California Board of Behavioral Sciences

"Protecting the consumer by establishing and maintaining standards
for competent and ethical behavior"

Sunset Review Report

Presented to the
Joint Committee on Boards, Commissions, and Consumer Protection
(Formerly the Joint Legislative Sunset Review Committee)

September 2004

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California Board of Behavioral Sciences

Board Members

Catherine Kay, Chair, Public Member
Robert Gerst, Public Member
Victor Law, Public Member
Peter Manoleas, LCSW Member
Glynis Morrow, Public Member
Jane Nathanson, MFT Member
Karen Pines, MFT Member
Howard Stein, Public Member
Susan Ulevitch, LCSW Member

Interim Executive Officer
Denise Johnson

Sunset Review Report Prepared by:
California Board of Behavioral Sciences
400 R Street, Suite 3150
Sacramento, CA 95814-6240
Telephone: 916) 445-4933
Fax: 916) 323-0707
www.bbs.ca.gov

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BOARD OF BEHAVIORAL SCIENCES

EXECUTIVE SUMMARY

The Board of Behavioral Sciences is in the business of consumer protection, education and communication

The State of California has established standards for the practice of Marriage and Family Therapy, Licensed Clinical Social Work, and Licensed Educational Psychology. These standards are intended to safeguard the public's health, safety, and welfare. This Sunset Review Report enumerates the manner in which the Board carries out its mission and implements those standards. This report also provides information to answer the questions from the Joint Committee on Boards, Commissions, and Consumer Protection and provides an overview of the Board's activities, achievements, and issues that have arisen since the last Sunset Review in 1997.

In this report the Board presents the three professions for which it has responsibility:

- Marriage and Family Therapists,
- Licensed Clinical Social Workers; and
- Licensed Educational Psychologists

On July 1, 2004 there were 26,788 active Marriage and Family Therapists (MFTs), 15,847 active Licensed Clinical Social Workers (LCSWs), and 1,706 active Licensed Educational Psychologists (LEPs) in California. These mental health practitioners serve more than 1 million Californians every year. Because the mental health of those in therapy has such a dramatic effect on their families and friends, it is possible the work of these professions impacts every Californian.

The Board of Behavioral Sciences, established in 1945 as the Board of Social Work Examiners, is responsible for protecting the public from injury by members of these professions. In order to accomplish its mission, the Board works with a budget of $4,654,000 and has a permanent staff of 31.6. The Board is comprised of eleven members; six public, two MFTs, two LCSWs, and one LEP. The Board's Strategic Plan includes mission and vision statements, goals, objectives, and performance measures by which it continuously monitors and evaluates its progress.

The Board works extensively with consumers, licensees, professional associations, and educational institutions in carrying out its mission. Such public involvement is invaluable. At the Board's public meetings issues regarding licensure, continuing education, examinations, and enforcement are continually explored for needed change and improvement.

As such, various improvements and accomplishments by the Board have occurred since the last Sunset Review, which are detailed further within this report. However, some of these are highlighted below.

Licensing

Setting appropriate standards for entry into the professions through licensing is one way in which the Board protects the public. Board members and staff frequently speak at schools, colleges, universities and meetings of the various professional associations in an attempt to provide the information necessary for licensing and compliance with the law. Supplying good information, and providing timely review and response, are important priorities when working with the Board's licensees and would-be licensees. Some improvements and outreach activities that have occurred since the last Sunset Review are:

- Revised the laws regarding supervision for Associate Clinical Social Workers giving more responsibility to the supervisor and strengthening the requirements.
- Required training of supervisors.
- Broadened the settings appropriate for Interns and Associates allowing more opportunities for them to gain hours.
- Opened communication with schools that offer the MFT program in a series of meetings scheduled around the state. Those meetings resulted in changes to forms and publications relating to the schools.
- Met with Educational Therapists to discuss the scope of practice and potential licensure.
- Met with Drug and Alcohol Counselors to discuss and explore potential licensure.

Examination

Examination is a primary means of ensuring public safety. The Board continually evaluates and strengthens the criteria in the examination process through its occupational analyses and examination workshops. Since the last Sunset Review the Board:

- Developed an alternative to the oral examination for MFTs and LCSWs and began implementation of the written clinical vignette examination.

Continuing Education

Continuing education (CE) is another method for maintaining quality consumer services. Licensees have the flexibility to take courses they think are pertinent to their practice, providing the courses are related to their scope of practice. Approval of CE providers is for two years and covers any qualified course. This reduces some obstacles to course planning for providers. Since the last Sunset Review CE requirements were:

- Broadened to include additional training in aging and domestic violence.
- Revised to include more opportunities for self-study.

Enforcement

When allegations are made against a licensee, it is the Board's responsibility to conduct a swift and fair investigation of that complaint. If the complaint is substantiated, then a course of appropriate action is determined in order to correct the situation and prevent its reoccurrence. It is imperative that the Board makes the best possible decisions about enforcement matters. Sanctions for misconduct range from compliance actions to citations to revocations of licenses. Since the last Sunset Review the Board:

- Completed review and revision to the Disciplinary Guidelines.
- Implemented a Citation and Fine Program.
- Expanded its Public Disclosure Policy to include citations that have been issued.
- Enhanced the Board's website in June 2003 to provide the ability to file consumer complaints online. To date approximately 250 complaints have been submitted through the online process.

Conclusion

As California grows, so does the complexity of the psychotherapy professions. The Board of Behavioral Sciences is a viable and dynamic organization, and contributes to the well being of Californians. It is committed to continuing its proactive and preventative efforts to protect the consumers of California, while maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. This Sunset Review Report is intended to provide the information needed to assure the Legislature and consumers that California is well served by this consumer board.

At the end of this report the Board outlines its legislative recommendations, both for issues pertaining to the sunset review process and for issues related to its regulatory mission. In summary, these recommendations are:

- Revision of the LEP licensing requirements: Changes in practice as well as requirements for school credentialing have changed over the years and have not been reflected in the Board's Licensing Laws and Regulations.
- Continue to clean up language that is unclear.
- Continue to streamline the ability for those coming from out of state to obtain licensure in California.

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PART 1
BOARD OF BEHAVIORAL SCIENCES

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION

- The Board was created in 1945 and in January 1997 its name was changed from the "Board of Behavioral Sciences Examiners" to the "Board of Behavioral Sciences" to better represent its functions, which extend beyond simply administering examinations.
- On July 1, 1999, the MFCC profession underwent a name change from Marriage, Family and Child Counselor to Marriage and Family Therapist (MFT).
- The Board is comprised of eleven members; six public members; two Marriage and Family Therapists; two Licensed Clinical Social Workers; and one Licensed Educational Psychologist.

History and Function of the Board

➢ *Short Explanation of the History and Function of the Board.*

California became the first state to register social workers when, on July 18, 1945, Governor Warren signed legislation creating the Board of Social Work Examiners. The new Board was placed within the Department of Professional and Vocational Standards, and consisted of seven members appointed by the Governor and approved by the State Senate. The law required that at least two Board members be from the public and at least four be social workers with five years professional experience and a year of graduate work. By late 1945, the Governor had finished appointing the first Board.

This same legislation included provisions to grandfather-in social workers already employed in California from September 1945 to the end of December 1946. During those 16 months, 4,233 social workers filed applications for registration and 4,098 were issued certificates. Certification was intended to identify competent professionals who were working for higher standards and better service to the public.

The Board's duty of registering social workers remained relatively unchanged until the 1960s. In late 1962, the Assembly began investigating fraudulent practice in marriage counseling. In part because of that investigation, the Marriage, Family, and Child Counselor Act was enacted in 1963. Under the Act, the Board was given the additional responsibility of licensing and regulating Marriage, Family, and Child Counselors. Soon after, the Act was renamed the Social Worker and Marriage Counselor Act and the Board was accordingly renamed the Social Worker and Marriage Counselor Qualifications Board.

In 1967, the Board began administering a new Licensed Clinical Social Worker Program, and after 1969 anyone who wanted to practice clinical social work in California was required to hold a license. In 1970, a licensing program for educational psychologists was added and the Board became known as the Board of Behavioral Science Examiners. At that time, the Board expanded to its present membership of six public members; two Marriage, Family and Child Counselors; two Licensed Clinical Social Workers; and one Licensed Educational Psychologist.

On January 1, 1997, the name of the Board was officially changed to the "Board of Behavioral Sciences" in order to more clearly represent its functions, which extend beyond administering examinations. The Board is under the Department of Consumer Affairs (DCA).

The mission of the Board is to protect consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction.

The Board licenses Marriage and Family Therapists (MFTs),[1] Licensed Clinical Social Workers (LCSWs), and Licensed Educational Psychologists (LEPs). It registers MFT interns (IMFs), Associate Clinical Social Workers (ASWs), and continuing education providers (PCEs). The Board develops and administers written examinations for its licensing programs, administers a continuing education program for professional competency, develops regulatory standards, and conducts an enforcement program to investigate consumer complaints. It imposes disciplinary action against licensees and registrants who violate the law.

Current Composition of the Board

- ***Current Composition of the Board (Public vs. Professional) and listing of Board Members, who appointed by, when appointed, when terms expire, and whether vacancies exist and for how long.***

Since 1970, the Board has been composed of 11 members - six public members, two Licensed Clinical Social Workers, one Licensed Educational Psychologist and two Licensed Marriage and Family Therapists. Nine members are appointed by the Governor, one public member is appointed by the Speaker of the Assembly and one public member is appointed by the Senate Rules Committee.

Each Board position is appointed for a term of four years with staggered expiration dates. It has been taking approximately one year for vacancies to be filled. Vacancies are filled by appointment for the

[1] On July 1, 1999, the MFCC profession underwent a name change from Marriage, Family and Child Counselor to Marriage and Family Therapist (MFT) (i.e., AB 1449 (Brown)

remainder of any un-expired term. The Board elects a Chair and a Vice-Chair from within its membership. Currently, the Board has two vacancies.

Name	Appointing Authority	Appointed	Term Expires	Position
KAY, CATHERINE **(Chair)**	Governor	May, 2002	June 1, 2005	Public
GERST, ROBERT	Governor	March, 2003	June 1, 2006	Public
LAW, VICTOR F.	Assembly	November, 2003	June 1, 2007	Public
MORROW, GLYNIS	Governor	September, 2001	June 1, 2005	Public
STEIN, HOWARD	Senate	September, 1999	June 1, 2007	Public
VACANT	Governor	--	June 1, 2007	Public
VACANT	Governor	--	June 1, 2008	LEP
MANOLEAS, PETER	Governor	June, 2002	June 1, 2006	LCSW
ULEVITCH, SUSAN	Governor	September, 2001	June 1, 2005	LCSW
NATHANSON, JANE	Governor	May, 2002	June 1, 2005	MFT
PINES, KAREN B.	Governor	August, 1999	June 1, 2006	MFT

Committees of the Board and their Functions

- ***Describe the Committees of the Board and their functions. Provide organization chart.***

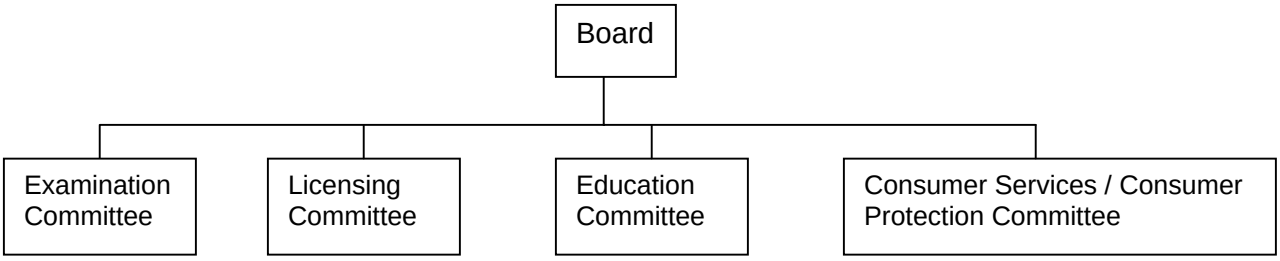
The Board works effectively through a structure of four Board Committees. Each committee is comprised of three or more Board members and are working committees that do not have statutory authority. In addition to monitoring their respective goals and objectives set by the Board in its *Strategic Plan, (See Appendix A: BBS Strategic Plan)* these committees hold various workshops, which include public participation. The committees discuss and explore ways in which their respective areas can improve overall operations, and make policy recommendations to the Board.

The ***Examination Committee*** oversees the ongoing development and administration of the Board's written examinations to ensure they are current and occupationally valid. The committee also reviews examination results to identify problem areas and new testing needs, and strives to improve examination availability.

The ***Licensing Committee*** strives to streamline the application process and makes recommendations to ensure applicants for licensure meet the requirements prescribed by the Board's laws and regulations.

The ***Education Committee*** makes recommendations to ensure schools and students are in compliance with the laws and regulations, and amend laws and regulations as necessary.

The ***Consumer Services / Consumer Protection Committee*** makes recommendations on practice standards, consumer services, and enforcement issues. The committee makes recommendations regarding regulatory standards for the behavioral sciences, policies and procedures designed to protect consumers, and guidelines for enforcing standards when violations occur. It further protects consumers by informing the public and licensees of standards and enforcement programs, and by working cooperatively with agencies, associations, and educational institutions to monitor trends, anticipate problems, and educate at all levels.



Who the Board Licenses, Titles, Regulates, etc. (Practice Acts vs. Title Acts)

The Board is responsible for licensing and regulating MFTs, LCSWs, and LEPs. It registers MFT interns (IMFs), Associate Clinical Social Workers (ASWs), and continuing education providers (PCEs). Its laws and regulations are specified in the *Laws and Regulations Relating to the Practice of Marriage and Family Therapy, Licensed Clinical Social Work and Licensed Educational Psychology*[2] *(See Appendix A: BBS Laws and Regulations).* The Board's Laws and Regulations are both a practice and title act.

Though a number of similarities exist, each profession has a distinct emphasis:

MFTs are authorized to employ psychotherapeutic techniques with individuals, couples, families, and groups to improve the clients' interpersonal functioning. MFTs provide assessment, diagnosis, and treatment of mental disorders and other problems. An MFT generally performs these functions within the client's interpersonal and cultural context.

LCSWs are authorized to employ psychotherapeutic techniques with individuals, couples, families, and groups to improve the clients' quality of life. LCSWs provide assessment, diagnosis, and treatment of mental disorders and other problems. An LCSW generally performs these functions within the view of the client's biological, psychological, social, and cultural context. An LCSW also often coordinates resources and advocates for the client.

LEPs are authorized to provide education-related evaluation, diagnosis, and counseling to individuals of all ages, and consultation services to clients, parents, schools, agencies, and community groups regarding education-related issues. LEPs also serve as an advocate for the client.

[2] Business and Professions Code Chapters 13 and 14, and California Code of Regulations Title 16, Division 18.

Major Changes to the Board Since the Last Review

- ***Any major changes to the Board since the last review. (Internal changes, strategic planning, regulatory changes or recent legislation, etc.)***

The Board has had a number of changes since its last review in 1997.

Strategic Plan

One of the Board's most important working documents is its *Strategic Plan (See Appendix A)*. The Board reviews and updates the strategic plan yearly in an effort to examine progress made in all organizational areas. In developing the strategic plan, internal and external environmental assessments are utilized. To advance the planning process, Board members and staff participate in work sessions. Through this strategic planning, a number of programmatic, operational and legislative changes and enhancements have occurred. These changes and enhancements are summarized below.

Internet Services and Computer Technology

Local Area Network **–** In November 1996, Board staff were connected to a Local Area Network, enhancing internal communication and automation.

BBS Website – The Board's website, www.bbs.ca.gov, which went live July 1996, currently receives an average of 190,000 hits a month.

Online License Verification **–** In June 1999, the Board began providing the public with online license verification for those individuals it licenses and regulates. This "license lookup" system has been received very favorably, and ranks consistently in the top 5 website hits each month.

Filing Complaints Online - In June 2003, the Board's website was enhanced to provided the ability to file consumer complaints online through a secure methodology for privacy protection. Since it became operational, approximately 250 complaints have been submitted through the online process. The Board also added a feature where an individual can file a complaint against the Board itself as an agency.

Licensing and Examination Program

Live Scan Process for Fingerprinting – In August 2000, the Board implemented Live Scan procedures for fingerprinting applicants seeking licensure. This new computer technology allows applicants to go to one of over 150 Live Scan sites in California to have their fingerprints electronically scanned and transmitted. With this new technology, the Department of Justice can notify the Board of results within one week if no prior criminal record is found. This represents a significant improvement to the one to three month turnaround time for the paper-based fingerprint system. For applicants completing the fingerprint process outside of California, where Live Scan is not available, the paper-based system is still accepted.

Reporting Criminal Convictions at the time of License Renewal – In January 2001, the Board implemented a new requirement that all licensees must disclose on their renewal application any

conviction or plea of nolo contendere to any misdemeanor or felony, or disciplinary action taken by any regulatory or licensing board in this or any other state subsequent to their last renewal.

Oral Examination Replaced - At its November 2003 meeting, the Board voted to replace the Oral examination with a Written Clinical Vignette examination. This affected both Licensed Clinical Social Worker (LCSW) and Marriage and Family Therapist (MFT) candidates.

In 1998, the Board was the target of legislation (SB 288), which would have eliminated the Oral examination for LCSWs. After this legislation was narrowly defeated, the Board began to consider other options to the oral examinations. In January 2002, the Board held a public hearing to solicit comments regarding the oral examination. In April 2002, the Board received a presentation from the Department of Consumer Affairs, Office of Examination Resources (OER) regarding written clinical vignettes. The Board decided to include the clinical vignettes on the next examination version to begin gathering performance statistics.

At the November 13, 2003 Board meeting, the OER provided performance data regarding the clinical vignettes, which showed the reliability and validity of the exam items. OER also discussed changes in the professions that support change to a clinical vignette exam. After hearing the presentation, the public comments and the budget impact of continuing to administer an oral examination, the Board decided to eliminate the oral examination for both MFTs and LCSWs. Senate Bill 363, which became effective January 1, 2004, gave the Board authority to offer a written examination, an oral examination, or both.

Written Clinical Vignette Examination Implemented – In April 2004, the Board implemented the Written Clinical Vignette examination. It is administered electronically at eight California sites on a continuous basis by Experior Assessments.

Enforcement Program

Implementation of Citation and Fines – In February 1997, the Board's citation and fine program was implemented as an alternative to the disciplinary action process for certain violations of the Board's Laws and Regulations. As of June 30, 2004, 82 citations have been issued.

Federal Reporting Mandate Implemented – In 2000, the Federal Office of the Inspector General implemented a new federal mandate requiring reporting of disciplinary actions against healthcare professionals to a national data bank, the Health Integrity and Protection Data Bank (HIPDB). The Board reports disciplinary action it imposes to this data bank.

Legislative and Regulatory Improvements

A number of relevant legislative and regulatory changes have been enacted since the last Sunset Review. These changes are listed in chronological order:

JLSRC Legislation (*Senate Bill 1983*) - This legislation extended the Board's existence until July 1, 2005. Within the Sunset Review Committee Hearings, there were many discussions regarding the educational and experiential requirements for Licensed Clinical Social Workers. This resulted in legislation that revised and enhanced the experience requirements as well as increased collaborative

efforts between the Board and the schools of social work. This legislation became effective January 1, 1999.

Inactive License (Senate Bill 2238) – This legislation was among the Board's recommendations in the last sunset review report. It allows a licensee, who is currently not practicing, the option of placing their license on an inactive status. An inactive status permits a licensee to pay a lesser fee and not be required to comply with the continuing education requirement until such time as they wish to reactivate their license and commence practicing. This legislation became effective January 1, 1999.

Identification of all Fees Collected by the Board and Reduction of Registration and Inactive Fees (CCR Sections 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, and 1816.7) - Language included in Senate Bill 2238 stated that with regard to all license, examination, and other fees, the Board shall establish fee amounts at or below the maximum amounts specified. The Board promulgated regulations to identify all the fees collected in one article of the regulations, reduced the registration fees for registration and renewal of the Marriage and Family Therapist Intern registration and the Associate Clinical Social Worker from $90.00 to $75.00, and reduced the inactive fees to half the active renewal fee. These regulations became effective January 8, 1999.

Supervision Training for Marriage and Family Therapist Supervisors (CCR Section 1833.1) – This regulation amendment specified the requirement of six hours of supervision training every two years to be completed by a licensed individual in order for that individual to qualify as a supervisor. This addition has increased a supervisor's knowledge of the necessary components needed to effectively supervise unlicensed individuals. This regulation became effective January 21, 1999.

Requirements for Associate Clinical Social Worker Supervisors (CCR Section 1870) – As a result of Senate Bill 1983 above, the Board and the schools of social work worked together to create comprehensive regulations addressing the responsibilities of supervisors of Associate Clinical Social Workers. This regulation clearly delineates the necessary involvement and knowledge of a supervisor. This regulation became effective May 10, 1999.

Supervisory Plan (CCR Section 1870.1) – Also included in the legislation resulting from the sunset review process was the requirement for the supervisor and supervisee to create a supervisory plan describing the goals and objectives of supervision. This plan is an effective tool to help assure that all individuals involved are aware of their responsibilities. This regulation became effective May 11, 1999.

Marriage, Family and Child Counselor Name Change to Marriage and Family Therapist (AB1449) – This legislation reflected that any reference in any statute or regulation to "licensed marriage, family and child counselor" or "marriage, family and child counselor" shall be deemed a reference to "Marriage and Family Therapist." This legislation became effective July 1, 1999.

Statute of Limitations (Senate Bill 809) – This legislation placed time frames on the Board for pursuing disciplinary action for accusations filed on and after January 1, 2000. This legislation became effective January 1, 2000.

MFT and LCSW Corporations Discontinued (AB 1667) –This legislation discontinued registering MFT and LCSW Corporations. These corporations are required to file their articles of incorporation with the California Secretary of State. This legislation became effective on January 1, 2000.

Reduction of Biennial License Renewal Fees, Delinquent Fees, and Inactive License Fees (CCR Sections 1816, 1816.6, and 1816.7) – Business and Professions Code Section 4994.1 directs the Board to reduce fees accordingly when funds are redeposited into Behavioral Sciences Fund pursuant to the 1991 Budget Act. In 1997 the Legislature redeposited funds, and as a result the Board promulgated regulations to reduce fees. These fee reductions provided a cost savings to licensees. These regulation amendments became effective July 25, 2000.

LCSW Experience Gained Outside of California (SB 1554) – This legislation enacted requirements for individuals who apply for licensure as an LCSW with education and experience gained in another state and for those who hold a valid license in another state. This statute has benefited those applying from another state by clearly delineating the necessary documentation and additional courses needed. This legislation became effective January 1, 2001.

Require Continuing Education in Law and Ethics (CCR Section 1887.3) – Due to a majority of disciplinary actions related to ethical and legal violations, the Board initiated a continuing education requirement of six hours of training in law and ethics every two years. Since the inception of this requirement, there has been a direct correlation between this mandated training and a reduction of enforcement actions. This mandate has been an effective mechanism of ensuring that licensees are informed of the current laws and ethical practices. The regulation amendments became effective December 4, 2001.

Disciplinary Guidelines (CCR Section 1888) - This document was originally incorporated by reference by regulation in July 1, 1997 and was amended in 2002 to create a more efficient document to assist those involved in the disciplinary process when determining the appropriate discipline and probation conditions. It also added probation conditions that better protect the public. This regulation amendment became effective March 25, 2002.

Marriage, Family, and Child Counselor Name Change and Clarification of Acceptance of Out of Country Degrees (Senate Bill 2026) – This legislation primarily changed the license title name from marriage, family, and child counselor to marriage and family therapist throughout the laws that relate to the practice. This change throughout the law connected with the adoption of Business and Professions Code Section 4980.08, which officially renamed the license title *(AB1449)*. The professional association for marriage and family therapists pursued this legislation to rename the MFT license title so that it brought the title in line with those used throughout the United States. Another amendment included in this legislation provided clear, detailed information to those who apply for licensure with a degree obtained outside of the United States. Language was also added that granted the Board the authority to determine the acceptance of a degree program, regardless of approval or accreditation. This legislation became effective January 1, 2003.

Licensed Mental Health Service Provider Education Program (Assembly Bill 938) – This legislation was developed in an effort to address the current shortage of mental health service providers and established the Licensed Mental Health Service Provider Education Program. To partially fund this effort, AB938

amended Sections 4984.75 and 4996.55 of the Business and Professions Code to require an additional ten-dollar fee at the time of license renewal for MFTs and LCSWs. This additional fee does not go into the Board's fund, but is instead transferred into the Mental Health Practitioner Education Fund. The program provides grants to licensed mental health service providers who provide direct patient care in a publicly funded facility or a mental health professional shortage area. This legislation became effective September 20, 2003.

Acceptance of On Line Courses for Completing the Continuing Education Requirement (CCR Section 1887) - This regulation allows licensees to obtain all 36 hours of required continuing education through distance learning and inactive means due to advancements in technology, which now allow for training and reliable verification. This has been an enormous benefit to those licensees who reside in rural areas and have found it difficult in the past to locate and attend the required continuing education courses. This regulation became effective January 22, 2003.

Additional Pre-Licensed and Licensed Continuing Education Training (SB 564) - This legislation requires that pre-licensed individuals complete a 15 hour course in spousal and partner abuse detection, assessment, and intervention strategies and that licensees complete a course in this subject during their first renewal period after the January 1, 2004 operative date. The Board successfully pursued legislation in 2003 to specify that the continuing education course not be less than seven hours in length to provide clarification to continuing education providers and licensees. This legislation became effective January 1, 2004.

Continuing Education Hours Needed for Reactivation of License During Certain Time Periods, Deleting Specification of Settings for Gaining Experience and Enhancing Qualifying Experience, and Increasing Hours Gained Under Other Disciplines (SB 1077) - This legislation made several amendments to the sections of law that relate to Marriage and Family Therapy and Licensed Clinical Social Work by allowing a Marriage and Family Therapist Intern to apply hours of experience gained under separate registrations toward the requirements for licensure, specify the number of continuing education hours required for reactivation from inactive to active status within a renewal period, delete the specific settings in which Marriage and Family Therapist Trainees, Interns, and Associate Clinical Social Workers gain experience and further elaborate on the experience to be gained, clarify setting responsibilities, allow Associate Clinical Social Workers to gain additional hours of experience under a licensed mental health professional acceptable to the Board, specify a required amount of supervision that associates must gain under a Licensed Clinical Social Worker, and restructure the experience sections of law. These changes have lessened the restrictions on settings in which experience may be gained and enhanced the experience to be gained thereby benefiting persons pursuing licensure and employers who have been experiencing shortages in staff. This legislation became effective January 1, 2004.

Additional Pre-Licensed and Licensed Continuing Education Training (SB 953) –This legislation requires that pre-licensed individuals complete a minimum of 10 hours of coursework in aging and long term care and that licensees complete a three hour course in this subject. The Board is in the process of pursuing legislation to further clarify the legislative intent of requiring that all licensees complete this required continuing education coursework during their first renewal period after the January 1, 2005 operative date.

Major Studies conducted by the Board

- ***Any major studies conducted by the Board. [Please provide copy of any documents or reports produced by or under the direction of the Board.]***

Occupational Analyses

An occupational analysis is a study that is designed to identify the job-related critical skills necessary for safe and effective practice in a profession. All examinations administered by the Board are based upon the results of an occupational analysis. The Department of Consumer Affairs' Office of Examination Resources, with the help of licensees, performs the occupational analyses.

LCSWs last had an occupational analysis performed in 1998. A new occupational analysis is in process and will be completed by the end of 2004. MFTs last had an occupational analysis performed in 2002. The next occupational analysis is scheduled for 2007. LEPs last had an occupational analysis performed in 2003. The next occupational analysis is scheduled for 2008. *(See Appendix A: 1998 LCSW Occupational Analysis, 2002 MFT Occupational Analysis, 2003 LEP Occupational Analysis)*

Licensed Clinical Social Work Education and Experience

Throughout the discussions held in the Sunset Review hearings in the 1997-1998 Legislative Session, there was a determination and general agreement that there was a need to reform and revise the experiential requirements for Licensed Clinical Social Workers. This language was included in SB 1983 and became effective January 1, 1999. Originally this legislation contained language mandating that schools issue a masters degree in social work with a clinical emphasis.

The graduate schools of social work responded by pointing out the implications this legislation would have on their programs and their accreditation. In an effort to resolve these issues, several meetings were held with interested parties and the result was to eliminate the legislative proposal and require the Board and the schools of social work to meet and work collaboratively. In addition, the Board implemented legislative and regulatory requirements (supervisory plan) to assist those involved with the expectations required in a supervisory relationship.[3]

Throughout the following years, selected members of the Board met with representatives from the schools of social work to identify common goals and objectives. Goals included development of strategies to improve communication between the Board, the schools of social work and interested parties, a review of clinical social work content, a review of professional development and practice competencies of clinical social work, a research project performed by the schools relating to pre-licensed experience and examination scores, and implementation of the *Requirements for Associate Clinical Social Workers*[4] regulation that became effective in May 1999. In January 2001, the Board implemented the requirement of supervisor training to ensure that supervisors are aware of their responsibilities.

[3] California Code of Regulations Section 1870.1.
[4] California Code of Regulations Section 1870.

These meetings have proven to be a very educational and beneficial experience to all involved. By sharing information about the licensing process early and providing education about the requirements for licensure, the Board continues to strive to streamline the licensing process and protect consumers by preventing violations of the law. *(See Appendix D: September 23, 1999 letter and attachments to Senator Liz Figueroa, Joint Sunset Review Committee Chair).*

Review of Marriage and Family Therapist Degree Granting Institutions

In 2002, the Board's Education Committee began a series of meetings with representatives of schools that offer a qualifying degree program for marriage and family therapy licensure to discuss areas of improvement. Discussions included a review of the current curriculum, trainee experience and school responsibility, review of examination pass rates by school, and review of school compliance with the laws and regulations. These meetings have resulted in enhanced communication between the schools and the Board, revisions to forms to provide further clarification and lessen confusion as to the requirements delineated in law, and a preface to the examination statistics providing information on the purpose of the statistics and the need for potential students to contact the schools directly for degree program information. Language was also added that granted the Board the authority to determine the acceptance of a degree program, regardless of approval or accreditation.[5]

Licensing Data

- ***Licensing Data - What information does the Board provide regarding the licensee (i.e., education completed, awards, certificates, certification, specialty areas, etc.)?***

The Board provides public information regarding its licensees and registrants to individuals who call or write to request information. The public information includes the name, address of record, license number, license status, license issue and expiration dates, whether the individual holds a master's degree, if a citation has been issued against an individual, and whether an accusation has been filed or disciplinary action has been taken against the individual. In addition, the Board maintains a Licensee Query / Verification function on its web site, that can be used to access information on licensees (i.e., name, license number, issue and expiration dates, address of record, citations issued (if any), pending accusations (if any), and any discipline that has been taken place).

[5]Business and Professions Code Section 4980.40.

There are approximately 26,788 Marriage and Family Therapists, 15,847 Licensed Clinical Social Workers, and 1,706 Licensed Educational Psychologists for FY 2003/04. The following provides licensing data for the past four years:

LICENSING DATA FOR MARRIAGE AND FAMILY THERAPISTS	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Total Licensed California Out-of-State *	Total: 25,110	Total: 25,733	Total: 26,275	Total: 26,788
Applications Received	Total: 1,311	Total: 1,297	Total: 1,313	Total: 1,386
Applications Denied	Total: 1	Total: 3	Total: 0	Total: 1
Licenses Issued	Total: 1,060	Total: 847	Total: 922	Total: 1,007
Renewals Issued	Total: 12,316	Total: 12,415	Total: 12,704	Total: 12,681
Statement of Issues Filed	Total: 0	Total: 2	Total: 0	Total: 1
Statement of Issues Withdrawn	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Denied	Total: 1	Total: 1	Total: 1	Total: 0
*** Data unavailable**				

LICENSING DATA FOR LICENSED CLINICAL SOCIAL WORKERS	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Total Licensed California Out-of-State *	Total: 14,750	Total: 15,127	Total: 15,480	Total: 15,847
Applications Received	Total: 846	Total: 808	Total: 867	Total: 948
Applications Denied	Total: 0	Total: 2	Total: 0	Total: 1
Licenses Issued	Total: 469	Total: 520	Total: 533	Total: 671
Renewals Issued	Total: 7,042	Total: 7,525	Total: 7,202	Total: 7,679
Statement of Issues Filed	Total: 0	Total: 1	Total: 0	Total: 0
Statement of Issues Withdrawn	Total: 0	Total: 1	Total: 0	Total: 0
Licenses Denied	Total: 0	Total: 0	Total: 0	Total: 1
*** Data unavailable**				

LICENSING DATA FOR LICENSED EDUCATIONAL PSYCHOLOGISTS	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Total Licensed California Out-of-State *	Total: 1,635	Total: 1,646	Total: 1,665	Total: 1,706
Applications Received	Total: 61	Total: 53	Total: 85	Total: 108
Applications Denied	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Issued	Total: 50	Total: 42	Total: 44	Total: 82
Renewals Issued	Total: 747	Total: 842	Total: 752	Total: 859
Statement of Issues Filed	Total: 0	Total: 0	Total: 0	Total: 0
Statement of Issues Withdrawn	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Denied	Total: 0	Total: 0	Total: 0	Total: 0
*** Data unavailable**				

REGISTRATION CATEGORIES	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Marriage and Family Therapist Intern				
Total	8,082	8,429	8,747	9,008
Registrations Issued	1,785	2,196	2,116	2,222
Registrations Renewed	6,700	6,706	6,967	7,177
Statement of Issues Filed	0	1	2	2
Statement of Issues Withdrawn	0	0	0	0
Registrations Denied	0	1	1	0
Associate Clinical Social Workers				
Total	5,048	5,471	5,786	5,893
Registrations Issued	1,192	1,411	1,278	1,323
Registrations Renewed	3,815	4,089	4,390	4,481
Statement of Issues Filed	1	0	2	1
Statement of Issues Withdrawn	0	0	1	0
Registrations Denied	0	1	0	0

BUDGET AND STAFF

Current Fee Schedule and Range

- ***Discuss which fees are main source of revenues, when renewal is required, date of last fee(s) adjustment, and if any plans to increase fees and for what reasons. List all fees.***

The Board is a special funded agency that generates its revenue from its fees. The Board's main source of revenue is from its applicants and licensees through the collection of examination, licensing, and renewal fees. These fees support the license, examination, enforcement, and administration programs, which includes processing and issuing licenses, maintaining Board records, printing and distributing publications, mediating consumer complaints, enforcing Board statutes, disciplinary actions, personnel, and general operating expenses.

Renewal fees, inactive license fees and continuing education provider fees are all paid on a biennial basis. The due date for the renewal fees is biennial and based on the licensees' birth month. Registrations for interns are renewed annually. All other fees for exams and initial licenses are received and processed on an on-going basis.

From January 1, 2001 through December 31, 2003, the Board temporarily reduced the license renewal fees to $25.00, the delinquent license fees to $25.00 and the inactive license fees to $12.50. In January 2004, the fees reverted back to the amounts listed below. The Board has no plans to increase fees.

Fee Schedule	Current Fee	Statutory Limit
Application Fee (MFT, LCS, LEP)	$100.00	$100.00
Application Fee, CE Providers	$200.00	$200.00
Written Exam Fee	$100.00	$100.00
Written Clinical Vignette Exam Fee	$100.00	$100.00
Initial License Fee, MFT	$130.00	$180.00
Initial License Fee, LCS	$130.00	$155.00
Initial License Fee, LEP	$ 80.00	$150.00
Biennial License Renewal, MFT	$140.00	$180.00
Biennial License Renewal, LCS	$110.00	$155.00
Biennial License Renewal, LEP	$ 80.00	$150.00
Biennial Registration Renewal, CE Providers	$200.00	$200.00
Delinquent Renewal, MFT	$ 65.00	$ 90.00
Delinquent Renewal, LCS	$ 50.00	$ 75.00
Delinquent Renewal, LEP	$ 40.00	$ 75.00

Revenue and Expenditure History

➢ ***Provide brief overview of revenues and expenditures. Comparison of Revenues and Expenditures.***

The Board's revenues are expected to remain generally the same in upcoming years. Expenditures for the Board have decreased slightly in recent years. The Board contributes this trend to efficiencies in the Enforcement Unit as well as the elimination of the Oral Examination. The Board's revenue and expenditures for the last four fiscal years and projections for the next two fiscal years are shown below.

REVENUES	ACTUAL				PROJECTED	
	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Licensing Fees	2,500,895	[a]1,624,989	2,358,302	3,562,835	3,799,530	3,828,650
App. & Exam Fees	1,340,754	1,633,964	1,432,953	1,638,317	1,172,950	1,197,000
Fines & Penalties[b]	58,250	58,120	51,288	66,439	69,535	73,155
General Fund Loan	0	0	-6,000,000	0	0	0
Return (G.F. Loan)	312,510	0	0	0	0	0
Other	75,068	65,377	61,051	52,960	37,325	37,800
Interest	568,995	315,094	78,975	45,665	58,798	69,921
TOTALS	**4,856,471**	**3,697,543**	**-2,017,431**	**5,366,216**	**5,138,138**	**5,206,626**

EXPENDITURES	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Personnel Services	1,565,378	1,540,390	1,537,735	1,647,499	1,665,000	1,665,000
Operating Expenses	2,849,106	3,039,931	2,901,935	2,615,859	2,850,000	2,850,000
(-) Reimbursements	152,129	84,591	93,924	52,072	0	0
(+)Other[c]	0	15,000	0	0	0	0
(-) Distributed Costs	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	**4,262,355**	**4,510,730**	**4,345,746**	**4,211,286**	**4,582,000**	**4,582,000**

[a] Licensing revenue decrease is due to License Renewal Fee reduction.
[b] Includes Cite & Fine Penalties and Delinquent Renewal Penalties
[c] Tort Payment

Expenditures by Program Component

➢ ***Discuss the amounts and percentages of expenditures made by program components.***

During the last four years, the Board has spent an average of 39% of its budget on the examination program, 32% on the enforcement program, and 16% on the licensing program. During the same time frame, the Board's administrative expenses accounted for about 13% of its total expenditures.

EXPENDITURES BY PROGRAM COMPONENT	FY 00-01	FY 01-02	FY 02-03	FY 03-04	Average % Spent by Program
Enforcement	1,365,610	1,592,608	1,418,301	1,207,273	**32%**
Examination	1,636,352	1,625,297	1,740,745	1,731,511	**39%**
Licensing	719,591	739,664	602,822	660,967	**16%**
Administrative	540,802	553,161	583,877	611,534	**13%**
Diversion (if applicable)	N/A	N/A	N/A	N/A	
TOTALS	**4,262,355**	**4,510,730**	**4,345,746**	**4,211,286**	

Fund Condition

- ***Discuss reserve level, spending trends, and if a mandated statutory reserve level exists. Also whether a deficit may occur and whether fee increase or reduction is appropriate.***

The Board's statutory reserve fund limit is 24 months.[6] The Board's fund reserve at the end of fiscal year 2002/03 is 5.1, well within the statutory limits. Projections in subsequent years also indicate a moderate growth maintaining the Board at an adequate fund reserve; projections do not indicate a need for any fee adjustments.

- ***Comparison of Revenues, Expenditures, and Reserves: [See Table Below]***

ANALYSIS OF FUND CONDITION	FY 02-03	FY 03-04	FY 04-05 (Budget Yr)	FY 05-06 (Projected)	FY 06-07 (Projected)	FY 07-08 (Projected)
Total Reserves, July 1	8,097,102	1,784,973	2,939,901	3,496,039	4,120,665	4,757,783
Total Rev. & Transfers	(2,017,431)	5,366,215	5,138,138	5,206,626	5,219,118	5,231,861
Total Resources	6,130,849	7,151,188	8,078,039	8,702,665	9,339,783	9,989,644
Total Expenditures	4,345,876	4,211,287	4,582,000	4,582,000	4,582,000	4,582,000
Reserve, June 30	1,784,973	2,939,901	3,496,039	4,120,665	4,757,783	5,407,644
MONTHS IN RESERVE	**5.1**	**7.7**	**9.2**	**10.8**	**12.5**	**14.2**

[6] Business & Professions Code Section 128.5

LICENSURE REQUIREMENTS

- In November 2003, the Board discontinued administration of the oral examination for MFT and LCSW applicants.
- On April 1, 2004, the Board began administering written clinical vignette examinations to MFT and LCSW applicants.
- Since the Continuing Education (CE) requirements were originally implemented, the Board has continued to refine and expand the CE requirements.

Education, Experience and Examination Requirements

- ***Discuss education, experience and examination requirements for all licensure categories which the board regulates.***

Education Requirements

California law requires Marriage and Family Therapists (MFTs), Licensed Clinical Social Workers (LCSWs), and Licensed Educational Psychologists (LEPs) to hold a master's or doctor's degree. Specific requirements are as follows:

- MFTs must possess a master's or doctor's degree in marriage, family, and child counseling; marital and family therapy; psychology; clinical psychology; counseling psychology; or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy. The degree must have been earned at an accredited or approved institution.[7]
- LCSWs must possess a master's degree from a school or department of social work accredited by the Council on Social Work Education.[8]
- LEPs must possess a master's degree in psychology, educational psychology, school psychology, counseling and guidance, or a degree deemed equivalent by regulations. They must have completed 60 semester or 90 quarter units of postgraduate coursework devoted to pupil personnel services. Such degree or training must be obtained from an educational institution deemed acceptable by the Board.[9]

Experience Requirements

Before becoming licensed as an MFT, LCSW or LEP, all applicants must complete the required hours of supervised work experience in addition to the educational requirements. The way in which these hours

[7] Business and Professions Code Section 4980.40(a).
[8] Business and Professions Code Sections 4996.18(a) and 4996.2 (b).
[9] Business and Professions Code Section 4986.20(a) and California Code of Regulations Section 1854.

may be completed varies among the professions the Board regulates because of the different needs of each profession.

MFT applicants may earn work experience first as a trainee and then as an intern registered with the Board. Trainees have not yet been awarded the necessary degree and are not registered with the Board, while interns have completed their degree and are registered with the Board. MFT applicants must have completed at least 3,000 hours of supervised experience during a period of at least 104 weeks. No more than 1,300 of these hours may be obtained prior to the applicant's completion of the required degree. At least 1,700 post-degree hours of experience must be completed as a registered intern.[10]

LCSW applicants may not earn work experience credit until they have been awarded the required degree and register with the Board as an Associate Clinical Social Worker. They must complete at least 3,200 hours of supervised experience during a period of not less than 104 weeks. Of the 3,200 hours of supervised experience, 1,700 hours must be completed under the supervision of a LCSW. The remaining 1,500 hours may be completed under the supervision of a licensed mental health professional acceptable to the Board. The 3,200 hours are further broken down to consist of a minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling and a maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.[11]

LEP applicants do not register with the Board while gaining the required supervised experience. LEP applicants must have at least two years experience as a full-time, credentialed school psychologist in the public schools or have experience that the Board deems equivalent, which may include work as a credentialed school psychologist in a private or parochial school. The applicant must have at least one year of supervised professional experience either in an accredited school psychology program or under the direction of a licensed psychologist, or comparable experience as determined by the Board's regulations. One year in a public school or its equivalent may fulfill the latter requirement, if that year includes supervision by a licensed psychologist.[12]

Examination Requirements

State licensing boards are mandated to protect the public by preventing unqualified people from entering the professions they regulate. Examinations that test entry-level competency for those who wish to be licensed to practice independently are an important method of ensuring such protections. The practitioners regulated by the Board have a direct impact on the mental health and well being of clients, and therefore, an indirect effect on all who come into contact with that client. The Board's examinations help to ensure public safety by requiring applicants to demonstrate the knowledge, skills, and ability to independently provide safe and effective services to the public.

Candidates for licensure must first complete the necessary education and experience requirements in order to qualify to take the licensing examinations. Each examination is based on an occupational analysis that was conducted within the past five years. Numerous written standards and guidelines

[10] Business and Professions Code Section 4980.43(a).
[11] Business and Professions Code Section 4996.23(a).
[12] Business and Professions Code Section 4986.20 and California Code of Regulations Section 1832.

concerning the examination process exist, including handbooks provided to applicants *(See Appendix B: Licensure Requirements)*.

LEP candidates are required to pass a standard multiple-choice written examination. LCSW and MFT candidates are required to pass both a standard multiple-choice written examination and a written clinical vignette examination.

LEPs are not required to pass a clinical vignette examination because the work performed by LEPs differs from the work performed by MFTs and LCSWs. LEPs provide education-related evaluation, diagnosis, counseling, consultation services and advocacy. Their counseling services are related to resolving academic learning problems. MFT and LCSW clients may present a range of potentially life-threatening issues during therapy sessions.

Standard Written Examinations
The standard written examinations are designed to test an applicant with respect to their knowledge, professional skills, and ability to perform safely and effectively in their field.

The examinations are administered electronically by Experior Assessments, who immediately notifies candidates of the results at the test site. The LCSW and MFT examinations each consist of 175 multiple-choice items and lasts four hours. The LEP examination consists of 100 multiple-choice items and lasts two and one-half hours.

Up to 25 pre-test items are included on each examination to determine whether an item should be used in future examinations. Pre-test items do not impact the applicant's score.

Written Clinical Vignette Examinations
The Board began administering written clinical vignette examinations to MFT and LCSW applicants on April 1, 2004. These examinations are designed to test an applicant with respect to their higher-order cognitive processing and clinical skills.

Each vignette is a brief description of a clinical situation a licensee would likely encounter in practice. Candidates are presented with four to six vignettes, each with a series of four or more multiple-choice questions. The possible answers are longer and more complex than a standard multiple-choice question, and list a sequence of actions or describe a process of applying knowledge.

The examinations are administered electronically by Experior Assessments. Each examination includes 30 multiple-choice items and lasts 90 minutes. Pre-test items may be included that do not impact the applicant's score.

One advantage of administering the examination in a written format rather than oral format is that candidates receive their results immediately on site, as opposed to the six to eight week wait when candidates completed the oral examination. Because the written clinical vignette examination is provided on a continuous basis rather than just several times per year, candidates are able to schedule their examination within three weeks of passing the standard written examination.

Oral Examinations
The purpose of the oral examinations is to permit evaluation of a candidate's ability to provide safe and effective clinical services to consumers. The Board discontinued administration of the oral examinations in November 2003 and replaced it with the written clinical vignette examinations.

Examination Plans
Each examination is based on the results of an occupational analysis, which determines the content to be tested in each examination. The following are the core content areas and descriptions for each examination program.

Marriage and Family Therapist

- Clinical Evaluation
  The ability to identify presenting problems and collect information to assess clinical issues and formulate a diagnostic impression within the client's interpersonal and cultural context.

- Crisis Management
  The ability to identify, evaluate, and manage crisis situations.

- Treatment Planning
  The ability to develop a complete treatment plan and prioritize treatment goals based on assessment, diagnosis, and a theoretical model.

- Treatment
  The ability to implement, evaluate, and modify clinical interventions consistent with treatment plan and theoretical model.

- Ethics
  The ability to apply and manage ethical standards and principles in clinical practice to advance the client's welfare.

- Law
  The ability to apply and manage legal standards and mandates in clinical practice.

Licensed Clinical Social Worker

- Biopsychosocial Assessment
  The ability to identify and assess the impact of biological, psychological, social, environmental, and risk factors on the client.

- Developing a Diagnostic Impression
  The ability to use assessment information to develop a problem formulation or diagnosis.

- Planning for Intervention and Therapy
  The ability to develop a treatment plan based on assessment and diagnostic information, prioritize interventions, monitor progress toward goals and objectives, and plan for termination.

- Clinical Case Management
  The ability to coordinate adjunctive resources, advocate for the client, and empower the client.

- Application of Theory in Practice
  The ability to apply theory to practice using cognitive/behavioral, psychodynamic, systems, and humanistic/existential models.

- Providing Therapeutic Intervention
  The ability to provide a range of interventions specific to client's needs.

- Human Diversity
  The ability to evaluate the effects of human diversity factors on the client's social functioning, values, beliefs, identity, and family dynamics. This area also assesses the candidate's ability to integrate human diversity factors into therapy.

- Legal Requirements for Clinical Practice
  The ability to recognize and apply legal mandates in clinical practice.

- Ethical Standards for Professional Conduct
  The ability to identify and manage ethical issues that impact therapy.

Licensed Educational Psychologist

- Assessment
  The ability to evaluate the client's cognition, information processing, academic achievement, personality, and social-emotional status to determine level of educational functioning by administering standardized tests and alternative measures.

- Intervention
  The ability to facilitate interventions to improve the client's development as related to educational functioning.

- Consultation
  The ability to advocate for the client as well as to provide consultation to clients, parents, schools, community groups and agencies related to educational functioning.

- Law
  The ability to comply with legal obligations, including confidentiality, reporting requirements, and disclosure of fees and qualifications.

- Ethics
  The ability to comply with ethical standards for Licensed Educational Psychologists, including confidentiality, scope of practice issues, and professional boundaries.

- ***What does the Board do to verify information provided by the applicant regarding education and experience? What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?***

Verification of education and experience

All applicants for licensure must have official transcripts submitted in a sealed envelope directly from the school. For MFT and LEP applicants, if their degree was obtained outside of the country, the master's or doctor's degree must be evaluated to determine whether it is equivalent to one of the degrees as stated in law. The evaluation service must be a member of the National Association of Credential Evaluation Services. The Board requires a detailed report from the evaluation service. The Board is in the process of pursuing legislation to gain authority to accept out-of-country degrees from LCSW applicants.

The supervisor completes and signs the experience verification form under penalty of perjury to verify the applicant's supervised experience. The applicant submits this form with the application for licensure.

Checking for criminal history and prior disciplinary actions

The Board considers background checks of all applicants vital to the protection of consumers. Applications are reviewed for past criminal convictions and disciplinary actions against a professional license. If the Board discovers convictions or disciplinary actions, it may require rehabilitation or deny licensure.

Applicants are required to declare, under penalty of perjury, whether they have ever been convicted of, pled guilty to, or nolo contendere to, any misdemeanor or felony. Applicants must also declare, under penalty of perjury, whether they have ever been denied a professional license or had license privileges suspended, revoked, or disciplined, or if they have ever voluntarily surrendered a professional license in California or any other state.

If an applicant reports such an act, the Board requires the applicant to provide a written explanation and any rehabilitative efforts or changes made to prevent future problems. In addition, the Board requires applicants to provide certified copies of court documents describing the conviction and disposition of the case, or certified copies of the determination made by the applicable licensing agency.

Once the information is reviewed, the application is moved forward, held until the applicant undergoes rehabilitation, or denied. Decisions to deny a license or require rehabilitation are made after careful consideration of each case. The Board considers a crime or disciplinary action related to the qualifications of an applicant if it indicates the applicant will be unable to perform in a manner consistent with the public health, safety or welfare. The Board considers the nature and severity of the act, evidence of any act committed subsequent to those under consideration, the time that has elapsed since the act occurred, the extent to which the applicant has complied with the terms of probation or other sanction, and any evidence of rehabilitation. The Board's Executive Officer follows Board policy when making decisions regarding denial or requirement of rehabilitation.

An applicant not reporting a conviction or a disciplinary action against a license is required to explain why the information was not disclosed. Such concealment may result in the application being denied, issuance of a citation and fine, or other disciplinary action. For an applicant whose license has been denied, the Board utilizes applicable laws to develop criteria to evaluate rehabilitation efforts.

The Board uses a variety of methods to determine the accuracy of an applicant's declarations. Criminal history within the state is checked when the applicant's fingerprints are processed through the California Department of Justice (DOJ); and out of state criminal background checks are done through the Federal Bureau of Investigation (FBI).

In August 2000, the Board implemented Live Scan procedures for fingerprinting. This new computer technology allows applicants to have their fingerprints electronically scanned and transmitted. The DOJ can notify the Board of results in approximately 14 days, and FBI within 30 days, if no prior criminal record is found. For applicants completing the fingerprint process outside of California, where Live Scan is not available, the paper-based system is still accepted. Prior to the use of Live Scan, the Board required that all applicants have their fingerprints processed through the DOJ. Out of state or out of country applicants were required to have their prints processed through the FBI, in addition to DOJ. Upon implementation of Live Scan, all applicants seeking registration or licensure must have their fingerprints processed through both DOJ and FBI.

In addition, the Board verifies out of state licensure status through other state regulatory boards. LEP applicants, as well as MFT and LCSW applicants, are checked for prior disciplinary actions through the Commission on Teacher Credentialing and the Consumer Affairs System (CAS). The Board can also access information regarding discipline of an applicant or licensee through the Healthcare Integrity and Protection Data Bank.

- ***Discuss passage rates for all examinations, whether there is legitimate justification for all exams, whether exams have had an occupational analysis performed and been validated and when, and the date of the next scheduled occupational analysis for each exam.***

Examination Validation

All examinations are validated on a continuous basis, and examination validation is never complete. Each examination is based upon the results of an occupational analysis, which identifies the job-related critical skills necessary for safe and effective practice. The examinations are designed to assess those skills.

All examinations are developed and evaluated, and have the occupational analyses performed by the Department of Consumer Affairs' Office of Examination Resources, with the help of licensed MFTs, LEPs, and LCSWs. Licensees are invited to participate in examination development workshops, which are facilitated by Test Validation and Development Specialists. During these workshops, licensees write and review items for the examinations, construct examinations, and establish the passing standards. Such licensees receive training in established examination development processes and measurement methodologies.

Each examination is psychometrically evaluated after each administration. Statistical findings consistently indicate that the examinations are psychometrically sound, legally defensible, and valid. The Board began administering the written clinical vignette examination on April 1, 2004. However, clinical vignette items have been pre-tested since 2002, and data from those pre-test items demonstrated that the clinical vignettes performed very well.

Passage Rates and Establishing the Passing Standards

The Board monitors and publishes passage rates by examination version and by school.

The written examinations represent a standard of performance that licensees agree is the minimum acceptable level for licensing in the profession. To establish pass/fail standards for each version of the written examination, a criterion-referenced passing score methodology is used.

During a criterion-referenced passing score procedure, a panel of licensees considers factors that would contribute to minimum competence such as prerequisite qualifications (e.g., education, training and experience), the difficulty of the issues addressed in each multiple choice item, and public health and safety issues. By adopting a criterion-referenced passing score, the Board applies the same minimum competence standards to all licensure candidates. Because each version of the examination varies in difficulty, an important advantage of this methodology is that the passing score can be modified to reflect subtle differences in difficulty from one examination to another, providing safeguards to both the candidate and the consumer. A new version of the examination is implemented a minimum of two times per year to maintain examination security and the integrity of the licensing process.

Marriage and Family Therapist (MFT) Program
Candidates for MFT licensure are required to pass both a standard written examination and a written clinical vignette examination.[13] MFTs last had an occupational analysis performed in 2002. The next occupational analysis is scheduled for 2007.

Licensed Clinical Social Worker (LCSW) Program
Candidates for LCSW licensure are required to pass both a standard written examination and a written clinical vignette examination.[14] LCSWs last had an occupational analysis performed in 1998. The next occupational analysis is in process and will be completed by the end of 2004.

Licensed Educational Psychologist (LEP) Program
Candidates for LEP licensure are required to pass a standard written examination.[15] LEPs last had an occupational analysis performed in 2003. The next occupational analysis is scheduled for 2008.

- ***Comparison of exam passage rates for all candidates for both a national exam (if applicable) and/or a California state exam(s) if provided:***

All examinations are state-constructed. The Board does not use national examinations.

[13] Business and Professions Code Section 4980.40(g) and California Code of Regulations Section 1829.
[14] Business and Professions Code Section 4996.1 and California Code of Regulations Section 1877.
[15] Business and Professions Code Section 4986.20(f).

The Board used the Association for Social Work Boards (ASWB) clinical level examination from October 1991 through March 1999. However, the pass rate of California candidates was not comparable to the national pass rate. California applicants' average pass rate was 85%, with first-time participants at 93%. Nationwide, the average pass rate for the clinical level examination is currently 64%, with first-time participants at 72%.

The Board has never used the national examination for MFTs, administered by the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB). The Board is concerned about the level at which this examination is written due to differences in licensing requirements among states. AMFTRB reports that more than 50% of its candidates have less than 200 hours of supervised post-graduate experience, whereas California requires a minimum of 1500 such hours before a candidate may take the examination, a difference of 1300 hours.

There is no national examination for LEPs.

LICENSED CLINICAL SOCIAL WORKER STANDARD WRITTEN EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	926	1051	1153	965
PASS %	50%	64%	70%	65%
NOTE:				

LICENSED CLINICAL SOCIAL WORKER ORAL EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	887	969	918	762
PASS %	52%	55%	56%	54%
NOTE: Final administration 10/03				

LICENSED CLINICAL SOCIAL WORKER WRITTEN CLINICAL VIGNETTE EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	--	--	--	472
PASS %	--	--	--	66%
NOTE: Began administration 04/01/04. Statistics cover the time period from 4/1/04 through 6/30/04.				

LICENSED EDUCATIONAL PSYCHOLOGIST WRITTEN EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	59	65	72	39
PASS %	81%	69%	64%	79%
NOTE:				

MARRIAGE AND FAMILY THERAPIST STANDARD WRITTEN EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	1741	1776	2082	1,728
PASS %	65%	56%	61%	75%
NOTE:				

MARRIAGE AND FAMILY THERAPIST ORAL EXAMINATION				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	2050	2045	1649	1325
PASS %	48%	42%	51%	52%
NOTE: Final administration 10/03				

MARRIAGE AND FAMILY THERAPIST WRITTEN CLINICAL VIGNETTE EXAM				
	2000/01	2001/02	2002/03	2003/04
CANDIDATES	--	--	--	797
PASS %	--	--	--	46%
NOTE: Began administration 04/01/04. Statistics cover the time period from 4/1/04 through 6/30/04.				

- ***Discuss any increase or decrease in average time to process applications, provide exam and issue license.***

Processing Applications

The Board has shown a decrease in the processing time of the applications due to the new Live Scan fingerprinting process. With this new technology, the DOJ can notify the Board of results in approximately 14 days, and FBI within 30 days.

Providing Examinations

In November 2003, the Board discontinued administering the oral examinations. The oral examinations were previously offered three times per year. The oral examinations were replaced by written clinical vignette examinations and were first implemented in April 1, 2004. The clinical vignette examinations provide an advantage to candidates, as they are administered on a continuous basis, six days per week.

Issuing Licenses

The receipt of license fee to issuance of license has remained constant at 30 days.

AVERAGE DAYS TO RECEIVE MFT LICENSE	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Application to Exam Eligibility	90 days	75 days	60 days	60 days
Receipt of License Fee to Issuance of License	30 days	30 days	30 days	30 days
Total Average Days	120 days	105 days	90 days	90 days

AVERAGE DAYS TO RECEIVE LCS LICENSE	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Application to Exam Eligibility	90 days	50 days	45 days	45 days
Receipt of License Fee to Issuance of License	30 days	30 days	30 days	30 days
Total Average Days	120 days	80 days	75 days	75 days

AVERAGE DAYS TO RECEIVE LEP LICENSE	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Application to Exam Eligibility	30 days	30 days	30 days	30 days
Receipt of License Fee to Issuance of License	30 days	30 days	30 days	30 days
Total Average Days	60 days	60 days	60 days	60 days

Continuing Education/Competency Requirements

- ***Discuss briefly: changes made by the Board since last review to assure competency. How does the Board verify CE or other competency requirements?***

At the time of the Board's last Sunset Review the continuing education program was in the process of being implemented for MFT and LCSW licensees. Since then, the Board has established additional CE requirements. Licensees renewing for the first time are required to complete 18 hours of continuing education and subsequent renewals require completion of an additional 36 hours every renewal cycle.[16]

The Board requires three mandatory one-time continuing education courses and one ongoing continuing education course for MFTs and LCSWs. These courses[17] are HIV/AIDS, spousal or partner abuse, and aging and long term care. Licensees must complete six hours in law and ethics[18] as a condition for each renewal.

Licensees can access detailed continuing education information on the Board's website. The brochure *Continuing Education and Licensee Renewal Information (See Appendix B)* is sent to new licensees and is available to all licensees upon request.

[16] Business and Professions Code Section 4980.54(c)(1), 4996.22(a)(1) and California Code of Regulations 1887.3(a).
[17] California Code of Regulations Section 1887.3 (c). Business and Professions Code Section 4980.39 (a), 4980.57(a), 4996.22(a)(3) and 4996.26(a).
[18] California Code of Regulations Section 1887.3 (d).

In February 1, 2003, a change was made to the definition for self-study continuing education.[19] Previously, electronic methods of learning were limited to one-third of the required continuing education hours. Licensees may now obtain all of their required continuing education hours through interactive, electronic means. This includes online, teleconferencing, and videotape viewing.

Approximately four percent of the MFTs and LCSWs who renew each month are randomly selected for an audit to ensure compliance with continuing education requirements. Of those audited, 99% have been found to be in compliance. Licensees who are not in compliance are referred to the enforcement program for the issuance of a citation. Since August 2001, the Board has issued 41 citations for non-compliance with the continuing education requirement.

As of July 1, 2004, there were 2,204 continuing education providers. Approximately four percent of the CE Providers who renew each month are also randomly selected for an audit. Of those audited, 99% have been found to be in compliance as well. CE Providers that are not in compliance are required to correct the violation(s) and comply with the regulations for Board approved providers. They are also flagged for an audit the next time they renew to ensure compliance. Failure to pass a subsequent CE audit may result in disciplinary action against the CE provider's registration with the Board.

Comity/Reciprocity With Other States

- ***Discuss briefly: temporary licensing process, or any other methods used to facilitate licensing of those from other states or foreign countries. Any anticipated changes or changes made since last review?***

The Board may issue a MFT license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially equivalent to California and the person successfully completes the Board administered licensing examinations. The issuance of a license is further conditioned upon the person's completion of additional coursework.[20]

The Board may issue a LCSW license to any person who, at the time of application, has held a valid license, issued by a board of clinical social work examiners or corresponding authority of any state, for two years if the education and supervised experience requirements are substantially equivalent and the person successfully completes the Board administered licensing examinations. The issuance of a license is further conditioned upon the person's completion of additional coursework.[21]

The Board has determined that the reciprocity process in place ensures adequate protection of consumers and does not believe that changes to the process are needed at this time.

[19] California Code of Regulations Section 1887 (a) (b).
[20] Business and Professions Code Section 4980.80.
[21] Business and Professions Code Section 4996.17(a).

ENFORCEMENT ACTIVITY

- In February 1997, the Board's citation and fine program was implemented as an alternative to the disciplinary action process for certain violations of the Board's Laws and Regulations. As of June 30, 2004, 82 citations have been issued.
- In June 2003, the Board's website was enhanced to provided the ability to file consumer complaints online. To date approximately 250 complaints have been submitted through the online process.
- In May 2004, the Board expanded its Public Disclosure Policy to include citations that have been issued.

The Board of Behavioral Sciences has an active enforcement program designed to ensure that laws governing Marriage and Family Therapists (MFTs), Licensed Clinical Social Workers (LCSWs), and Licensed Educational Psychologists (LEPs) are enforced in a fair and judicious manner. Entry into the various mental health professions is usually restricted through rigorous qualification standards in education, experience, and examinations. These standards protect the public by screening out incompetent applicants who could cause severe harm. Enforcing appropriate standards for licensure is an important duty of any licensing board's regulatory program.

In evaluating the Board's enforcement program, it is important to consider the nature of the professions being regulated. Many of the Board's licensees work independently and are expected to assess, diagnose, formulate treatment plans, and make appropriate referrals while demonstrating an understanding of the dynamics of their interaction with clients. There may be physical danger to the client or others, alcohol or drug abuse, physical or emotional abuse, family relationship problems, work relationship problems, and issues related to loss. In many cases, clients seeking guidance are vulnerable and susceptible to harm, particularly through sexual misconduct or sexual abuse by the therapist. An accurate diagnosis and well-implemented treatment can, in some cases, be the difference between life and death.

The client places enormous trust in the therapist licensee. If a licensee abuses that trust through negligence or a failure to follow the law and ethics of the profession, the Board imposes discipline such as monitoring or limiting practice, or requiring remedial education. Through the Board's enforcement efforts, the public has recourse against negligent and dangerous licensees who, although they have mastered tests of knowledge and abilities, have failed to observe the law and their ethical obligations.

ENFORCEMENT DATA	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Inquiries	Total: 770	Total: 900	Total: 990	Total: 1025
Complaints Received (Source)	Total: 701	Total: 888	Total: 898	Total: 943
Public	312	393	403	454
Licensee/Professional Groups	14	3	29	22
Governmental Agencies	18	33	77	80
Other / Internal	357	457	388	384
B&P Code Section 800	0	2	1	3
Complaints Filed (By Type)	Total: 701	Total: 888	Total: 898	Total: 943
Competence/Negligence	34	34	45	39
Unprofessional Conduct	164	241	188	194
Fraud	8	3	9	10
Health & Safety	0	0	2	0
Unlicensed Activity	34	33	39	45
Personal Conduct	9	4	7	7
Sexual Misconduct	20	24	9	11
Criminal Charges/Convictions	313	397	384	383
Other	119	152	215	254
Complaints Closed	Total: 725	Total: 892	Total: 930	Total: 917
Investigations Commenced	Total: 33	Total: 42	Total: 25	Total: 11
Compliance Actions	Total: 21	Total: 50	Total: 48	Total: 54
ISOs & TROs Issued	0	0	0	1
PC 23 Order Issued	2	2	2	1
Citations and Fines	10	29	24	19
Public Letter of Reprimand	0	0	1	0
Cease & Desist/Warning	8	17	21	32
Referred for Diversion	n/a	n/a	n/a	n/a
Compel Examination	1	2	0	1
Referred for Criminal Action	Total: 2	Total: 1	Total: 0	Total: 2
Referred to AG's Office	Total: 34	Total: 31	Total: 41	Total: 17
Accusations Filed	30	27	17	22
Accusations Withdrawn	3	3	1	0
Accusations Dismissed	1	0	0	0
Stipulated Settlements	Total: 25	Total: 23	Total: 16	Total: 15
Disciplinary Actions	Total: 34	Total: 35	Total: 21	Total: 23
Revocation	10	14	4	10
Voluntary Surrender	13	6	7	7
Suspension Only	0	0	0	0
Probation with Suspension	1	2	3	1
Probation	9	13	6	5
Probationary License Issued	1	0	0	0
Public Reprimand / Reproval	0	0	1	0
Probation Violations	Total: 5	Total: 4	Total: 2	Total: 2
Suspension or Probation	1	1	0	0
Revocation or Surrender	4	3	2	2

Enforcement Program Overview

- **Discuss statistics in enforcement data. What is the source of most of the complaints? Are there some unique reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report any judgments taken against the licensee. Any current problems with board's receiving relevant complaint information or obtaining information for investigation purposes? What are the largest number and type of complaints filed (incompetence, unprofessional conduct, etc.)? Explain which type of cases are being stipulated for settlement. Any significant changes since last review (increases or decreases)?**

Source and Types of Complaints

The Board receives an average of 850 complaints a year with a portion of those received from the public, most of whom are clients, and internal referrals which are a result of a new reporting requirement which mandates that all licensees disclose criminal convictions on their renewal application. The majority of complaints are those that allege unprofessional conduct and criminal charges/convictions. Common examples of unprofessional conduct include allegations of sexual misconduct, breach of confidentiality, or complaints alleging emotional or physical harm.

The Board's enforcement staff receives allegations of misconduct by MFTs, LCSWs, LEPs, MFT interns, and LCSW associates. The Board encourages anyone to file a complaint if they believe a licensee or registrant has engaged in illegal or unethical activities related to her or his professional responsibilities.

Approximately 10 percent of the inquiries that the Board receives are informal complaints. These consumers typically receive the information they need from the enforcement staff and do not file a formal written complaint.

To file a formal complaint, a complainant must provide a written statement which explains the nature of the complaint in as much detail as possible, including dates, times, and locations of therapy whenever possible. Copies of any documentary evidence that verifies a client/therapist relationship, along with the name, address, and phone number of anyone who can corroborate the complaint or verify the events, should also be submitted. A complainant must sign a release of information form, which is included as part of the complaint package, to allow the complaint to be investigated. Because of confidentiality laws regarding the therapeutic relationship, an investigation cannot proceed without the signed release.

When a written complaint is received, an enforcement staff member verifies whether the subject of the complaint is a licensee or registrant of the Board. Allegations are tracked as the complaint progresses and statistics are developed regarding the number and subject matter of complaints filed. Alleged violations are monitored for possible trends, and that information is used to determine whether new regulations should be developed.

Complainants are notified within 10 days of the Board's receipt of their complaint. They are informed whether there is sufficient information to pursue the complaint and whether the Board has jurisdiction. If the Board does not have jurisdiction, the complainant may be referred to another agency.

Complainants are kept informed of the progress of their complaints in writing by the enforcement staff assigned to the case. They are notified at critical junctures in the review process, including when a complaint is:

- received,
- opened,
- closed,
- referred to the Division of Investigation (DOI),
- referred to the Attorney Generals Office (AG),
- when an accusation is filed, and
- discipline is rendered against the licensee.

Unique Reporting Requirements

Although ethical expectations are that licensees will support clients' efforts to report misconduct, there is no law that requires licensees to report unprofessional conduct or other violations by other licensees. However, under Business and Professions Code Section 800 et seq. there are various mandates where the Board receives complaints:

- Section 801(c): Insurers providing professional liability insurance to MFTs, LCSWs and LEPs shall report to the Board any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

- Section 801.1(c): Every state or local governmental agency that self-insures a MFT, LCSW, or LEP shall report to the Board as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services.

- Section 802(c): Settlements or arbitration awards over $10,000 of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a MFT or LCSW who does not possess professional liability insurance.

- Section 803. (a) (1): Requires California courts report to the Board judgments against a person who holds a license, certificate, or other similar authority from the Board and has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services.

The Board has received six complaints over the last four fiscal years as a result of these reporting requirements.

Reporting of Criminal Convictions on License Renewal Form - As mentioned previously, in January 2001, the Board implemented a new requirement that all licensees must disclose on their renewal application any conviction or plea of nolo contendere to any misdemeanor or felony, or disciplinary action taken by any regulatory or licensing board in this or any other state subsequent to their last renewal.

Current Problems

The problems that routinely arise in the investigative process pertain to obtaining consents for release of medical records, accessing personnel records, interviewing the subject of the complaint and witnesses, and obtaining other relevant records regarding the incident. Due to case law and other privacy provisions, these restrictions are becoming an increasing problem.

Stipulated Agreements

The Board encourages stipulated agreements (Stipulations), as a resolution to disciplinary cases, as long as the public interest is served. The public is often better served because the resolution time is reduced, lengthy appeals are avoided, and the Board and respondent save time and money. Stipulations eliminate the six month to one-year delay that may result from attempting to schedule a mutually agreeable hearing date. It is typically expedient, more certain, and less costly than pursuing revocation through an administrative hearing. Even in egregious cases where outright revocation seems appropriate, a stipulated revocation accomplishes the same goal with less risk, lower costs, and less personnel time.

Stipulation terms are given to the Deputy Attorney General (DAG) representing the Board by the enforcement staff, utilizing the Board's *Disciplinary Guidelines (See Appendix C: Disciplinary Guidelines)*. Stipulations are negotiated and drafted by the DAG, the respondent, and the respondent's legal counsel. In negotiating a stipulation, the DAG is encouraged to work closely with the Board's Executive Officer to arrive at a stipulation that will be acceptable to the Board. The percentage of stipulated agreements has remained relatively stable in recent years at approximately 70%.

Significant Changes

Significant changes in the Board's enforcement program which are reflected in the overall statistics above, can be attributed to:

- The rise in criminal charges/convictions, as reflected in the statistics for complaints received, are from implementing the Live Scan procedures in August 2000 for fingerprinting applicants seeking licensure; subsequent arrest or conviction information the Board received as a result of the Live Scan; and the renewal requirement implemented in January 2001, that requires licensees to disclose criminal charges/convictions on their renewal application.

- The implementation and expansion of the Citation and Fine program in 1997.

- The decrease in disciplinary actions from the last Sunset Review are a result of:
  - The Board's increased outreach and education to licensees through reporting of disciplinary actions in the Board's newsletters, and on its website,
  - Additional administrative/enforcement alternatives afforded by the Citation and Fine Program,
  - The implementation of new continuing education requirements for law and ethics and,
  - A new Business and Professions Code Section involving statute of limitations[22] for the time in which the Board is able to pursue disciplinary action.

- **Discuss what percentage of complaints are referred for investigation, then to accusation, and end up having some disciplinary action taken. What overall statistics show as to increases or decreases in disciplinary action since last review.**

The overall statistics for this category show significant change since the last Sunset Review and the average number of disciplinary actions has decreased. Of the 3,340 complaints received during this reporting period, an average of 4% were referred for investigation, 3% had accusations filed, and 4% resulted in disciplinary action. In the last Sunset Review 8.5% of the Board's complaints resulted in disciplinary actions. As noted previously in this section, the Board's preventive efforts and the significant changes made by the Board translate to the decrease in accusations and disciplinary actions.

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
COMPLAINTS RECEIVED	701	888	898	943
Complaints Closed	725	892	930	917
Referred for Investigation	33	42	25	11
Accusation Filed	30	27	17	22
Disciplinary Action	34	35	21	23

Case Aging Data

- **Discuss time frames for processing complaints, investigation of cases, from completed investigation to formal charges being filed, and from filing of the accusation to final disposition of the case. Discuss if any changes from last review.**

Over the past four years the average number of days from receipt of complaint to final disposition of the case has decreased from 1032 days in fiscal year 2000/01 to 675 in 2003/04. Of the four components determining the number of days to process and prosecute a case, the Board controls only one, which is complaint processing. As a result of procedural changes and staffing patterns, the processing time has been decreased from 82 days in 2000/01 to 56 in 2003/04. Additional strategies to decrease this component of the disciplinary process are being explored. The most dramatic changes occurred in the

[22] Business and Professions Code Sections 4982.05 and 4992.31.

investigation phase, which rose from 318 days in fiscal year 2000/01 to 404 days in fiscal year 2002/2003, then declined to 326 days in 2003/04. Factors that influence the length of this phase are the complexity and number of cases, and the availability of Division of Investigation investigators to conduct the Board's investigations. Both the pre- and post-accusation phases of the administrative process have changed slightly since 2000/01. The pre-accusation phase increased from 62 days in 2000/01 to 116 in 2003/04; however the post-accusation phase increased from 243 days in 2000/01 to 250 days in 2003/04.

CASE AGING DATA AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 2000/01	**FY 2001/02**	**FY 2002/03**	**FY 2003/04**
Complaint Processing	82	67	62	56
Investigations	318	333	404	326
Pre-Accusation*	62	43	128	116
Post-Accusation**	243	188	155	250
TOTAL AVERAGE DAYS* **	1032	819	679	675

* From completed investigation to formal charges being filed.
** From formal charges filed to conclusion of disciplinary case.
*** From date complaint received to date of final disposition of disciplinary case: The numbers reflected here are not the sum of the column because the disciplinary cases finalized in the fiscal year may or may not be the same as the complaints or accusations filed in that same year.

- **Discuss time frames for closing of investigations and AG cases over past four years, and average percentage of cases taking over 2 to 4+ years, and any decreases or increases in the percentage of cases being closed each year. Discuss any changes from last review.**

During fiscal years 2000/01 through 2003/04, approximately half of the investigations were closed within one year and approximately 86% were closed within two years. Additionally, investigations taking over 2 years to complete decreased from 44% from the last sunset report period to 14% over the last four fiscal years.

Since the last report, there has also been a decrease in the number of AG cases closed and the time it takes to close cases. During the last four fiscal years, an average of 39 cases at the AG's office were closed. This compares to 93 from the previous reporting period, covering fiscal years 1993/94 through 1996/97.

Over the past four years 16% of the cases took over two years to complete, compared to 42% from the previous report. Overall the number of cases being referred to investigation and the Attorney General for disciplinary action has decreased due to changes implemented and previously discussed in this report.

CASE AGING DATA INVESTIGATION & ATTORNEY GENERAL TIME FRAMES					
INVESTIGATIONS CLOSED WITHIN:	**FY 2000/01**	**FY 2001/02**	**FY 2002/03**	**FY 2003/04**	**AVERAGE % CASES CLOSED**
90 Days	3	1	0	0	3%
180 Days	3	0	0	0	2%
1 Year	20	15	6	12	32%
2 Years	26	20	22	11	49%
3 Years	6	6	7	3	14%
Over 3 Years	0	0	0	0	0%
Total Cases Closed	**58**	**42**	**35**	**26**	
AG CASES CLOSED WITHIN:	**FY 2000/01**	**FY 2001/02**	**FY 2002/03**	**FY 2003/04**	**AVERAGE % CASES CLOSED**
1 Year	15	18	22	20	49%
2 Years	18	17	9	10	35%
3 Years	9	7	2	2	13%
4 Years	1	0	1	0	1.5%
Over 4 Years	0	2	0	0	1.5%
Total Cases Closed *	**43**	**44**	**34**	**32**	
Disciplinary Cases Pending	**45**	**32**	**39**	**24**	

* For purposes of this chart, "closed" data reflected here means fully adjudicated, withdrawn or rejected.

Cite and Fine Program

➢ **Discuss the extent to which the board has used cite and fine authority. Discuss any changes from last review and last time regulations were updated.**

The Board's Cite and Fine Program regulations became effective on February 17, 1997, and the Program was implemented in April 1999. Since the inception of the Program, 82 citations and fines have been issued, and one citation was issued without a fine. The Cite and Fine Program increases the effectiveness of the Board's enforcement process in that it provides the Board with an expedient method of addressing violations which do not warrant revocation, suspension, or imposition of probationary terms. Examples of violations amenable to resolution through cite and fine includes misrepresentation as to the type or status of a license or registration, practicing with an expired license, breach of client confidentiality, failure to report suspected child abuse, advertising in a manner which is false, misleading or deceptive, or unprofessional conduct in terminating therapy.

The Executive Officer of the Board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations of the statutes and regulations enforced by the Board. Fines may range from $100.00 to a maximum of $2,500.00. In issuing an order of abatement or assessing the amount of the fine, the Executive Officer of the Board gives due consideration to several factors, including the gravity of the violation, complaint history,

extent to which the cited individual cooperated with the Board's investigation, and good or bad faith exhibited by the individual.

In August 2001, the Board began issuing citations and fines for failure to comply with continuing education requirements and audits, and misrepresentation on the renewal application of completion of the required continuing education hours. To date, of the 82 citations issued, 41 of those have resulted from random continuing education audits.

The Board also has the authority to cite, fine, and issue an order of abatement for unlicensed practice. Criminal charges may also be filed in some instances for unlicensed practice; however, district attorneys do not generally pursue these cases unless they are egregious. One of the benefits of the Cite and Fine Program is the ability to penalize an individual financially for unlicensed practice, as well as order the individual to immediately cease the unlicensed practice, advertising self as performing the services for which a license is required, or using the title of MFT, LCSW or LEP after their name.

Effective January 1, 2003, Senate Bill 2019 authorized the Board to issue a citation and fine against a licensee who is in default of a United States Department of Health and Human Services education loan including a Health Education Assistance Loan. In addition, on January 1, 2004, the Business and Professions Code[23] was amended to increase the administrative fine limit from $2,500 to $5,000. The Board anticipates reviewing the citation and fine regulations to determine if changes are needed to enhance the effectiveness and efficiency of the Program.

CITATIONS AND FINES	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Total Citations	10	29	24	19
Total Citations With Fines	10	28	24	19
Amount Assessed	$11,950	$13,800	$10,750	$16,200
Reduced, Withdrawn, Dismissed	0	6	1	1
Amount Collected	$8,825	$10,500	$10,650	$8,300

Results of Complainant Satisfaction Survey

➢ **Discuss the results of the Survey.**

In completing the consumer satisfaction survey, the Board sent out approximately 360 surveys to consumers whose complaints were closed or had disciplinary action taken during the time frames listed below. Forty percent of the surveys mailed were returned to the Board and the results are provided below.

The results of the survey were not entirely surprising. Many complainants will not obtain the results they seek, that is to say, the formal discipline of a MFT, LCSW, or LEP. Sending surveys to clients who were involved in a psychotherapeutic relationship tends to re-open the underlying issues involved in their psychotherapy and not the matters that caused them to contact the Board in the first place.

[23] Senate Bill 362, Ch. 788 amended Business and Professions Code Section 125.9.

The level of the standard of proof is difficult to meet, and licensees are not disciplined for being insensitive, rude or uncommunicative, nor can the Board pursue matters where a violation could not be substantiated, or is outside of the Board's jurisdiction (i.e., child custody issues, third party complaints, etc.).

While the licensee's behavior may cause client dissatisfaction, it is not illegal nor is it a disciplinable offense. At the same time, it is unlikely that consumers will be satisfied if no disciplinary action is taken against the licensee who they filed a complaint against. The Board has and is making every effort to fully explain the process and provide guidance to the consumer.

As stated earlier, complainants are kept informed of the progress of their complaints at critical junctures in the review process. They are notified when a complaint is received, opened, closed, referred to the DOI, referred to the AG, when an accusation is filed, and when discipline is rendered against the licensee.

CONSUMER SATISFACTION SURVEY RESULTS*				
QUESTIONS	**Percent Satisfied by Fiscal Year**			
# Surveys Mailed: 360 **# Surveys Returned: 143**	**2000/01** **90** **28**	**2001/02** **106** **40**	**2002/03** **99** **45**	**2003/04** **65** **30**
1. Were you satisfied with knowing where to file a complaint and whom to contact?	79%	73%	82%	90%
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	57%	63%	53%	70%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	36%	40%	40%	43%
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?	39%	45%	44%	47%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	43%	50%	40%	47%
6. Were you satisfied with the final outcome of your case?	11%	13%	13%	30%
7. Were you satisfied with the overall service provided by the Board?	**39%**	**35%**	**29%**	**47%**

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

- **Discuss the average costs incurred by the board for the investigation and prosecution of cases, and which type of cases average more than others. Explain if the board is having any difficulty in budgeting for Prosecution and Hearing costs, and whether cases may have been delayed because of cost overruns.**

The table below shows the average costs of investigating and prosecuting cases. The average cost per case ranges from $ 12,832 to $17,208 depending on the complexity of the case.

The Board makes every effort to minimize the cost of its enforcement activities while maintaining the level needed to protect the public. As stated earlier, the use of investigative time by the DOI has been reduced over the past four years. However, expert witnesses are also utilized to determine if gross negligence, incompetence or unprofessional conduct has occurred. More complex cases typically require the expert witness to work closely with the AG assigned to the case. During this reporting period, the Board had six cases that were appealed to and denied by the superior court.

Average costs per case are not representative of the actual costs for cases referred or closed for the fiscal years. Cases may carry over one or more fiscal years before closure or completion. Costs incurred for the DOI are based on a two-year roll over methodology. In this methodology, funds for DOI investigations are based on investigations closed two fiscal years ago.

AVERAGE COST PER CASE INVESTIGATED	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Cost of Investigation & Experts	$ 59,307	$272,303	$116,478	$46,366
Number of Cases Closed	58	42	35	26
Average Cost Per Case	$1,022	$6,483	$ 3,327	$1,783
AVERAGE COST PER CASE REFERRED TO AG	**FY 2000/01**	**FY 2001/02**	**FY 2002/03**	**FY 2003/04**
Cost of Prosecution & Hearings	$548,346	$487,816	$526,139	$292,541
Number of Cases Referred	34	31	41	17
Average Cost Per Case	$16,127	$15,735	$12,832	$17,208
AVERAGE COST PER DISCIPLINARY CASE	**$17,149**	**$22,218**	**$16,159**	**$18,991**

Cost Recovery Efforts

➢ **Discuss the board's efforts in obtaining cost recovery. Discuss any changes from the last review.**

The Board has the authority to recoup the costs[24] of investigation and prosecution and aggressively seeks and collects cost recovery in most cases. Cost recovery is always negotiated in stipulated settlements. In cases where the respondent is placed on probation, cost recovery, including compliance with a payment schedule, is generally a condition of probation. Non-compliance with this condition of probation may result in the case being returned to the AG's office to seek revocation or to extend the term of probation until cost recovery is made in full.

In cases calling for the revocation of a license or registration, costs are often difficult to collect. In September 1999, the Board began to use the Franchise Tax Board (FTB) Intercept Program to attempt collection of unpaid recovery costs. The FTB program was selected based on its simplicity, reasonable costs for services, and its effectiveness. To date, twelve cases have been referred to the FTB, resulting in interception of $9,925.33.

COST RECOVERY DATA	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Total Enforcement Expenditures	$607,653.00	$760,119.00	$642,617.00	$338,907.00
# Potential Cases for Recovery*	34	35	21	23
# Cases Recovery Ordered	20	21	12	9
Amount of Cost Recovery Ordered	$112,902.00	$130,772.00	$ 36,258.50	$ 25,497.50
Amount Collected	$ 33,105.74	$ 45,544.76	$ 57,867.25	$ 20,600.08

* The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.

RESTITUTION PROVIDED TO CONSUMERS

➢ **Discuss the board's efforts in obtaining restitution for the individual complainant, and whether they have any formal restitution program and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Discuss any changes from last review.**

The Board does not have the authority to order restitution to consumers. However, the Board may consider seeking restitution for the complainant as part of a stipulated agreement. Additionally, a licensee placed on probation must adhere to any terms of criminal probation that may include a requirement to provide restitution.

RESTITUTION DATA	FY 2000/01	FY 2001/02	FY 2002/03	FY 2003/04
Amount Ordered	$0	$0	$0	$0
Amount Collected	$0	$0	$0	$0

[24] Business and Professions Code Section 125.3

COMPLAINT DISCLOSURE POLICY

- **Briefly describe the board's complaint disclosure policy. At what point in the disciplinary process is information made available to the public concerning the licensee and what type of information is made available? Does the board have problems obtaining particular types of information?**

The Board's *Complaint Disclosure Policy (See Appendix C)* was adopted on February 21, 2003. Pursuant to this policy, the Board releases complaint information once an accusation is prepared by the AG's Office and filed by the Board, with certain exceptions. In the following situations, complaint information is disclosed in lieu of or prior to the filing of an accusation:

- A citation, fine, and/or order of abatement may be disclosed after the issuance of a citation.[25] The Board may issue citations, fines, and orders of abatement in lieu of filing of an accusation.

- An interim suspension order (ISO) may be disclosed upon filing of the ISO.[26] An ISO may be sought and issued in a case that is considered very recent, provable, shocking in nature, and posing an immediate threat.

- An action taken by the Board pursuant to Penal Code Section 23 may be disclosed, upon the Board's appearance or filing. (Under Section 23 of the Penal Code, the Board may intervene in a criminal case to obtain a court order to suspend or restrict practice of marriage and family therapy, licensed educational psychology, or licensed clinical social work in advance of the filing of an accusation.)

A summary of a complaint may be provided to the subject of the complaint or the subject's attorney under Section 800(c) of the Business and Professions Code. The Board may elect not to disclose investigative files under Section 6254(f) of the Public Records Act. Section 6254(c) exempts disclosure of certain personal information.

However, the Board is in the process of reviewing its Complaint Disclosure Policy for revision. Areas being reviewed for amendment to the policy include disclosing pending complaint information where the Executive Officer has determined that one or more of the following circumstances exist:

1. The complaint is serious and that disclosure could provide protection to the public;
2. The complaint is part of a pattern of complaints and their disclosure may protect the consumer and/or prevent additional harm to the public;
3. The complaint has been referred to the Office of the Attorney General for formal disciplinary action, but the charging document has not yet been filed;
4. The complaint has been referred to another law enforcement entity for prosecution.

[25] Business and Professions Code Sections 125.9 and 148, and California Code of Regulations, Title 16, Section 1886 et. seq..
[26] Business and Professions Code Section 494

The Board has based its complaint disclosure policy on legal advice and concerns about consumer protection, investigative integrity, and basic privacy issues pursuant to:

1. Public Records Act (Government Code Section 6250 et seq.)
2. Information Practices Act (Civil Code Section 1798 et seq.)
3. California Constitutional Right to Privacy (California Constitution, Article I, Section 1)

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed	**X ******	**X**
Citation	X	
Fine	X	
Letter of Reprimand *	X	
Pending Investigation	X ****	X
Investigation Completed	X ****	X
Arbitration Decision		X
Referred to AG: Pre-Accusation	X ****	X
Referred to AG: Post-Accusation	X	
Settlement Decision **	X	
Disciplinary Action Taken	X	
Civil Judgment ***	X	
Malpractice Decision	N/A	
Criminal Violation: Felony *** Misdemeanor ***	 X X	
Referred to another Law Enforcement entity for prosecution	X ****	

* A public reprimand is considered disciplinary action.
** This is considered disciplinary action.
*** If resulting in an accusation or disciplinary action.

**** Information being considered for amendment to the Board's Complaint Disclosure Policy.

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

- ***Discuss what methods are used by the board to provide consumer outreach and education.***

The Board uses a variety of mechanisms to provide consumer outreach and education. Its web site is one focus of the Board's efforts. Since the Board's last Sunset Review report, the web site has been enhanced to provide the public, licensees, and candidates a wide range of information. The web site allows these parties to access license verification, disciplinary actions, information on Board members, present and past newsletters, as well as applications and instructional materials. The site allows consumers the opportunity to file complaints online, request various publications and forms, and send emails for quick responses. Information is organized in categories to make it easier for consumers, licensees, and candidates to find the information they need. The site also provides links to various related organizations, accredited and approved schools, and other government agencies. The Board continually seeks input for items that may be included on the site and makes a specific effort to ensure our site meets the needs of consumers, licensees and candidates.

The Board participates in and provides a variety of presentations to consumers, schools, governmental agencies and professional organizations about the profession, educational, experience and examination requirements, as well as disciplinary or enforcement related issues or processes.

- ***Discuss whether the board offers online information to consumers about the activities of the board, where and how to file complaints, and information about licensees, or believes it is feasible/appropriate to do so.***

Since July 1996, the Board has maintained a web site that provides a variety of information to the public, licensees, and candidates. The site, which is updated on a regular basis, includes the following features: consumer complaint information and instructions; the ability to file a complaint online or access a complaint form which can be completed and sent by mail; license query function to ascertain if an individual is licensed or registered or has had any disciplinary action taken; the Board's meeting schedule and minutes; and a majority of the Board's publications and newsletters. Individuals may also use the site to request applications and publications be sent by mail or they may fill out and print the material directly. The site also provides articles of interest regarding new regulations, statutes, as well as news affecting the profession.

- ***Discuss whether the board conducts online business with consumer/licensees, or believes it is feasible/appropriate to do so.***

The Board's web site provides licensees and candidates with online applications, instructions, and updates regarding the profession. The site features license renewal requirements and forms, procedures for examinations, as well as links to other sites that provide information of interest to the consumer, licensee or candidate. The site provides for change of address and a mechanism to contact the Board by email. Comments and suggestions are also accepted via emails to the Board.

The Board does not currently have the capability of initiating online processing of business transactions. The Department of General Services was implementing online credit card payments for all state agencies pursuant to the Governor's Executive Order D-17-00 on e-Government. The DCA is conducting a pilot program with several boards and bureaus. After the pilot project's completion, the Board hopes to begin accepting credit cards as a means of payment via the web site.

- ***Discuss whether the board offers online license information and applications (initial and renewal licenses, address changes, etc.), or believes it is feasible/appropriate to do so.***

As noted above, the Board provides most of its applications and information regarding examinations and license renewals online. Licensees can ascertain from the query feature if they are current, and if not, they can access license renewal information and forms to complete and submit to the Board. The site provides candidate handbooks and applications for those requesting examination and re-examination, applications and instructions for those seeking registration and licensure, as well as forms for reporting a change of address. All of these services, plus more, can be found under the "Forms and Publications" section of our web site.

- ***Discuss whether the board offers online testing/examination services for both initial and renewal licenses, or believes it is feasible/appropriate to do so.***

Examination information, updates, handbooks and applications are provided on the Board's website. The Board provides candidates the ability to schedule their examination appointment online. Examinations are offered via computer at monitored test sites throughout the state.

It is not feasible or appropriate to offer high-stakes licensure examinations online. Security and confidentiality could not be maintained, leading to unqualified individuals becoming licensed, and potential harm to the public.

The Board does not require an examination to renew a license.

- ***What streamlining of administrative functions would be necessary if the above services and information was provided via the Internet***

The Board has streamlined many of its processes since the last Sunset Review. More consumer information has been made available online. Board staff procedures have been simplified by the development and utilization of computer technology programs, which in turn allows faster processing of applications, license renewals, and other requests for services. The Board has updated its applicant tracking system, added enhancements to its enforcement tracking system and simplified the examination and application process to reduce paperwork.

The DCA is currently developing a program that will allow the Board to accept credit card payments for payments of applications, renewals and other fees. As stated above, after the pilot project's completion, the Board hopes to begin accepting credit cards as a means of payment via the web site.

- ***Please describe if there are other ways use of the Internet by the board could improve services to consumers/licensees.***

As stated earlier, after the DCA's pilot project's for online renewals is completed, the Board hopes to begin accepting credit cards as a means of payment for renewals and other services via the Board's web site.

- ***Discuss what types of practices are increasingly occurring outside California's traditional "marketplaces" that fall under the jurisdiction of your board.***

There are a variety of non-traditional, non-practice related fields occurring in the marketplace today such as self help information contained in various Internet websites or books, various support groups, online research in an attempt to self diagnose, hypnotherapy, life or career coaches, etc.

These fields do not fall within the jurisdiction of the Board. However, if the services in these various settings should crossover into practice-related services, then the individual's license could be subject to discipline. As these issues are brought to the Board's attention, the information is reviewed to ensure unlicensed practice is not occurring or that licensee's are adhering to the Board's Laws and Regulations.

- ***Discuss what type of challenges the board faces with respect to online advice "practice without presence," privacy, targeted marketing, and other issues.***

The Internet and computer technology are being utilized by consumers and health care practitioners in a number of ways. Consumers are utilizing the Internet to obtain information on healthcare and in some instances, psychotherapy. The profession has utilized computer technology in their practices as well. The Board has a notice to consumers on its web site regarding online psychotherapy in an effort to inform those who choose to seek therapy or counseling over the Internet.

Individuals who provide psychotherapy or counseling, either in person, by telephone, or over the Internet, are required by law to be licensed. Licensing requirements vary by state. Individuals who provide psychotherapy or counseling to persons in California are required to be licensed in California. Such licensure permits the consumer to pursue recourse against the licensee should the consumer believe that the licensee engaged in unprofessional conduct.

The Board and the Legislature have addressed issues surrounding "Telemedicine" over the past several years. In 1996 legislation was passed[27] regarding out of state practitioners, consultations, professional education, and telemedicine. In the Telemedicine Development Act, a health care practitioner may deliver medical services using interactive audio, video, or data communications without person-to-person contact with the patient.

In 1997 language was added[28] to require the health care practitioner, prior to delivery of service, to obtain verbal and written informed consent. The legislation also delineated the procedures required. The

[27] Stats. 1996, ch.864 (SB 1665)
[28] Stats. 1997, ch. 654

law also defined "health care practitioner" as having the same meaning as "licentiate"[29] because the definition did not include marriage and family therapists or clinical social workers at the time of passage in 1996.

In 1999 language was added[30] that broadened the definition of "licentiate" adding marriage and family therapists and clinical social workers. The determination was made that, even though this law is contained in the Medical Practices Act, the Board of Behavioral Sciences should treat Business and Professions Code Section 2290.5 as part of its law.

In 2003, legislation[31] amended the law to reflect that the provisions in Business and Professions Code Section 2290.5 regulating telemedicine apply to Marriage and Family Therapists and Licensed Clinical Social Workers.

- ***Discuss whether the board has any plans to regulate Internet business practices or believes there is a need to do so.***

The Board regulates business practices to the degree that such practice is within the Board's jurisdiction. As noted above, the Board has also posted a notice to consumers and licensees on its website regarding online psychotherapy and practicing on the Internet in an effort to inform those who choose to seek therapy or counseling over the Internet. This information states:

"Individuals who provide psychotherapy or counseling, either in person, by telephone, or over the Internet, are required by law to be licensed. Licensing requirements vary by state. Individuals who provide psychotherapy or counseling to persons in California are required to be licensed in California. Such licensure permits the consumer to pursue recourse against the licensee should the consumer believe that the licensee engaged in unprofessional conduct.

Be a cautious consumer when seeking therapy over the Internet, or by any other means, by doing the following:

- *Verify that the practitioner has a current and valid license in the State of California.*
- *Be sure you understand the fee that you will be charged for the services to be rendered and that you fully understand how and to whom the fee is to be paid.*
- *Be sure you are satisfied with the methods used to ensure your communications with and by the therapist will be confidential.*
- *Be sure you are aware of the risks and benefits of doing therapy, over the Internet or by any other means, so you can make an informed choice about the therapy or counseling to be provided.*

[29] As defined in Business and Professions (B&P) Code Section 805.
[30] Business and Professions Code Section 805, Stats.1999, c.252 (AB 352)
[31] Stats. 2003, ch. 20, (AB116)

- *According to Business and Professions* Code Section 2290.5, *prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:*

  (1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

  (2) A description of the potential risks, consequences, and benefits of telemedicine.

  (3) All existing confidentiality protections apply.

  (4) All existing laws regarding patient access to medical information and copies of medical records apply.

  (5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient."

PART 2
BOARD OF BEHAVIORAL SCIENCES

BOARD'S RESPONSE TO ISSUES IDENTIFIED AND FORMER RECOMMENDATIONS MADE BY THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

ISSUE #1. SHOULD THE LICENSING OF MFTS, LCSWS, AND LEPS BE CONTINUED?

JLSRC Recommendation: Both the Department and Committee staff recommended the continued licensure of MFT's (marriage and family therapists), LCSW's (licensed clinical social workers), and LEP's (licensed educational psychologists).

JLSRC Vote: The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.

JLSRC Comment: The Board of Behavioral Sciences regulates the following Master's degree-level professionals: MFT, approximately 23,000 active licensees; LCSW, approximately 13,600 active licensees; LEP, approximately 1,600 active licensees.

As indicated by the Board, the public is entitled to demand that the professionals in these fields follow high standards of behavior. The mental health professional increasingly serves the public. For example, they are often called to situations that directly affect consumers when they are in their most vulnerable state, by providing service to, and with emergency response teams, hostage negotiation teams, child protective services, juvenile courts, schools, prisons, and adult/child abuse agencies.

Because of the possibility of serious harm to clients, the public expects that mental health professionals be regulated, monitored, and held accountable for any type of negligent practice. Because mental health professionals have access to confidential client information, the public expects that regulatory authorities will remove dishonest or incompetent practitioners.

The public has a right to expect that professionals will be educated, monitored, and held accountable. The professionals also have a stake in promoting a safe and educated profession and in supporting the public's demand that practitioners be ethical and honest. The regulatory program is needed because of the fact that harm to clients can occur and can be severe. Possible harm includes physical injury or death of the client or others, and the possible escalation of dysfunction and distress.

2004 Board Response and Recommendation:

The Board concurs with the Joint Committee's recommendation.

ISSUE #2. SHOULD AN INDEPENDENT BOARD OF BEHAVIORAL SCIENCES BE CONTINUED, OR SHOULD ITS OPERATIONS AND FUNCTIONS BE ASSUMED BY THE DEPARTMENT OF CONSUMER AFFAIRS?

JLSRC Recommendation: Both the Department and Committee staff recommended that the Board of Behavioral Sciences be retained as the independent state agency to regulate and license MFT's, LCSW's and LEP's. Committee staff recommends that the sunset date of the Board be extended for six years (to July 1, 2005). However, the Legislature should continue to monitor the Board's enforcement and oral examination programs.

JLSRC Vote: The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.

JLSRC Comment: The Board of Behavioral Sciences appears, in most respects, to be operating efficiently and carrying out its mandate for public protection effectively. However, due to the concerns raised by a significant number of applicants in regard to the Board's oral examination, and to a lesser extent, by some licensees regarding its enforcement activities, the Joint Committee may wish to revisit these aspects of the Board program fairly soon. Additional discussion of the oral examination and enforcement issues follows.

2004 Board Response and Update Since Last Review:

The Board concurs with the Joint Committee's recommendation that the Board of Behavioral Sciences be retained as the independent state agency to regulate and license MFTs, LCSWs and LEPs.

Following the last Sunset Review, the Board reviewed the oral examination programs and submitted a report to the Sunset Review Committee on September 23, 1999. *(See Appendix D: Part 2).* Thereafter the Board explored options to replace the oral examinations with written clinical vignettes as a means of testing application of high-level cognitive and clinical skills.

Additionally, the Board completed LCSW and MFT occupational analyses, performed recruitment efforts to assist in recruiting licensees to become oral examiners and participate in development workshops, conducted an adverse impact study, conducted oral examiner training, and performed cooperative efforts with professional associations to redevelop the oral exam candidate questionnaire. In January 2003, the Board submitted language to Senator Figueroa and the Sunset Review Committee for inclusion in the committee bill *(See Appendix D: Part 2).* Language was included in SB 363 (which passed in November 2003), which allowed the Board the option to administer a written and/or an oral examination. The new written clinical vignette examination has been administered since April 1, 2004.

ISSUE #3. SHOULD THE COMPOSITION OF THE BOARD OF BEHAVIORAL SCIENCES BE CHANGED?

JLSRC Recommendation: Both the Department and Committee staff recommended retaining the current statutory composition of the Board of Behavioral Sciences.

JLSRC Vote: The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.

JLSRC Comment: The 11-member Board of Behavioral Sciences comprises a majority of 6-public members, and 2-MFCC's, 2-LCSW's, and 1-LEP. The Department and Committee staff views this as an appropriate mix of public and professional members.

2004 Board Response and Recommendation:

The Board concurs with the Joint Committee's recommendation.

ISSUE #4. SHOULD THE ORAL EXAMINATIONS REQUIRED BY THE BOARD OF BEHAVIORAL SCIENCES BE ELIMINATED?

JLSRC Recommendation: Both the Department and Committee staff recommended continuation of the use of oral examinations by the Board of Behavioral Sciences, but that the Board continue to review and validate the integrity of its examinations. The Board should also conduct an assessment of all the possible causes of the low pass rate for its exams (see discussion below). Committee staff also recommended a subsequent review of the Board's examination program within two years.

JLSRC Vote: The Joint Committee did not adopt the recommendation of the Department and Committee staff as it concerned the Licensed Clinical Social Worker's (LCSWs) oral examination. The Joint Committee adopted a substitute recommendation, by a vote of 5-1, to eliminate the current oral examination [for LCSWs by January 1, 1999], and for the Board of Behavioral Sciences to come back to the Legislature within one year with a proposal to include the material on the oral exam within a degree program and under supervised conditions, etc.

JLSRC Comment: The Board of Behavioral Sciences oral examinations have been the subject of intense criticism, particularly from candidates for LCSW licensure who have failed. They have alleged that the examination (and any oral examination) is inherently subjective in both content and administration, that it does not reflect or measure their professional preparation and experience adequately, and that the oral examination process is biased. They have also argued that the low pass rate (consistently in the middle-30 percent range over the last few years, and substantially lower since the examination was standardized in 1992) conclusively demonstrates that the oral examination is not a valid testing tool. The Board disagrees, asserting that the oral examination is defensible and that there may be other reasons for the low passage rate such as: (1) gaps in candidates professional education or supervised experience, (2) changes in the profession that create significantly different types of practice settings and

experience, (3) changes in state and federal laws that now require practitioners to be licensed who were previously exempt from the licensure requirement.

It should be noted, that the California license does not differentiate among practice settings -- the law allows practitioners to practice in private, independent settings as well as supervised institutional settings (private or public), such as county mental health facilities or correctional facilities. Accordingly, candidates whose professional preparation or subsequent work experience may have been narrowly focused, may very well have difficulty with a broad based oral examination.

The Board has provided extensive documentation regarding its oral examination, including: (1) assessment from the DCA Office of Examination Resources that the oral examination is occupationally relevant and psychometrically defensible; and,(2) a survey of expert examiners, which indicates that the pool of examiners reflects the diversity of the general California population and the licensure candidate population. An adverse impact study is under way to determine whether the oral examination is biased, and may cause a disadvantage to ethnic or linguistic minorities, older or younger applicants, or male or female applicants.

Those who strenuously advocate elimination of the oral examination have provided substantially less hard evidence to bolster their case, though one study (conducted under contract to a professional organization that represents both licensees and candidates) has been offered that challenges the occupational validity and testing methodology. Moreover, the low pass rate remains enigmatic, in view of the candidates' extensive academic preparation and supervised experience.

While the issue was debated extensively in 1997, in the context of SB 288 (Haynes), which is now pending in the Assembly policy committee, huge variance remains between those who argue that the examination serves the purpose of public protection, by screening out applicants whose professional preparation or skills are deficient, and those who argue that an arbitrary and unfair oral examination prevents qualified applicants from practicing their chosen profession.

Given the serious and sensitive nature of the practice of the Board's licensees, the Department and Committee staff are reluctant to recommend abandoning any examination, or other licensing/screening device, whose primary purpose is to prevent unqualified candidates from practicing with a general license that authorizes professional interaction with highly vulnerable clients in private, independent practice.

2004 Board Response and Update Since Last Review:

As stated earlier in this report, the Board discontinued administration of the oral examinations in November 2003. The oral examinations in use by the Board were valid and legally defensible, but it was clear that it was time to develop another instrument that could measure minimum competency for licensure. The Board began to develop written clinical vignettes in 2001. Clinical vignettes are designed to test an applicant with respect to their higher-order cognitive processing skills and clinical skills. The Board began including clinical vignettes in the standard written examination in July 2002 to obtain information regarding their performance.

Senate Bill 363, which passed in 2003 and became effective January 1, 2004, gave the Board the option to require a written examination and/or an oral examination (emphasis added). It also gave the Board the authority to require a second written examination. In November 2003, key information was presented by

the DCA's Office of Examination Resources, which assisted the Board in making the decision to replace the oral examination with a written clinical vignette examination. They presented performance data, which showed the reliability and validity of the clinical vignettes. Additional data demonstrated the efficacy of the standard written examinations. The pros and cons of oral and written examinations were explored, and the Board discussed the budget impact of continuing to administer an oral examination.

After taking into consideration all of these factors, as well as volumes of written correspondence and public comment, the Board decided to replace the oral examination with a written clinical vignette examination for both LCSWs and MFTs.

The Board began administering the written clinical vignette examination April 1, 2004. The written clinical vignette examination is provided on a continuous basis rather than just several times per year and candidates are able to receive their results immediately on site. Statistics indicate that the examination has been performing within the normal range of acceptability and has shown to be reliable and valid.

BOARD PROPOSALS IN LAST SUNSET REVIEW

The following items were also provided to the Joint Committee as the Board's legislative proposals for 1998:

- Display of license in primary place of practice
  Status: **Completed.**
  B&P Code Sections 4980.31, 4986.41, 4996.7 became effective January 1, 1999.

- Required training related to spouse/partner abuse
  Status: **Completed.**
  B&P Code Sections 4980.57 and 4996.22 became effective January 1, 2004 to require CE training related to spousal/partner abuse.

- Collection of oral exam fee only after a candidate has passed the written exam.
  Status: **Completed.**
  Effective January 1, 1999, B&P Code Sections 4984.7, 4986.80, and 4996.3 were amended to reflect that after successfully passing the written exam, applicants submit their fee for the oral exam.

- Creation of inactive license status category
  Status: **Completed.**
  Effective January 1, 1999, B&P Code Sections 4984.8, 4986.82 and 4997 were added to provide an inactive license status category for MFTs, LEPs, and LCSWs.

2004 BOARD PROPOSALS AND RECOMMENDATIONS

The following are the Board's proposals and recommendations for this Sunset Review report:

1. Revision of the LEP licensing requirements: Changes in practice as well as requirement for school credentialing have changed over the years and has not been reflected in our law.

2. Continue to clean up language that is unclear.

3. Continue to streamline the ability for those coming from out of state to obtain licensure in California.

APPENDICES

The following documents and publications are contained in a separate notebook.

Appendix A: Background Information

- BBS Laws and Regulations
- BBS Strategic Plan
- 1998 LCSW Occupational Analysis
- 2002 MFT Occupational Analysis
- 2003 LEP Occupational Analysis

Appendix B: Licensure Requirements

- LEP Written Examination Handbook

- LCSW Standard Written Examination Candidate Handbook
- LCSW Written Clinical Vignette Examination Candidate Handbook

- MFT Standard Written Examination Handbook
- MFT Written Clinical Vignette Examination Candidate Handbook

- Continuing Education and Licensee Renewal Information Brochure

Appendix C: Enforcement Activity

- Disciplinary Guidelines
- Complaint Disclosure Policy

Appendix D: Part 2 Recommendation and Issues

- September 23, 1999 letter and attachments to Senator Liz Figueroa, Joint Sunset Review Committee Chair.

- January 10, 2003 letter and attachment to Senator Liz Figueroa, Joint Sunset Review Committee Chair.