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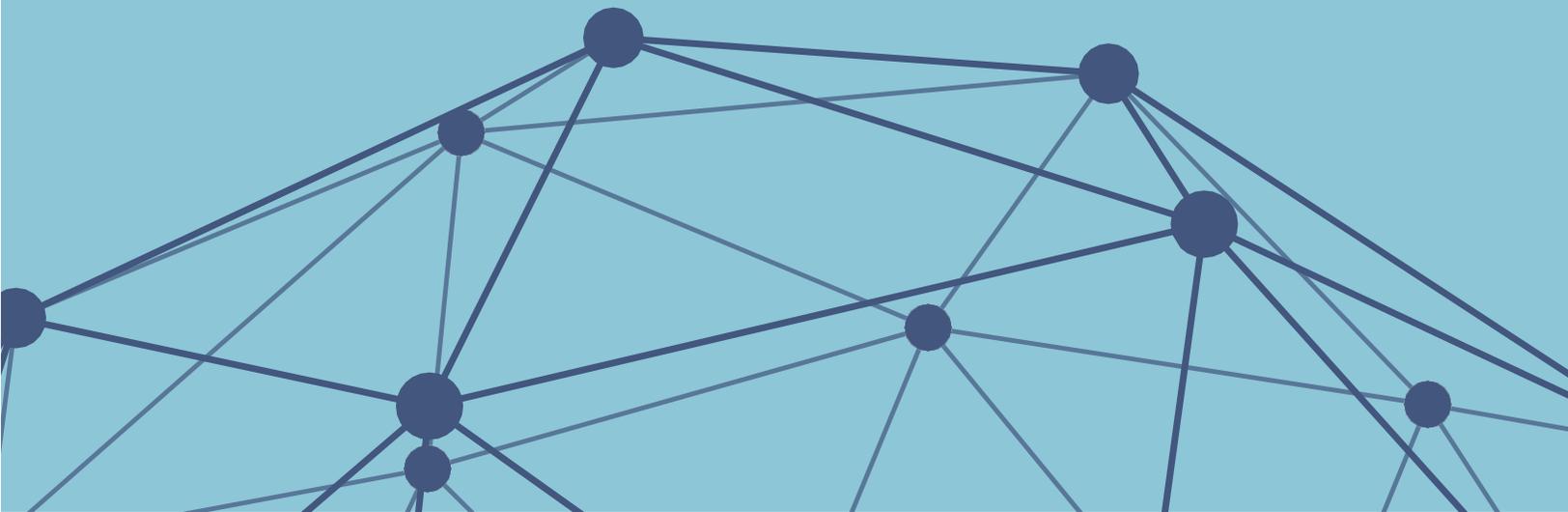


DEPARTMENT OF CONSUMER AFFAIRS

BOARD OF BEHAVIORAL SCIENCES

SUNSET REVIEW

Supplemental Information 2020



REPORT UPDATES

This supplemental informational report is an addendum to the Board of Behavioral Sciences Sunset Report submitted in December 2019. The following relevant updates are categorized into the pertinent section of the original report and are identified under topic headings.

TITLE PAGE

MEMBERS OF THE BOARD OF BEHAVIORAL SCIENCES

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Wendy Strack, Public Member

Vacant, Public Member

SECTION 1-BACKGROUND AND DESCRIPTION OF THE BOARD AND REGULATED PROFESSIONS

BOARD QUORUM ISSUES

At the time of the original sunset report the Board of Behavioral Sciences (Board) had seven positions vacant of its 13-member Board. Currently the Board has only one public member vacancy. The Board has not had issues establishing a quorum for meetings since October 2019.

LEGISLATION SPONSORED BY AND AFFECTING THE BOARD SINCE THE LAST SUNSET REVIEW

Several additional legislative changes relevant to the Board's duties were signed into law since the Sunset Report was issued in 2019. They are as follows:

AB 465 - Mental Health Workers: Supervision (Eggman, Chapter 137, Statutes of 2020)

This bill requires a licensed mental health professional to supervise any program where mental health professionals respond to emergency calls related to mental health crises in collaboration with, or in place of, law enforcement.

AB 1145 - Child Abuse: Reportable Conduct (Garcia, Chapter 180, Statutes of 2020)

This bill specifies that voluntary acts of sodomy, oral copulation, and sexual penetration are not considered acts of sexual assault that must be reported by a mandated reporter as child abuse if there are no indicators of abuse, unless it is between a person age 21 or older and a minor under age 16.

AB 2113 - Refugees, Asylees, and Immigrants: Professional Licensing (Low, Chapter 186, Statutes of 2020)

This bill requires the Board to expedite the initial licensure process for certain refugee, asylee, and immigrant applicants.

AB 2520 – Access to Medical Records (Chiu, Chapter 101, Statutes of 2020)

This bill requires, among other provisions, health care providers to assist in the completion of forms relevant to a patient receiving public benefits, at no extra charge to the patient. This bill also entitles a nonprofit legal services entity representing a patient to receive a copy of the relevant portion of the patient's records that are needed to support a claim regarding eligibility for specified public benefit programs. Additionally, this bill expands the number of public benefit program applications that qualify for free medical records.

AB 3330 - Department of Consumer Affairs: Boards: Licensees: Regulatory Fees (Calderon, Chapter 359, Statutes of 2020)

This bill increases the licensing, registration, and examination fees charged by the Board. The Board has not increased its fees in over 20 years. The Board sponsored the provisions of this bill pertaining to increasing its licensing fees.

SB 855 - Health Coverage: Mental Health or Substance Use Disorders (Wiener, Chapter 151, Statutes of 2020)

This bill expands California's 1999 Mental Health Parity Act. That act required health plans and insurers to provide coverage for the diagnosis and medically necessary treatment of severe mental illness (for persons of any age), and for serious emotional disturbances of a child under the same terms and conditions applied to other medical conditions. Instead, this bill requires health plans and insurers to cover all medically necessary treatment of mental health and substance use disorders under the same terms and conditions applied to other medical conditions.

SB 878 - Department of Consumer Affairs: License: Application: Processing Timeframes (Jones, Chapter 131, Statutes of 2020)

This bill, effective July 1, 2021, requires the Board to post average license application processing timeframes on its website at least quarterly.

SB 1474 - Business and Professions (Senate Committee on Business, Professions, and Economic Development, Chapter 312, Statutes of 2020)

This bill extends the Board's sunset date for one year, until January 1, 2022. It also prohibits licensees from including a provision in a contract that limits a consumer's ability to make complaints to a licensing board or from participating in an investigation of a licensee. Including such a clause is unprofessional conduct.

REGULATION CHANGES APPROVED BY THE BOARD SINCE THE LAST SUNSET REVIEW

The following changes to title 16 of Division 18 of the California Code of Regulations (CCR) have been enacted since the Board's Sunset Report was issued in 2019:

Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

Effective July 1, 2020, sections 1806 and 1816.1 were amended, section 1805.08 was added, and section 1816.3 was repealed to clarify the Board's examination rescoring provisions. It clarified that rescoring pertains only to exams taken via paper and pencil, since all others are taken electronically and automatically rescored. It also made

clarifying changes to the Board's application abandonment criteria, and clarified the fee required for subsequent APCC registrations.

PENDING REGULATIONS

The following changes to title 16 of Division 18 of the CCR have been proposed, and are in various stages of the regulatory process as follows:

Contact Information; Application Requirements; Incapacitated Supervisors

Amend title 16, CCR sections 1804, 1805, and 1820.7; add section 1815.8

This proposal would:

- Require all registrants and licensees to provide and maintain a current, confidential telephone number and email address with the Board.
- Codify the Board's current practice of requiring applicants for registration or licensure to provide the Board with a public mailing address, and ask applicants for a confidential telephone number and email address.
- Codify the Board's current practice of requiring applicants to provide documentation that demonstrates compliance with legal mandates, such as official transcripts; to submit a current photograph; and for examination candidates to sign a security agreement.
- Require certain applications and forms to be signed under penalty of perjury.

Status: The proposal was approved by the Board at its meeting in March 2017. It was initially placed on hold pending the outcome of SB 679 relating to license portability, which significantly changed certain application requirements referenced in the text of this proposal. It continues to be on hold due to other priority regulation packages.

Substantial Relationship and Rehabilitation Criteria (AB 2138 Regulations)

Amend title 16, CCR sections 1812, 1813, 1814, 1888 and 1888.1; amend the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015)," which are incorporated into the Board's regulations by reference via section 1888.

This proposal would result in changes necessary to meet the requirements of Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018). This proposal includes modifying the Board's substantial relationship criteria, which helps to evaluate whether a crime or act was substantially related to the profession, as well as criteria to evaluate the rehabilitation of an individual when considering denying, suspending or revoking a license.

Status: The regulations were noticed to the public on August 16, 2019 and the hearing was held on September 30, 2019. During the DCA final review process several changes were requested which the Board approved at its March 2020 meeting, resulting in a 15-day public notice/comment period that ended March 30, 2020. The proposal was filed with OAL for final approval on July 3, 2020 and is also pending review by the Department of Finance.

Enforcement Process

Amend title 16, CCR sections 1823, 1845, 1858, 1881, 1886.40, and 1888; amend the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015),” which are incorporated into the Board’s regulations by reference via section 1888.

This proposal would result in updates to the Board’s disciplinary process. It would also make updates to the Board’s “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015). The proposed changes fall into three general categories:

1. Amendments seeking to strengthen certain penalties that are available to the Board.
2. Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the BPC.
3. Amendments to clarify language that has been identified as unclear or needing further detail.

Status: The proposal was approved by the Board at its meeting in February 2017 and was submitted to DCA to begin the initial review process in July 2017. This regulation package was placed on hold due to the passage of AB 2138 (Chapter 995, Statutes of 2018) and remains on hold pending passage of the AB 2138 regulations.

Supervision

Amend title 16, CCR sections 1820, 1820.5, 1821, 1833, 1833.1, 1833.2, and 1870; add sections 1815.8, 1820.3, 1821.1, 1821.2, 1821.3, 1833.05, 1833.1.5, 1834, 1869, 1869.3, 1870.3, 1870.5, and 1871; repeal sections 1822, 1870.1, and 1874

This proposal would:

- Revise the qualifications to become supervisor.
- Require supervisors to perform a self-assessment of qualifications and submit the self-assessment to the Board.
- Set forth requirements for substitute supervisors.
- Update and strengthen supervisor training requirements.
- Strengthen supervisor responsibilities, including provisions pertaining to monitoring and evaluating supervisees.

- Strengthen requirements pertaining to documentation of supervision.
- Make supervision requirements consistent across the three licensed professions.
- Address supervision gained outside of California.
- Address documentation when a supervisor is incapacitated or deceased.
- Set forth terms relating to registrant placement by temporary staffing agencies.

Status: The proposal was approved by the Board at its meeting in November 2016 and was held aside while awaiting passage of AB 93 (Chapter 743, Statutes of 2018), the Board’s supervision legislation. This proposal was submitted to DCA to begin the initial review process on April 18, 2019, was brought back to the Board for requested changes, and was noticed to the public on February 7, 2020. This package was submitted to DCA on July 28, 2020 to begin the final review process.

Continuing Education and Additional Training Requirements

Add title 16, CCR section 1810.5; amend sections 1807, 1807.2, 1810, 1887, 1887.1, 1887.2, 1887.3, 1887.4.0, 1887.4.1, 1887.4.2, 1887.4.3 and 1887.11.0; and repeal sections 1810.1, 1810.2, 1887.4, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11 and 1887.15.

This proposal would:

- Update content requirements for human sexuality, child abuse assessment and reporting, and alcoholism and other chemical substance dependency courses and create consistency in the required qualifications for course providers.
- Strike the 18-hour CE exception for initial renewal periods.
- Recast CE “exceptions” as “temporary waivers” and modify CE waiver criteria.
- Require licensees who are granted a waiver to complete six hours of CE in law and ethics.
- Update CE waiver forms incorporated by reference for consistency with the proposed updated requirements and for clarity.
- Clarify that a course on law and ethics designed specifically to meet supervisor training requirements cannot be accepted toward meeting the 6-hour law and ethics course required of all licensees each renewal period.
- Specify that a maximum of 18 hours of CE may be met by teaching courses each renewal period, and that the course taught must be for a Board-accepted provider to count.

- Allow a licensee who completes a Board occupational analysis survey to be credited with six hours of CE.
- Repeal outdated regulations pertaining to the Board's former CE program.
- Clarify that professional associations are the only type of organization that may be recognized by the Board as a CE provider.

This proposal was approved by the Board at its meeting in November 2019 and was submitted to begin the DCA initial review process on September 23, 2020.

Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees

Amend title 16, CCR sections 1805.05, 1850.6, 1850.7 and 1854; and repeal section 1832.

This proposal would update examination waiting periods for consistency with current practice, add Licensed Professional Clinical Counselors to code sections pertaining to ownership, transfer of shares and naming of professional corporations, delete outdated text pertaining to equivalent accrediting agencies for marriage and family therapist applicants, and specify the accrediting agencies that are acceptable for licensed educational psychologist applicant degree programs. This proposal was approved by the Board at its meeting in November 2019 and is on hold due to other priority regulation packages.

SECTION 2-PERFORMANCE MEASURES AND CUSTOMER SATISFACTION

No updates to report.

SECTION 3-FISCAL AND STAFF

The Board currently has 63.7 authorized positions (62.8 positions were previously reported).

Change in Leadership

The Board's executive officer will be retiring effective December 31, 2020. At the November 2020 Board meeting a selection committee was appointed for recruitment of a new executive officer.

Vacancies

The Board currently has seven vacancies and has initiated the recruitment efforts to fill the following positions; 2 Associate Governmental Program Analysts (Consumer Complaint Unit), 1 Staff Services Analyst (Exam Unit), 3 Management Service Technicians (Licensing Unit and Exam Unit), 1 Office Technician (Administration Unit).

In November of 2019 the Board reclassified a vacant Staff Service Manager II position to create a Staff Services Manager I position responsible for Board legislative and regulation activities. As of September 2020, the Board was able fill two Staff Service Manager I positions (Licensing and Examination Units) that were being held vacant to achieve savings and avoid a budget shortfall. The hiring of these two manager positions completed an organizational realignment that centralized administrative, registrant and licensing functions under three separate managers. This has allowed for better oversight and streamlining of processes.

SECTION 4-LICENSING PROGRAM

It was last reported that the Board's licensing population increased by 14% since 2016. At the time of this report the Board's licensing population now exceeds 122,000, which represents an increase of 20%.

New Test Vendor

On November 4, 2019 the Board initiated a contract with Pearson Vue. Pearson Vue now administers the California Law & Ethics Examinations, the Licensed Marriage and Family Clinical Examination and the Licensed Educational Psychologist Standard Written Examination. They have twenty-seven sites within California and more than two hundred sites nationally. Pearson View also allows testing at select test centers on military installations. As part of the contract, Pearson VUE is responsible for approving and providing special accommodations for qualified exam candidates.

SECTION 5-ENFORCEMENT PROGRAM

No updates to report.

SECTION 6-PUBLIC INFORMATION POLICIES

Board Website

The board continues to improve the accessibility and navigation of its website. A major improvement was the creation of the Updates/FAQs page that centralizes informational publications and alerts.

Consumer Outreach and Education Material

The Board has updated its consumer brochure, “Self-Empowerment - Choosing a Mental Health Professional in California”. This brochure is now available in thirteen different languages. In collaboration with the Department of Consumer Affairs Public Affairs Office the Board created a video presentation called “Who Are We”. This video can be accessed through the Board’s website and explains the role of the Board in licensing and consumer protection. Additionally, the Board revised and published a “Guide to Licensure” for each of its license types to clarify the requirements and steps during the pathway to licensure.

Social Media Presence

Beginning in January 2020 the Board made a concerted effort to leverage its social media accounts (Facebook and Twitter) to enhance outreach to applicants, registrants and licensees. This effort consisted of increased monitoring, actively responding to comments, increased posting including processing times, and the use of weekly Facebook live events to actively engage registrants and licensees. All these efforts have been positively received and have greatly increased the Board’s social media presence.

Department of Consumer Affairs Call Center Update

In January of 2020, Board staff began working with the Department of Consumer Affairs (DCA) on a plan to utilize the services of DCA’s Call Center. After several meetings and training sessions with DCA Call Center staff, the Board officially transitioned its phone system to DCA. The Call Center has nine staff members who are trained to answer basic questions and to transfer calls to appropriate Board units if the questions are too complicated to be answered by the Call Center. This transition has dramatically lowered hold wait times.

SECTION 7-ONLINE PRACTICE ISSUES

No updates to report.

SECTION 8-WORKFORCE DEVELOPMENT AND JOB CREATION

ASSESSMENT OF THE IMPACT OF LICENSING DELAYS

During the last fiscal year, the Board added the option for applicants to complete two additional applications online via Breeze: the Initial Law & Ethics Examination, and the Initial License application. These are in addition to registration and license renewals, which can already be completed online. Also, because of policies that were implemented due to COVID-19, the Board has begun to accept transcripts and education certification forms electronically. This has streamlined the process for applicants and has assisted in reducing delays.

EFFORT TO WORK WITH SCHOOLS TO INFORM APPLICANTS OF LICENSING REQUIREMENTS AND PROCESS

The board has assigned a staff member to act as a school liaison. This position is responsible for working with school administrators to ensure that they are aware of law changes that may affect their programs and graduates. Additionally, the Board has initiated weekly live BBS Facebook Friday events. These events are open forum session in which a Board staff member answers questions from participants in real time concerning licensure requirements.

SECTION 9-CURRENT ISSUES

No updates to report.

SECTION 10-BOARD ACTION AND RESPONSE TO PRIOR SUNSET ISSUES

No updates to report.

SECTION 11-NEW ISSUES

No updates to report.

SECTION 12-ATTACHMENTS

No updates to report.

SUPPLEMENTAL INFORMATION: COVID-19

In response to COVID-19, has the board implemented teleworking policies for employees and staff?

Beginning on March 23, 2020 the Board implemented telework policies for staff members. These policies have allowed for most staff to work remotely for at least 75% of their scheduled hours. For those staff that have duties not viable for telework (e.g. mail processing and cashiering) the Board was able to identify tasks that would allow the staff member to telework at least 50% of their scheduled hours. The Board has established a rotating schedule for staff to drop off/pick up work that considers the safety protocols that align with the CDC guidelines.

Board managers have conducted weekly management meetings to discuss staff concerns, connectivity issues and stakeholder concerns. Additionally, managers have initiated weekly videoconference meetings with their units to discuss workload concerns, equipment needs, and modify existing processes to accommodate telework. From these meetings the Board has established policies and procedures including:

- Relying on electronic signatures when possible
- Accepting electronic submission of transcripts and program certifications forms from applicants
- Utilizing social media platforms to keep licensees and applicants updated
- Utilizing videoconferencing to communicate and engage with stakeholders
- Revised guidelines for reporting staff absences
- Scanning and retaining application documents electronically so they can be processed remotely
- Utilizing emails to notify applicants of deficiencies or approval of their applications

The Board continues to evaluate the telework policies to ensure that the Board can meet its public protection mandate while complying with all administrative rules and regulations. Also, the Board continues to explore additional avenues to enhance the viability of a remote workforce.

In response to COVID-19, has the board utilized any existing state of emergency statutes?

The Board has not utilized any existing state of emergency statutes.

Pursuant to the Governor's Executive Orders N-40-20 and N-75-20, has the board worked on any waiver requests with the Department?

The Board has worked on six waiver requests with the Department; four of which were directly requested by the Board. All four requests submitted by the Board were approved.

**1. Law & Ethics Exam Waiver for Subsequent Registration Number (DCA-20-18)
Board Requested**

This waives the requirement that associate marriage and family therapists, associate clinical social workers, and associate professional clinical counselors must pass the California law and ethics examination before a subsequent registration number is issued. The waiver applies to all associates who are in their last year of renewal, if that renewal expires between **March 31, 2020 and December 31, 2020**. The California law and ethics exam will still need to be passed at the by the NEXT renewal date – see the FAQ on the website for more information.

**2. Face-to-Face Training and Supervision Requirements (DCA-20-73)
Board Requested**

This waives the component of the law that only permits Associate Marriage and Family Therapists (AMFTs), Associate Clinical Social Workers (ASWs), and Associate Professional Clinical Counselors (APCCs) to obtain their required weekly direct supervisor contact via videoconferencing if they are working in an exempt setting. (An exempt setting is defined as a government entity, a school, college or university, or an institution that is both nonprofit and charitable.) It also waives BPC sections 4980.36(d)(1)(B)(ii) and (d)(1)(B)(vi)(II) for MFT trainees, and 4999.33(c)(3)(K) for PCC trainees, that specifically requires provision of “face-to-face” mental health services in order to complete required practicum hours. This waiver was extended and is now effective from the beginning of the social distancing order (March), until December 31, 2020.

**3. Waiver Extending Eligibility Period to Retake Examinations for Marriage and Family Therapist, Educational Psychologist, Clinical Social Worker, and Professional Clinical Counselor Applicants (DCA-20-68)
Board Requested**

This waiver extends examination eligibility for LMFT, LEP, LCSW, and LPCC applicants that failed to take or retake a required examination, and whose one-year eligibility to take or re-take the examination expired between March 31, 2020 and January 31, 2020. Instead of having one year to take or retake the examination, these individuals will instead have 20 months to take or retake the examination. For individuals who have not taken the required exam yet, the 20-month timeframe starts on the date the applicant was notified of initial eligibility to take the examination. For individuals who need to retake a required exam, the 20-month timeframe starts on the date the applicant most recently participated in the exam.

**4. Practicum Enrollment Requirement Waiver for MFT Trainees (DCA-20-19)
Board Requested**

Under current law, marriage and family therapist trainees (MFT trainees) are permitted to gain experience hours outside of practicum, but they must be enrolled in a practicum course to counsel clients. However, the law permits MFT trainees to counsel clients while not enrolled in practicum if the period of lapsed enrollment is less than 90 calendar days, and if that period is immediately preceded by enrollment in a practicum course and immediately followed by enrollment in a practicum course or completion of the degree program. The Director has issued a law waiver that extends the lapsed enrollment period from 90 days to 180 days. The waiver applies to trainees who were last enrolled in a practicum course between March 31, 2020 and December 31, 2020. These trainees are permitted to counsel clients while not enrolled in practicum if the period of lapsed enrollment is less than 180 calendar days, and if that period is immediately preceded by enrollment in a practicum course and immediately followed by enrollment in a practicum course or completion of the degree program.

**5. Licensing Renewal Requirements (DCA-20-53)
Department Wide**

It allows that that registrants (associate marriage and family therapists, associate clinical social workers, and associate professional clinical counselors) whose registrations expire between March 31, 2020 and December 31, 2020 do not need to attempt the California Law and Ethics Examination in order to renew their registration. Also, allows that Board licensees who are set to renew between March 31, 2020 and December 31, 2020 do not need to complete continuing education in order to renew their license. (It will need to be completed at a later date – see the FAQ on the website for more information.)

6. Waiver of Laws Requiring Individuals Reactivating or Restoring a Retired, Inactive, or Cancelled License to Complete Continuing Education and Pay a Renewal or Delinquency Fee (DCA-20-02)

This waiver permits an individual with a retired, inactive, or cancelled license who wishes to restore their license in order to help with the current State of Emergency to do so during this time without being subject to the normally required continuing education requirements and renewal and delinquency fees. This only applies to individuals whose license has been retired, inactive, or cancelled for no more than 5 years.

In response to COVID-19, has the board taken any other steps or implemented any other policies regarding licensees or consumers?

In order to reduce barriers for new applicants the Board implemented a policy of accepting transcript and education program certification forms electronically. These forms can either be directly uploaded to shared cloud box account by educational institutions or they may be sent to the board directly by a third-party transcript clearinghouse. Also, the Board staff have established procedures to notify applicants of application deficiencies or approvals through email.

Has the board recognized any necessary statutory revisions, updates or changes to address COVID-19 or any future State of Emergency Declarations?

Because of COVID-19 and the State of Emergency Declaration, the Board has recognized the need to update or revise current statutes. Some of the specific areas of concern that the Board will discuss are as follows:

- The ability of pre-licensed individuals (trainees) to perform telehealth and gain required practicum hours via telehealth.
- The supervision via telehealth requirements for both associates and trainees
- The possibility of adding a temporary allowance for out-of-state licensees to perform services for clients that have relocated to California.



Board of Behavioral Sciences



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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

December 16, 2020

Senator Glazer, Chair
Senate Business, Professions and Economic Development Committee
Assembly Member Low, Chair
Assembly Committee on Business and Professions
State Capitol Room 2053
Sacramento, CA 95814

Dear Senator Glazer and Assembly Member Low:

This is in response to the Senate Business, Professions and Economic Development Committee (Committee) request to provide a written response to the Issues and Recommendations raised in the Committee's Background Paper prepared for the Oversight Hearing held on November 18, 2020. I will address the issues in the order presented in the Background Paper.

Issue #1: *Should professional representation be reduced or expanded?*

Committee Recommendation

The Board should advise the Committees on the current professional membership representation of the Board, and if there are any issues with the current membership.

Board Response

The original language of SB 788 included the addition of two Licensed Professional Clinical Counselors (LPCCs) to the board composition. It is unclear as to why this was later amended. While LPCC licensees account for approximately 3% of the Board's licensee population, over the last four years LPCCs have had the largest increase in population (39%) when compared to LMFTs (15%) and LCSWs (20%). This increase is only projected to continue as the population of the corresponding registrant level of licensure that leads to a LPCC license, the Associate Professional Clinical Counselor (APCC), has increased approximately 50% over the same four years. The Board has not had any formal discussions regarding its professional membership representation but may address this at a future meeting.

Issue #2: *Do Board surveys inform BBS' work and add value?*

Committee Recommendation

The Board should advise the Committees on the usefulness of current surveys, and if possible, provide information as to whether or not these surveys are beneficial to the Board's overall operations.

Board Response

The consumer complaint satisfaction survey and the Board's satisfaction survey have not added value to the Board's overall operations. Many of the survey responses are submitted regarding an unsatisfactory outcome of a case or regarding an application denial; both of which are guided by law and do not allow for discretion. Additionally, Board staff's direct communication and feedback from complainants, applicants and licensees is of greater value than the surveys in identifying trends or areas of improvement. The Board will continue to encourage feedback from the public, applicants and licensees through its website, social media, outreach events and Board meetings.

Issue #3: Is the Board aware of any issues with the online practice of licensed therapists?

Committee Recommendation

The Board should advise the Committees on what steps, if any, it is taking to ensure the integrity of telehealth services provided to patients and consumers. Additionally, the Board should advise the Committees on how, what if any changes to the current telehealth laws may be necessary because of the COVID-19 pandemic and current state and local government requirements for businesses. Given the vulnerability of persons seeking mental health treatment, consumer safety is vital.

Board Response

The Board will be conducting the first Telehealth Committee meeting on January 22, 2020. Although the Board was already planning to discuss whether any of its telehealth laws needed updating, the COVID-19 State of Emergency has further highlighted several issues related to telehealth that may need to be clarified or addressed. Topics of discussion of the Telehealth Committee will include:

- The ability of pre-licensed individuals (trainees) to perform services via telehealth (possible BPC §2290.5(a)(3) clarification).
- The ability of MFT and PCC trainees to gain required practicum hours via telehealth. (Possible clarification of "face-to-face" terminology in BPC §§4980.36(d)(1)(B), 4980.37(c)(2), 4999.32(c)(3), and 4999.33(c)(3)).
- The allowable settings for pre-licensed individuals to perform services via telehealth (i.e. Can it be from home? Or must it be from the work site? Can they perform services with clients located in California if temporarily in another state?)
- The supervision via videoconferencing requirements for both associates and trainees. Also the use of the term "face-to-face" contact in these sections when defining direct supervisor contact. (BPC §§4980.43.2(b) and (d), 4996.23.1(b) and (f), 4999.46.2(b) and (d))
- Review of current BBS telehealth regulations, including discussion of §1815.5(e) specifically.
- Examination and discussion of newer delivery methods being offered (email, texting, app based)
- Examination and discussion of regulating online therapy sites operating in California (i.e. via advertising guidelines, etc.)
- The possibility of adding a temporary/incidental allowance for out-of-state licensees to perform services for clients that are temporarily located in California (both in an emergency, and incidentally, such as travelling or for college).
- Examination of the U.S. Department of Veteran's Affairs telehealth allowance.
- Examination and discussion of interstate compacts.
- Discussion of outreach strategy to educate California consumers about online therapy (consumer rights, possible downfalls, etc.)

Through the work of the committee the Board will identify amendments to current statutes and regulations that will assist to increase consumer protection within the telehealth delivery system while maintaining and increasing consumer access to mental health services.

ISSUE #4: *How does the Board ensure that supervisors are not supervising more registrants or trainees that authorized and how does the Board ensure individuals are actually earning reported hours?*

Committee Recommendation

The Board should advise the Committees on whether it believes there are any deficiencies with the current supervision program, or any issues specifically related to the recent pandemic.

Board Response

Since its last sunset review the Board has had extensive discussions concerning possible deficiencies in the current supervision program. Through the work of the supervision committee the Board was able to identify possible deficiencies and pursue amendments to its statutes and regulations that would strengthen this program. In addition to the changes identified in the committee’s background statement, the Board has submitted a regulation package that is in the final Department of Consumer Affairs (DCA) review process. This package includes, among other updates, the following:

- Updated supervisor training requirements: 15 hours will be required for new supervisors (with updated content requirements), and 6 hours of continuing professional development (CPD) will be required each renewal cycle.
- A new requirement for a supervisor to complete a yearly assessment of the strengths and limitations of the supervisee.
- Requirement that all supervisors must notify the Board they are supervising and confirm that they meet the qualifications to supervise. This would be done by submitting a “Supervisor Self-Assessment” form.

The Board has not yet discussed supervision issues in relation to the current pandemic, although a waiver has been granted to allow supervision via videoconferencing in all settings during the state of emergency. Supervision issues raised by the pandemic will be discussed in the upcoming Telehealth Committee and Licensing Committee that will commence in 2021.

Issue #5: *What is the status of the Board’s implementation of Assembly Bill 2138 (Chui/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Fair Chance Licensing Act?*

Committee Recommendation

BBS should provide an update in regard to its implementation of AB 2138 provisions, as well as relay any recommendations it has for statutory changes.

Board Response

The Board has identified technical amendments for its practice act statutes that are needed to ensure consistency with AB 2138. These technical amendments will be submitted to the Senate Business, Professions, and Economic Development Committee for consideration in this year's committee bill proposal, however, another vehicle such as the sunset bill may be used if the Committee prefers.

Issue #6: Is clarity needed for what places are considered exempt settings?

Committee Recommendation

The Board should advise the Committees on its continued efforts to clarify the definition of non-exempt settings and any other issues related to trainee supervision.

Board Response

This year the Board will be pursuing the amendments that were originally presented in AB 2363. This bill will clarify the definition of non-exempt settings, and it will also provide greater clarity about the settings in which trainees may work.

Issue #7: Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc v. Superior Court*, have any unresolved implications for licenses working in the Board's professions as independent contractors?

Committee Recommendation

The Board should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and if it is aware of any potential to impact the current professions.

Board Response

The Board is aware of, but has not had any formal discussions, regarding the Dynamex decision and AB 5. The Board is aware that its stakeholders are exploring legislative options to seek an exemption from the provisions of AB 5. The Board will consider taking a position on any resulting legislation from this effort based on the details of the proposal, as viewed through the lens of consumer protection.

Issue #8: How can the Board improve the collection of cost recovery?

Committee Recommendation

The Board should advise the Committees on its efforts to obtain cost recovery as a way mitigate the expenses associated with taking enforcement actions.

Board Response

Cost recovery is due upon the completion of a probationary period or before the reinstatement of a license. The Board continues to collect cost recovery from its probationers mostly through a payment installment plan that is established over the three to five years of a probation period. Collecting cost recovery from a respondent who has been revoked is more difficult since there is very little to compel the respondent to pay unless they are attempting to reinstate a license.

The Board will continue to review its cost recovery program to identify areas of possible improvement.

Issue #9: *Since March of 2020, there have been a number of executive issued waivers, which affect licensees and future licensees alike. Do any of the waivers warrant an extension or statutory changes?*

Committee Recommendation

The Board should advise the Committees on its COVID-19 waiver requests and whether or not any of the waivers be permanent or for a set time, or if any waivers are no longer necessary.

Board Response

The Board believes that the current waivers should be extended until the COVID-19 state of emergency is lifted, except the continuing education waiver. Continuing education is readily available online and has not appeared to prevent a barrier to license renewal. During the telehealth committee meeting in January 2021, the Board will discuss whether to make the provision of DCA-20-73 permanent. This waiver allows for supervision via videoconferencing in all setting and allows trainees to gain practicum hours via telehealth. A permanent law changed based on this waiver may be warranted, due to the rapid expansion of the use of telehealth during the pandemic. The Board does not believe any additional waivers will need to be made permanent after the pandemic.

Issue #10: *There are amendments to the various practice acts that are technical in nature but may improve Board operations and the enforcement of those laws?*

Committee Recommendation

The Board should recommend cleanup amendments to the Committees.

Board Recommendation

The Board appreciates the Committee’s recommendation and has approved several proposed cleanup amendments at its November 6, 2020 meeting. Staff will be submitting a request to the Committee to include various proposed amendments in either this year’s Committee bill or the Board’s sunset bill.

Issue #11: *Should the licensing and regulation of the BBS be continued and be regulated by its current membership?*

Committee Recommendation

The Committees recommend that the LCSW, LMFT, LEP and LPCC professions, and registration of ASW Associates, MFT Associates and PCC Associates continue to be regulated by the Board in order to protect the interests of consumers and be reviewed once again.

Board Response

The Board thanks the committee and concurs with the recommendation. The Board looks forward to continued opportunity to protect consumers while working to increase access to mental health services for Californians. We are available to answer any additional questions that you may have.

Sincerely,

Steve Sodergren

Steve Sodergren
Assistant Executive Officer

cc: Kim Kirchmeyer, Director, Department of Consumer Affairs
Jennifer Simoes, Deputy Director, Division of Legislative and Regulatory Review, Department of Consumer Affairs
Max Disposti, Chair, Board of Behavioral Sciences