

Written by Jill Epstein

1. Enforcement Regulations: Unprofessional Conduct

Current regulations state that it is unprofessional conduct to fail to cooperate in a board investigation pending against the licensee or registrant. DCA Legal has recommended this sentence be change to state that it is unprofessional conduct to fail to cooperate in a board investigation pending against a licensee or a registrant. This way, if a licensee or registrant failed to cooperate when needed in a case involving another licensee or registrant, failure to cooperate would still be a violation.

CAMFT raised several specific concerns with this proposal, in addition to indicting that it was overbroad.

The Committee discussed the rationale of the change and Board counsel agreed with CAMFT's comments and concerns. It was noted that this was not a change recommended by Enforcement. Counsel noted that if the Board pursues this change, CAMFT and others would be able to comment during the rulemaking process and the Board would have to respond.

It was also recommended to revise current regulations to state that it is unprofessional conduct to fail to provide, upon request of the board, documentation regarding an arrest and/or conviction. Because certified copies are needed to ensure that the information is authentic, language that the records must be certified copies was also suggested.

The Committee voted to recommend to the Board to commence rulemaking as proposed, but take no action on changing language to subject a "witness" to unprofessional conduct.

2. Enforcement Regulations: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

As written, this section states that every violation that involves the use of drugs and/or alcohol must comply with the Uniform Standards Related to Substance Abuse. DCA Legal has recommended Section 1888 be amended to clarify that if a violation involves the abuse of drugs and/or alcohol, then the violation is presumed to be a substance abuse violation. If the licensee does not rebut the presumption, then the Uniform Standards apply. A paragraph clarifying the process of determining substance abuse has also been added to Section I of the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines."

CAMFT acknowledged and appreciated the Board's desire to pursue only those violations involving the abuse of drugs or alcohol. However, CAMFT inquired how the Board will determine if someone is a "substance abusing licensee." Board staff noted that they consider

issues such as multiple patterns of arrest for drug and alcohol use and/or high level of blood alcohol content. The Licensee always has opportunity to rebut the presumption of being a substance abusing licensee.

Several of the violations in the Penalty Guidelines list suspension of a certain number of days (which is defined depending on the violation) as a minimum penalty. At times, the Board does not believe suspension is appropriate, especially if the licensee or registrant is not being required to undergo a clinical diagnostic evaluation. However, if suspension is listed as a minimum penalty, the Board must suspend regardless of the circumstances. To allow the Board more discretion, all instances of suspensions being included as a minimum penalty have been moved to the "if warranted" condition within that minimum penalty.

SB 1172 (Lieu, Chapter 835, Statutes of 2012) made it unprofessional conduct to engage in any sexual orientation change efforts with a patient under the age of 18. This violation is not yet included in the Penalty Guidelines. This proposed amendment would add minimum and maximum penalties to the Penalty Guidelines for engaging in sexual orientation change efforts with a minor. Staff chose to use the same minimum and maximum penalties used for the unprofessional conduct violation of *"Intentionally / Recklessly Causing Physical or Emotional Harm to Client."* (Minimum includes: Revocation stayed, 3-5 years probation, if warranted, 60-90 day actual suspension; Maximum: Revocation/Denial of License/Registration.)

A proposed amendment clarified that if a clinical diagnostic evaluation is required, the Board shall be responsible for appointing the evaluator. Currently, it is not clear whether the probationer or the Board must select the evaluator. The Board already is required to select the evaluator when a psychological evaluation is ordered; this proposed amendment makes the selection consistent with that process.

Clarifications were made to the language, and the timeframe for a Respondent to choose a therapist was increased from 15 days to 30 days. The 30 day timeframe is consistent with the timeframe to respond to other types of disciplinary requirements. If the psychotherapist finds Respondent is not safe to practice, the timeframe that the therapist has to notify the Board has been reduced from 3 working days down to 1 working day, in order to ensure consumer protection.

There are currently three violations for which taking a law and ethics course is listed as a minimum penalty: General Unprofessional Conduct; Commission of a Dishonest, Corrupt, or Fraudulent Act; and Paying, Accepting, or Soliciting a Fee for Referrals. The Penalty Guidelines for these three terms has been amended to state that, if warranted, the minimum penalty can be either taking a law and ethics course and/or or take and pass one or both of the licensure examination(s). This gives the Board the discretion to determine which penalty would be most helpful in a particular case.

This amendment adds a new optional term of probation requiring, if the Board so chooses, the probationer to attend a dependency support program, if warranted. It was discussed whether

these programs are the best options or whether other options may be more effective. The Committee acknowledged it would be good to have a training on options for dependency support, beyond dependency support programs.

This proposed amendment adds a new optional term of probation requiring, if the Board so chooses, the probationer to enter a relapse prevention program. Same concerns as dependency support program.

This term of probation currently states that if the probationer does not practice for a total of two years, his or her license or registration will be automatically cancelled. In a 2006 case involving the Medical Board, a court ruled that this term violated the Constitutional right to due process if there was not a hearing. Therefore, this sentence must be removed. DCA Legal has proposed it be replaced with the following sentence: *“The failure to practice for a total of two years shall be a violation of probation.”* Board considers mitigating circumstances to toll the term of probation and agreed to add the term “Absent good cause....”

As a term or condition of probation licensee or registrant may be required to see a therapist, have a clinical diagnostic evaluation, undergo supervised practice, or attend a chemical dependency support or recovery group. The Guidelines currently prohibit a personal, professional, or business relationship with one’s supervisor, clinical diagnostic evaluator, therapist, or with the meeting facilitator of a chemical dependency support or recovery group. In order to clarify the intent of the law, a “therapeutic” relationship has been added to the list of prohibited relationships for each of these roles.

The Committee recommended adding that Board, in its discretion, may issue a public reprimand (a penalty between censure and fine and a stayed revocation), in lieu of other discipline, when evidence suggests patient harm did not occur.

The Committee voted to recommend the Board commence rulemaking, as amended.

3. Proposed Rulemaking: Filing of Addresses; Applications; Confirmation of Qualifications to Treat Couples and Families

The Committee discussed proposals to: Disallow the use of an address in “care of” or “c/o” another person; Codify the Board’s current practice of requiring an applicant’s telephone number and email address on applications for licensure or registration; Require all current licensees and registrants to provide the Board with a telephone number and email address, if they have one; Require Board notification of changes to a telephone number or email address within 30 calendar days in writing, consistent with current law for mailing addresses.

The Board also discussed LPCC Confirmation of Qualifications to Assess or Treat Couples and Families.

The Committee recommended that the Board pursue rulemaking, as proposed.

4. Proposed Rulemaking: LPCCs Working with Couples and Families: Exemptions and Supervised Experience

The proposed regulatory changes would clarify who can supervise LPCCs and PCIs who are gaining experience in assessing or treating couples, families or children, and who wish to count that experience toward meeting the 500-hour requirement. The acceptable types of supervisors are currently implied by the regulation but needs to be made explicit, as they are listed in the context of the exemption, rather than in the context of meeting the 500-hour requirement. LMFT may supervise. LPCC may supervise and there are currently more than 500 eligible LPCC supervisors in CA. A supervisor who is a licensed clinical social worker, licensed psychologist, or licensed physician who is board certified in psychiatry, shall have sufficient education and experience in treating couples and families to competently practice couples and family therapy in California.

The Committee voted to recommend the Board pursue rulemaking, as proposed.

5. AB 93

The Board is pursuing legislation to update the requirements for gaining supervised experience toward licensure for LMFT, LCSW, and LPCC applicants. The bill was introduced on January 9, 2017 as AB 93 (Medina).

The Committee discussed several amendments to the bill, including:

- Upon graduation, an LMFT/LPCC applicant may consider himself/herself a registrant for purposes of counting hours if he or she applies for registration with the Board within 90 days of the degree award date. This is referred to as the “90 day rule.” Language related to the 90 day rule has been amended to specify that the 90 day period to apply for registration after the degree is awarded is determined by the date that the Board receives the application.
- An amendment was made to clarify that no hours of experience may be gained more than six years prior to the date the application for licensure was received by the Board.

- The law sets limits on the number supervisees that may be supervised in a corporation. An amendment clarifies that the supervisees may be employees, volunteers, or a combination of employees and volunteers.

The Committee voted to recommend that the Board commence rulemaking, as proposed.

6. Draft Policy to Remove Board Newsletter from the Board's Website

In August, 2016, Board Members voted to establish a policy to remove the Board newsletters five years from the date the newsletter was posted on the Board's website. The issue was raised when the Board resumed publishing its newsletter in 2015. Within the newsletter, Board disciplinary actions, including citations and fines, are published. The Board publishes its newsletter on its website, with no policy of when the newsletter would be removed from the website. This left information regarding citation and fines available to the public indefinitely instead of complying with code that specifies that Pursuant to this code section, the Board shall not publish on the Internet the final determination of a citation and fine of \$1,500 or less for more than five years from the date of issuance.

The Committee reviewed and approved a draft policy that removes Board newsletters from website four years after publication. The policy will be reviewed by the Board.

7. Status of Outstanding Rulemaking Proposals: English as a Second Language

This proposal would allow the Board to grant time-and-a-half (1.5x) on a Board-administered examination to an English as a second language (ESL) applicant, if the applicant meets specific criteria demonstrating limited English proficiency. The Office of Administrative Law disapproved the proposal. OAL objected to allowing "documentation to the satisfaction of the Board" without further clarification. OAL requested examples of documents that would be satisfactory. New language will go to the Board in March and it will then move to a 15-day notice. If no adverse comments, it goes to Department of Consumer Affairs. The revisions must be back in OAL on June 1, 2017 and they have 30 days to make a decision. If approved by OAL, it will go into effect October 1, 2017.