Board of Behavioral Sciences

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EXEMPT SETTING COMMITTEE MEETING NOTICE
June 23, 2017
1:30 p.m.

Department of Consumer Affairs
HQ2 Hearing Room
1747 North Market Blvd., #186
Sacramento, CA 95834

I. Call to Order and Establishment of Quorum

II. Introductions*

III. Purpose of the Committee

IV. Discussion and Possible Action Regarding Draft Survey Topics Related to Practice Settings for LCSW, LMFT and LPCC Students

V. Discussion and Possible Action Regarding Draft Survey Topics Related to Exempt and Private Practice Settings

VI. Discussion and Possible Action Regarding Registrant Employment by Temporary Staffing Agencies

VII. Discussion and Possible Action Regarding Business and Professions Code Sections 4980.43(h) (granting of qualifying master's or doctoral degree) and 4999.46(d) (granting of qualifying degree) – 90 Day Rule

VIII. Public Comment for Items not on the Agenda

IX. Suggestions for Future Agenda Items

X. Adjournment

**Introductions are voluntary for members of the public*

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times and order of items are approximate and subject to change. Action may be taken on any item listed on the Agenda.

This agenda as well as Board meeting minutes can be found on the Board of Behavioral Sciences website at www.bbs.ca.gov.

NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

Governor
Edmund G. Brown Jr.

State of California

Business, Consumer Services and Housing Agency

Department of Consumer Affairs

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Memo

To:	Exempt Setting Committee Members	**Date:**	May 30, 2017
From:	Christy Berger Regulatory Analyst	**Telephone:**	(916) 574-7817
Subject:	**Updated Draft Survey of Practicum and Fieldwork Placement Coordinators**		

Draft Survey

In consultation with the Office of Professional Examination Services, staff developed a draft survey that would be provided to site placement coordinators for students in LMFT and LPCC degree programs. The goal of the survey is to obtain information that will help determine whether current laws pertaining to students in practicum or fieldwork performing services at a work site need to be changed. The initial draft survey was presented to the Committee at its March 2017 meeting. Placement coordinators for LCSW students have now been included per the Committee's direction. See the **Attachment** for the updated draft survey for the Committee's review and feedback.

Feedback from Schools

Board staff has received feedback from schools about various challenges and uncertainties they encounter when finding and approving settings for their students. In order to further gain an understanding of these difficulties, and to identify issues that may be able to be addressed by the Exempt Setting Committee, staff reached out to school representatives via the MFT consortiums. In general, there appear to be two main concerns: 1) Whether the setting is appropriate due to its ownership or profit status; and 2) Whether the setting provides services that are appropriate for student training. The survey is designed to help answer these questions.

Background Information and Pertinent Laws

Student Titles

The law defines a "trainee" as an unlicensed person who is currently enrolled in a master's or doctoral degree program that is acceptable toward licensure as an LMFT or LPCC, and who has completed no less than 12 semester units or 18 quarter units of coursework in that degree program (Business and Professions Code (BPC) §§4980.03(c), 4999.12(g)).

LCSW law designates the title of "social work intern" to refer to someone enrolled in a graduate training program in an accredited school or department of social work. The law requires social work interns performing activities of a psychosocial nature to be participating in a supervised course of study, and to use a title that clearly indicates the training status appropriate to their level of training (BPC §4996.15). Other than that, the law does not set any specific requirements for social work interns.

Acceptable Settings for Students

An LMFT or LPCC trainee may be credited with supervised experience completed in any setting that meets all of the following (BPC §4980.43(e) and §4999.34):

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession.

(C) Is not a private practice (LMFT only: may not be owned by a licensed marriage and family therapist, a licensed professional clinical counselor, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions).

LCSW law is less specific about the settings for student interns. However, it states that employment in a private practice shall not commence until the applicant has been registered as an associate. A private practice is defined as a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed professional clinical counselor, a licensed physician and surgeon, or a professional corporation of any of those licensed professions (BPC §4996.23(h) and (i)).

This implies that LCSW interns may not work in a private practice.

Requirements for Student Work Settings

The Board does not approve student work settings, nor register students. The Board has little jurisdiction over students in the settings in which they are working. For LMFT and LPCC trainees, the law requires the following (BPC §§4980.42, 4999.36):

- Experience gained as a trainee must be coordinated between the school and the site where the trainee will be working.
- The school must approve each site, and have a written agreement with each site detailing each party's responsibilities, including the methods of supervision.
- The written agreement must provide for regular progress reports and evaluations of the student's performance at the site.
- For LMFT Trainees who wish to count hours of pre-degree experience toward licensure, other legal requirements pertaining to supervised experience hours apply.

There are no comparable requirements for work settings for social work interns.

Attachment: Draft survey for Practicum/Fieldwork Placement Coordinators

BBS Exempt Settings Committee 06/23/2017

ATTACHMENT

DRAFT #3

BBS Survey of LCSW, LMFT and LPCC Practicum Placement Coordinators

GOAL: Determine appropriate work settings for LCSW, LMFT and LPCC students in practicum or field study.

SURVEY DESCRIPTION/INSTRUCTIONS:

The Board of Behavioral Sciences is asking practicum placement coordinators and other educators directly involved in a LCSW, LMFT or LPCC practicum or fieldwork program to complete this survey regarding work settings for students in practicum or field study. The information gathered will help inform the Board when considering possible changes to the laws related to practicum and fieldwork sites.

LMFT and LPCC laws require the following:

- **The school shall approve each site.**
- **The school shall have a written agreement with the site that details each party's responsibilities, including the methods of supervision. The agreement shall provide for regular progress reports and evaluations of student performance at the site.**
- **Setting must lawfully and regularly provide mental health counseling or psychotherapy.**
- **Setting must provide oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements and is within the scope of practice.**
- **LMFT Only: Setting may not be a private practice owned by a LMFT, LPCC, LCSW, licensed psychologist, licensed physician and surgeon or a professional corporation of any of those licensed professions.**
- **LCSW and LPCC: Setting may not be a private practice.**

(LMFT - Business and Professions Code (BPC) sections 4980.42 and 4980.43; LPCC - BPC sections 4999.34 and 4999.36)

If you are a practicum placement coordinator or other educator directly involved in a LCSW, LMFT or LPCC practicum or fieldwork program please answer the following questions:

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1. What license type(s) are being pursued by the students in your degree programs?

   ☐ LCSW
   ☐ LMFT
   ☐ LPCC
   ☐ LMFT and LPCC

2. In what types of settings are students placed in which they are performing clinical services *(assessment, diagnosis, and/or treatment)*? Mark all that apply.

SETTING TYPE A	**SETTING TYPE B**
☐ School's own counseling center ☐ Public schools ☐ Private schools ☐ Governmental agencies ☐ Churches ☐ Nonprofit and charitable entities (registered as a 501(c)(3))	☐ Not-for-profit entities that are not registered as a 501(c)(3) ☐ For-profit entities ☐ Other *(describe)*: _____

2A. If you selected a "Type B" setting-in question 2, please select the facility or facilities that best describes that entity.

- ☐ Professional Corporation
- ☐ Mental health clinic/counseling center
- ☐ Outpatient intensive mental health treatment program
- ☐ Residential mental health treatment center
- ☐ Medical hospitals
- ☐ Psychiatric hospitals
- ☐ Other licensed health facilities
- ☐ Inpatient alcohol and drug treatment programs
- ☐ Outpatient alcohol and drug treatment programs
- ☐ Pediatric day health and respite care facilities
- ☐ Social rehabilitation facilities
- ☐ Skilled nursing home facilities
- ☐ Assisted living facilities
- ☐ Adult day health facilities
- ☐ Other *(describe)*: _____

3. Is the school primarily responsible for initially finding a placement, or is the student?

- ☐ School
- ☐ Student
- ☐ The school and the student collaborate to find a site *(Please explain:_____)*

4. Does the school require a supervisor who is a licensed mental health professional to oversee the experience?

- ☐ No
- ☐ Yes – we require an on site supervisor
- ☐ Yes - the supervisor can be off site

~~4.~~5. Other than the attributes required by law, what are the most important characteristics or qualities of a suitable practicum or fieldwork setting? *(open-ended question)*

~~5.~~6. Are there certain types of settings that are allowed by law, but that you or your school feels are generally not suitable placement~~s~~ settings for students?

- ☐ No
- ☐ Yes: *(Describe which types of settings and why):* _____

7. Are there any settings not currently allowed by law that you or your school feels may be suitable placement settings for students?

- ☐ No
- ☐ Yes: *(Describe which types of settings and why):* _____

~~6.~~8. Are there certain types of settings where you believe it is necessary to use extra precaution when placing students?

- ☐ No
- ☐ Yes: *(Describe which types of settings and why/what those extra precautions may be):* _____

~~7.~~9. What are some of the factors that may lead you to decide against (or discontinue) placing students at a site? *(open-ended question)*

~~8.~~10. _____Do you require students to notify the school when there are difficulties at the work site?

- ☐ Yes
- ☐ No
- ☐ We don't require it but we encourage it

~~9.~~11. _____How many agencies do the students have to choose from to earn practicum hours? _____

~~10.~~12. _____What percentage of your ~~MFT~~ students continue on at their site ~~as an MFT Intern~~ after graduation? _____%

~~11.~~13. _____What type of information or clarifications would be helpful from the BBS in terms of student placements? *(open-ended question)*

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Memo

To:	Exempt Setting Committee Members	**Date:**	May 30, 2017
From:	Christy Berger Regulatory Analyst	**Telephone:**	(916) 574-7817
Subject:	**Updated Draft Survey Related to Exempt and Private Practice Settings**		

In consultation with the Office of Professional Examination Services, staff has developed a draft survey pertaining to exempt and private practice settings. The survey was originally drafted with BBS licensees and registrants in mind, but will now also include exempt setting agency directors. The goals of the survey are primarily to obtain information that will:

- Help determine whether consumers are being harmed in exempt settings by unlicensed staff (who are not pursuing licensure as a mental health professional) who are performing clinical services.
- Help formulate a legal definition for “private practice,” “exempt” and other types of settings.

The draft survey was initially presented to the Committee at its March 2017 meeting and has been updated based on feedback for the Committee’s review. See the **Attachment** for the revised draft survey.

ATTACHMENT:
Draft Survey for Agency Directors and BBS Registrants and Licensees

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BBS Exempt Settings Committee 6/23/2017

ATTACHMENT - UPDATED

DRAFT #3 - Survey of BBS Registrants and Licensees Re: Exempt Settings

The Board of Behavioral Sciences (BBS) is conducting a survey of agency directors, as well as BBS ~~its~~ registrants and licensees, pertaining to "exempt" practice settings. An "exempt" setting is currently defined in law as a governmental entity, a school, or an entity that is both nonprofit and charitable (a 501c3). Such settings are permitted by law to provide clinical services (assessment, diagnosis and/or treatment) through unlicensed staff members who are not pursuing licensure as a mental health professional.

The purpose of the survey is to gather information regarding the clinical services provided to consumers by unlicensed staff working in exempt settings. An additional purpose of the survey is to gather information to assist in formulating a legal definition for different types of work settings.

The BBS is asking current registrants, ~~and~~ licensees and exempt setting agency directors to answer the following questions based on their CURRENT, PRIMARY work setting in which either: (1) clinical services (assessment, diagnosis and/or treatment) are provided, or (2) in which the licensee provides supervision to unlicensed staff who are performing clinical services.

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1. **What type of license or registration do you hold with the BBS?**

   - ☐ LCSW
   - ☐ LEP
   - ☐ LMFT
   - ☐ LPCC
   - ☐ ASW
   - ☐ MFT Intern
   - ☐ PCC Intern
   - ☐ N/A - Unlicensed Agency Director

2. **Which of the following work settings describes the CURRENT, PRIMARY setting in which you provide clinical services (defined as assessment, diagnosis, treatment), ~~or~~ provide~~d~~ clinical supervision or serve as an agency director? *(Select only the option that best describes your current, primary work setting)***

   - ☐ Public school
   - ☐ Private school
   - ☐ Church
   - ☐ Federal agency
   - ☐ State agency
   - ☐ County or city agency
   - ☐ Other governmental agency
   - ☐ Private practice
   - ☐ Nonprofit and charitable entity (501(c)(3))
   - ☐ Professional corporation *(ownership solely composed of licensed health professionals)*
   - ☐ Not-for-profit entity that is not a 501(c)(3) *(describe)*: _____
   - ☐ For-profit entity not otherwise listed *(describe)*: _____
   - ☐ Other setting *(describe)*: _____

2B. What is the main focus/purpose of this setting? ***(Mark all that apply)***

- ☐ School
- ☐ Church/Religious Institution
- ☐ Mental health clinic/counseling center
- ☐ Residential mental health treatment center
- ☐ Psychiatric hospital
- ☐ Psychosocial rehabilitation program
- ☐ Integrated primary care/behavioral health care program
- ☐ Integrated behavioral health care and substance abuse treatment program
- ☐ Medical hospital
- ☐ Other licensed health facility: _____
- ☐ Employee assistance program
- ☐ Online counseling clinic
- ☐ Crisis care/intervention program
- ☐ Victims of crime program
- ☐ Domestic violence program
- ☐ Culturally-focused mental health program
- ☐ Military member or veteran's service program
- ☐ Case management program
- ☐ Homeless shelter or service program
- ☐ Jail or correctional facility
- ☐ Offender treatment/re-entry program
- ☐ State hospital
- ☐ Inpatient alcohol and drug treatment program
- ☐ Outpatient alcohol and drug treatment program
- ☐ Supported employment program
- ☐ Prevention/early intervention program
- ☐ Developmental/Intellectual disability program
- ☐ Pediatric day health/respite care facility
- ☐ Skilled/intermediate care nursing and/or assisted living facility
- ☐ Self-help organization
- ☐ Family and/or children's services program
- ☐ Young adult transitional services program
- ☐ Older adult service program
- ☐ Other specialized community provider: _____

3. How is this facility and/or program funded? ***(mark all that apply)***

- ☐ Federal funding or grants
- ☐ State funding or grants
- ☐ Local government funding or grants
- ☐ Donations and/or foundation grants
- ☐ Third-party reimbursement
- ☐ Private payment
- ☐ Other: _____
- ☐ Unknown

4. If the setting is a <u>for-profit</u> entity, what is the ownership structure? ***(mark all that apply)***

- ☐ Private practice
- ☐ Professional corporation (ownership solely composed of licensed health professionals)
- ☐ Investor-owned corporation
- ☐ Employee-owned corporation
- ☐ Other for-profit: _____
- ☐ Unknown

5. In what county is this facility located? ***(drop down list)***

6. **Is there a shortage of licensed mental health providers in the region where the facility is located?**

   ☐ Yes
   ☐ No
   ☐ Unknown

7. **Is the facility is any of the types of "exempt" settings listed below?**

   - Public school
   - Private school
   - Church
   - Federal agency
   - State agency
   - County or city agency
   - Other governmental agency
   - Nonprofit and charitable entity (registered 501(c)(3))

   ☐ Yes
   ☐ No **(stop here – survey ends)**
   ☐ Unknown **(stop here – survey ends)**

   7A. If YES, does the facility or program allow clinical services (assessment, diagnosis and/or treatment) to be provided by ~~paraprofessional (unlicensed and unregistered)~~ employees or volunteers who are not seeking licensure as a mental health professional?

   ☐ **No (stop here – survey ends)**
   ☐ **Yes (please answer all of the questions below)**

8. **What qualifications are required of ~~paraprofessional~~ staff members (including volunteers) who are not seeking licensure as a mental health professional but are providing clinical services (assessment, diagnosis and/or treatment)? *(mark all that apply)***

   ☐ **Be license-eligible *(i.e., completed a degree program that qualifies for licensure)***
   ☐ **Lived experience as a consumer of mental health services**
   ☐ **Family member experience**
   ☐ **Work experience *(specify how much if known: _____)***
   ☐ **Education *(specify if known: _____)***
   ☐ **Training prior to hire *(number of hours if known: _____)***
   ☐ **Training after hire *(number of hours if known: _____)***
   ☐ **Certification *(type if known: _____)***
   ☐ **Unknown**

9. **Do the clinical services (assessment, diagnosis, and/or treatment) provided by ~~paraprofessionals~~ individuals who are not seeking licensure as a mental health professional in this agency meet the same minimum standards of care as those provided by licensed mental**

health professionals? This includes acceptable interventions, compliance with statutory and regulatory requirements, compliance with ethical codes,~~-~~etc.

- ☐ **Yes**
- ☐ **No *(Explain: _____)***
- ☐ **Varies *(Explain: _____)***
- ☐ **Unknown**

10. Approximately how many ~~paraprofessionals~~ individuals who are not seeking licensure as a mental health professional are providing clinical services in this agency? _____

~~11. Do the paraprofessionals who provide clinical services typically perform those services as their primary job duty?~~

- ~~☐ Primary job is providing clinical services~~
- ~~☐ Clinical services are provided secondarily to other job duties~~
- ~~☐ Both types of positions~~

~~12.~~11. _____Is a background check including fingerprinting performed on ~~paraprofessionals~~ individuals who are not seeking licensure as a mental health professional performing clinical services?

- ☐ **Yes**
- ☐ **No *(Explain: _____)***
- ☐ **Varies *(Explain: _____)***
- ☐ **Unknown**

~~13.~~12. _____Does ~~a~~the agency require a licensed ~~supervisor~~professional *(LCSW, LMFT, LPCC, Psychologist, Psychiatrist or Psychiatric Nurse Practitioner)* to provide supervision to ~~paraprofessional~~ staff who are not seeking licensure as a mental health professional but are performing clinical services?

- ☐ **Yes (answer #1~~3~~2A below)**
- ☐ **No ~~(answer #13B below)~~**
- ☐ **Varies *(Explain: _____)***
- ☐ **Unknown**

12~~3~~A~~.~~ If YES: ~~Does the~~ Are the licensed supervisors ~~(or supervisors)~~required to work on site?

- ☐ **Yes**
- ☐ **No *(Explain: _____)***
- ☐ **Varies *(Explain: _____)***
- ☐ **Unknown**

~~13B. If NO: In your professional opinion, is the supervision adequate to protect the consumer?~~

- ~~☐ Yes~~
- ~~☐ No *(Explain: _____)*~~

☐ ~~Varies *(Explain: _____)*~~
☐ ~~Unknown~~

~~14.~~13. _____ How many individuals who are not seeking licensure as a mental health professional ~~paraprofessionals~~ performing clinical services are assigned to each clinical supervisor? Approximate number: _____

~~15.~~14. _____ Do clients have a formal mechanism at this agency to have complaints or concerns about the clinical services received or about the therapist addressed?

☐ No
☐ Yes (answer questions 15A & 15B)
☐ Unknown

14~~5~~A. Are all clients informed about the complaint process?

☐ Yes
☐ No
☐ Unknown

14~~5~~B. Do you feel that client complaints are addressed appropriately?

☐ Yes, typically
☐ No, typically *(Explain: _____)*
☐ Varies *(Explain: _____)*
☐ Unknown

~~16.~~15. _____ Do you believe that certain settings should continue to be exempted from mental health professional licensure requirements?

☐ Yes *(Explain: _____)*
☐ No *(Explain: _____)*
☐ Not sure

~~17.~~16. _____ Is there anything else you would like to add? *(open ended question).*

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Memo

To: Exempt Setting Committee Members **Date:** June 15, 2017

From: Christy Berger, Regulatory Analyst **Telephone:** (916) 574-7817

Subject: **Discussion Regarding Registrant Employment by Temporary Staffing Agencies**

The Board has become aware that some registrants (typically ASWs), are gaining hours of experience while employed by a temporary employment/staffing agency. This type of arrangement has often been seen with registrants placed at the Veteran's Administration (VA). Current law does not explicitly address a temporary agency as an employer of registrants, and questions have arisen about this employment arrangement, its fit with current law, and consumer protection.

Problem #1 – Employment of Registrant as Independent Contractor

The first problem is that temporary agencies have a tendency to employ BBS registrants as independent contractors (under a 1099). In this case, any hours gained toward licensure would be denied as this is explicitly prohibited by law.

Problem #2 – Location of Services Performed - Employer and Supervisor Responsibilities

LMFT and LPCC law* requires registrants to perform services *"at the place where their employer regularly conducts business."* Obviously, services are not performed by registrants in temporary employment agency settings. LMFT and LPCC law* goes on to specify that services may be performed at other locations, so long as the services are performed *"under the direction and control of the employer and supervisor,"* and *"in compliance with the laws and regulations pertaining to supervision."*

This means, that in the case of a registrant employed by a temporary agency, that agency would be required to take responsibility for the direction and control of services provided by the registrant, and to ensure compliance with all laws pertaining to supervision. In order to protect the supervisee and clients, it would make sense to instead require the agency where the registrant has been placed (such as the VA) to take on these responsibilities.

Problem #3 – Written Agreement Between Employer and Outside Supervisor

<u>Background</u>

As referred to in this section, an "outside supervisor" is a supervisor who*:

- LCSW law: A supervisor who is not employed by the supervisee's employer.

**Legislation is currently being pursued via AB 93 that would also implement these requirements in LCSW law.*

- LMFT and LPCC law: A supervisor who serves as a volunteer in a non-private-practice setting.

The law requires “outside supervisors” to sign a written agreement with the employer to take supervisory responsibility for the registrant’s services. LMFT and LPCC law goes further to require the agreement to ensure the supervisor has access to client records and to prohibit the employer from interfering with the supervisor’s legal and ethical obligations to ensure compliance with licensure requirements. The purpose of the written agreement is to protect the supervisee and his or her clients.

Legislation is currently being pursued via AB 93 that would modify and standardize the legal requirements pertaining to the written agreement across license types. It would require a written agreement that does all of the following:

- Requires the supervisor to take supervisory responsibility;
- Ensures the supervisor has access to client records when the supervisor is either not employed by the supervisee’s employer or is a volunteer; and,
- Requires the employer to agree not to interfere with the supervisor providing clinical guidance to the supervisee.

The pending legislation does not address temporary agency employers of registrants.

<u>Temporary Agency Employers and Written Agreement</u>
When a temporary agency places a registrant at an agency such as the VA, the law permits supervision of the registrant by an outside supervisor if the supervisor has signed a written agreement, as described above, with the registrant’s employer.

In the case of a temporary agency employer, the written agreement would be between the temporary agency employer and the outside supervisor. In order to protect the supervisee and clients, it would make more sense for the agreement to be between the agency that has responsibility for the clients (the VA in this example) and the supervisor.

In addition, when a registrant has been placed by a temporary agency in an agency where the registrant’s supervisor is on staff at the agency, LCSW law (and the law changes proposed for

**Legislation is being pursued this year (AB 93) that makes LMFT and LPCC law consistent with LCSW law.*

LMFT and LPCC in AB 93) require a written agreement to be signed between the supervisor and the registrant's temporary agency employer. This is because the agreement is required when the supervisor and supervisee's employers are different. However, in the situation described, the supervisor is already employed by the agency responsible for the clients and therefore the written agreement seems unnecessary.

Recommendation

Discuss whether temporary staffing agencies should be permitted to employ registrants. If the committee believes that temporary staffing agencies should be allowed to employ registrants, discuss the following:

1. Should the law that allows registrants to perform services at other locations, so long as the services are performed under the direction and control of the employer and supervisor, and in compliance with the laws and regulations pertaining to supervision, exclude the temp agency and instead be between the agency where the registrant has been placed (which has responsibility for the clients) and the supervisor?

2. Should the written agreement between the supervisor and the employer specify that, in the case of a temp agency employer, the agreement shall instead be between the agency where the registrant has been placed (which has responsibility for the clients) and the supervisor?

3. Should the laws pertaining to the written agreement between the supervisor and the employer specify that, in the case of a temp agency employer, the written agreement is not necessary if the supervisor is employed by the agency where the registrant has been placed by the temp agency?

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Memo

To: Exempt Setting Committee Members

Date: June 14, 2017

From: Kim Madsen
Executive Officer

Telephone: (916) 574-7830

Subject: **90-Day Rule**

Background

The 90-day rule has been included in LMFT licensing law for many years. Research by Board staff indicates that this law has been in effect since at least 1984. When the LPCC licensure act was created, it was modeled after LMFT law and included the 90-day rule. LCSW law does not contain the 90-day rule. Currently, Assembly Bill 456 (Thurman) proposes to allow LCSW applicants the opportunity to participate in the 90-day rule.

Historically, it appears that the purpose of the rule has been to assist recent graduates in obtaining some of their supervised experience hours during the time they are waiting for their registration number. Currently, the Board strives to keep its registration processing times to under 30 days. However, in the past due to high seasonal application volumes, budget constraints, or furloughs, processing times were higher. In addition, before fingerprint processing was done electronically, there could be up to a 3-month wait for the FBI and the Department of Justice to perform their required background checks. (With electronic fingerprints today, that wait time has been reduced to approximately 3 to 7 days.)

The intent and interpretation of the 90-day rule by BBS or its stakeholders was never to encourage or to sanction an unregistered person providing clinical mental health services.

Application of the 90 Day Rule

The 90-day rule allows applicants for registration as a marriage and family therapist intern or a professional clinical counselor intern to count post-degree hours of supervised experience acquired before the receipt of a BBS registration number, as long as they applied to the BBS for their intern registration within 90 days of the granting of their qualifying degree. These post-degree hours of experience are ONLY applied retroactively toward licensure if the BBS ultimately grants the applicant a BBS number. An applicant whose application is denied is not permitted to count any post-degree hours towards licensure.

Employers and Employment Settings

The 90-day rule only applies to the hours an intern can retroactively apply toward licensure. It does not affect the ability of agencies to hire interns, which maintain their independent protocols

regarding interviews and background checks for each applicant. Indeed, most of the individuals who utilize the 90-day rule to retroactively count hours toward licensure have been working for weeks, months, or even years at their current agency, often during practicum placements prior to graduation.

During the work of the Supervision Committee, Board staff conducted a survey of supervisees (interns/registrants) in an effort become better informed about the supervision experience. One key take away from that survey is that out of the approximately 400 supervisees who responded, most of the respondents gained their hours in a public, non-profit agency or government agency. The response from the supervisors regarding work settings had the same result. Most of the supervision occurred in these settings.

Under current law, both of these work settings are exempt from the BBS jurisdiction. Essentially, the law does not require a registration or license to work in these settings. However, as part of the employer's hiring protocol, the employer may require a registration or license as well as fingerprints prior to employment.

As previously stated, all applicants for a registration are prohibited from working in a private practice until they have been granted an intern registration number by the Board.

Previous Concerns Regarding the 90-Day Rule

In 2012, the Board pursued legislation to eliminate the 90-day rule for LMFT and LPCC applicants. This was due to concerns that the 90-day rule could potentially be used to practice unlicensed and outside the Board's jurisdiction while temporarily bypassing the Board's enforcement process.

One concern was if a consumer or a supervisor were to file a complaint against an applicant who was not yet registered but was using the 90-day rule to gain hours, the Board would have no jurisdiction to investigate the complaint and take action.

The other concern was that using the 90-day rule, an applicant with a previous conviction would be able to submit an application after graduation and begin working under the 90 day-rule. They would then have up to one year to submit their conviction records (which would be considered a deficiency if not submitted up front; deficient applicants have one year to provide the missing information.) Although most applicants with deficiencies typically submit the missing information quickly in order to obtain their registration as soon as possible, occasionally an applicant with a serious conviction will delay, taking their full one-year period.

However, although they are gaining hours in this period, if after reviewing the application the Board imposes supervised practice or other restrictions on their supervised experience as a condition of their registration due to the conviction, the hours gained without the imposed restrictions would not count. In addition, the law explicitly states that applicants utilizing the 90-day rule to gain hours cannot work in a private practice until the registration is issued.

Ultimately, the Board was unable to find an author for the proposal to eliminate the 90-day rule, due to stakeholder opposition and a lack of specific cases where such a situation compromised consumer protection.

Current Issue

Recently, a concern at the Legislature regarding the 90-day rule and consumer protection was brought to the Board's attention. Specifically, the concern is that the 90-day rule allows

unregistered individuals to provide mental health services without a fingerprint clearance – a significant consumer protection issue.

Discussion

The Board's highest priority is consumer protection. The fingerprint clearance is an essential component to provide consumer's protection from unsafe mental health practitioners. During the registration process, most applicants submit proof of their fingerprint submission with their application. As noted earlier, fingerprint results are typically received within 3 to 7 days. If the Board gets a "hit" on the fingerprint results, meaning if some type of background issue is found, the application is diverted to the Board's Enforcement Unit for further review. However, frequently, it is the receipt of the official transcripts that delays the issuance of a registration; not the fingerprint results.

To initiate the discussion regarding the 90-day rule and possible solutions to improve consumer protection without adverse consequences, the committee members and stakeholders may wish to consider the following. The discussion should also include parity among the license types where possible.

- Should the 90-day rule be eliminated? This would mean that the Board would only permit the counting of supervised work experience hours after the registration is issued?
- What safeguards could be established to improve consumer protection if the 90-day rule remains in effect? For example, a limit on the time period an unregistered individual, who is waiting for the registration to be issued, may see clients. Or, only permitting the counting of non-clinical hours during the 90-day rule (this would include all non-clinical activities such case management, intake, client advocacy, workshops, and seminars).
- What effect would any recommended solution have on continuity of care for clients?
- Do the recommended solutions require modification to the Board's existing database system, increased or redundant workload, or additional staff?
- Do the recommended solutions create an unnecessary barrier to licensure or employment?
- Are there any unintended consequences?

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