

Written by Jill Epstein

1. Executive Officer Report

The Board's budget for Fiscal Year (FY) 2016/2017 is \$12,377,000. FY 2016/2017 expenditures received as of December 31, 2016 total \$5,438,702 or 44% of the Board's budget. As of December 31, 2016, the Board had collected \$ 5,578,191 in total revenue.

The Board is currently processing all applications in under 30 days.

The Examination Unit expanded and will improve Unit processes and overall service to the public. In coming months, the BBS will be adding an additional examination evaluator and providing cross training to existing staff. This will reduce the processing time of exam applications and allow for improved responsiveness to exam candidates. The additional staff will also provide the opportunity to work on exception reports which will resolve exam issues proactively instead of waiting for the candidate to contact the Board.

In March, 2017, the Exam Unit will begin Subject Matter Expert recruitment in order to expand the pool of experts.

In 2016, a total of 305 licensees were audited. Of this number, 26% (80 licensees) failed the audit. All licensees who fail the Continuing Education Audit are referred to the Board's Enforcement Unit for issuance of a citation and fine. The top reasons for licensees failing the continuing education audits are: failure to complete the law and ethics coursework, failure to complete the required number of continuing education units within the renewal period, and completing continuing education courses from unapproved providers. Board staff did not audit licensees during the last quarter of 2016 (calendar year). Staff used this time to reconcile all outstanding audits and prepare for the 2017 audits. Continuing education audits resumed on January 2, 2017. The Board's goal is to complete 720 audits between January and September 2017. The last quarter of 2017 will be to reconcile any outstanding audits and prepare for the 2018 audits. The BBS will be reaching out to BBS Approval Agencies to provide links to approved providers so licensees can be aware which providers are approved.

The Board's 2017 Statutes and Regulations law book was posted on the Board's website in January.

The Board noted it is currently conducting a Customer Satisfaction Survey. CAMFT offered to promote the survey link in the March newsletter.

2. Update on Review of the Association of Marriage and Family Therapy Regulatory Board (AMFTRB) National Examination and the National Board of Certified Counselor (NBCC) National Clinical Mental Health Counselor Examination

In 2011-2012, the Board engaged the services of Applied Measurement Services, LLC (AMS) to assess the AMFTRB national examination. AMS was charged with determining whether the AMFTRB national examination met prevailing standards for fair, valid, and legally defensible licensure examinations. AMS

also evaluated the similarity between the AMFTRB national examination plan and the Board's examination plan.

In August, 2013, AMS determined that the AMFTRB national examination met professional and technical guidelines for examination validation, but noted some technical issues. AMS also noted the current ratio of LMFTs in California versus the nation. At that time, California had approximately 35,000 LMFTs versus a total of 20,000 nationally. Further, at the time of AMS' assessment of the AMFTRB examination, the administration of this examination was a paper and pencil test. AMS stated that AMFTRB was exploring the possibility of transitioning to a computer-based test format. AMS suggested that the Board continue to have discussions with AMFTRB to resolve the technical issues as the Board implemented its exam restructure.

During the February 25-26, 2015 Board Meeting, the Board Members revisited the topic of evaluating the AMFTRB National Examination as the clinical examination for licensure in California. On November 29, 2016, Board staff met with the Office of Professional Examination Services (OPES) to discuss evaluating the AMFTRB National Examination. A follow up meeting was held on January 26, 2017 and OPES staff indicated that the evaluation of this examination was possible. The evaluation of the AMFTRB National Examination will be scheduled in 2018, following the conclusion of the Board's Occupational Analysis of Marriage and Family Therapist practice and AMFTRB's Occupational Analysis. These analyses incorporate results from licensee surveys and determines the landscape of the practice and identify which tasks and skills are necessary. Once the evaluation is completed, the results will be presented to the full board. While it has been established that the exam is "viable", the question for the Board will be whether the exam is appropriate for California licensure. If the exam is not sufficient, the Board can examine whether the California law and ethics exam is an adequate supplement or whether an additional supplement could address the gaps. It was noted that the goal is to improve portability of the MFT license.

In 2011, Board directed staff to enter into a contract with NBCC to use the National Clinical Mental Health Counselor Examination (NCMHCE) for LPCC licensure in California. The Board began using this examination in 2012. Although the terms of the contract with NBCC provide for a review of the NCMHCE to ensure the examination meets the requirements for practice in California, a review of the NCMHCE examination has not been conducted since the initial AMS evaluation in 2010.

During the November 29, 2016 and January 26, 2017 meeting with OPES, Board staff inquired if OPES is able to evaluate the NCMHCE examination. OPES indicated the evaluation of the NCMHCE examination will be scheduled after the conclusion of the Licensed Professional Clinical Counselor Occupational Analysis in 2017. Once the evaluation is completed the results will be presented to the full board.

3. Enforcement Regulations: Unprofessional Conduct

The Board discussed a recommendation 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 Board also discussed requiring certified copies from the issuing agency for investigations into certain unprofessional conduct sections. Since the guidelines do not currently state that the copies must be certified, that change was recommended.

The Board voted to direct staff to commence rulemaking, as proposed.

4. 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. 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), which is also comparable to penalties for violating other laws.

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.

Currently, if a probationer is required to have supervised practice, the supervisor must be currently licensed and in the probationer's same field, but there are no other qualifications specified. An amendment was made to state that the supervisor must meet the same requirements as supervisors of registrants who are gaining supervised experience, as defined in statute. CAMFT noted that supervising someone in his/her practice for a BBS issue is very different than supervising someone gaining hours of experience and recommended that the current language not be amended. Having additional requirements limits the available pool of supervisors. A representative from the CAMFT Ethics Committee added that the Committee focuses on the specialty of the person doing the supervision – not whether the person is a designated BBS supervisor – when imposing supervision on someone who has violated the Code of Ethics. The Board noted that the requirements ensure a supervisor is trained in vicarious liability and other skills that are required from a supervisor. The Board also noted that licensees can go out of the profession to identify an appropriate supervisor, so the pool is wider. There was further discussion about allowing a waiver to new requirements for a probationer who cannot find a supervisor who meets the BBS requirements. The Board ultimately determined that this provision should be modified now only to require 2 years of licensure in California or any state. Once AB 93 passes and is implemented, data can be collected to determine the size of the supervisor pool and whether further requirements for supervisors are reasonable.

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. The Committee had 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. CAMFT raised the issue of giving options to therapists in remote communities to possibly participate in on-line programs, but the Board noted that dependency support programs are widespread around the state.

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 cite and fine and a stayed revocation), in lieu of other discipline, when evidence suggests patient harm did not occur.

The Board voted to direct staff to commence rulemaking, as amended.

5. 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 Board voted to direct staff to pursue rulemaking, as proposed.

6. 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 Board voted to direct staff to pursue rulemaking, as proposed.

7. 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 Board 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 Board voted to direct staff to commence rulemaking, as proposed.

8. 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 \$1500 or less for more than five years from the date of issuance.

The Board reviewed and approved a draft policy that removes Board newsletters from website 4 years after publication. The Board voted to approve the policy and direct staff to implement policy, effective immediately.

9. 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 disproved 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.

The Board voted to propose the new language. This language will now 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.

10. Proposal to Add Coursework in Parent Alienation to Educational Requirement for Licensure

The Board heard a proposal to revise the 7-hour continuing education Child Abuse course (required for first renewal) to include the study of Parental Alienation and its diagnostic indicators. It was argued that this enables therapists to protect children. The Board noted that the Board does not control course content. The Board determined that “parental alienation” is an emerging issue and needs to be

reviewed in a thoughtful, balanced manner. Staff was directed to research the issue and bring data back to the Board.

11. Alternative Option to License Surrender in Disciplinary Cases Involving Neuro-Cognitive Degenerative Disorders

The Board heard a proposal to provide retirement with dignity to licentiates whose capacities to practice become impaired, due to neuro-cognitive degenerative disorders (e.g. dementias).

Legislation creating the retired license status became effective on January 1, 2011. The intent of the retired license status is to provide the licensee an option if the licensee no longer wishes to practice. Under this option, the licensee is permitted to submit a one-time fee to the Board. A retired license honors the years of service in the mental health profession, but does not permit the licensee to practice. Under current law, a licensee may not have committed a crime or act which would constitute disciplinary action in order to qualify for the retired license. As a state regulatory agency, the Board is mandated to protect consumers. The publication of disciplinary actions on the Board's website is one way to protect consumers. The Board will discuss at future meeting whether offering a retired license to licensee whom is the subject of an Accusation; a neuro-cognitive disorder is confirmed; and failing to post the Accusation on its website, would be perceived as noncompliant with its consumer protection mandate.