

BBS Board Meeting
May 13, 2016

Alain Montgomery
Staff Paralegal

I. Introductions:

Christina Wong, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 8:39 a.m. Christina Kitamura called roll, and a quorum was established.

II. Approval of February 25-26, 2015 Board Minutes. APPROVED

III. Approval of March 2-4, 2016 Board Meeting Minutes. APPROVED

IV. Chair Report

- Chair, Christina Wong attended the following meetings/events:
 - Sunset Hearing
 - Social Worker's Board Meeting
 - NASW Lobby Days

V. Executive Officer's Report:

A. Budget Report:

The Board's budget for FY 2015/2016 is \$10,351,000. Expenditures as of March 31, 2016 total \$7,512,070 or 73% of the Board's budget.

The Board's Fund Condition report reflects 5.7 months in reserve. Projections for the FY 2016/2017 budget indicate a scheduled repayment of \$6.3 million dollars which will provide the Board 9.9 months in reserve. By law, the Board may only have 24 months in reserve.

B. Operations Report/Personnel:

The Board has been active in attending the following meetings and events: Quarterly Educator Consortiums; the AAMFT Conference; the California PCC Conference; and provided a webinar for the USC School of Social Work.

Also, in the last Quarter, the Board conducted 10 LMFT Exam Development workshops.

The Board has resumed auditing Continuing Education units of Board licensees. Among LMFTs, there was a 24 % fail rate. Across all of the Board's licensees, there was a 22% fail rate – mostly due to not completing required courses. Failing an audit could lead to a citation, fines (based on the number of CE's missed), and having to retroactively complete the missing/required continuing education course(s).

- C. Sunset Review Update:** The Board of Behavioral Sciences Sunset Hearing was held on March 14, 2016. The hearing was attended by Board Chair Christina Wong, Vice Chair Deborah Brown, Executive Officer Kim Madsen, and Assistant Executive Officer Steve Sodergren. The Senate Business, Professions and Economic Development Committee Chair Jerry Hill and the Assembly Committee on Business and Professions Chair Rudy Salas conducted the hearing. During the hearing the Board presented a brief overview of the Board and responded to several issue questions raised in the Board's background paper. The Board's background paper was prepared by committee staff. The video of the Board's hearing can be viewed at the following link: http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=3448. On April 12, 2016, the Board submitted a written response to all of the issues in the Board's background paper. Board staff is pleased to share that Assembly Bill 2191 proposes to extend the Board until 2021, the maximum amount of years between Sunset Reviews.

VI. Strategic Plan Update: Management and staff continue to address the strategic goals and objectives:

- I. Licensing: Establish licensing standards to protect consumers and allow reasonable and timely access to the profession.
- II. Examinations: Administer fair, valid, comprehensive, and relevant licensing examinations.
- III. Enforcement: Protect the health and safety of consumers through the enforcement of laws and regulations
- IV. Legislation and Regulation: Ensure that statutes, regulations, policies, and procedures strengthen and support the Board's mandate and mission.
- V. Organizational Effectiveness: Build an excellent organization through proper Board governance, effective leadership, and responsible management.
- VI. Outreach and Education: Engage stakeholders through continuous communication about the practice and regulation of the professions.

The Board intends to prepare a new strategic plan next year in 2017.

- VII. Supervision Committee Update: The Supervision Committee held its tenth meeting on April 29, 2016, and is expected to complete its work in late 2016. The topics and informal decisions made by the Committee are addressed below. Upon completion of the Committee's work, proposed language will be presented to the Board for

consideration, and will require the passage of both legislation and regulations in order to implement.

The majority of informal decisions made by the Supervision Committee to date have been incorporated into an initial draft of proposed language, which addresses the following:

- Supervision via videoconferencing
- Methods of monitoring/evaluating the supervisee
- Addressing issues related to supervisee performance (plan for remediation)
- Supervisory Plan form
- Supervisors being reachable while supervisee is providing services
- Initial supervisor training – 15 hours for all professions
- Six (6) hours ongoing supervisor training for all professions every two years - may consist of professional development activities
- Require supervisors to notify the Board that they are supervising
- Require supervisors to perform a self-assessment of qualifications and provide a copy to the Board and to supervisees
- Auditing supervisors
- Make the definition of supervision consistent among the professions
- Require the supervisor to ensure that the amount of group supervision is appropriate to each supervisee's needs, considering eight (8) are allowed in the group
- Allow triadic supervision (two supervisees, one supervisor) in place of individual supervision
- Allow one-half hour increments of supervision to be counted toward experience hours (beyond the minimum required)
- Require applicants who have completed their experience hours to continue receiving one hour of supervision per week, per work setting
- Define parameters for acceptable documentation when a supervisor is deceased and an Experience Verification form had not yet been signed.

Topics Remaining

- Supervisor not signing for hours/one-week notice requirement

- Review BBS Unprofessional Conduct code sections pertaining to supervision
- More thorough requirements to become a supervisor for individuals on probation
- Offsite or Contract Supervisors:
 - Do the current requirements pertaining to offsite supervision adequately protect the supervisor, supervisee and client?
 - Should offsite supervision requirements be made consistent between license types, keeping in mind possible differences needed for MFT Trainees since they are still in school?

The next Supervision Committee will be June 9, 2016 at the Ayres Hotel in Costa Mesa.

VIII. Examination Restructure Update: Since January 1, 2016 the Board has been working on the transition to the new exam restructure requirements. While the transition has been fairly smooth, it has not been without its challenges. The greatest challenge has been the processing of exam applications and examinee scores. These challenges existed because of the increased volume of exam applications and the fact that the Board had yet to implement system changes in BreEZe. Processes that had been automatic before January 1st now require manually processing and data entry in the system.

On May 5, 2016 the system changes that are necessary for the BreEZe system to properly process applications under the new requirements were implemented. This was the last component necessary for the full implementation of the Exam Restructure project. This could not have been completed without the excellent cooperation and collaboration of the Department's BreEZe team. Also, under the leadership of the Board's IT specialist Lynne Stiles, the Board tested and was able to ensure the proper function of the system changes.

After the BreEZe system changes are implemented, the Board is hopeful that the current challenges regarding the processing of applications and the transfer of exam eligibilities will be greatly reduced. This will allow the Board to concentrate more resources to providing outreach and assisting the applicants in navigating the new exam restructure requirements.

In the last quarter, the Board processed approximately 6,000 exam applications, which were primarily comprised of the applications to take the Law and Ethics Exam.

Steve Sodergren, Asst. Executive Officer of the Board, provided updates regarding the technical implementations and modifications to the BreZe System. Mr. Sodergren is confident that exam processing times for the Law and Ethics Exam for all Registrants will be *no more* than 30 days since the technical issues have been finalized and resolved.

Mr. Sodergren suggested that Board Registrants who have questions about exam processing times do the following to keep apprised of important alerts regarding exam processing times as well as processing times for other applications:

1. Subscribe to the BBS "Subscriber List"
2. Make sure the personal information on the BreZe system is updated
3. Check the Boards Facebook and Twitter account information

Also, Mr. Sodengren suggested that when contacting the Board via phone or through email, with a question to be concise and to leave enough identifying information (such as a social security number or registrant or license number) to ensure the Board can appropriately respond.

IX. Policy and Advocacy Committee Recommendations:

- 1) Assembly Bill 796 (Nazarian) Health Care Coverage: Autism and Pervasive Developmental Disorders. This is a 2-year bill that was introduced in 2014, with the BBS taking a neutral position in 2014. This bill seeks ensure that individuals with pervasive development disorder or autism are able to receive insurance coverage for types of evidence-based behavioral health treatment other than applied behavior analysis. To accomplish this, it directs the Board of Psychology to form a committee to develop a list of acceptable behavioral health evidence-based treatment modalities. The bill defines "behavioral health treatment" as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets specific criteria. The Board voted to take a neutral position on this bill. CAMFT is watching this bill.
- 2) Assembly Bill 1001 (Maienschein) Child Abuse: Reporting: Foster Family Agencies: This is a 2-year bill that was introduced in 2014 and was supported by the BBS, but has been significantly amended. This bill seeks to address a report that social workers who work for foster family agencies are sometimes prohibited by their supervisors from making mandated reports of child abuse. Foster family agencies are licensed by the Department of Social Services. The amendments in this bill give the Department of Social Services more authority to ensure that foster family agencies follow mandated reporting requirements. The Board voted to support this bill. CAMFT is watching this bill.

- 3) Assembly Bill 1808 (Wood) Minors: Mental Health Services: This CAMFT-sponsored bill includes marriage and family therapist trainees and clinical counselor trainees in the list of professional persons who may perform mental health treatment or residential shelter services with a consenting minor 12 years of age or older under certain defined circumstances. The bill would require the marriage and family therapist trainee and clinical counselor trainee to consult with his/her supervisor as soon as reasonably possible when assessing the maturity of the minor.

A representative from CAMFT informed the Board that technical changes are currently being considered with respect to the language in the bill that requires the trainee to consult with his or her supervisor as soon as reasonably possible when assessing the minor; the Board was advised that CAMFT is consulting with licensed supervisors to ensure that any requirement imposed, if at all, is practicable and serves the interest of all parties.

The Board voted to support this bill.

- 4) Assembly Bill 1863 (Wood) Medi-Cal: Federally Qualified Health Centers: Rural Health Centers: This CAMFT-sponsored bill would allow Medi-Cal reimbursement for covered mental health services provided by a marriage and family therapist employed by a federally qualified health center or a rural health clinic.

A representative from CAMFT reiterated the Board's position of "support" for the previous version of this bill and reiterated that the primary reason the Governor vetoed this bill last year was due to fiscal concerns which have now been addressed; and it was emphasized that MFTS are uniquely qualified to serve the interests of individuals who utilize services offered by FCHQs and RHCs. A representative from CAL PCC stressed that LPCCs should be included.

The Board voted to support this bill and direct staff to work with the author to include LPCC's.

- 5) Assembly Bill 2083 (Chu) Interagency Child Death Review: This bill would, at the discretion of the provider, allow medical and mental health information to be disclosed to an interagency child death review team. Existing law allows counties to establish interagency child death review teams to review suspicious child deaths and to help identify incidents of child abuse or neglect. Existing law allows domestic violence and elder and dependent adult death review teams the ability to review mental health information, if disclosed to the team at the discretion of the person who has the information. The Board voted to support this bill. CAMFT is watching this bill.
- 6) Assembly Bill 2191 (Salas) Board of Behavioral Sciences: This bill extends the operation of the Board until January 1, 2021. The "sunset review" process permits

the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The Board voted to support this bill. CAMFT supports this bill.

- 7) Assembly Bill 2199 (Campos) Sexual Offenses Against Minors: Persons in a Position of Authority: This bill would subject persons who engage in specified acts of a sexual nature with minor to additional jail terms if they held a position of authority over the minor. Persons in a position of authority include the minor's counselor or therapist. The Board voted to support this bill. CAMFT is watching this bill.

- 8) Assembly Bill 2507 (Gordon) Telehealth: This bill requires that a health care service plan or health insurer must cover patient services provided via telehealth to the same extent as services provided in-person. It also specifies various communications platforms that are acceptable for telehealth. This bill aims to provide a viable telehealth reimbursement infrastructure in California in order to improve patient access. Under this bill, providers will be able to offer telehealth services with a guarantee that they will receive health plan reimbursement. The BBS noted that while texting, chat, and email may be permitted modes of telehealth and acceptable for use in some healing art professions, the statute and regulations make it clear that it is the practitioner's ethical obligation to ensure the mode of service delivery is appropriate to each client, and that it is acceptable according to the industry standards of his or her profession. The Board voted to support this bill. CAMFT supports this bill.

- 9) Assembly Bill 2606 (Grove) Crimes Against Children, Elders, Dependent Adults, and Persons with Disabilities: This bill requires a law enforcement agency to report to a state licensing agency if the law enforcement agency receives or makes a report that one of the licensing agency's licensees has allegedly committed certain crimes, including failure to file a mandated report. Currently, the Board would learn of instances of the crimes listed if an arrest was made, or if a complaint was received.

The Board voted to adopt a neutral position on this bill and direct staff to work with the author provide technical assistance regarding the definition of the term "registrant." CAMFT is watching this bill.

- 10) Senate Bill 614 (Leno) MediCal: Mental Health Services: Peer, Parent, Transition-Age, and Family Support Specialist Certification: This is a 2-year bill and BBS position in 2014 was Oppose unless Amended. This bill requires the State Department of Health Care Services to develop a peer, parent, transition-age, and family support

specialist certification body to provide statewide certification. The bill authorizes DHCS to add peer support providers as a provider type within the Medi-Cal program. The bill also delegates the task of establishing specific education and training requirements to regulation.

A representative from CAMFT expressed concerns regarding the DHCS ability to provide oversight and to manage consumer protection issues.

The Board voted to: support this bill if it is amended to define what a peer support specialist's services *do not include* and to add LPCC's to those qualified to provide supervision. CAMFT's position on this bill is to Oppose Unless Amended.

- 11) Senate Bill 1034 (Mitchell) Health Care Coverage: This bill removes the January 1, 2017 sunset date so that health service plans and insurance policies will be required to provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A) indefinitely. The bill also makes a change to the definition of "behavioral health treatment" to clarify that it includes not only behavior analysis, but also other evidence-based behavior intervention programs. Also specifies that behavioral health treatment involves maintaining functioning of an individual with PDD/A. The Board voted to support this bill. CAMFT does not have a position on this bill.
- 12) Senate Bill 1101 (Wieckowski) Alcohol and Drug Counselors: Regulation: This bill creates the Alcohol and Drug Counseling Professional Bureau under the Department of Consumer Affairs (DCA) for the purpose of licensing alcohol and drug counselors. The bill outlines the minimum qualifications for obtaining an alcohol and drug counselor license, but does not include a scope of practice. The bill provides a one-year grand parenting period where applicants with 12,000 experience hours are exempted from the degree requirements, the exam requirements, and the specified coursework requirements. However, such applicants must pass the exam within one year of the end of their licenses' first renewal period. At this time, the bill is not a practice act, and the Board's licensees may continue to practice alcohol and drug counseling that is within the scope of their practice, education, and experience, as long as they do not use the title "licensed alcohol and drug counselor." The Board voted to support this bill if amended. CAMFT's position on this bill is Opposed Unless Amended.
- 13) Senate Bill 1155 (Morrell) Professions and Vocations: Licenses: Military This bill would require licensing boards within the Department of Consumer Affairs (DCA) to

grant fee waivers for the application for and issuance of a license to persons who are honorably discharged veterans. The Board cannot make an accurate estimate at this time about how many individuals per year would qualify for the fee waiver and the fiscal implication to update the BrEZe system to accommodate this fee waiver. The Board noted that they already provide for an expedited review process for military applicants to assist. The Board voted not to take a position on this bill. CAMFT supports this bill.

14) Senate Bill 1334 (Stone) Health Practitioners: Human Trafficking: This bill requires a health practitioner employed in a health facility, clinic, physician's office, or local or state public health department to make a report when he or she provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct. Currently such a mandated report is only triggered if there is a wound or injury. The Board voted to oppose unless amended to exclude BBS licensees. CAMFT is watching this bill.

X. Discussion and Possible Action Regarding Assembly Bill 1715 (Holden) Healing Arts: Behavior Analysis: Licensing:

This bill establishes licensure for behavior analysts and assistant behavior analysts under the Board of Psychology. In addition, it would require behavior analyst interns and behavior analyst technicians to register with the Board of Psychology. Establishes the Behavior Analyst Act to license behavior analysts and assistant behavior analysts, and to register behavior analyst interns and technicians, under the Board of Psychology beginning January 1, 2018. This bill specifies that the practice of behavior analysis does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, counseling, prescribing drugs, performing surgery, or administering electroconvulsive therapy. Requires an applicant for licensure as a Behavior Analyst to maintain active status as a certified behavior analyst with the Behavior Analyst Certification Board (BACB), or a national credentialing organization with behavior analyst certification programs approved by the board and accredited by the National Commission for Certifying Agencies. The applicant must also have passed the BACB's exam and must pass a California Law and Ethics Exam.

A representative from CAMFT articulated CAMFT's concerns about how this bill would *prevent* LMFTs who are currently training under licensed providers in behavior analysis *from rendering* further services which would result in an immediate job loss; and how the bill would prohibit LMFTs from providing supervision to those providing behavior analysis services, which would again, result in immediate job loss.

Also, the results of a CAMFT survey were shared. The results directly demonstrate that this bill would directly result in job loss for MFT licensees and registrants: 150 of the 200 pre-licensed respondents who practice ABA, said that under this bill, they would no longer be able to do so. Also, of the 300 supervisors that responded, 90 of them who currently supervise those who practice ABA would be negatively impacted by this bill.

The Board voted not to take a position on this bill and direct staff to work with the author regarding dual licensure for BBS licensees; the educational exemption for BBS licensees, trainees and registrants; and supervision requirements for behavior analysis assistants, interns, and technicians.

CAMFT's position on this bill is Oppose Unless Amended.

XI. Discussion and Possible Action Regarding Senate Bill 1195 (Hill) Healing Arts: Professions and Vocations: Board Actions: Competitive Impact:

This bill seeks to ensure that boards under the Department of Consumer Affairs (DCA) are in compliance with the recent Supreme Court ruling, North Carolina State Board of Dental Examiners v. Federal Trade Commission. This ruling stated that state licensing boards consisting of market participants in the industry regulated by the board can be held liable for violations of antitrust law unless their anti-competitive decision meets two requirements. The anti-competitive action or decision must be based on a clearly articulated and affirmatively expressed state policy; and the board decision must be actively supervised by the state. Requires the director of DCA, on his own initiative, or upon request by a consumer or licensee, to review any board decision or other action to determine whether it unreasonably restrains trade. The Board voted to support this bill if amended to clarify the language, meaning, and definition of "competitive impact."

XII. Status of Board Sponsored Legislation and Other Legislation Affecting the Board:

- a. Assembly Bill 1917 (Oberholte) Educational Requirements for Marriage and Family Therapists and Professional Clinical Counselor Applicants: This bill proposes modifications to the education required to become an LPCC or an LMFT as follows: 1. It amends the coursework and practicum required of LPCC applicants in order to ensure that the degree was designed to qualify the applicant to practice professional clinical counseling. 2. It amends the law to define education gained out-of-state based on the location of the school, instead of based on the residence of the applicant. Status: This bill has passed the Assembly and is now in the Senate. CAMFT supports this bill.
- b. Senate Bill 1478 (Senate Business, Professions, and Economic Development Committee) Omnibus Bill: This bill proposal, approved by the Board at its November 20, 2015 meeting, makes minor, technical, and non-substantive amendments to add clarity and

consistency to current licensing law. The proposal to change the marriage and family therapist and professional clinical counselor “intern” title to “associate,” also approved by the Board at its November 20, 2015 meeting, is also included in this bill. Status: This bill is in the Senate Appropriations Committee.

XIII. Status of Board Rulemaking Proposals:

a. Standards of Practice for Telehealth: Add Title 16, CCR Section 1815.5: This proposal addresses the use of telehealth in the provision of psychotherapy, and clarifies questions, such as when a California license is needed, actions a licensee must take in order to protect the client in a telehealth setting, and that failure to follow telehealth requirements is considered unprofessional conduct.

b. English as a Second Language: Additional Examination Time: Add Title 16, CCR Section 1805.2: 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.

XIV. Presentation Ethical Decision Making – Dianne R. Dobbs, DCA Legal Counsel

Attorney Diane Dobbs presented the above mentioned presentation.

XV. 2016 Board Elections

Christina Wong completed her term as Chair of the Board. Debra Brown was nominated and appointed to succeed her as Chair. Patricia Dawson was nominated and appointed to become the Vice Chair.

XVI. Suggestions for Future Agenda Items

The “pros and cons” of having legal counsel and a videographer at future meetings.

Consider requiring licensees and registrants to take the Law and Ethics Exam as a term of probation if he or she is subject to disciplinary action.

The next meeting is scheduled for August 16th – 19th in Sacramento.

XVII. Public Comment for Items Not on the Agenda: NONE

XVIII. Adjournment: 5:04pm