

Policy and Advocacy Committee Minutes August 7, 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
Christina Wong, LCSW Member

Staff Present

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

Members Absent

Dr. Christine Wietlisbach, Public Member

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 9:03 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 January 30, 2015 Committee Meeting Minutes

Renee Lonner moved to approve the January 30, 2015 Committee meeting minutes. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

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

IV. Approval of the April 23, 2015 Committee Meeting Minutes

Correction on page 15, line 18: Omit Deborah Brown, Public Member.

Renee Lonner moved to approve the April 23, 2015 Committee meeting minutes as amended. Christina Wong seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown - abstain

Renee Lonner - yes

Christina Wong - yes

V. Discussion and Recommendations for Possible Action Regarding Out-of-State Education

Current law states that in regards to LMFT and LPCC applicants, the Board shall accept education gained while residing outside of California if it is substantially equivalent to the Board's in-state education requirements for licensure. The law also defines what coursework makes the education substantially equivalent, and whether post-degree remediation is acceptable. Therefore, 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 because 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 that 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.

This distinction can be confusing to applicants, who may not be aware that a degree program taken from an online school while they reside in California can make them ineligible for licensure because they are a California resident. The Board has placed a statement on its website to increase awareness of this issue.

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. For LCSW, there are no California-specific coursework requirements other than California law and ethics, which may be remediated.

Dianne Dobbs stated that the current language of the statute, "education gained while residing outside of California", would have to be changed.

Rosanne Helms suggested changing the language to require the physical address of the school.

Kim Higginbotham replied that Ms. Helm's suggestion would not address the issue. For example, the University of Phoenix is based out-of-state, but it has a California-approved program. She suggested obtaining a program certification from each school to determine that the school is an in-state program.

The school must complete the program certification form to confirm the applicant's coursework. Christy Berger suggested adding a question on the form: Which campus was this person's degree based?

Ms. Dobbs suggested changing the language to "education gained from an out-of-state-school."

Steve Tierney pointed out that Ms. Dobbs' suggested language would allow a California resident who took an out-of-state program to remediate, but would not allow a California resident who took an in-state program to remediate. He opined that it would be fair to consider why the Board would allow those who gained out-of-state education to remediate when the Board would not allow those who gained in-state education to remediate.

Ms. Helms responded that per SB 33, the LPCC degree program was to be integrated and there would not be a need for remediation. Ms. Higginbotham added that the new programs do not need to be remediated.

Ms. Helms will write a draft and present the draft language in October.

No action was taken.

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

In order to qualify for an LPCC license, the law requires that the applicant possess a master's degree or doctoral degree that is counseling or psychotherapy in content and contains the supervised practicum and core content areas required by law.

Problem: 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 as follows:

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

The law only 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 most degree requirements, including 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.

LPCC Scope of Practice: Although LPCC licensing law does not provide specific degree titles, it does provide a clearly defined scope of practice.

LMFT Licensing Law: LMFT licensing law is more specific about the degree titles required for licensure. It lists specified Master's or Doctoral degrees as acceptable. The law gives the Board authority to make the final decision about whether or not a degree is acceptable. In addition, out-of-state degrees are not required to have one of the specified titles.

Counselor Licensure in Other States: Many other states also contain vague language in their licensing law about the degree title, typically requiring the degree to be in mental health counseling or a related field. However, in some states, the statutes or regulations are more specific about the type of degree allowed.

The Texas Administrative Code requires a Master's or Doctoral degree in counseling or a counseling-related field from an accredited school. The code then specifically defines a "counseling-related field."

CACREP Accreditation: The Council for Accreditation of Counseling & Related Educational Programs (CACREP) accredits counseling programs covering specified topic areas.

Ms. Lonner expressed that she prefers the language provided by Texas.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that the intent was to use the content of the degree, not the title of the degree, which would determine a qualifying degree for LPCC licensure.

Ms. Madsen explained that these students obtaining degrees do not have the core curriculum in place, including clinical practicum. However, the law allows them to remediate. This is why staff likes the Texas definition - because it defines the clinical component. Ms. Madsen stated that language needs to be developed to clarify that the practicum must be clinical.

Ms. Madsen offered to direct staff to develop language and bring it back to the Committee in October.

No action taken.

VII. Discussion and Recommendations for Possible Action Regarding Board Policies

a. Record Retention Schedule for Enforcement Related Files

The State Records Management Act, Government Code Sections 14740-14774, requires the Department of General Services (DGS) to establish and administer a

record retention program. DGS assigned this task to the DGS Procurement Division's California Records and Information Management (CalRIM) Program.

CalRIM established the overall record management policy and published a handbook to provide guidance to state agencies in establishing their record retention program. Each agency must manage its own records program and is required to review its retention schedule every five years.

A review of the May 2000 Consumer Committee meeting minutes revealed that the Board had an existing retention schedule; however, the schedule did not include a retention period for citation and fines. This committee determined that citation and fines would be kept for a period of one year in the office and ten years at the State Records Center (SRC).

In January 2001, Board Policy #E-00-1 Record Retention Schedule for Enforcement Related Files was adopted. This policy specifies the number of years the Board will retain enforcement-related material in the Board office, at SRC, and provides for confidential destruction of these materials following the retention period. The retention period for citation and fines is a total of 5 years and not the 11 years agreed to by the Committee members.

However, in January 2007, B&P Section 4990.9 was revised to state in part that the Board may publish on the Internet the final determination of a citation and fine of \$1,500 dollars or less for a period of time in excess of 5 years from the date of the citation.

Board staff recommended that the Committee members review the current retention period (1.5 years) for complaints and investigations that are closed without merit. Considering the type of cases closed without merit, retaining the information for 6 months in the Board office and then destroying the case confidentially may be more appropriate.

Staff also recommended updating the policy language to update the reference to Government Code Section 14750, which is incorrect.

Renee Lonner moved to direct staff to make the recommended revisions to present to the Board for consideration. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

b. Complaint Disclosure Policy

During the May 2006 Board meeting, Board Members were informed that Executive Order #S-03-06 required all state agencies to take a number of actions related to agency compliance with the California Public Records Act (PRA). The action required of each agency was to review and revise as necessary, written guidelines for

accessibility of public records. A review of the Board policies noted that Policy #E-06-01 and #E-06-02 required revisions.

The Board Members voted to amend Policy #E-06-01 and Policy #E-06-02 to disclose settlements and arbitrations upon request and to include revisions to the language for clarity.

The PRA requires public records be available upon request and provides for specific timelines and general process to respond to a request. Government Code Section 6254 specifies which records are not subject to public disclosure. In accordance to Government Code Section 6250, DCA developed guidelines follow upon receipt of a public record request. B&P Code Section 27 specifies what information must be available through the Internet.

Since 2006, revisions to both of these code sections have been enacted, with the last revisions occurring in 2014. These revisions include the contents of Policy # E-06-01 and #E-06-02.

B&P Code Section 4990.09 specifies how long a citation and fine issued for \$1,500 or more shall be published on the Internet. A citation and fine of less than \$1,500 may not be published on the Internet.

At the time these policies were adopted, some of the code sections related to PRAs and license disclosure were not specific. So it was prudent for Boards and Bureaus to adopt policy guidelines as to what specific information would be available to the public. Now, the Board's policies for complaint disclosure and public disclosure of license verification are now incorporated into the B&P Code and the Government Code.

Staff recommended rescinding Policy #E-06-01 and #E-06-02 since both policies are redundant.

Christina Wong moved to recommend that the Board rescind Policy #E-06-01 and #E-06-02. Deborah Brown seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

The Committee took a break at 10:27 a.m. and reconvened at 10:40 a.m.

c. Mail Ballots and Confidentiality of Executive Session

During the November 2002 Board meeting, Board Members discussed the adoption of the Mail Ballots and Confidentiality of Executive Session Policy #B-02-1. The discussion focused on whether or not it was necessary to have this policy when there are several statutes and regulations that addresses mail ballots and confidentiality. Further, the members added that this issue could be addressed during Board Member training.

DCA Legal Counsel stated that although DCA provided new board member orientation, new members may not be aware of all the confidentiality issues before they become a functioning board member. At the end of the discussion, the Board decided not to adopt this policy.

Upon research, Board staff recently discovered that Policy #B-02-1 was not adopted. The policy reflected an adoption date and therefore, it was assumed the policy was adopted. The ability to determine a decision by mail ballot is addressed in Government Code Section 11526. This code does not specify the number of votes needed to hold a case for discussion; nor, do Board records reflect how the current number of “two” was determined.

The Bagley-Keene Open Meeting Act addresses the confidentiality of a closed session meeting. The mail ballot process is included in the Board Member Procedure Manual.

Board staff recommended removing the document from the list of Board policies, since it was never adopted by the Board.

Deborah Brown moved to recommend that the Board removed Policy #B-02-1 from the Board policies. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

d. Advertising Psychotherapy/Psychotherapist

In November 1995, the Board adopted Policy #E-95-2, Advertising Psychotherapy/Psychotherapist. It appears that this policy was adopted because of a concern regarding the use of the words “psychotherapy” and “psychotherapist” by Board licensees in advertisements.

On August 14, 2012, the Board gave notice of proposed changes to CCR Section 1811. This regulation package proposed changes to clarify which abbreviations may be used in an advertisement and whether or not a licensee can use the term “psychotherapy” and “psychotherapist” when advertising. The proposal added a subsection “c” to CCR 1811 regarding the use of “psychotherapy” and “psychotherapist.”

CCR 1811 (a) specifies the type of abbreviations a licensee or registrant may use in advertisements.

On January 9, 2013, the Office of Administrative Law (OAL) approved the proposed changes to CCR 1811. This regulation changed went into effect on April 1, 2013.

The current language of CCR 1811 appears to incorporate the intent of Board Policy #E-95-02. Therefore, this policy is no longer relevant. Staff recommends that the Committee consider rescinding this policy.

Christina Wong moved to recommend that the Board rescind Board Policy #E-95-02. Renee Lonner seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

e. Correspondence Degree Programs

A review of the May 7, 1998 Licensing Committee meeting minutes reveal that the Licensing Committee discussed the issue of accepting correspondence degree program. Staff contacted other states to determine any other state accepted correspondence degree programs. The results from this survey revealed that most states do not accept this type of degree program. A clear policy decision had never been in place, and staff requested direction on this issue.

The Licensing Committee subsequently voted to not accept correspondence degrees. This action resulted in Board Policy #L-98-02.

Various sections of the B&P Code specify the educational qualifications for licensure. Pursuant to these sections, applicants must possess a qualifying degree from an educational institution that is accredited by a specific accrediting agency.

A correspondence degree program was likely a precursor to the online degree programs that are in place today. Currently, the law specifies the type of degree programs that the Board may accept to satisfy the requirements for licensure. Therefore, Policy #L-98-02 is no longer relevant. Staff recommended that the Committee consider rescinding this policy.

Deborah Brown moved to recommend that the Board rescind Board Policy #L-98-02. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

f. License Surrenders

During the February 1998 Enforcement Committee meeting, the Board's License Surrender Policy #E-96-1 was discussed. The members noted this policy and the recommended language in the Board's Disciplinary Guidelines for voluntary surrender. Although no changes to the policy were proposed, Richard Leslie, Legal Counsel for CAMFT, stated that in the voluntary surrender decisions, there is mention of the ability for licensees to petition for reinstatement. Mr. Leslie believed that petitioning for reinstatement should not be an option. The current Executive Officer and DCA Legal Counsel agreed to look into this matter.

Since 1996, the Board's Disciplinary Guidelines have been revised several times, which are incorporated by reference in CCR Section 1888. Accordingly, in order to propose any revision to these guidelines, the Board must initiate a rulemaking package.

A review of the Board's current Disciplinary Guidelines reveals that nearly all of the language in Policy #E-96-1 is reflected in the Disciplinary Guidelines.

Renee Lonner moved to recommend that the Board rescind Board Policy #E-96-1. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

g. Third Party Complaints

During the February 1998 Enforcement Committee meeting, the Executive Officer and the Enforcement Committee discussed whether or not to adopt a policy regarding third party complaints. At that time, these types of complaints were received regarding child custody cases. For various reasons, investigation of these complaints could not move forward. Following this discussion, the Enforcement Committee agreed to recommend adoption of the proposed policy.

Board enforcement staff currently follows Policy #E-98-01. In general, third party complaints are challenging to investigate. Frequently, the allegations are such that a release of information is required from the patient in addition to first hand testimony. Board staff may or may not be successful in obtaining this release. Further, the patient may be reluctant to participate in the investigation and/or subsequent prosecution. In these situations where a release of information could not be obtained and/or the patient is not willing to participate, the case is closed.

There are cases in which the Board is able to investigate a third party complaint. In these cases, frequently the evidence to determine whether or not a violation occurred is available without involving the patient. In these cases, the Board proceeds with the investigation.

With respect to the concerns expressed in 1998 about child custody cases, through a legislative change, the Board now has access to child custody evaluation reports for investigative purposes.

Christina Wong moved to direct staff to prepare an updated version to Policy #E-98-01 and present to the Board at its next meeting. Renee Lonner seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

h. Public Disclosure of License Verification

Agenda item VII h regarding Public Disclosure of License Verification was merged with item VII b Complaint Disclosure Policy, and was discussed as item VII b.

i. Succession of Officers

During the November 2004 Board Meeting, the Board Members requested that a policy be drafted to address situations when the Board Chair is unable to serve for reasons including term expiration and absences. A review of Board Minutes during that time period indicates that the Board experienced delays in Board Member appointments. The current Board Chair was in the final months of service to the Board and was not reappointed. As a result, the Board was left without a Board Chair in the summer of 2004 and did not have a process or policy to address this situation.

In February 2005, the Board adopted the Succession of Officers Policy #B-05-01.

In recent years, Board staff has actively contacted the Governor's Appointment Office and DCA to inform them of any upcoming Board Member vacancies. Through these efforts, the Board has not experienced any situation that led to current policy. Additionally, at every May Board Meeting, prior to the election of officers, Board Members are provided with each member's expiration date of his/her term. Board Members are cautioned about potential consequences of electing a member whose term is nearly complete and has not been reappointed to the Board.

While the Board has not invoked the use of this policy in recent years, it seems reasonable to have a policy addressing the absence of the Board Chair. However, the policy should be updated to reflect minor changes since 2005.

Christina Wong moved to direct staff to prepare an updated version to Policy #B-05-01 and present it to the Board at its next meeting. Deborah Brown seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

j. Board Member Attendance and Reimbursement Policy

During the 1997-1998 Sunset Review, Boards were asked about their Board Member attendance policies. At its January 1998 meeting, the Board was informed of this inquiry and was provided information regarding other boards' attendance policies to review. Following the review of other Board policies, Policy #B-98-1 was drafted and adopted in May 1998.

This policy addresses the following topics.

- Expectation that all Board Members should attend all Board and Committee meetings;
- Defines the term "meeting";

- Procedure to follow if a Board Member will be absent from a Board Meeting or Committee Meeting;
- Per Diem reimbursement;
- Expenses related to Board and Committee meetings and other approved Board functions;
- Business expenses such as meals, costs of hotels, rental cars, official telephone calls, facsimiles, postage, emergency purchases, transportation;
- In-state reimbursement rates for mileage, meals, lodging, taxi service, rental cars;
- Reimbursement requests;
- Out-of-state travel; and
- Conference fees

Many of the topics in Policy #B-98-1 are specified under current law. B&P Code Section 103 sets forth the compensation (per diem) for Board Members. However, this code section does not specify the types of activities that are considered “official duties”. The State Administrative Manual (SAM) specifies travel reimbursement rates that are incorporated into the DCA Travel Guide.

The topics related to attendance are relevant. Although the expectation is that the Board Member will attend all Board and Committee meetings, Board Member attendance is not specified in law. Further, a summary of Board Member attendance is provided in the each Sunset Review Report.

Since many of the topics related to travel are already addressed in the SAM and incorporated in the DCA Travel Guide it seems redundant to have a Board policy addressing these topics. The DCA Travel Guide is provided to all Board Members soon after their appointment to the Board. All revisions to travel, such as mileage reimbursement, are provided as the revisions occur.

Therefore, the Committee may wish to consider revising Policy #B-98-1 to set forth a policy related only to Board Member attendance. Additionally, the committee may wish to consider adopting a new policy clarifying the “official duties” for which per diem may be claimed.

Renee Lonner moved to rescind Board Policy #B-98-1 and present a new Per Diem policy to the Board at its next meeting. Christina Wong seconded. The Committee voted unanimously to pass the motion.

Roll call vote:

Renee Lonner: yes

Christina Wong: yes

Deborah Brown: yes

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

Board-Sponsored Legislation

- SB 531 Enforcement Process – This bill is currently in the Senate for concurrence of amendments.
- SB 620 Licensure Requirements – This bill is currently in the Senate for concurrence of amendments.

- SB 800 Omnibus Bill – This bill is currently in the Assembly Appropriations Committee.

Board-Supported Legislation

- AB 250 Telehealth: Marriage and Family Therapist Interns and Trainees – This bill was signed by the Governor.
- AB 1140 California Victim Compensation and Government Claims Board - This bill will contain language that clarifies that a violence peer counselor may not perform services that fall under the scope of practice of any of the professions which the Board regulates, unless those services take place in an exempt setting.

At its June 2015 meeting, the Board reviewed and took a “support if amended” position on this language, asking for one minor clarifying amendment.

The author’s office committed to taking the language at the July 14, 2015 Senate Committee on Public Safety Hearing. The language has not been released in print yet.

IX. Status of Board Rulemaking Proposals

Disciplinary Guidelines and SB 1441: Uniform Standards for Substance Abuse

These regulations were approved by the Secretary of State on June 23, 2015 and will take effect October 1, 2015.

Implementation of SB 704: Examination Restructure

This proposal is now under review by DCA.

Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families

This proposal is now under review by DCA.

Standards of Practice for Telehealth

The 45-day public comment period ends on August 24, 2015. The public hearing is scheduled on August 25, 2015.

X. Suggestions for Future Agenda Items

There were no suggestions for future agenda items.

XI. Public Comment for Items not on the Agenda

There were no public comments.

XII. Adjournment

The meeting was adjourned at 11:07 a.m.