

Policy and Advocacy Committee Minutes October 30, 2015

Department of Consumer Affairs
El Dorado Room
1625 N. Market Blvd., #N220
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
Dianne Dobbs, Legal Counsel

Members Absent

None

Public Attendees

Sign-in sheet on file

I. **Call to Order and Establishment of Quorum**

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 9:00 a.m. Christina Kitamura took roll, and a quorum was established.

II. **Introductions**

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

III. **Approval of the August 7, 2015 Committee Meeting Minutes**

Corrections were noted on the following pages:

- Page 2, line 14
- Page 2, line 45
- Page 3 line 19
- Page 4 line 8
- Page 4 line 13

Renee Lonner moved to approve the August 7, 2015 Committee meeting minutes as amended. Christina Wong seconded. The Committee voted to pass the motion.

Roll call vote:

*Deborah Brown - yes
Renee Lonner – yes*

Christine Wietlisbach - abstain

Christina Wong – yes

IV. Discussion and Recommendations for Possible Action Regarding Defining Out-of-State Education for LMFT and LPCC Applicants

Current statute permits the Board to accept education gained outside of California toward licensure if it is substantially equivalent to the Board's in-state education requirements for licensure.

For LMFT and LPCC applicants, the law respectively state that the Board shall accept education gained while residing outside of California if it is substantially equivalent. Out-of-state education requirements are triggered based on the residence of the applicant while obtaining his or her degree.

Problem: In-State Applicants Cannot Remediate Coursework

The Board screens all in-state schools to ensure that they meet education requirements, and remediation outside the degree program is not permitted for in-state applicants. However, if an applicant who resides in California attends an out-of-state school which has not designed its program to lead to California licensure, he or she is treated as an in-state applicant, and thus is not allowed to remediate missing coursework, because the education was gained while residing in California.

Problem: It can be Difficult to Determine Where a Student Resided While Obtaining a Degree

It can be difficult for the Board to obtain proof of where an applicant resided while he or she completed his or her degree program, especially if the degree program was completed several years prior. The fact that residing in California while completing an out-of-state degree program prohibits remediation of any deficiencies may provide an incentive for the applicant to list an out-of-state address. Further complicating matters, sometimes students move from one state (and school) to another while completing a degree program.

This issue affects the LMFT and LPCC license types because of the large quantity of California-specific coursework that is required for those license types. It does not affect LCSW applicants because their degree must be accredited by the Commission on Accreditation of the Council on Social Work Education. There are no California-specific coursework requirements other than California law and ethics, which may be remediated.

Staff amended the language in BPC §4980.74 and §4999.61 as follows:

"The board shall accept education gained while residing outside of California from an out-of-state school for purposes of satisfying licensure or registration requirements if the education is substantially equivalent.

This amendment triggers out-of-state education requirements based on the location of the school, rather than the location of the student while he or she gained the education. It will allow applicants who live in California, but who obtained an online degree from a school located outside of California, to remediate California-specific course content that may have not been in the degree program.

The Committee also asked staff to provide examples of coursework that may be remediated by an out-of-state student, but not an in-state student.

LMFT and LPCC education requirements have changed for California-based degree programs begun after August 1, 2012. Instead of requiring specific classes, the law now requires specified topic areas to be woven throughout the degree, in what is called an “integrated degree program.” Under this system, the Board works with each California-based school to ensure the degree includes the appropriate content. The school submits a program certification to verify the content.

Student who began their degree programs after August 1, 2012 are beginning to submit applications for registration. At this time, the Board has not seen any coursework deficiencies from these applicants. Therefore, having the Board work with California schools ahead-of-time appears to be effective. Staff recommends monitoring this system on an ongoing basis, and pursuing a law change in the future if necessary.

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), pointed out a concern: out-of-state based schools that have campuses in California and online programs. Does that qualify the school to be an in-state school?

Rosanne Helms responded that the program must be geared to California to be considered an in-state program. She also explained that the language is vague so that the Board can use discretion.

Dean Porter, California Association for Licensed Professional Clinical Counselors, (CALPCC), supports the proposed language.

V. Discussion and Recommendations for Possible Action Regarding Licensed Professional Clinical Counselor Degree Content

The Board is receiving LPCC applications from applicants who have degrees that may not be intended to lead to licensure as a clinical counselor. Typically, these degrees are from out-of-state. Examples of these degrees are:

- Behavior Analysis;
- Art Therapy;
- Dance Therapy;
- Human Relations
- Human Services;
- Rehabilitation Counseling; and
- Substance Use and Addictions.

The law requires the degree to be counseling or psychotherapy in content. However, it is possible for a degree to have some counseling or psychotherapy content but not be intended to prepare the student for licensure.

The law does require the degree to contain practicum and certain specified core content areas. Effective January 1, 2016, out-of-state applicants can remediate up to 6 out of the 13 core content areas. Practicum may also be remediated if licensed out-of-state, and the practicum requirement is waived if the applicant has been licensed in another state for two or more years.

At its August 2015 meeting, the Committee discussed the possibility of clarifying which degrees are accepted to practice professional clinical counseling. The Committee directed

staff to draft language defining acceptable degrees, using the Texas Administrative Code section as a model. It also directed staff to look into tightening the practicum requirement to ensure it requires clinical experience.

Staff's proposed language makes the following amendments:

1. Specify Acceptable Degrees: Staff drafted language specifying which degrees are or are not acceptable, for both in-state and out-of-state degrees. The language is modeled after the Texas Administrative Code, but some degree titles were modified based on what the Board's evaluators commonly see.
2. Tighten In-State Practicum Requirements to Ensure Clinical Experience: The in-state practicum requirement has been amended to specify that direct client contact is required. The language has also been amended to no longer allow any equivalencies to in-state supervised practicum/field study experience.
3. Amend Practicum Requirements for Out-of-State Applicants: The out-of-state practicum requirement has been amended to specify that the 280 hours of face-to-face experience must now be "supervised clinical experience counseling individuals, families, or groups" instead of experience in "face-to-face counseling". The amendment is consistent with current requirements for in-state applicants.

A written response was received from Ms. Porter and distributed to the audience. Mrs. Porter made recommendations regarding remediation of coursework. She also expressed concerns about two degrees on the BBS "unacceptable list": degrees in education and degrees in dance therapy.

Ms. Madsen explained that staff was seeing degrees, such as dance therapy, with very little to no core content. For this reason, staff must be clear as to what applications will and will not be reviewed. As for applicants who possess a dance therapy/counseling degree, their applications will be reviewed because the term "counseling" is in the title.

Out-of-state applicants that have a dance therapy degree may receive a professional counselor license in another state. Those applicants believe that they can get a license in California because they qualified for that license in another state.

Ms. Madsen stated that if adjustments are made to the language, there must be some core components in the degree program.

Ms. Porter proposed to require the first 7 of the 9 core content areas outlined in §4999.33, allow 2 of the 9 core content areas to be remediated, and allow the remaining 4 core content areas to be remediated.

Ms. Helms suggested to allow 6 of the 13 core content areas to be remediated except (E) and (G) of §4999.33, which is assessment and the diagnostic process.

Mr. Caldwell suggested not including MFT on the list of acceptable titles, if the Board moves forward with using degree titles. To say that an MFT degree is appropriate for LPCC licensure, suggests that there is no difference between the disciplines.

After some discussion, it was suggested to remove the list of degree titles and instead, specify the course content. The consensus was to allow in-state applicants to remediate up to 3 core content areas, except (E) and (G); and allow out-of-state to remediate up to 6 of the 13 core content areas, except (E) and (G).

Direct staff to make any discussed changes, as well as any non-substantive changes to the proposed language, and submit to the Board for consideration as a legislative proposal.

There were no issues regarding the proposed language on practicum.

Christina Wong moved to direct staff to do the following: (1) strike “specifying degree titles”; (2) accept the practicum changes; (3) allow in-state applicants to remediate up to 3 core content areas, except (E) and (G); (4) allow out-of-state to remediate up to 6 of the 13 core content areas, except (E) and (G); and submit to the Board for consideration as a legislative proposal. Renee Lonner seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown - yes

Renee Lonner – yes

Christine Wietlisbach - yes

Christina Wong – yes

VI. Discussion and Recommendations for Possible Action Regarding Possession of a Controlled Substance as a Basis for Discipline

The Board has no statute or regulation stating that it is unprofessional conduct to unlawfully possess a controlled substance. Due to this, the Board’s Enforcement Unit has difficulty pursuing disciplinary action when a licensee or registrant is arrested for possession of drugs and/or drug paraphernalia.

For example, the Board sometimes gets cases where a licensee is arrested for drug possession, however there is no conviction. There is also no evidence that the licensee was actually taking the drugs. In order to pursue disciplinary action, the Board would have to argue that the possession is general unprofessional conduct. To do this, a subject matter expert needs to review police reports and sign a declaration stating that, in their expert opinion, unprofessional conduct occurred.

The staff at the Attorney General’s Office notes that many healing arts boards have a provision in law that include possession of a controlled substance as a basis for disciplinary action, and suggests the Board consider similar language.

Staff proposed language for each license type that would make it unprofessional conduct for a Board licensee or registrant to possess a non-prescribed controlled substance.

Mr. Caldwell suggested removing “or” so that the language reads as follows:

“Obtaining or possessing in violation of law, ~~or~~ except as directed by a licensed physician....”

AAMFT-CA has concerns with the bill. Mr. Caldwell expressed that the current mechanism of a subject matter expert review should be sufficient.

Concerns were voiced regarding those who are arrested for possession of drugs that may not belong to them. For example, an arrest of a social worker helping terminal patients who may have possession of prescribed marijuana.

Ms. Madsen suggested tabling this item, and bringing back data that supports moving forward with this proposal.

Ms. Brown added to remove marijuana for the time being because it will be on the California ballot soon.

VII. Discussion and Recommendations for Possible Action to Change Marriage and Family Therapist Intern Title to Associate Marriage and Family Therapist

At the August 2015 Board meeting, Mr. Caldwell of AAMFT-CA presented a proposal to change the “Marriage and Family Therapist Intern” title to “Associate Marriage and Family Therapist.” He cited several reasons the title “associate” may be more appropriate than “intern” for registrants. The Board directed staff to bring the issue to the Committee for further discussion.

Staff researched titles used by other states for both LMFT and LPCC applicants, and the statutes for a sample of high-population states to determine the title given to those gaining experience hours, if any.

Staff provided suggested language if the Board decides to move forward with the title change for LMFT and LPCC registrants.

The language states that in any statute or regulation, the “intern” and “associate” titles are equivalent. In subsequent years, the Board would need to change references to “interns” in the law when it runs other bills or regulatory proposals.

The language proposed contains a one-year delayed implementation, to January 1, 2018. This would allow the Board time to update §1811 of the regulations, which lists specific titles that registrants may use in advertisements.

Mr. Caldwell proposed the title Associate Marriage and Family Therapist (AMFT).

Ms. Porter suggested Professional Clinical Counselor Associate (PCCA).

CAMFT supports this proposal.

Renee Lonner moved to direct staff to bring to the Board for consideration as a legislative proposal. Dr. Christine Wietlisbach seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown - yes

Renee Lonner – yes

Christine Wietlisbach - yes

Christina Wong – yes

VIII. Discussion and Recommendations for Possible Action for Proposed Omnibus Bill

Several sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences require the following amendments:

1. Delete BPC §§ 4980.40, 4980.50, 4980.80, 4980.90, 4984.01, 4984.7, 4984.72, 4992.1, 4996.1, 4996.3, 4996.4, 4999.45, 4999.46, 4999.50, 4999.52, 4999.57, 4999.58, 4999.59, 4999.100 - Expired Examination Restructure Provisions and Out-of-State Applicant Provisions

The Board's examination restructure, affecting the exam process for LMFT, LCSW, and LPCC applicants, takes effect on January 1, 2016. The Board's new out-of-state application requirements for LMFT and LPCC applicants also take effect on January 1, 2016. Several BPC sections defining the old processes and requirements become inoperative.

Staff recommended deleting the above-referenced BPC sections.

2. Amend BPC §4980.43(b), §4996.23, and §4999.47(a) – Experience Gained as an Independent Contractor

The law allows LMFT, LCSW, and LPCC applicants to gain experience hours as a W-2 employee or a volunteer, but not as an independent contractor. However, the Board receives a significant number of applications for exam eligibility from individuals who are contracting and receiving a 1099 tax form. Some applicants believe that because the statute says "employed", they can be 1099 employees, which is incorrect.

Staff recommends amending the law to clarify that interns, trainees, and associates may not be employed as independent contractors, and that they may not gain any experience hours for work performed as an independent contractor and/or reported on an IRS Form 1099.

The Committee requested staff to research whether the official title of the IRS form, 1099-MISC, should be used in the language.

3. Amend BPC §4980.43 and §4999.46 – Amount of Supervised Experience Required for Applicants in the Exam Cycle

LMFT and LPCC licensing law requires all applicants to be under supervision at all times. It sets specific requirements for how much supervision and intern and trainee must have. However, the law is unclear about how much supervision an LMFT and LPCC applicant in the exam cycle must obtain. Unlike interns, such an applicant is no longer gaining experience hours to count toward licensure and is waiting to take/pass the examinations.

LCSW licensing law has a provision that specifies that associates and applicants for examination must receive at least one hour of supervision per week for each setting he or she is working in.

Staff recommended amending BPC §4980.43 (LMFT law) and §4999.46 (LPCC law) to state that interns and applicants for examination must receive at least one hour of direct supervisor contact per week for each setting he or she is working in.

As part of this change, BPC §4980.43(c)(2) and §4999.46(g)(2) have also been amended to clarify that these subsections only apply to interns and intern applicants.

Ms. Epstein stated that the language is too broad, and suggested amending it to clarify that the intern must receive one hour of client contact per week in each setting.

Paula Gershon, BBS Licensing Manager, stated that many interns become eligible to take the exam, but do not take the exam. After one year of not testing, their files are closed. They reapply later, and the hours are re-evaluated. If the hours are older than 6 years, the hours do not count; however, they often submit new hours. If the language proposed by Ms. Epstein is approved, those hours will not count.

After some discussion, the Committee determined that this is a larger issue and should be discussed by the Supervision Committee, and therefore, should be removed from the Omnibus Bill.

4. Amend BPC §4992.05 – Associate Clinical Social Worker Reference

The statute refers to registrants gaining hours to be an LCSW as “associate clinical social workers.” Subsection 4992.05(b) references “associate social workers.”

Staff recommends replacing the term “associate social worker” in §4992.05(b) with the term “associate clinical social worker.”

5. Amend BPC §4996.18 – LCSW Applicants: School Accreditation and Exam Eligibility

The purpose of this statute is to keep an LCSW applicant from becoming licensed until it is confirmed that his or her school obtains the accreditation required for licensure. However, the wording of this requirement could be problematic when the timing of the exams changes with the exam restructure.

Under the exam restructure, associates must take a law and ethics exam within the first year of registration in order to renew that registration. Due to the new requirement, the first exam is taken much sooner after graduation than before the exam restructure. Before the restructure, both exams were taken after gaining hours.

Since accrediting a school sometimes takes several years, the language could cause a first-year associate to be ineligible to take the law and ethics exam, and consequently, be unable to renew his or her associate registration.

Staff proposed to allow registrants to take the law and ethics exam so that they may continue renewing their registrations, but prohibit registrants from taking the clinical exam until the school has achieved accreditation.

6. Amend BPC §4999.40, §4999.60, §4999.61 – Program Certification Requirement for LPCC Applicants

LMFT law requires that an applicant for registration or licensure must submit a certification from his or her educational institution that the institution's required curriculum for graduation meets either the education requirements specified in BPC §4980.36 (for graduate degrees begun after August 1, 2012) or BPC §4980.37 and §4980.41 (for graduate degrees begun before August 1, 2012).

There is no requirement in law that LPCC applicants submit this type of certification, although it is required in the application. Such a certification is a crucial piece of information as it assists the Board's evaluators in determining whether an individual's degree meets all education requirements. Even though the information is currently being obtained through the application, staff believes it important to have such a requirement in LPCC law in case provision of the information is ever challenged.

Staff recommended adding a subsection in BPC §4999.40 requiring LPCC applicants to provide a program certification to the Board.

7. Delete BPC §4999.54, Amend BPC §4999.52, §4999.120 – Expired LPCC Grandparenting Provision

This section established a grandparenting period at the beginning of the LPCC licensing program. The Board accepted applications for licensure via grandparenting between January 1, 2011 and December 31, 2011.

Until this time, it was necessary to keep the grandparenting provision in law because there were applicants who were still in the one-year period to remediate education and experience deficiencies, and there were still applicants in the exam cycle.

As of summer 2015, all remediation periods have expired, and the final grandparenting exam has been administered.

Staff recommended deleting BPC §4999.54, as it is no longer necessary, and amending BPC §4999.52 and §4999.120 to remove references to BPC §4999.54.

Christina Wong moved to direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal. Renee Lonner seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown - yes

Renee Lonner – yes

Christine Wietlisbach - yes

Christina Wong – yes

IX. Discussion and Recommendations for Possible Action Regarding Acceptable Accreditation Entities

Current LMFT licensing law require the qualifying degree be obtained from a school, college or university that is approved by the state Bureau for Private Postsecondary Education, or accredited by either the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) or by a regional accrediting agency that is recognized by the United States Department of Education (USDE).

LPCC licensing law also requires the qualifying degree be obtained from an accredited or approved school. It defines “accredited” as a school, college, or university that is accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

Both LMFT and LPCC law gives the Board the discretion to make the final determination as to whether a degree meets all requirements, regardless of accreditation or approval.

Board staff believes that it may be helpful to revise the definition of an “accredited” school in statute because the USDE does not recognize a specific category of regional-only accrediting agencies.

The USDE recognizes two basic categories of accreditation:

1. Regional and National Institutional Accrediting Agencies; and
2. Specialized Accrediting Agencies.

Staff recommended that the Board consider accepting a degree from a program accredited by a “regional or national institutional accrediting agency” that is recognized by the USDE, rather than simply referring to a USDE-recognized regional accrediting entity. This amendment would make Board’s statute consistent with the categories that USDE recognizes.

The amendment would need to be made in BPC codes pertaining to the LMFT degree program requirements, the LMFT education requirements for out-of-state applicants, and the LPCC definition of an accredited school.

Staff also recommended deleting BPC §4980.40.5. This section was put in place in 2009 when the State of California’s Bureau for Private Postsecondary Education (BPPE) had been sunset. The BPPE is no longer sunsetted; therefore, this section is no longer used.

Deborah Brown moved to direct staff to make any discussed changes, as well as any non-substantive changes to the proposed language, and submit to the Board for consideration as a legislative proposal. Renee Lonner seconded. The Committee voted to pass the motion.

Roll call vote:

- Deborah Brown - yes*
- Renee Lonner – yes*
- Christine Wietlisbach - yes*
- Christina Wong – yes*

X. Status of Board-Sponsored Legislation and Other Legislation Affecting the Board

Board-Sponsored Legislation:

- SB 531, Board of Behavioral Sciences Enforcement Process - signed by the Governor.
- SB 620, Board of Behavioral Sciences: Licensure Requirements – signed by the Governor.
- SB 800 Omnibus Bill – signed by the Governor.

Board-Supported Legislation:

- AB 250: Telehealth: Marriage and Family Therapist Interns and Trainees – signed by the Governor.
- AB 858/690: Medi-Cal: Federally Qualified Health Centers: Rural Health Clinics - *The provisions of AB 690 were amended into AB 858 in May 2015. However, the Governor vetoed AB 858. AB 690 is a two-year bill, and therefore, may reappear during next legislative session.*
- AB 1140: California Victim Compensation and Government Claims Board – signed by the Governor.

Monitored Legislation:

- AB 85: Open Meetings – the Governor vetoed this bill.
- AB 1279: Music Therapy - the Governor vetoed this bill.

XI. Status of Board Rulemaking Proposals

- Disciplinary Guidelines and SB 1441: Uniform Standards for Substance Abuse – took effect October 1, 2015.
- Implementation of SB 704 (Examination Restructure) – in the final stages of review and expected to take place January 1, 2016.
- Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families - in the final stages of review and expected to take place January 1, 2016.
- Standards of Practice for Telehealth – The public comment period has ended, and the proposal is currently under review by DCA.

XII. Suggestions for Future Agenda Items

Discuss social workers' concerns regarding ACSW title and acronym.

XIII. Public Comment for Items not on the Agenda

There were no public comments for items not on the agenda.

XIV. Adjournment

The meeting was adjourned at 2:38 p.m.