

BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS

Hearing Date: April 20, 2001

Section Affected: Section 1887.3

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The Board adopted the originally proposed language on January 12, 2001. The Board held a regulation hearing on April 20, 2001, and, based on comments received orally at the hearing and in writing within the 45-day comment period (February 23, 2001 through April 9, 2001), chose to modify the language to allow licensees to accumulate six one hour continuing education courses in law and ethics as opposed to the originally proposed language that would have required one six hour course to satisfy this requirement. The Board adopted the modified text on April 20, 2001. The Notice of Availability of Modified Text and the Modified Text were made available to the public from April 25, 2001 through May 10, 2001. The Board received one written comment during the 15-day comment period suggesting that a term found in existing regulation be used to identify the timeframe in which this training is necessary. This nonsubstantive change from “cycle” to “period” has been made to ensure consistency of reference to timeframes.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Board has determined that this action will not have a significant adverse economic impact on small businesses.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses

The Board carefully considered all comments on the proposed regulations. The Board's responses are as follows:

Organization or Individual: Steven R. Sproger, LCSW

Comment: Mr. Sproger stated in his letter that he does not believe that a class is not likely to make an unethical person ethical. He also stated that he thought a class every two years was excessive. He proposes making one class a requirement and requiring proof of completion to be submitted with a licensee's renewal. Lastly, he states that ignorance of the law is never an excuse for not following the law, therefore, if the intent of these regulations is to show evidence that a licensee knew that law, they are unnecessary.

Response: The Board appreciates Mr. Sproger's comments, however, we do not agree with the comments and will address each separately.

1. Ethical course: The Board has determined that a high portion of its disciplinary cases involve ethical violations. Further, the Board disagrees that ethical behavior cannot be taught. The laws and regulations that govern the practice of marriage and family therapists and licensed clinical social workers include violations that are ethical in nature. For example, the duty of a therapist to keep confidential information he or she receives during therapy from the patient is both in the law and the ethical standards for each license. Also, ethics has evolved for both professions over the years. What may have been considered ethical behavior years ago could today be considered unethical.
2. Excessive requirement: The Board engaged in lengthy discussions during its Board meetings and regulation hearing with members of the public and representatives from various professional associations regarding the issue of the length and frequency of the course. The Board concluded that six hours every two years was not excessive.
3. Ignorance of the law: The Board does not have to prove in a disciplinary case that a licensee was aware of the laws and regulations governing the practice of marriage family therapy or licensed clinical social work. The purpose behind this regulation is to prevent licensees from committing unethical acts. As a consumer protection agency, the Board wants to protect consumers by preventing unethical behavior from ever occurring.

Organization or Individual: L. Ross Zatin, LEP, on behalf of the California Association of Licensed Educational Psychologists.

Comment: Mr. Zatin asked if licensed educational psychologists would be affected by this regulation.

Response: The Board responded to Mr. Zatin that this regulation only affects marriage family therapists and licensed clinical social workers. It does not affect licensed educational psychologists.

Organization or Individual: Carl Totton, Psy.D.

Comment: Dr. Totton expressed, "The proposal is probably a good one given the number and seriousness of the ethical code violations often occurred by MFT's and LCSW's. I would be inclined to support the 6 hour requirement either as written, or possible, at least every other renewal cycle. I would nevertheless be inclined to support this bill as it helps to increase professionalism and protect the public. And, the 6 hours is part of the 36 hours already required and simply relates to specific course content."

Response: The Board agrees with the commenter with the exception that every other renewal cycle would be adequate. It was determined by the Board that six hours of coursework for each two-year renewal cycle was reasonable in light of the frequency in which laws relating to the practices change and the changing developments in ethics.

Organization or Individual: Richard S. Leslie

Comments: Mr. Leslie's comments will be restated below with the Board's response immediately following each comment.

I. Specific Language Issues:

- (a) "As the section is now written ("shall complete"), it appears as though the licensee who renews in January, 2004, for example, shall thereafter obtain the required hours. The wording of the section should make clear, if this is your intent, that the licensee shall have completed the hours as a precondition to renewal."

Response: The Board agrees with the commenter on this issue and has changed the regulation language to clarify that it is a precondition of renewal.

- (b) "The section should make clear that licensees can count hours of continuing education in the area of law and ethics from a specific date forward in order to satisfy the requirements that must be met by those renewing on and after January 1, 2004."

Response: The Board disagrees with the commenter. Licensees are very aware of the need to gather their continuing education in the two years preceding renewal, and the date indicated in the proposal will alert licensees that they will need to include six hours in law and ethics in their 36 hours of continuing education to renew their license after January 1, 2004.

- (c) "The section is unduly restrictive. It seems to require one six hour course. What if a provider or a licensee were involved in two three hour workshops?"

- this seems to be not allowed by the regulation – an obviously silly result. The regulation should be worded to require “six hours of coursework in the subject of California law and professional ethics.”

Response: The Board agrees with the commenter on this issue and has modified the regulation to allow for six hours of coursework in law and ethics as opposed to one six hour course.

- (d) “When making reference to the subject of law and ethics, the wording used in Section 4980.41 of the Business and Professions Code, where it requires such coursework as a condition of licensure, should be used – that is, “California law and professional ethics.”

Response: The Board disagrees with the commenter on this issue because the California law and professional ethics course is a requirement for licensure, not a continuing education requirement. The statute is “wordy” and the Board does not want its regulation to be “wordy” as well.

- (e) “Since the law and professional ethics are two different things, must the six hour requirement include both subjects? If yes, in what proportion? If no, then a six hour workshop could be solely on legal issues or solely on ethical standards and it would meet the spirit and intent of the regulation. This seems appropriate since a licensee may want and need, for example, to attend an intensive workshop on the child abuse reporting law. This may need to be clarified in regulation.”

Response: The Board disagrees with the commenter on this issue. The Board did not want to dictate the proportions of law and ethics for the six hour requirement because these subjects overlap. Further, the Board wanted the CE providers and licensees to have some discretion as to what portion should be focused on law or ethics based on their professional needs.

II. Larger Policy Issues:

- (a) “The specific purpose stated in the Initial Statement of Reasons is legally insufficient. Actually, no purpose is stated. All that is stated is what the regulation essentially is to provide. The content of the regulation is not the same as the purpose for the regulation. For this reason alone, the regulation cannot be properly adopted.”

Response: The Board disagrees with the commenter on this issue. The specific purpose was clearly stated in the Initial Statement of Reasons. It reads: “The specific purpose of this proposal is to require marriage and family therapists and licensed clinical social workers to complete a six-hour course in law and ethics every two-year renewal cycle and specify that this training shall be credited toward the thirty-six hours of coursework required

each renewal cycle.”

- (b) “The Board’s factual basis for the regulation, as stated in the Initial Statement of Reasons, is misguided and based upon incorrect assumptions. This proposed regulation imposes an onerous mandate on approximately 23,000 MFTs based upon approximately twenty-five final disciplinary actions per year, most of which involve intentional misconduct and are the very kind of violations that are typically not helped by continuing education.”

Response: The Board disagrees with the commenter on this issue. The Board’s enforcement statistics reflect a high percentage of violations by practitioners involving ethical violations. The Board believes that through education some of these violations may be avoided. The Board will monitor its statistics once the regulations are in place to track the effect on licensees’ behavior. It needs to be pointed out that the regulations include law as well as ethics. The laws governing the practice of MFT’s and LCSW’s change every year and practitioners need to keep up with these changes.

- (c) “In the Initial Statement of Reasons, you specify the following categories of violations – fraud, sexual misconduct, competence/negligence and unlicensed activity – suggesting that if licensees are required to get continuing education in the area of law and ethics, this will help to reduce the number of these kind of disciplinary violations (see the Board’s statements in the Information Digest portion of the Notice). Continuing education in law and ethics does not prevent fraudulent conduct. Nor does it correct or prevent sexual misconduct or other intentional wrongs.”

Response: The Board disagrees with the commenter on this issue. As stated in the previous response, the Board believes that through education some of the violations that lead to formal discipline will be avoided.

- (d) “With respect to competence, you mandate no specific coursework on treating suicidal and dangerous persons, for instance. A mandate in law and ethics does not help one’s competence. A mandate in law and ethics does not help prevent negligence. (The board actually does not have the authority to take action for negligence, but rather, gross negligence). Finally, unlicensed activity cases typically have nothing to do with continuing education.”

Response: The Board disagrees with the commenter on this issue. Again, as stated in previous responses, the Board does believe that mandatory education in law and ethics will prevent gross negligence and incompetence by its licensees.

- (e) “The other kinds of violations cited in the Initial Statement of Reasons (see Underlying Data) include terms that are so vague and generic as to bear no discernable relationship to mandatory continuing education (“personal conduct, unprofessional conduct, health and safety, and other”). There is no evidence that indicates that mandatory continuing education in law and ethics will have any affect upon the number or kind of cases the board will see in the future, nor has there every been such a showing for continuing education in general.”

Response: The Board disagrees with the commenter on this issue. The Board does not have current evidence that requiring coursework in law and ethics will reduce certain types of violations, however, the Board does have evidence that a significant portion of violations committed by its licensees relate to these areas. The Board is mandated to protect the public and one way of accomplishing that is to require its licensees to take courses for the fundamental purpose of avoiding harming California consumers. As mentioned above, the Board will monitor its enforcement cases to see if these regulations are having an effect.

- (f) “Thus, the reason for the proposed regulation is based upon a faulty premise. Of course enforcement statistics reflect, as is stated in the Initial Statement of Reasons, that the majority of violations relate to legal and ethical offenses! What else would they relate to? So, when you eliminate the many cases that involve fraud, gross negligence or incompetence, and sexual misconduct (all of which are largely unaffected by MCE in law and ethics), how many enforcement actions are you referring to? Virtually none. The factual basis cited by the Board does not support the necessity for this regulation and it does not hold up under impartial and close scrutiny.”

Response: The Board disagrees with the commenter’s assertion that the proposed regulations are based on a faulty premise. The commenter is entitled to his opinion, however, as explained above, the Board is of a different opinion.

- (g) “There is another problem with the regulation and the factual basis specified. The Board states that laws are amended and adopted each year and the ethical standards are as well. The legal and ethical principles that govern the MFT profession do not change frequently as is suggested. If the courses were to only cover changes in the law and in ethical standards for the prior two year period of time, the six hour requirement is excessive. Additionally, the regulation contains no requirement that recent developments in law and/or ethics be taught.”

Response: The Board disagrees with the commenter on this issue. The amount of hours required was discussed at length at both Board meetings and the regulatory hearing. It was determined by the Board that six hours of

coursework for each two-year renewal cycle was reasonable in light of the frequency in which laws relating to the practices change and the changing developments in ethics. Furthermore, the Board wanted this coursework to include new developments as well as serve as a refresher course.

- (h) “The Board’s function is to protect the public. The best way to do that is to allow the practitioner to choose the coursework that he/she needs. Mandatory continuing education works best when the licensee is treated like an ethical and responsible professional. MFTs were getting far more continuing education hours when there was no mandate. Many therapists are now interested in getting no more than the required thirty-six hours because the state will not count the excess hours. Not too long before MCE was enacted, licensees were obtaining over 50 hours per year of continuing education. Now they are averaging approximately 18 hours per year. Take heed – the mandates are having the opposite effect desired.”

Response: The Board disagrees with the commenter on this issue. The Board is mandated to protect the public and allowing self-regulation of the profession in this area has shown to not be adequate to protect consumers.

- (i) “A licensee who acts as a supervisor must get six hours of continuing education in supervision in each renewal cycle. If the Board moves ahead with this regulation, that licensees will be mandated to get another six hours in law and ethics. Thus, 33% of the hours will be dictated by the Board. What’s next? Why not pass a regulation that requires those treating persons with eating disorders to six hours of CE, in each renewal cycle, related to the diagnosis and treatment of eating disorders. And, what about treating suicidal or otherwise dangerous persons – why not mandate that?”

Response: The Board disagrees with the commenter on this issue. Mandatory continuing education is just one component of professional development that a licensee participates in. If a licensee feels he or she needs more education in a specific area of practice, they should by all means avail themselves to that education regardless of whether they will receive continuing education credits.

- (j) “This proposed regulation is good for the provider, but it is not, in the long run, good for the licensee or the public. The Board has proposed no provision to study the effect that this onerous mandate will have on disciplinary actions in the future. Quite frankly, if the Board had somewhat fewer final disciplinary actions than it does now, many policymakers might conclude that the Board was not doing an adequate job of protecting the public. A study would reveal that the number and kind of cases seen by the board would not change as a result of this mandate”.

Response: The Board disagrees with the commenter on this issue. As stated above, the Board will monitor its enforcement statistics to determine if this regulation is reducing the number of violations relating to law and ethics.

- (k) “Continuing education works best when the licensee gets to decide what coursework he/she needs. The State has mandated 36 hours every two years – give the licensee the freedom to choose the coursework that he/she needs. Someone else will come along with another “good idea” as to what should be mandated. When will it end? It is important for the Board to understand that licensees are self-interested – that is, they are interested in protecting themselves, their assets, and their licenses. They don’t need the Board to tell them that a course in law and ethics would be useful in helping them to protect themselves from complaints and lawsuits. In any event, the vast majority of violations, especially the more serious ones, are committed by those who act intentionally, fraudulently, or with gross negligence. This proposed regulation will have virtually no effect on those kinds of violations”.

Response: The Board disagrees with the commenter on this issue and has already thoroughly explained why in its answer to (g) above.

- (l) “Are we to think that after all of these years the Board finally discovered what needs to be mandated in order to lessen the number of violations? I urge you to honestly and openly examine your rationale for the proposed regulation. If you do, I trust that you will see that the relationship between the proposed regulation and the number and kinds of violations you will encounter in the future is nonexistent. Simply because coursework in law and ethics is a good idea does not justify a mandate of six hours every two years”.

Response: The Board disagrees with the commenter and has thoroughly explained why in previous responses.

Organization or Individual: Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists.

Comment: Ms. Riemersma suggested that the Board add language to the proposal to allow licensees to count a law and ethics course taken up to two years prior to the implementation of the regulations.

Response: The Board disagrees with the commenter. As stated above in a response to Mr. Leslie’s comment, the Board would like this course to include the most current changes in law and ethical standards, and allowing someone to apply a course taken prior to the effective date of the regulation would not serve this purpose.

Organization or Individual: Richard S. Leslie

Comment: Mr. Leslie suggested that the term “renewal cycle” in the proposal be changes to “renewal period” to maintain consistency of this timeframe term throughout regulation.

Response: The Board agrees with the comment and has made the suggested change.