



Board of Behavioral Sciences



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www.bbs.ca.gov

Governor Edmund G. Brown Jr.
State of California
Business, Consumer Services and Housing Agency
Department of Consumer Affairs

EXEMPT SETTING COMMITTEE Meeting Notice and Agenda

**September 12, 2018
10:00 a.m. - 12:00 p.m.**

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

While the Board intends to webcast this meeting, it may not be possible to webcast the entire meeting due to technical difficulties or limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location.

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- I. Call to Order, Establishment of Quorum, and Introductions*
 - II. Discussion and Possible Recommendations Regarding Registrant Employment by Temporary Staffing Agencies
 - III. Discussion and Possible Recommendations Regarding Practice Setting Definitions
 - IV. Suggestions for Future Agenda Items
 - V. Public Comment for Items Not on the Agenda
Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 1125.7(a)]
 - VI. 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.

(Continued on Reverse)

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.



Board of Behavioral Sciences

Memo

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To: Exempt Setting Committee Members **Date:** September 6, 2018
From: Christy Berger
Regulatory Analyst **Telephone:** (916) 574-7817
Subject: **Discussion and Possible Recommendation Regarding Registrant
Employment by Temporary Staffing Agencies**

At its June 2017, February 2018, and June 2018 meetings, the Exempt Setting Committee discussed the topic of registrants gaining hours of experience while placed at the setting 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 for the LMFT, LCSW and LPCC professions does not address a temporary agency as an employer of individuals gaining hours of experience toward licensure, and certain provisions of existing law are a poor fit for this situation (see Attachment A).

Staff presented conceptual draft language to address those concerns at the February 2018 meeting, and the Committee was satisfied with the language. However, staff had to make a minor change to the text regarding the locations where individuals are authorized to see clients, in line with Assembly Bill 93, currently awaiting signature by the Governor.

In addition, stakeholder feedback was received after the meeting, which led to some additional text changes. Staff was informed that a temporary staffing agency may not always be considered the trainee or associate's "employer," so any references to the temporary agency as employer have been removed. The language still serves the original purpose, which is to clarify that the trainee or associate may perform services only at the places permitted by the contracting agency, and to ensure that the written agreement pertaining to supervision is between the contracting agency and the supervisor.

The revised draft language is provided in Attachment B.

Recommendation

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes, and any non-substantive changes, and recommend to the full Board as regulatory proposal.

Attachments

Attachment A: Relevant Statute

Attachment B: Draft Revised Language

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ATTACHMENT A

Relevant Business and Professions Code

Section 4980.43.4 (LMFT)

(The same language is in sections 4996.23.3 (LCSW) and 4999.46.4 (LPCC))

- (a) A trainee, associate, or applicant for licensure shall only perform mental health and related services at the places where his or her employer regularly conducts business and services.**
- (b) An associate who is employed or volunteering in a private practice shall be supervised by an individual who is employed by, and shall practice at the same site as, the associate's employer. Alternatively, the supervisor may be an owner of the private practice. However, if the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services at the site.
- (c) A supervisor at a private practice or a corporation shall not supervise more than a total of three supervisees at any one time. Supervisees may be registered as an associate marriage and family therapist, an associate professional clinical counselor, or an associate clinical social worker.
- (d) In a setting that is not a private practice:**
 - (1) A written oversight agreement, as specified by regulation, shall be executed between the supervisor and employer when the supervisor is not employed by the supervisee's employer or is a volunteer.**
 - (2) A supervisor shall evaluate the site or sites where a trainee or associate will be gaining experience to determine that the site or sites comply with the requirements set forth in this chapter.
- (e) Alternative supervision may be arranged during a supervisor's vacation or sick leave if the alternative supervision meets the requirements in this chapter and regulation.

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ATTACHMENT B

Draft Language

Re: Temporary Agency Employers

Title 16, California Code of Regulations

- (a) A “temporary ~~employment staffing~~ agency” is defined as agency that locates positions for individuals seeking temporary work, and fills vacancies for agencies seeking ~~to employ~~ individuals ~~to perform work~~ on a temporary basis.
- (b) A “contracting agency” is defined as the agency where a trainee, associate, or applicant for licensure has been placed by a temporary ~~employment staffing~~ agency.
- (c) The following provisions apply to a trainee, associate, or applicant for licensure ~~whose employer is who has been placed by~~ a temporary ~~employment staffing~~ agency:
- (1) Notwithstanding sections 4980.43.~~5.4~~, 4996.23.3, and 4999.46.4 of the Code, the trainee, associate or applicant for licensure shall only perform mental health and related services at the places where the contracting agency permits business to be conducted.
 - (2) Notwithstanding sections 1821, 1833 and 1869, the written agreement shall be between the contracting agency and the supervisor; and, in cases where the supervisor is an employee of the contracting agency, no written agreement shall be required.

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To: Exempt Setting Committee Members **Date:** September 6, 2018
From: Christy Berger
Regulatory Analyst **Telephone:** (916) 574-7817
Subject: **Discussion and Possible Recommendations Regarding Practice Setting Definitions**

At its meeting in June 2018, the Exempt Setting Committee reviewed proposed definitions for different types of practice settings that offer mental health services. Setting definitions are necessary in order to help clarify acceptable practicum settings for students, and to implement efforts to protect consumers receiving psychotherapy from unlicensed/unregistered therapists in exempt settings.

Exempt Settings

In current law, the only fully-defined type of setting are those specified in law as exempt from Board of Behavioral Sciences' licensure requirements for their employees (if the work is performed solely under the supervision of the employer). In exempt settings, unlicensed/unregistered individuals who are not pursuing a license are permitted to provide psychotherapy services. Those settings are:

- Nonprofit and charitable entities (a 501(c)(3) or a church/religious organization that meets certain federal requirements)
- Schools (whether public, private, for-profit or non-profit)
- Governmental agencies

After reviewing the Exempt Setting Survey results (full results presented at the February 23, 2018 [meeting](#)), the Committee expressed interest in addressing exempt setting agencies where consumer protection may be lacking. The survey results indicated that some agencies do not fingerprint employees (16% of survey respondents), do not have a licensee supervising unlicensed/unregistered staff (34%), or do not have a consumer complaint process (15%).

At its June 8, 2018 meeting, the Committee considered proposed language that would require unlicensed/unregistered therapists working in an exempt setting to provide consumers with a printed disclosure, prior to initiating psychotherapy, containing information about how to file a complaint about the therapist with the agency.

In addition, the Committee considered proposed language that would require **all** settings in which psychotherapy is performed, including private practices, to provide written information to consumers about where to file a complaint with the Board about a licensed or registered psychotherapist. This is currently a requirement in law for other health professions including psychologists, physicians and dentists.

The Committee agreed that consumers should be provided with such a disclosure, and directed staff to make modifications to the proposed language and bring it back for further consideration. The revised proposed language is provided in **Attachment A**. Note that the revisions are shown in ~~strike~~underline and double underline.

For-Profit Business Entities

There are a variety of for-profit business entity types that may be set up for the purpose of providing mental health services. At its June 8, 2018 meeting, the Committee considered a proposal that would separately define “Private Practice” (including professional corporations) and “Other For-Profit Settings.”

There is no definition in current law for “private practice” except in LCSW statute, despite there being a number of laws that reference “private practice” for each of the professions (see **Attachment B**).

There is no definition or any references in current law to other types of “for-profit” settings. However, a definition is necessary in order to clarify the types of settings in which students pursuing licensure can be placed during practicum. Many for-profit settings do not meet the criteria for what is normally considered a private practice or professional corporation. The Committee considered including these types of settings into the private practice definition. However, for the following reasons, the decision was made to define them separately:

- If other types of for-profit businesses were included in the private practice definition, it could impact whether schools would be allowed to continue placing students gaining practicum experience in such for-profit entities. Currently, 42% of programs place students in for-profit entities. In addition, 30% of schools do not have enough placements for their students.
- If other for-profit entities were added to the private practice definition, it would subject other types of companies to all of the laws pertaining to private practices, provided in **Attachment B**.

“Other” for-profit business entity types include :

- Companies owned, in full or in part, by an individual who is not a licensee
- Partnerships (multiple owners, can be licensees or non-licensees)
- General stock corporations such as:
 - Telecare (employee-owned)
 - Health Net of California which owns MHN, an employee assistance program
- Public benefit corporations
- Flexible purpose corporations

Types of for-profit companies may include, but are not limited to:

- Mental health clinics
- Substance abuse recovery programs
- Medical settings such as hospitals, medical groups, nursing homes, hospices, dialysis clinics

Certain types of for-profit companies are regulated by the State of California. The type of oversight varies, from lightly to heavily regulated. All of the for-profit company types listed in the

above bullet points are settings regulated either by the state Department of Public Health or Department of Health Care Services.

Staff are not aware of problems surrounding student placements in these types of “other for-profit settings,” other than the Practicum Coordinator Survey results (presented at the [November 3, 2017 Exempt Setting Committee](#)), which indicated that substance abuse recovery programs are sometimes not ideal because they can be limited in scope. However, there is some question as to why the law currently prohibits students from being placed in a private practice setting when an “other for-profit” type of setting is considered acceptable.

The the American Public Health Association has expressed concerns about entities that are owned and/or managed by non-licensees¹, stating, “The primary fiduciary responsibility of for-profit health care corporations is to their shareholders, not to the health of their patients. For the for-profit health care entities and the caregivers who share in their profits or whose patient care decisions can be influenced by financial incentives, there is a clear potential for conflict of interest.”

However, the profit potential in mental health is not as high as in the medical field, and for-profit companies must meet the requirements of their professional liability insurance, which would include the need to offer effective treatment, etc.

The proposed language, as written, would clarify that students pursuing licensure can continue to be placed in “Other For-Profit Settings” while maintaining the restriction on placement in a private practice. However, the Committee may wish to further discuss the appropriateness of student placements in for-profit settings.

Draft definitions for the different types of for-profit settings were presented at the June 8, 2018 meeting. The Committee directed staff to make modifications to the proposed language, including creating definitions specific to the LEP profession, and bring it back for further consideration. In addition, staff received stakeholder feedback after the meeting about the language, and additional changes were made on this basis.

The revised proposed language is provided in **Attachment C**. Note that the revisions are shown in strikethrough/underline and double underline.

Recommendation

Conduct an open discussion of the proposed language. Direct staff to make any discussed changes and any non-substantive changes, and submit to the Policy and Advocacy Committee for consideration.

Attachments

Attachment A: Proposed Language: Exempt Settings / Notice to Consumers

Attachment B: California Laws Referencing “Private Practice”

Attachment C: Proposed Language: For-Profit Setting Definitions

¹ “The Issue of Profit in Health Care.” *American Public Health Association*, 01 Jan. 1997, <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/30/09/10/the-issue-of-profit-in-health-care>.

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**ATTACHMENT A
PROPOSED LANGUAGE**

**Exempt Settings
Board Licensees:
Notice to Consumers**

Amend §4980.01 (LMFT)

~~(c)(1) This chapter shall not apply to an employee or volunteer working in any of the following settings if his or her work is performed solely under the supervision of the employer, a governmental entity, a school, or an institution that is both nonprofit and charitable if:~~

~~(A) His or her work is performed solely under the supervision of the entity;~~

~~(B) He or she performs those functions as part of the position for which he or she is employed or is volunteering; and,~~

~~(C) If the employee or volunteer is not licensed or registered with the Board, he or she provides consumers with the notice described in paragraph (2) prior to initiating psychotherapy services.~~

~~(A) A governmental entity.~~

~~(B) A school, college, or university.~~

~~(C) An institution that is both nonprofit and charitable.~~

~~(2) This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution.~~

(2) An individual providing psychotherapy services in any of the above settings who is not licensed or registered with the Board must provide consumers with a written notice in at least 12-point font that describes how to file a complaint about the therapist with the agency. The notice shall be provided to the consumer prior to initiating psychotherapy services and shall include the following:

NOTICE TO CONSUMERS

The (office/unit/individual name) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed therapist providing services at (agency name). To file a complaint, contact (telephone number, email website address and mailing address).

Add §4980.32 (LMFT)

Licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

The Board of Behavioral Sciences receives and responds to complaints regarding the practice of psychotherapy services provided within the scope of practice for marriage and family therapists. You may contact the Board online at www.bbs.ca.gov, by emailing bbs.consumercomplaint@dca.ca.gov, or by calling (916) 574-7830.

Add §4989.17 (LEP)

Licensees shall provide a written notice to consumers in at least 12-point font prior to initiating psychological services that reads as follows:

NOTICE TO CONSUMERS

The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice for licensed educational psychologists. You may contact the Board online at www.bbs.ca.gov, or by calling (916) 574-7830.

Amend §4996.14 (LCSW)

~~(a) This chapter shall not apply to an employee or volunteer who is working in any of the following settings if his or her work is performed solely under the supervision of the employer: a governmental entity, a school, or an institution that is both nonprofit and charitable if:~~

~~(1) His or her work is performed solely under the supervision of the entity;~~

~~(2) He or she performs those functions as part of the position for which he or she is employed or is volunteering; and,~~

~~(3) If the employee or volunteer is not licensed or registered with the Board, he or she provides consumers with the notice described in paragraph (b) prior to initiating psychotherapy services.~~

~~(1) A governmental entity.~~

~~(2) A school, college, or university.~~

~~(3) An institution that is both nonprofit and charitable.~~

~~(b) This chapter shall not apply to a volunteer who is working in any of the settings described in subdivision (a) if his or her work is performed solely under the supervision of the entity, school, college, university, or institution.~~

(b) An individual providing psychotherapy services in any of the above settings who is not licensed or registered with the Board must provide consumers with a written notice in at least 12-point font that describes how to file a complaint about the therapist with the agency. The notice shall be provided to the consumer prior to initiating psychotherapy services and shall include the following:

NOTICE TO CONSUMERS

The (office/unit/individual name) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed therapist providing services at (agency name). To file a complaint, contact (telephone number, email website address and mailing address).

Add §4996.75 (LCSW)

Licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

The Board of Behavioral Sciences receives and responds to complaints regarding the practice of psychotherapy services provided within the scope of practice for clinical social workers. You may contact the Board online at www.bbs.ca.gov, by emailing bbs.consumercomplaint@dca.ca.gov, or by calling (916) 574-7830.

Amend §4999.22 (LPCC)

~~(d) This chapter shall not apply to an employee of or volunteer working in a governmental entity, or a school, college, or university, or of an institution that is both nonprofit and charitable, if his or her practice is performed solely under the supervision of the entity, school, college, university, or institution by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed. if:~~

~~(1) His or her work is performed solely under the supervision of the entity;~~

~~(2) He or she performs those functions as part of the position for which he or she is employed or is volunteering; and,~~

~~(3) If the employee or volunteer is not licensed or registered with the Board, he or she provides consumers with the notice described in paragraph (b) prior to initiating psychotherapy services.~~

~~(e) An individual providing psychotherapy services in any of the above settings who is not licensed or registered with the Board must provide consumers with a written notice in at least 12-point font that describes how to file a complaint about the therapist with the agency. The notice shall be provided to the consumer prior to initiating psychotherapy services and shall include the following:~~

NOTICE TO CONSUMERS

The (office/unit/individual name) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed therapist providing services at (agency name). To file a complaint, contact (telephone number, email website address and mailing address).

Add §4999.71 (LPCC)

Licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

The Board of Behavioral Sciences receives and responds to complaints regarding the practice of psychotherapy services provided within the scope of practice for professional clinical counselors. You may contact the Board online at www.bbs.ca.gov, by emailing bbs.consumercomplaint@dca.ca.gov, or by calling (916) 574-7830.

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ATTACHMENT B

California Laws Referencing “Private Practice”

Business and Professions Code (BPC):

- Prohibits a licensee who has been granted a renewal waiver due to being on active military duty from working in a private practice while holding the waiver. (*BPC §114.3*)
- Prohibits an individual from working in a private practice until registered with the Board as an AMFT or APCC or ASW. (*BPC §§ 4980.43, 4996.23, 4999.34, 4999.44, 4999.45 and 4999.46*)
- Requires an AMFT or APCC working in a private practice to be under the direct supervision of a qualified supervisor who is either employed by and practices at the same site as the associate’s employer, or who is an owner or shareholder of the private practice. (*BPC §4980.43, Title 16, California Code of Regulations (16CCR) §§ 1820 and 1833*)
- Allows AMFTs, APCCs and Trainees who serve as volunteers and provide services in any setting other than a private practice to be considered employees and not independent contractors if they receive no more than \$500 per month in reimbursement of expenses. (*BPC §§ 4980.43 and 4999.47*). **Note: AB 93 removes the \$500 limit and allows the Board to audit such expenses.**
- Prohibits an LMFT, LCSW, or LPCC in private practice from employing, at any one time, more than three BBS registrants. (*BPC §§ 4980.45, 4996.24 and 4999.455*). **Note: AB 93 allows a maximum of three BBS registrants per qualified supervisor in a private practice.**
- Subjects LMFT, LCSW and LPCC professional corporations to all laws governing employment, experience and supervision gained in a private practice setting. (*BPC §§ 4980.45, 4996.24 and 4999.455*)
- Prohibits a LMFT or LCSW who conducts a private practice under a fictitious business name from using a name which is false, misleading or deceptive, and requires informing clients of the name and license type of the practice owner(s). (*BPC §§ 4980.46, 4992.10 and 4999.72*)
- Prohibits an AMFT, ASW or APCC from being employed or volunteering in a private practice after the initial six-year registration runs out. (*BPC §§ 4984.01, 4996.28, 4999.45 and 4999.100*)
- States that it is unprofessional conduct for an LEP, when employed by another person or agency, to encourage the employer’s or agency’s clientele to use his or her private practice for further counseling without the approval of the employing agency or administration. (*BPC §4989.54*)
- Excludes private practices from the definition of “community mental health setting” in LPCC law. (*16CCR §1820*)

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**ATTACHMENT C
PROPOSED LANGUAGE**

FOR-PROFIT SETTING DEFINITIONS

PRIVATE PRACTICE DEFINITION (LMFT, LCSW & LPCC)

For the purposes of this chapter, a “private practice” is business which that provides clinical mental health services, including psychotherapy and meets both all of the following:

~~(a) The business is owned and operated by one or more licensed mental health professionals, or other licensed individuals who are permitted to provide clinical mental health services; and,~~

(a) The business is solely owned and directed by one of the following:

(1) One or more licensed health professionals whose scope of practice permits the licensee to provide clinical mental health services, including psychotherapy.

(2) One or more licensed health professionals who have formed a professional corporation pursuant to Part 4 of Division 3 of Title 1 of the Corporations Code who employ licensed mental health professionals to provide clinical mental health services, including psychotherapy, at the business.

(b) The business is a type of business that may only be owned and operated by one or more licensed mental health professionals, or other licensed individuals permitted by law to allow licensed mental health professionals to provide clinical services at the business.

(c) The licensed professionals have responsibility for the practice and services provided, and set conditions of client payment or reimbursement for the provision of services.

(d) “Licensed mental health professionals” includes licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers, licensed professional clinical counselors, licensed psychologists, licensed physicians and surgeons, registered psychiatric/mental health nurses, registered associate marriage and family therapists, registered associate clinical social workers, and registered associate professional clinical counselors.

OTHER FOR-PROFIT SETTING DEFINITION (LMFT, LCSW & LPCC)

For the purposes of this chapter, an “other for-profit setting” is a for-profit business which provides clinical mental health services and is owned, in full or in part, by one or more individuals who are not licensed mental health professionals.

PRIVATE PRACTICE DEFINITION (LEP)

For the purposes of this chapter, a “private practice” is business that provides educational psychology services, and meets all of the following:

(a) The business is solely owned and directed by one of the following:

(1) One or more licensed health professionals whose scope of practice permits the licensee to provide educational psychology.

(2) One or more licensed health professionals who have formed a professional corporation pursuant to Part 4 of Division 3 of Title 1 of the Corporations Code who employ licensed educational psychologists to provide educational psychology services at the business.

(b) The business is a type of business that may only be owned and operated by one or more licensed mental health professionals, or other licensed individuals permitted by law to allow licensed educational psychologists to provide clinical services at the business.

(c) The licensed professionals have responsibility for the practice and services provided, and set conditions of client payment or reimbursement for the provision of services.

(d) “Licensed mental health professionals” includes licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers, licensed professional clinical counselors, licensed psychologists, licensed physicians and surgeons, registered psychiatric/mental health nurses, registered associate marriage and family therapists, registered associate clinical social workers, and registered associate professional clinical counselors.

OTHER FOR-PROFIT SETTING DEFINITION (LEP)

For the purposes of this chapter, an “other for-profit setting” is a for-profit business which provides educational psychology services and is owned, in full or in part, by one or more individuals who are not licensed educational psychologists.