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**UNITED STATES DEPARTMENT OF JUSTICE**  
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
**IMMIGRATION COURT**  
**SAN FRANCISCO, CALIFORNIA**

**In the Matter of:**

**XX**

**In removal proceedings**

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File No.:

Hearing:

Time:

Judge:

**AMICUS BRIEF OF CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY**  
**THERAPISTS IN SUPPORT OF RESPONDENT'S MOTION TO RECONSIDER THE**  
**COURT'S DECISION ON THE DHS MOTION TO PRECLUDE THE TESTIMONY OF**  
**XX**

## **I. PRELIMINARY STATEMENT**

The California Association of Marriage and Family Therapists (“CAMFT”) is the largest professional association for Licensed Marriage and Family Therapists (“LMFTs”) in California, as well as in the nation, serving 32,000 members. XX is a Marriage and Family Therapist Intern registered in California. The arguments contained in the Motion to Preclude XX evaluation report and testimony as to the scope of practice of LMFTs are contrary to the law and give CAMFT standing to file as an Amicus as an association. Therefore, CAMFT respectfully requests that the Court allow this filing of Amicus Curia.

## **II. FACTS**

CAMFT has been the primary association representing LMFTs in California for over 50 years. At the present time, CAMFT has over 32,000 members. CAMFT is actively involved in legislation in California dealing with the scope of licensure and training requirements of LMFTs. In addition, CAMFT is a major stakeholder with the Board of Behavioral Sciences, which licenses and regulates LMFTs in various ways, and CAMFT regularly comments on proposed regulations. CAMFT also monitors and advocates on federal law as it relates to LMFTs. Through its staff attorneys, CAMFT offers specific training in law and ethics for therapists throughout California and provides workshops which the Board of Behavioral Sciences approves for continuing education credit for CAMFT members, and California therapists.

## **III. LEGAL ARGUMENT**

The Motion to Preclude contends that XX was practicing outside of her scope of practice when she offered a diagnosis of post-traumatic stress disorder (“PTSD”) in support of XX immigration case. The Department of Homeland Security (“DHS”) argues that, under the governing statutes, LMFTs are only authorized to provide therapy as regards to marriage and other close familial relationships.

The scope of practice for LMFTs is not as restrictive as DHS characterizes it to be in its Motion to Preclude. A careful reading of California Business & Professions Code § 4980.02 indicates that the scope of practice for LMFTs is **also** set forth in B&P § 4980.36. The Motion to

Preclude ambiguously relies on only part of the MFT Practice Act, and ignores the MFT ability to diagnosis and treat under Business and Professions codes §4980.36, 4980.37, and 4980.41. The scope of practice for LMFTs, as set forth in B&P § 4980.36, includes education and training in all of the core tasks that comprise the conducting of psychological evaluations, including assessing, diagnosing, and treating mental disorders, and the writing of treatment plans. It is well established in California that MFTs are trained to assess, diagnose, and treat individuals, couples, families, and groups for a wide variety of mental health disorders. The practice includes (but is not limited to) the diagnosis and treatment of personality disorders, post-traumatic stress disorder (PTSD), bipolar disease/depression, autism, substance and alcohol abuse, and anxiety.

Psychiatrists and psychologists are not the only mental health professionals who can perform psychological evaluations. The phrase “psychological evaluation” is a term of art that generally refers to a clinician’s assessment, evaluation, and proposed treatment of a client. Such work is also frequently referred to as “case conceptualization” or an “initial evaluation.” In this sense, the word “psychological” means dealing with mental and emotional processes, and not what one license can or cannot do.

In addition, the Motion incorrectly summarizes the 30-year-old Attorney General opinion. In fact, Attorney General Opinion 83-810 allows LMFTs to utilize psychological tests to help them work with clients so long as they are competent to utilize the tests and are utilizing such tests in their work as LMFTs. This Opinion also formally recognizes that LMFTs may perform services of a “psychological nature,” thereby abrading the boundary between the professions of psychology and marriage and family therapy.

CAMFT submits that the decision in Speaker Ex Rel Speaker v. City Of San Bernardino (2000) 82 F.Supp.2<sup>nd</sup> 1105 where an LMFT was held not to be within the Federal psychotherapist-patient privilege is simply inconsistent with current law which expressly recognizes LMFTs as psychotherapists. Since B&P § 4980.36 was not part of the scope of practice law when Speaker was decided, the training and experience graduate students now receive in preparation for licensure as LMFTs was not considered by the court. Given the depth

and breadth of such training and experience, it is unlikely that Speaker would be decided the same way today. The congressional intent has clearly been to expand the use of LMFTs as psychotherapists under various federal statutes, and LMFTs routinely testify as experts in state court and federal court. There is currently no case, whether state or federal, that has analyzed the scope of practice of LMFTs in light of the expanded curriculum for LMFTs set forth in B&P § 4980.36. The underlying support for Speaker was eviscerated in 2009 when B&P § 4980.36 was added to California law.

The trend in Federal legislation has been to expand the use and role of LMFTs as psychotherapist under different Federal statutes, including 38 USC § 7401(3) which permits the US Department of Veterans Affairs to hire LMFTs to serve veterans with mental health needs, the Public Health Service Act 42 C.F.R. Part 5 which recognizes LMFTs as core mental health professionals, 49 C.F.R. §40.281(A)(5) which recognizes LMFTs as qualified to provide treatment for substance abuse programs under Department of Transportation; 32 C.F.R. 199.6 which includes LMFTs as providers under Champus/Tricare; 10 U.S.C. §1094(e)(2) which authorizes LMFTs to provide direct patient care; and 25 U.S.C. A. §1621(h)(1)(3) which includes LMFTs as eligible providers of mental healthcare services to native Americans.

**IV. CONCLUSION**

For the reasons set forth above the California Association of Marriage and Family Therapists as Amicus submit that the Motion to Preclude the evaluation report and proposed expert witness testimony of XX is not well taken and should be denied.

Respectfully submitted,

CALIFORNIA ASSOCIATION OF MARRIAGE  
AND FAMILY THERAPISTS

By:   
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