for Child and Elder and Dependent Adult Abuse Assessment

This section discusses a need for the BBS and the Psychology Board (BOP) to establish training in child and elder and dependent adult abuse assessment. The section states a course is acceptable if it is from a CE provider approved by the BBS or BOP.

Both BBS and BOP no longer approve CE providers, and therefore staff suggests the language be amended for consistency.

- Amend BPC §4980.399, §4980.54, §4989.34, §4992.09, §4996.22, §4999.55, and §4999.76: Miscellaneous References to Approving CE Providers

These sections make several references to the Board approving CE providers. Staff suggests changing the references as appropriate and stating that CE providers specified by the Board in regulation are acceptable. Staff also recommends changing the requirement of the Board to establish a procedure to approve CE providers, to instead require the Board to establish a procedure to identify acceptable CE providers.

Dr. Christine Wietlisbach recognized former Board Member, Dr. Harry Douglas, for his work on the CE program.

Renee Lonner moved to direct staff to make any discussed changes, and any non-substantive changes, and to bring to the Board for consideration as a legislative proposal. Dr. Christine Wietlisbach seconded. The Committee voted unanimously (4-0) to pass the motion.

VI. Discussion and Recommendations for Possible Action to Sponsor Legislation to Support the Board's Enforcement Process

Staff is recommending consideration of two legislative amendments related to the Board's enforcement process:

- Requirements to Petition for Reinstatement or Modification of Penalty

As the Board's licensing population increases, the Board's Enforcement Unit is receiving an increasing number of requests to petition for termination of probation or modify penalty from licensees and registrants who are not in compliance with the

terms of their probation. These requests utilize the valuable time and resources of staff, attorneys, and Board members, even though they will ultimately be rejected for noncompliance.

BPC §4990.30 sets the process by which a Board licensee or registrant may petition for reinstatement or modification of penalty if his or her license or registration has been revoked, suspended, or placed on probation.

Staff proposes to add BPC §4990.31, which outlines criteria under which the Board may deny a request to petition to terminate probation or modify penalty:

- Failure to comply with the terms/conditions of the disciplinary order;
- Receipt of additional credible complaints against the petitioner while on probation;
- A subsequent arrest or conviction while on probation; and/or
- The petitioner's probation is currently tolled.

Staff also recommends increasing waiting times to file a petition request, as follows:

- Two years to petition to terminate any probation period, regardless of its length.

Currently, a licensee/registrant must wait two years to petition to terminate any probation period of three years or more; and a licensee/registrant must wait one year to petition to terminate probation of less than three years.

- Two years to petition to modify a condition of probation.

Currently, a licensee/registrant must wait one year to petition to modify a condition of probation.

Discussion

Dr. Wietlisbach expressed that two years is a long period to wait, especially in terms of the expense for a licensee's/registrant's. She would prefer that the discretion remains with the Board.

Ms. Lonner agreed with Dr. Wietlisbach. She also added that there is no advantage in requiring to the licensee/registrant to wait two years to petition to terminate probation.

The Committee agreed that criteria need to be established for licensees/registrants petitioning to terminate or modify probation.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), agreed with the criteria; however, he does not agree with the waiting times to file a petition. Since only some of the petitions are granted, there is not a public protection need to require a two-year minimum waiting period. The two-year minimum waiting period will create an increased workload because probationers will remain on probation longer.

Mr. Montgomery, CAMFT, requested that the Board define "credible complaints." To clarify this term, Ms. Madsen and Ms. Dobbs agreed to add language indicating that the Board "is conducting an investigation" against a probationer.

Ms. Helms summarized that the Committee does not want to amend BPC §4990.30. She further summarized that the Committee proposes to add BPC §4990.31 as suggested by staff.

- License or Registration Status Change

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

- Medical Board Case Ruling

The California Medical Board 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, to add retired and inactive license statuses within that board's authority to investigate and take disciplinary action.

- Deficiencies in BPC §118

BPC §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 §118 that only allows this authority during the period of time during which the license can be renewed, restored, reissued, or reinstated.

The Board's Enforcement Unit is experiencing difficulties in taking disciplinary action on registrants with an expired or expiring registration number. Under the law, a registration number is valid for six years. After six years, the registration expires and cannot be renewed; therefore, the applicant must obtain a new registration number. Technically, the registrant is continuing their registration, but since they must do this by applying for a new registration number, §118 does not apply.

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

Staff is proposing to add §4990.33 so that the Board may take disciplinary action on its licensees and registrants regardless of the status of a license or registration.

Discussion

Mr. Caldwell expressed that this is a good opportunity to take a look at the 6-year rule. In Mr. Caldwell's opinion, there seem to be a lot of interns who are exhausting the 6 years of initial registration. The 6-year rule can be detrimental and could reduce a person's chance for becoming licensed. Mr. Caldwell would like a discussion in determining if 6 years is adequate or not, and recommends looking at a structure in which an intern can operate under one intern registration number.

Ms. Madsen recommends that the Supervision Committee lead the discussion on the 6-year rule.

Ms. Helms summarized that the Committee made no changes to staff's proposals.

Renee Lonner 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. Deborah Brown seconded. The Committee voted unanimously (4-0) to pass the motion.

VII. Discussion and Recommendations for Possible Action Regarding the Use of Telehealth to Provide Psychotherapy

As therapy via electronic means (telehealth) increases, Board staff continues to receive an increasing number of inquiries regarding the lawful practice of telehealth. Frequently, questions about telehealth focus on the issue of the practitioner's ability to continue counseling his or her patient when the patient moves or travels to another jurisdiction, or vice versa. Occasionally, other questions arise for which the law does not provide a clear answer.

Current law defines telehealth for all healing arts professions regulated by the Department of Consumer Affairs (DCA), including the Board's licensees. It sets patient consent and confidentiality standards, and it makes failure to comply with these standards unprofessional conduct.

Staff has conducted research to examine the laws, regulations, and policies of several other jurisdictions. Staff also researched codes of ethics or best practice guidelines from the professional associations. Massachusetts, Arkansas and Ohio have well-defined telehealth regulations or policies compared to other states. The professional associations outlined some points of interest. Ms. Helms presented the common themes amongst the states and professional associations.

Ms. Helms presented draft regulations. These regulations address specific issues related to the practice of therapy where the law is unclear, and addresses issues which are commonly addressed in other states or associations' guidelines.

Specific items that need further discussion are as follows:

1. How does the Board wish to define the location of the patient or client? Is it where the patient is physically located, or where he or she is a resident?
2. Is it appropriate for interns and associates to provide services via telehealth? Current law allows LMFT and LPCC applicants to count up to 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling

services via telehealth. The law does not specify if LCSW applicants may perform or count telehealth hours.

3. Is it appropriate for trainees to provide services via telehealth? Current law allows LMFT applicants to count some hours of experience earned as a trainee. A concern has been raised to Board staff that BPC §2290.5 is written only for licensed individuals (a definition which includes interns/associates, but not trainees, who are not yet under the jurisdiction of the Board.)
4. Should supervision via telehealth be permitted? Currently, the law allows supervision via telehealth if the intern or associate is working in an exempt setting. However, staff has been asked why supervision via telehealth is not permitted for interns and associates who are in rural settings where it is difficult to find a supervisor. In addition, questions about supervision during military or charitable service in another jurisdiction are not uncommon.

Mr. Caldwell explained that Arizona wrote into their laws that people licensed in other states can see clients located in Arizona for up to 90 days in the calendar year, as a way for the client to transition. Mr. Caldwell expressed that, as a clinician, there is a struggle for balance in respecting the boundaries of state lines and non-abandonment/continuity of care. Mr. Caldwell provided examples of clients in situations when they are temporarily out-of-state due to business or military. It is poor care to require these clients to find a therapist in each state they travel, as opposed to staying with one practitioner.

Mr. Caldwell stated that AAMFT is revising its code of ethics, and will address in greater depth the issues of telehealth and technology.

Mr. Caldwell provided answers to the questions outlined:

1. Jurisdiction takes place where the client is physically located. Using residency as jurisdiction would work better for continuity of care; however, other state licensing boards may have a problem with that.
2. It should be appropriate for interns and trainees to provide services via telehealth, especially when considering the likely continued growth of telehealth. AAMFT-CA wants interns and trainees to learn about providing services via telehealth while under supervision.
3. Yes, this could open up opportunities to provide services in underserved areas. Also, if a practitioner goes out-of-town for a week, the interns cannot count hours during that week. If the practitioner can supervise by phone or video conference during that week, the intern can count the hours. The supervisor can provide continuity of supervision.

Ms. Helms stated that she would look into the Arizona law.

Discussion took place; concerns mentioned during discussion were:

- Identity of the client
- Location of the client
- Confidentiality

- Support services available in other states

Ms. Madsen shared that telehealth is being discussed at the national level, and all the interested entities are struggling with this issue.

Dianne Dobbs explained that the interstate compact issue in the medical arena is a huge issue, and it is moving forward. There was federal legislation coming through that was attempting to address national licensure issues. All of the state boards had issues with the compact. Ms. Dobbs reported that the interstate compacts are close to being finalized.

Mr. Caldwell asked Ms. Dobbs if the interstate compacts were broad enough to capture mental health. Ms. Dobbs responded that she doesn't believe so, but she will look into it further.

Ms. Madsen stated that if California adopted language similar to Arizona's law, perhaps it will attract attention from other state boards to do the same.

In response #1, Ms. Dobbs stated that there must be a method in identifying where the client is located.

Mr. Caldwell referred to §1815.5(b) where it suggests that a licensee or registrant providing services via telehealth shall exercise the same standard of care. He explained that there are ways by which the standard of care when providing services by telehealth would be different, or even higher. To suggest that the licensee or registrant provide the same standard of care may be too low a standard as a non-distance provider.

In response to #3, Ms. Wong is hesitant to include trainees.

Mr. Caldwell expressed that trainees have a lot of supervision, and it would be ideal to allow the trainee to provide services via telehealth when the trainee has so many watchful supervisors. Ms. Madsen agreed with Mr. Caldwell.

Ms. Helms summarized the suggestions made during the discussion:

- Add language referencing registrants and trainees,
- Change §1815.5(b) to increase the standard of care;
- Add language that explains a method to verify the location of the client, and
- Draft language similar to Arizona's law.

Mr. Montgomery referred to subsection (f) regarding encryption standards. CAMFT feels that this is overbroad, and it might hold a practitioner to a higher standard than is required by state or federal law.

Staff will incorporate suggestions in draft language and present the draft at the next meeting.

VIII. Legislative Update

Ms. Helms reported that the following Board-sponsored bills were signed by the Governor and will go into effect on January 1, 2015:

- AB 2213 - LMFT and LPCC Out-of-State Applicant Requirements
- SB 1466 - Omnibus Legislation
- AB 1843 - Child Custody Evaluations: Confidentiality

The following bills sponsored by CAMFT were signed by the Governor:

- AB 1775 Child Abuse and Neglect Reporting Act: Sexual Abuse
- SB 578 Marriage and Family Therapists: Records Retention

IX. Regulation Update

Ms. Berger reported:

- The Continuing Education regulations were approved.
- The Disciplinary Guidelines and SB 1441 regulations had its 15-day public comment period, which ended on September 17th.
- The Examination Restructure regulations have been submitted to OAL and will be published in its California Regulatory Notice Register on November 14th. The public hearing for this proposal will be held on December 29th.

X. Suggestions for Future Agenda Items

The suggestion to discuss the 6-year rule was mentioned earlier in the meeting.

Ms. Lonner suggested a discussion regarding continuing education. She briefly explained a situation. Within the last 60 days, for example, before a license expires, the next renewed license is received by the licensee. Continuing education (CE) taken during that 60 day period, does not count toward the current renewal. Ms. Lonner would like to discuss allowing the CE taken during that period to count towards the following renewal.

Mr. Caldwell suggested a discussion regarding a national LMFT exam and an update on the last review of the American Marital and Family Therapy Regulatory Boards' (AMFTRB) examination.

XI. Public Comment for Items not on the Agenda

There were no public comments.

XII. Adjournment

The meeting was adjourned at 11:26 a.m.