Board of Behavioral Sciences

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

Policy and Advocacy Committee Minutes
January 30, 2015

Department of Consumer Affairs
Hearing Room
1625 N. Market Blvd.
Sacramento, CA 95834

Members Present
Renee Lonner, Chair, LCSW Member
Deborah Brown, Public Member
Dr. Christine Wietlisbach, Public Member
Christina Wong, LCSW Member

Staff Present
Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christy Berger, Regulatory Analyst
Dianne Dobbs, Legal Counsel
Christina Kitamura, Administrative Analyst

Members Absent
None

Public Attendees
Sign-in sheet on file

I. Call to Order and Establishment of Quorum

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at 9:07 a.m. Christina Kitamura took roll, and a quorum was established.

II. Introductions

The Committee, Board staff, and meeting attendees introduced themselves.

III. Approval of the September 18, 2014 Committee Meeting Minutes

The following edits were suggested:

- Page 3: omit line 28.
- Page 8, line 42: change “30 days” to “90 days.”

Renee Lonner moved to approve the Policy and Advocacy Committee meeting minutes as amended. Christina Wong seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown: Yay
Renee Lonner: Yay
Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

IV. Discussion and Recommendations for Possible Action Regarding Telehealth

a. Other States' Telehealth Laws, Regulations, and Policies

The Committee discussed telehealth at its September 2014 meeting. At that meeting, the Committee expressed a desire to examine the licensing laws of other states which temporarily allow out-of-state licensees to practice in their state. Arizona and Utah each have variations of such a clause.

According to the Arizona Board of Behavioral Health Examiners, mental health services are assumed to take place in the jurisdiction where the client lives. Arizona has an exemption to licensure that a behavioral health professional from another state may utilize. A non-resident is exempt from Arizona licensure if the following conditions are met:

- The practitioner performs the behavioral health services for no more than 90 days in any year;
- The practitioner is licensed to perform those services in the state or country where he or she resides; and
- The practitioner informs the client of the limited nature of the services and that he or she is not licensed in Arizona.

A practitioner performing services under this law is considered under the jurisdiction of the board and bound by the laws of Arizona.

Under this law, a licensee from another state may counsel a client located in Arizona via telehealth without an Arizona license if the duration of the counseling was less than 90 calendar days and the conditions listed above are met.

In the state of Utah, the Division of Occupational and Professional Licensing has both laws and regulations governing the use of telehealth. In 2013, the state adopted an exemption to licensure for a mental health practitioner licensed in good standing in another state. The practitioner may provide short term, transitional mental health therapy remotely under the following conditions:

- The practitioner must be present in the state in which he or she is licensed;
- The client must have relocated to Utah; and
- The client must be a client of the practitioner immediately before relocating to Utah.

If the criteria specified are met, then short-term transitional mental health therapy may be provided remotely for a 45-day period, which begins on the day the client relocates to Utah. Within 10 days of the client's relocation, the practitioner must

provide written notice to the state licensing agency of the intent to provide short-term transitional mental health therapy.

The Division of Occupational and Professional Licensing staff clarified that the definition of "relocate" does not mean that the client must permanently move to Utah. Instead, the client may be travelling or may be living there for a short period. The licensing agency has not received any complaints against an out-of-state practitioner at this time. They also noted that the main purpose of this provision is to allow a practitioner relocating to Utah the ability to practice while they are seeking a Utah license.

Utah's licensing agency also has a regulation dedicated specifically to unprofessional conduct related to telehealth. It requires practitioners to adhere to professional standards when practicing telehealth and to protect the security of confidential data and information.

The California Board of Psychology has a provision in law allowing a licensed psychologist from another state to practice temporarily for up to 30 days per year

While this provision helps psychologists moving to California to practice while they are in the licensure process, the provision has raised some legal issues for that board, including the following:

- Issues with out-of-state psychologists wanting to advertise that they may practice in California due to the 30-day provision;
- Issues with federal agencies accepting psychological exams required in California that were performed by out-of-state practitioners;
- Difficulties with establishing whether or not a practitioner had practiced in this state for more than 30 days; and
- Concerns about inequity from licensees who had worked to become licensed in California.

Dr. Wietlisbach asked the following questions: What are the reasons that the Board is looking at telehealth? What is the Board trying to accomplish?

Kim Madsen suggested focusing on the client. For example, a person from another state is moving to California, and needs time to transition to California and find a therapist without a break in treatment.

The Committee and staff discussed the following points:

- Jurisdiction of services based on location of the client and the therapist,
- Guidelines for California licensees to provide services via telehealth within California,
- Guidelines for out-of-state licensees to provide services via telehealth in California,
- Workload challenges for staff to process requests (to practice telehealth temporarily in California) from out-of-state licensees.

Ms. Madsen suggested narrowing the focus and establishing regulations for telehealth practice and for out-of-state licensees providing services via telehealth in California.

Janlee Wong, National Association of Social Workers, California Chapter (NASW-CA) suggested that this matter be approached with consumer protection in mind and from the perspective of enforcement.

Cathy Atkins, California Association of Marriage and Family Therapists (CAMFT), expressed that the 30, 60, or 90-day period is reasonable and should be considered for legislation sooner rather than later.

Angela Kahn, American Association for Marriage and Family Therapy, California Division (AAMFT-CA), expressed that AAMFT-CA would be in favor of California adopting something similar to the Arizona law.

The issue with the Arizona language is that it is not clear whether or not the 90-day period is consecutive days.

Ms. Lonner stated that a client knows when they are permanently relocating. As a therapist, there is time to prepare, transition, and gather resources for the client.

Ms. Kahn added that the situation is different for the client who is working or going to school temporarily out-of-state.

Ms. Lonner expressed that a task force could be created to address this issue, and use telecommunication technology to hold meetings.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), suggested that Ms. Madsen could attend the American Association of State Counseling Boards (AASCB) Annual Conference and bring up this topic.

Ms. Madsen expressed that she would be willing to attend the conference; however, out-of-state travel is not approved for BBS staff and board members to attend these events. Ms. Porter expressed disappointment stating that it is very important for the Board to represent California at these events. Ms. Madsen agreed with Ms. Porter, and acknowledges the importance of discussing and brainstorming these common issues with other state representatives.

Rosanne Helms suggested looking into interstate agreements allowing temporary provisions.

Christina Berger informed the Committee and staff that the Council on Licensure, Enforcement and Regulation (CLEAR) is beginning to do some work in this area.

No action taken.

b. Inclusion of Trainees in the Board's Proposed Telehealth Regulations

Current law specifies that trainees may not provide services in a private practice. It is the responsibility of the trainee's school to coordinate the trainee's services with

the site at which he or she is providing services. The school must approve the site and have a written agreement with the site detailing each party's responsibilities and outlining supervision methods.

Licensing law for clinical social workers does not specifically define trainees or specify any requirements of them. It does recognize them as being exempt from licensure.

Because trainees are practicing in exempt settings, the Board does not have authority to regulate their practice. This includes their use of telehealth.

However, applicants for licensure as a marriage and family therapist (LMFT) are allowed to count some pre-degree hours of trainee experience. Because the Board accepts some of those hours as experience toward licensure, the Board may specify the conditions under which those hours are gained.

Business and Professions Code (BPC) §2290.5 is the statute that defines telehealth and sets provisions for the practice of telehealth for healing arts licensees. A stakeholder has raised concern that BPC §2290.5 is written only for licensed individuals (a definition which includes interns/associates, but not trainees, who are not yet under the jurisdiction of the Board.)

However, BPC §4980.43 allows trainees to count some of their experience gained as a trainee toward licensure, and allows some of this experience to be via telehealth. This is causing concern that trainees and their supervisors may be vulnerable to liability for providing telehealth services, as §2290.5 does not include trainees.

Because BPC §2290.5 affects all healing arts boards with a variety of license, registration, and other provider statuses, it is therefore unlikely that the Board would be successful in getting a Board-specific definition amended. Therefore, staff has worked with DCA's Legal Division to propose a solution via amendment to the LMFT statute, clarifying that trainees are permitted to perform telehealth. Provided that the statutory amendment is made, the Legal Division does not advise including trainees in the telehealth regulations, as they are working in exempt setting that are not under Board jurisdiction.

Ms. Wong and Ms. Lonner expressed that they like the proposed language.

Ms. Atkins expressed that she liked the proposed language but would like to discuss the language further with BBS staff.

The Committee took a break at 10:33 a.m. and reconvened 10:50 a.m.

Christina Wong moved to accept language presented and bring to the Board for discussion, and continue ongoing discussions with CAMFT. Renee Lonner seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown: Yay
Renee Lonner: Yay

Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

c. Security and Confidentiality Requirements for Telehealth

The Board's current draft of the telehealth regulations, as considered at the September 2014 Policy and Advocacy Committee Meeting, stated the following:

> *"A licensee or registrant shall take steps to ensure the confidentiality of all telehealth services provided to the patient or client. This includes, but is not limited to, utilizing encryption security for the delivery of services."*

However, the Committee had some concerns about requiring licensees to use encryption.

HIPAA defines encryption as "the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key."

Several jurisdictions and professional associations have regulations or guidelines requiring that mental health practitioners take steps to ensure the confidentiality of services performed via telehealth. Some organizations make that requirement even more specific, requiring telehealth services to be encrypted.

Some entities discuss encryption directly:

- "NCCs shall use encryption security for all digital technology communications of a therapeutic type." *(National Board for Certified Counselors (NBCC) "Policy Regarding the Provision of Distance Professional Services" (Approved July 31, 2012)*
- "Licensees shall use encryption methods for electronic service delivery." (*State of Ohio Administrative Code Chapter 4757-5-13(B)(1))*

Other entities have more general requirements that telehealth services be safeguarded:

- "Marriage and family therapists are also aware of the limitations regarding confidential transmissions by Internet or electronic media and take care when transmitting or receiving such information via these mediums" (*CAMFT Code of Ethics, May 2002, March 2011, Section 2.3)*
- "Prior to commencing therapy or supervision services through electronic means…marriage and family therapists must (c) ensure the security of their communication medium…" (*AAMFT Board Approved Revised Code of Ethics, Effective January 1, 2015, Section 6.1*)

HIPAA does not explicitly require encryption for telehealth. However, there are several products that therapists may utilize that provide an encrypted platform. Google Helpouts, Mytherapynet.com, and CloudVisit are examples of these types of services.

Stakeholders have offered precautions about utilizing language specifically requiring encryption. For example, it may not be possible to require encryption for

services conducted via telephone. In addition, there may be differing opinions about the definition of encryption and its appropriate utilization.

Ms. Atkins expressed that encryption is too prescribed – the term has a different definition to different people, HIPAA does not require encryption, and the definition is evolving and changing. She referred to AAMFT's language as a good standard.

Dr. Wietlisbach stated that it is important to not be too specific because technology is going to be changing. If the language is overly prescriptive, then the language is going to be outdated by the time legislation passes. Ms. Madsen agreed and added that the language should be broad enough to allow the use of new technology as it becomes available.

Ms. Brown expressed concern about consumer protection in this area without specificity in the law.

Ms. Madsen suggested that staff develop an FAQ that can be updated as technology evolves, informing consumers of information when receiving telehealth. This document can be posted on the Board's website.

Mr. Wong agreed with Dr. Wietlisbach and Ms. Madsen. He also expressed that a document that provides information and resources is a good idea.

Dr. Christine Wietlisbach moved to direct staff to redraft the language as discussed and bring it back to the Committee. Deborah Brown seconded. The Committee voted to pass the motion.

Roll call vote:
Deborah Brown: Yay
Renee Lonner: Yay
Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

d. Review of Proposed BBS Regulations for Telehealth

At the September 2014 meeting, the Policy and Advocacy Committee discussed the need to develop regulations governing the practice of telehealth by Board licensees. Discussion points focused on the following:

- The location of the patient is critical. The location of the patient must be verified, and the practitioner must be aware of applicable local laws as well as local resources in case referral is necessary.

- The regulations should be revised so that it is clear that the Board's laws and regulations apply to services via telehealth just as they apply to face-to-face services. However, it is possible that the standard of care may be higher for telehealth in certain instances.

- The Committee expressed a desire to examine a clause in Arizona's law that allows practitioners licensed in other states to practice in their state for up to 90 days.

In addition, CAMFT provided written comments for the draft of the regulations presented in September.

Cathy Atkins, CAMFT, and Angela Kahn, AAMFT-CA, outlined concerns with various sections of the language and provided input.

Ms. Brown requested clarification on section 1815.5(j), as it refers to the location of a client.

Ms. Wong suggested that section 1815.5(e) should state that when considering whether telehealth services is appropriate for the client, the licensee or registrant shall consider the specifications listed.

Ms. Lonner suggested replacing the term "evaluation" with "assessment."

Dr. Christine Wietlisbach moved to direct staff to make changes discussed and to consult with legal on language, and bring back to the Committee. Christina Wong seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown: Yay
Renee Lonner: Yay
Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

e. Supervision Via Telehealth

The Board's statutes currently only allow supervision via videoconferencing if the intern or associate is working in an exempt setting.

As the use of telehealth in therapy becomes more common, the Board is increasingly being asked to consider allowing supervision via telehealth in all settings. Proponents of such an allowance reason that this would increase the availability of supervision in rural settings, which often have supervisor shortages. This would increase access to care in such areas.

Last summer, staff conducted a survey of 10 other states to examine their supervised experience requirements. Two of the states examined explicitly allowed some supervision via telehealth:

1. Texas
    - LMFT applicants may obtain a maximum of 50 hours of supervision via telephone or electronic media.
    - LPCC applicants may obtain up to 50 percent of their required supervision via live internet webcam.

2. Oregon

    LMFT and LPCC applicants may obtain up to 75 percent of their required individual supervision hours via electronic communication.

Renee Lonner moved to refer this issue to the Supervision Committee. Dr. Christine Wietlisbach seconded. The Committee voted to pass the motion.

Roll call vote:

Deborah Brown: Yay
Renee Lonner: Yay
Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

V. Update and Possible Action on Text of Proposed Legislation for 2015: Crime Victims: Compensation for Reimbursement of Violence Peer Counseling Expenses

AB 1629 makes costs incurred for certain services provided by violence peer counselors reimbursable to crime victims through the California Victim Compensation Board. It was signed into law by the Governor in late September, and became effective on January 1, 2015.

This bill was amended late in last year's legislative session to require a violence peer counselor to be supervised by a Board licensee in order to be eligible for reimbursable services. The Board was supportive of the concept of the bill, and indicated that requiring violence peer counselors to be supervised by Board licensees was a step in the right direction to achieve public protection. However, the Board had several concerns about the bill's language. At its August 2014 meeting, the Board took an "oppose unless amended" position on the bill, citing the following concerns:

1. Scope of Practice

   Board members voiced concerns that violence peer counselors may not have enough education or experience to know where their scope of practice ends, making it possible that they may unknowingly perform unlicensed practice.

2. Liability of Board Licensees

   The language contains very broad language defining the types of counseling that a peer counselor may perform and the setting it may be performed in. This could mislead a board licensee, who is supervising a violence peer counselor, into believing that his or her supervisee does not need to be licensed or registered, even if providing clinical services. However, in a non-exempt setting, this would be grounds for both the supervisor and supervisee to receive disciplinary action for violating the Board's licensing law.

3. Supervision Requirements

   The Board asked whether licensees supervising violence peer counselors should be required to have some education and experience providing supervision.

4. Cost to Service Organizations for Victims of Violent Crime

   Questions were raised about the cost to service organizations for victims of violent crime to employ a Board licensee as a supervisor.

5. LEPs as Supervisors

   The language includes LEPs as acceptable supervisors for violence peer counselors; however, LEPs do not typically perform clinical supervision services. Upon learning of the Board's concerns, the author's office attempted to make amendments to address some of the concerns, but it was too late in the legislative session to do so. Therefore, they have committed to making clarifying amendments in this year's legislative session. They have worked with Legislative Counsel to draft amendments. The proposed language is drafted as an urgency measure.

   The following language is of particular concern:

   - Government Code (GC) §13957.9(c)(1) defines a "service organization for victims of violent crime" as a nongovernmental organization. This implies it could be a private practice setting.

   - GC §13957.9(c)(3) defines a "violence peer counselor" as a provider of formal or informal counseling services. It is unclear if "formal" counseling services would rise to a clinical level where a license is needed.

   Currently, the proposed amendments drafted by Legislative Counsel and provided by the author's office clarify the following:

   - A "service organization for victims of violent crime" in which violence peer counselors perform services eligible for reimbursement must be both nonprofit and charitable.

   - Violence peer counseling services that fall under the scope of practice of any of the professions the Board regulates must either take place in an exempt setting, or be performed by an appropriately licensed professional.

Renee Lonner moved to provide technical assistance to the author's office. Dr. Christine Wietlisbach seconded. The Committee voted to pass the motion.

Roll call vote:
Deborah Brown: Yay
Renee Lonner: Yay
Dr. Christine Wietlisbach: Yay
Christina Wong: Yay

VI. Update Regarding AB 2198: Suicide Prevention Training for Mental Health Professionals

AB 2198 proposed requiring Board licensees to complete a six-hour training course in suicide assessment, treatment, and management. It also proposed requiring new applicants graduating after January 1, 2016, to take a 15-hour course on the subject.

There is currently no requirement in law that Board licensees have specific coursework devoted to suicide assessment in his or her degree. According to schools and stakeholders, this content is interwoven throughout the degree programs.

Citing a need for further discussion and information from experts on the topic, the Board took an "oppose unless amended" position on AB 2198 and asked that it be amended to form a task force on the subject.

The Governor vetoed AB 2198 last fall, and in his veto message asked the licensing boards to evaluate the issues raised by the bill and to take appropriate action as needed.

In an effort to gain specific information about suicide assessment and intervention content currently being offered in degree programs leading to Board licensure, staff created a survey. The survey asks the Master's degree programs to do the following:

- Name the required courses in its program covering suicide assessment;
- Estimate the number of hours each course spends on the topic; and
- Provide a description of the type of suicide assessment coverage for each course.

The survey was sent to the Board's contacts at degree programs leading to Board licensure in late November. Staff is still in the process of receiving responses.

In mid-January, Board staff, Board of Psychology staff and Medical Board staff were asked to meet with the Governor's office. The Governor is anticipating a similar bill this year, and is seeking additional information and potential solutions. The attending boards were asked to continue to pursue survey data and to work to develop a menu of options to address the issues raised by AB 2198.

The Committee reviewed the survey results.

Mr. Wong, NASW-CA, stated that specified course content is already required. Law and Ethics content areas specify suicide prevention.

Ms. Kahn expressed that this is not the right solution; additional coursework is not going to prevent suicide.

Ms. Lonner requested statistics from a suicide prevention center, specifically the percentage of suicides by clients who were in current treatment with mental health professionals.

No action was taken.

VII. Legislative Update

The Board is pursuing the following legislative proposals:

1. Supervised Work Experience Requirements

   This bill streamlines the experience requirements for LMFT and LPCC applicants. It eliminates the complex assortment of minimum and maximum hours of differing types of experience required for licensure (also known as the "buckets").

2. Enforcement Process

   This bill makes two separate amendments to the law governing the enforcement process:

   a) It modifies the Board's requirements for an individual to petition for an early termination of probation or modification of penalty. Under the proposal, the Board may deny a petition without hearing if the petitioner is not in compliance with the terms of his or her probation.

   b) It clarifies that the Board has jurisdiction to investigate and take disciplinary action even if the status of a license or registration changes or if the license or registration expires.

3. Omnibus Legislation

   This bill proposal, approved by the Board at its November 20, 2014 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

VIII. Regulation Update

Continuing Education:
The Continuing Education regulations have been finalized and are scheduled to take effect on January 1, 2015, and July 1, 2015.

Disciplinary Guidelines and SB1441: Uniform Standards for Substance Abuse
This has been forwarded to the Department of Finance for approval. Once approved, it will be submitted to the Office of Administrative Law.

IX. Suggestions for Future Agenda Items

No suggestions for future agenda items.

X. Public Comment for Items not on the Agenda

No public comment.

XI. Adjournment

The meeting was adjourned at 12:51 p.m.