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To: Board Members **Date:** November 21, 2018
From: Christy Berger **Telephone:** (916) 574-7817
Regulatory Analyst
Subject: Discussion and Possible Action Regarding Practice Setting Definitions

The Exempt Setting Committee concluded its work on September 12, 2018. The Committee developed draft definitions for different types of practice settings that offer mental health services, with the primary goals of protecting consumers and clarifying current law.

The draft definitions were presented to the Policy and Advocacy Committee at its meeting on October 19, 2018, and are presented herein for consideration by the Board. The Policy and Advocacy Committee continues to work on related language that is expected to be presented to the Board early next year.

Background: Exempt Settings

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

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

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

Proposed Language: Exempt Settings

The Committee developed language that would require unlicensed/unregistered therapists working in an exempt setting, and not pursuing licensure, to provide consumers with a printed disclosure, prior to initiating psychotherapy, containing information about how to file a complaint about the therapist with the agency.

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

The proposed language is provided in **Attachment A**.

Background: For-Profit Business Entities

There are a variety of for-profit business entity types that may be set up for the purpose of providing mental health services. Despite there being a number of laws that reference “private practice” for each of the professions, LCSW statute is the only one that currently defines private practice, and that definition is lacking in specificity. Current law does not contain definitions for any other types of for-profit entities with the exception of professional corporations (which are assumed under current law to be a type of practice). See **Attachment B** for the LCSW private practice definition, as well as the professional corporation definitions.

Many “for-profit” settings do not meet the criteria for what is normally considered a private practice or professional corporation. Other types of for-profit business entities include :

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

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

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

Certain types of for-profit companies are regulated by the State of California. The type of oversight varies, from lightly to heavily regulated. Nearly all of the for-profit company types listed in the above bullet points are settings regulated either by the state Department of Public Health or Department of Health Care Services (e.g., certain nonresidential substance abuse treatment programs can operate without a state license).

Companies that provide mental health services may be owned, in full or in part, by an unlicensed person. There are no laws that prohibit this. The vast majority of these companies do not provide psychotherapy as their primary service (substance abuse programs, nursing homes, hospices, dialysis clinics, etc.), though there may be some that do. Some of those companies are corporations or operate under a state license, which would provide a layer of oversight. However, there may be some such companies that look and operate similarly in structure to a private practice. This is likely a rare or unusual setup, but could occur. Such companies will be discussed further in the next section.

Proposed Definitions: “Private Practice” and “Other For-Profit” Settings

The Committee developed language that would separately define “Private Practice” and “Other For-Profit” settings. The new definitions are designed to clarify which settings must comply with (or are otherwise affected by) each of the laws that reference “private practice.”

The Committee considered including “other for-profit” setting types within the private practice definition. However, this would subject “other for-profit” companies to all of the laws pertaining to private practices, and the Committee determined that this would be problematic in some cases. In addition, since most for-profit companies operate under some type of oversight, the restrictions that pertain to private practices may be unnecessary. The Policy and Advocacy Committee is currently reviewing all of the laws that specifically reference “private practice” and is working to determine which of those laws should also apply to “other for-profit” settings. The Committee will develop proposed language as necessary, and is expected to complete that work early next year.

There is some question as to where a company that is owned in full or in part by an unlicensed person, that looks akin to a private practice, should fit in terms of the definitions, or whether such companies should be addressed in another way. If such companies fall under the “other for-profit” definition (as they would in the definition’s current form), they would not be subject to the restrictions related to private practice settings. The restrictions on private practice exist because there is little oversight as compared to an agency-type setting. The Board may wish to explore this issue further.

The proposed language is provided in **Attachment C**.

Proposed Language Re: LCSW Students

Business and Professions Code section 4996.15 allows students in a degree program leading to LCSW licensure to be placed in an exempt setting or “working in a recognized training program.” The reference to “a recognized training program” could give the impression that other types of settings, including private practice, are acceptable for clinical social work students. LMFT and LPCC law specifically prohibits students from being placed in private practice settings.

Language specifically prohibiting private practice placements for clinical social work students is proposed to be added. In addition, the phrase “or working in a recognized training program” is proposed to be deleted, as it appears to be obsolete. Staff was unable to locate any formally recognized training programs for clinical social work students, nor any mention of such.

See **Attachment D** for the proposed changes.

Plan for Legislation

Should the Board approve the language presented before them today, staff plans to find an author to introduce the language in Attachments A (notice to consumers) and D (LCSW students). The language in Attachment B will be held until the Board has the opportunity to consider language being developed by the Policy and Advocacy Committee regarding laws that address “private practice”. At that time (expected in early 2019) it would be amended into the same bill.

Recommendation

Conduct an open discussion about the proposed language. Direct staff to make any discussed changes and any non-substantive changes and to pursue as a legislative proposal.

Attachments

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

Attachment B: Professional Corporation Definitions; LCSW Private Practice Definition

Attachment C: Proposed Language: For-Profit Setting Definitions

Attachment D: Proposed Language: Students Pursuing a Master's Degree in Social Work

**ATTACHMENT A
PROPOSED LANGUAGE**

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

Amend §4980.01 (LMFT)

(c)(4) This chapter shall not apply to an employee or volunteer working in any of the following settings if his or her work is performed solely under the supervision of the employer a governmental entity, a school, or an institution that is both nonprofit and charitable if:

(A) ~~A governmental entity.~~

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

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

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

(1) The individual's work is performed solely under the supervision of the entity;

(2) The individual performs those functions as part of the position for which the individual is employed or is volunteering; and,

(3) Effective July 1, 2020, the individual, if not licensed or registered with the Board, and if providing psychotherapy services, provides consumers with a written notice that complies with all of the following:

(A) The notice is provided prior to initiating psychotherapy services;

(B) The notice is provided in at least 12-point font; and,

(C) The notice reads as follows:

NOTICE TO CONSUMERS

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

Add §4980.32 (LMFT)

Effective July 1, 2020, licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

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

Add §4989.17 (LEP)

Effective July 1, 2020, licensees shall provide a written notice to consumers in at least 12-point font prior to initiating psychological services that reads as follows:

NOTICE TO CONSUMERS

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

Amend §4996.14 (LCSW)

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

~~(1) A governmental entity.~~

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

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

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

~~(1) The individual's work is performed solely under the supervision of the entity;~~

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

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

~~(b) Effective July 1, 2020, the individual, if not licensed or registered with the Board, and if providing psychotherapy services, provides consumers with a written notice that complies with all of the following:~~

~~(1) The notice is provided prior to initiating psychotherapy services;~~

~~(2) The notice is provided in at least 12-point font; and,~~

~~(3) The notice reads as follows:~~

NOTICE TO CONSUMERS

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

Add §4996.75 (LCSW)

Effective July 1, 2020, licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

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

Amend §4999.22 (LPCC)

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

(1) The individual's work is performed solely under the supervision of the entity;

(2) The individual performs those functions as part of the position for which the individual is employed or is volunteering; and,

(3) Effective July 1, 2020, the individual, if not licensed or registered with the Board, and if providing psychotherapy services, provides consumers with a written notice that complies with all of the following:

(A) The notice is provided prior to initiating psychotherapy services;

(B) The notice is provided in at least 12-point font; and,

(C) The notice reads as follows:

NOTICE TO CONSUMERS

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

Add §4999.71 (LPCC)

Effective July 1, 2020, licensees and registrants shall provide a written notice to consumers in at least 12-point font prior to initiating psychotherapy services that reads as follows:

NOTICE TO CONSUMERS

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

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ATTACHMENT B

PROFESSIONAL CORPORATION DEFINITIONS

The California Corporations Code (section 13401(b)) defines “professional corporation” as:

“...a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute.”

BBS Statute (Business and Professions Code sections 4987.5, 4998 and 4999.123) define a professional corporation as:

“...a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed marriage and family therapists, physicians and surgeons, psychologists, licensed professional clinical counselors, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act...”

LCSW “PRIVATE PRACTICE” DEFINITION

Business and Professions Code (section 4996.23(i)) defines “private practice” as:

“... a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed professional clinical counselor, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.”

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REVISED
ATTACHMENT C
PROPOSED LANGUAGE
FOR-PROFIT SETTING DEFINITIONS

PRIVATE PRACTICE DEFINITION (LMFT, LCSW & LPCC)

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

- (a) The business is solely owned and directed by one or more health professionals licensed under Division 2 of the Code. This includes a professional corporation formed under Part 4 of Division 3 of Title 1 of the Corporations Code.
- (b) The business is a type of business that may only be owned and operated by one or more health professionals licensed under Division 2 of the Code.
- (c) One or more health professionals licensed under Division 2 of the Code have responsibility for the practice and services provided and set conditions of client payment or reimbursement for the provision of clinical mental health services.

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

For the purposes of this chapter, an “other for-profit setting” is a for-profit business which provides mental health services and meets both of the following:

- (a) The business does not meet the full definition of “private practice” under section xxxx of the Code.
- (b) The business is not any of those listed under section xxxx of the Code.¹

¹ This will refer to the law that specifies exempt settings.

PRIVATE PRACTICE DEFINITION (LEP)

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

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

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

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

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

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

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

OTHER FOR-PROFIT SETTING DEFINITION (LEP)

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

ATTACHMENT D
PROPOSED LANGUAGE

Students Pursuing a Master's Degree in Social Work

Amend §4996.15

Nothing in this article shall restrict or prevent activities of a psychosocial nature on the part of persons employed by accredited academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or social work interns pursuing the course of study leading to a master's degree in social work in an accredited college or university, ~~or working in a recognized training program,~~ provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by such titles as social work interns, social work trainees, or other titles clearly indicating the training status appropriate to their level of training. The term "social work intern," however, shall be reserved for persons enrolled in a master's or doctoral training program in social work in an accredited school or department of social work. A student shall not perform clinical social work in a private practice.

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