

## **BBS Board Meeting Notes**

Cathy Atkins, JD

Deputy Executive Director

November 2, 2017

### **1. Executive Director's Report**

The Board's budget for Fiscal Year (FY) 2017/2018 is \$11,316,000. The Board's Fund Condition for FY 2017/2018 reflects a 5.9 month reserve. The Board's Fund Condition report also reflects a \$3 million dollar loan repayment in fiscal year 2017/2018. The remaining \$3.3 million is scheduled for repayment in FY 2018/2019.

Overall, application volumes increased in the first quarter of FY 2017/2018 by 15%. Because of the increased application volumes and staff vacancies, the Board's Processing Times increased during the first quarter of FY 2017/2018. The processing time for MFT Registration Applications is 17 days, and MFT Examination is 50 days. A total of 1,286 initial licenses were issued in the fourth quarter. As of September 30, 2017, the Board has 110,412 licensees and registrants.

The MFT Examination pass rate has ranged from 52%-58% for 2017.

In March 2017 Subject Matter Expert (SME) recruitment was initiated and resulted in a great response with over 336 applications received as of September 25, 2017. Of the 336 applicants, 231 met the desired qualifications. There are now have over 434 qualified SME's committed to participating in the various examination development workshops. Subject Matter Expert (SME) recruitment is ongoing and interested licensees, including new licensees (licensed 5 years or less) are encouraged to apply via the Board's website.

During the first quarter, the Enforcement staff received 303 consumer complaints and 305 criminal convictions. 668 cases were closed and 57 cases were referred to the Attorney General's office for formal discipline. 17 Accusations and 8 Statement of Issues were filed this quarter. The number of final citations for the first quarter is 78.

The Board reviewed the 2018-2021 Strategic Plan Goals as provided by the BBS. There are six goals areas: licensing, examination, enforcement, legislation and regulation, organizational effectiveness and outreach and education. Included in the goals, was the evaluation of the MFT national examination to determine if appropriate for use in California. The Board approved the Strategic Plan as submitted.

### **2. LMFT Clinical Exam**

In response to the recent inquiries regarding the pass rate for the LMFT Clinical Exam, the BBS reviewed the exam development process and statistics regarding the pass rate.

The LMFT Clinical Examination was introduced on January 1, 2016 as part of examination restructure. Prior to this date the LMFT examinations consisted of the Standard Written and the Written Clinical Vignette Examinations. On January 1, 2016 these exams were replaced with the LMFT Law and Ethics Examination and LMFT Clinical Examination.

The LMFT Clinical Examination measures the competencies required for independent practice. It is designed to measure those competencies at a level that SMEs agree is the minimum acceptable level for performance in the profession. Candidates are expected to have attained a broad basic knowledge of marital and family therapy regardless of their individual backgrounds. As with any high stakes exam there are numerous factors that can affect the pass rate however a passing score is required to demonstrate competency.

Review of the LMFT Clinical Examination performance from January 1, 2017 to September 30, 2017 shows the passing rate for first time test takers has been between 56% and 61%. In 2016 the LMFT Clinical Examination passing rate for first time test takers was between 70% and 90%. It should be noted that the first quarter of 2016 reflected an unusual candidate pool with all being first time test takers. This anomaly could be attributed to changes in the exam eligibility business process that were necessitated because of new computer system designs put in place for the exam restructure.

The LMFT Standard Written Examination pass rate for first time test takers in 2015 was between 64% and 77%.

Concerns were raised by Dr. Ben Caldwell, Advocacy and Legislative Chair for AAMFT-CA, at the downward trend of the exam passage rate, asking for additional data be reviewed to help determine the reason behind this trend, including the demographic and schooling data of the test-takers, the effect of the new curriculum requirements, the criteria the questions derive, etc.

Cathy Atkins, Deputy Executive Director of CAMFT underscored Dr. Caldwell's concerns about the 50% passage rate, asking the Board to be as transparent as possible with the data they collect to allow the public to better understand the process and results.

### **3. Trainees Paying for Supervision and Administrative Fees**

During the BBS Board May 2017 meeting, the BBS committed to researching an concern raised that some practicum sites, particularly those in the Los Angeles area, are beginning to charge trainees fees to volunteer with their organization, or fees for supervision.

In response, the BBS sent out an informal survey of trainee practice settings as well as schools with degree programs. Although the data is still being analyzed, of the 76 respondents, just under 70% indicated that their practicum sites do not require students to pay a fee. However, 17% indicated a supervision fee, and 17% indicated a training fee. It was noted by the BBS that the Board of Psychology prohibits pre-licensurees from gaining hours by a person whom they have paid for that supervision.

During the meeting, Dr. Caldwell, again raised his concerns about this practice and the unintended consequences that might result in exploitation to the MFT in training. His request was for further data collection to provide greater insight into this practice.

Many agency stakeholders spoke to the concerns raised, explaining how training facilities work, as well as why a training fee is necessary.

Ms. Atkins reiterated the request that additional data be collected, specifically from schools, agencies and students. She also asked that more in-depth and open ended data be collected to assist in better understanding of the issue.

The Board determined to put out additional surveys to stakeholders to obtain more global data on whether this is a regional issue, how the various training facilities are set up, what percentage of practicum sites charge, etc.

#### **4. Proposed 2018 Legislation**

##### Amend BPC Section 27 – Disclosure of Information on Licensees and Registrants

Background: BPC §27 requires boards and bureaus under the Department of Consumer Affairs (DCA) to disclose certain specified information. For most boards and bureaus that register pre-licensees, the law states that information must be disclosed on licensees and registrants. However, registrants are not mentioned in this Board's subsection.

Recommendation: Amend BPC §27(c)(14) to state that "The Board of Behavioral Sciences shall disclose information on its licensees and registrants."

##### Amend BPC Sections 865, 2290.5, 4990.30, 4999.14, 4999.22, 4999.48, 4999.100, and Family Code Section 6924 – Changing "Intern" title to "Associate"

Background: Legislation was signed in 2016 to change the "intern" title to "associate" for LMFT and LPCC registrants effective January 1, 2018. Last year, general language was placed in the law stating that any reference to an "intern" shall be deemed a reference to an "associate," and staff began the process of making the title change in code sections that were already being amended in active legislation. These amendments complete the title change in sections that were not affected by legislation last year.

Recommendation: Change the term "intern" to "associate" in sections where the change was not made via legislation last year.

##### Amend BPC Sections 4980.37, 4980.39, 4980.41, and 4999.32 – Remove Expiration Date for Accepting Degrees Begun Prior to August 1, 2012 and Completed Before December 31, 2018

Background: Educational requirements for degrees begun after August 1, 2012 or completed after December 31, 2018, are specified in BPC sections 4980.36 and 4999.33 for LMFT and LPCC applicants, respectively (new education requirements). However, the educational requirements for older degrees, contained in BPC sections 4980.37, 4980.39, and 4980.41 (for LMFT applicants) and section 4999.32 (for LPCC applicants) are still specified in law, because applicants with these older degrees will continue to apply for licensure (often because they are coming here from out-of-state, but sometimes because they need a new registration number, or took a break for a while). Sections 4980.37, 4980.39, 4980.41, and 4999.32 are set to repeal on January 1, 2019. If that were to happen, then applicants with older degrees would need to meet the educational requirements of sections 4980.36 and 4999.33.

Staff does not believe it was the intent of the Board, when it ran legislation in 2009 to change the educational requirements for a license, to require older degrees to meet new requirements. Doing so would be exceptionally burdensome, because degree requirements have been increased from 48 to 60 semester units, and practicum hours (which cannot be remediated outside of the degree program) have also increased. Staff believes the intent of the Board at the time it changed the educational requirements was to have schools phase-in the new education requirements based on when the applicant started school, but not to eliminate an applicant's ability to apply for licensure a few years

down the road if they graduated under the older program. For these reasons, staff recommends striking the 2019 sunset date in the above-mentioned sections.

Recommendation: Amend sections 4980.37, 4980.39, 4980.41 and 4999.32 to strike the January 1, 2019 sunset date.

Amend BPC Sections 4980.72, 4996.17, and 4999.60 – Acceptance of Clinical Exam Score from an Out-of-State Applicant

Background: These code sections allow an applicant who obtained a license or registration in another jurisdiction to apply for licensure with the Board without taking the clinical exam if the applicant has already passed the clinical exam that is accepted by the Board, and if the outof-state license or registration is active and in good standing. The law currently allows the applicant to “apply for licensure” if the above conditions are met, but it would be more accurate to state that they may “qualify for licensure”.

Recommendation: Amend the term “apply for licensure” to “qualify for licensure.”

Amend BPC Sections 4980.78, 4980.79, 4999.62, and 4999.63 – Reference to “Supervised” Practicum for Out-of-State Applicants

Background: LMFT law for in-state applicants states that practicum must be “supervised.” LPCC law for in-state applicants references practicum as “supervised practicum or field study experience” (BPC §§4980.36, 4980.37, 4999.32, and 4999.33). However, the out-of-state education requirements simply mention “practicum,” and do not refer to practicum using the same terms as used for in-state applicants.

Recommendation: Amend the references to practicum in the LMFT and LPCC out-of-state education requirements so that they match the references to practicum used for the in-state requirements.

## **5. Renewal of Expired Registration Number**

Current law specifies actions a registrant must take to renew a registration number before its expiration. However, the law is silent on the actions needed to renew a registration number once it has expired. The problem is that although BPC §4990.33 grants the Board authority to take disciplinary action against an expired registration, it still faces difficulty taking action in some cases where a registration is expired, because current law does not specify a method by which an expired registration can be renewed. Due to this, judges, the Attorney General, and others in the legal profession dealing with Board cases do not understand that renewing an expired registration is simply a matter of submitting a renewal form and paying a fee. This leads to problems when the Attorney General’s office appears on the Board’s behalf in a criminal proceeding to obtain a PC 23 Order prohibiting or restricting the registrant’s practice. The Superior Court judges do not understand why a PC 23 Order is necessary to prohibit or restrict the registrant’s practice as the registration has expired.

Due to this issue occurring several times, the Attorney General’s office and DCA Legal have recommended that the Board pursue legislation to specify how to renew an expired registration.

The BBS recommended that BPC sections 4984.01, 4996.28, and 4999.100 specify the process to renew a registration that has not expired, for MFT, ASW, and PCC registrants, respectively. To renew an unexpired registration, the registrant must fill out a renewal form, pay a renewal fee, participate in the California law and ethics exam each year (if not yet passed), and notify the Board of any convictions or disciplinary action taken by another licensing board. Staff proposed that the law be amended to specify that the requirements to renew an expired registration be the same as those to renew an active registration as listed above.

## **6. Examination Re-scoring**

Existing Law Current statute authorizes the Board to charge candidates a \$20 fee for requesting an examination rescoring (per Business and Professions Code sections 4984.7(a)(5), 4989.68(a)(6), 4996.3(a)(5) and 4999.120(j)). The fee is also listed in regulation (Title 16, California Code of Regulations section 1816.3). However, neither statute nor regulation define “examination rescoring.”

Examination rescoring has its roots in the past when all exams were given manually, via paper and pencil. The purpose of an “examination rescoring” at that time was to hand-check for errors in Scantron processing. Now that all Board exams are administered electronically, the examination results for every single candidate are automatically double-checked by the Board’s testing vendor. Paying \$20 for a rescoring provides no benefit to a candidate who took the exam electronically. The Board does accept and respond to exam complaints filed by candidates, and if concerns are expressed about scoring, this would be investigated and addressed. No fee is required to file a complaint.

The Board currently offers the \$20 examination rescoring to candidates who took a Board developed exam via paper and pencil. Exams are only provided via paper and pencil to those candidates who have been granted such as a disability accommodation.

Recommendation: To strike the regulation section pertaining to the \$20 fee as unnecessary as the fees are set in statute.

## **7. Application Abandonment Criteria**

“Abandonment” in this context describes the situation where an applicant has not taken required action on his or her pending application for at least a one-year period. At the one-year mark, the file is closed and the applicant must reapply and requalify if he or she wishes to pursue registration or licensure.

Current regulations specify the circumstances under which a registration or licensure application is considered “abandoned” by the applicant, and describes, in general, the repercussions of abandonment. The following circumstances are considered “abandonment” per Title 16, California Code of Regulations section 1806:

- The applicant has not completed his or her application within one year after it has been filed (this includes all required documents and information required).
- The applicant has not submitted the information required to correct an application deficiency within one year from the date of the Board’s deficiency notice to the applicant.
- An applicant for licensure fails to take or retake an examination within one year of any of the following:
  - o Fails to take an exam within one year after

application approval; o Fails to retake an exam within one year after notification of failing; or o Fails to take the Clinical Exam within one year of passing the Law and Ethics Exam (this does not apply to registrants who have not yet applied for licensure). • Fails to pay the initial license fee within one year after passing the Clinical Exam

An individual who abandons his or her application must submit a new application, fees, and meet current requirements if he or she still wishes to pursue the application. Depending on how long the applicant takes to reapply, much of the documentation that remains on file may not have to be resubmitted. This is determined on a case by case basis.

The BBS recommended the following: • Move text that appears in the last line of the regulation section toward the top in order to emphasize the repercussions of abandonment. • Delete subdivision (a), which is outdated and unnecessary. Application completion is fully covered by paragraph (b) (now re-numbered as (a)), as all application completion problems are addressed in a deficiency letter. • Collapse the paragraphs that refer to specific examinations into one statement that encompasses all of the circumstances, thereby improving readability and understanding.

## **8. PCCI Registration Fees**

The first Professional Clinical Counselor Intern (PCCI) registrations were issued in January 2011. These registrations will soon be reaching their maximum allowable time span. Business and Professions Code (BPC) section 4999.45 limits an intern registration to five renewals (for a total of 6 years), but also allows for the ability to obtain a subsequent registration, which also has a maximum of six years. When staff was developing the application for subsequent registration, they found that the law which sets the intern application fee was in need of clarification.

LPC statute sets the maximum “intern application” fee at \$150 (4999.120(b)), and regulations specify the actual fee of (\$100) for a PCCI “initial application” (Title 16, California Code of Regulations (CCR) section 1816.1(e)).

The BBS proposed a regulatory change that would clarify that this fee is for both initial and subsequent intern registration applications. It would also make a technical change, replacing the term “intern” with “associate” in accordance with SB 1478 (Chapter 489, Statutes of 2016).

## **9. 2017 Legislation**

### *BOARD SPONSORED LEGISLATION:*

AB 93 (Medina) Healing Arts: Marriage and Family Therapists: Clinical Social Workers: Professional Clinical Counselors: Required Experience and Supervision: This bill proposal represents the work of the Board’s Supervision Committee. Its amendments focus on strengthening the qualifications of supervisors, supervisor responsibilities, types of supervision that may be provided, and acceptable work settings for supervisees. The bill also strives to make the Board’s supervision requirements more consistent across its licensed professions. This bill proposal was approved by the Board at its November 4, 2016 meeting. Minor technical amendments to the bill were approved at the Board’s March 3, 2017 meeting. Status: AB 93 is a two-year bill.

Ms. Atkins, CAMFT, testified about her extreme concerns about the Policy and Advocacy Committee's decision to sunset the 90-day rule bridging the hours from graduation to registration, including unintended consequences to consumer safety and increased exploitation of pre-licensees. She also indicated that she looked forward to working out a suitable alternative in lieu of this Committee discussion.

Dr. Caldwell, AAMFT-CA, reiterated the concern raised by CAMFT.

SB 800 (Senate Business, Professions, and Economic Development Committee) Professions and Vocations (Omnibus Bill): This proposal, approved by the Board at its November 4, 2016 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law. Status: This bill was signed by the Governor (Chapter 573, Statutes of 2017).

#### *BOARD-SUPPORTED LEGISLATION*

AB 191 (Wood): Mental Health: Involuntary Treatment: This bill adds licensed marriage and family therapists and licensed professional clinical counselors to the list of professionals who are authorized to be the secondary signatory to extend involuntary commitments, under certain circumstances. At its May 12, 2017 meeting, the Board took a "support" position on this bill. Status: This bill was signed by the Governor (Chapter 184, Statutes of 2017).

AB 456 (Thurmond): Healing Arts: Associate Clinical Social Workers: This bill would extend the Board's "90-day rule" to applicants for registration as an associate clinical social worker (ASW). Currently, the 90-day rule allows applicants for registration as a marriage and family therapist intern or a professional clinical counselor intern to count post degree hours of supervised experience before receiving a registration number, as long as they apply for their intern registration within 90 days of the granting of their qualifying degree. At its May 12, 2017 meeting, the Board took a "support" position on this bill. Status: This is a two-year bill.

AB 508 (Santiago): Health Care Practitioners: Student Loans: This bill removes a healing art board's ability to issue a citation and fine and its ability to deny an application for a license or renewal of a license due to the licensee or applicant being in default on a U.S. Department of Health and Human Services education loan. At its May 12, 2017 meeting, the Board took a "support" position on this bill. Status: This bill was signed by the Governor (Chapter 195, Statutes of 2017).

AB 1116 (Grayson): Peer Support and Crisis Referral Services Act: This bill establishes that a communication between an emergency service personnel worker and a peer support team member, crisis hotline staffer, or a crisis referral service staffer is privileged for a noncriminal proceeding to the same extent and limitations as a communication between a patient and a psychotherapist. At its May 12, 2017 meeting, the Board took a "support" position on this bill. Status: This is a two-year bill.

AB 1188 (Nazarian): Health Professions Development: Loan Repayment: This bill would increase the Mental Health Practitioner Education Fund fee that licensed marriage and family therapists and licensed clinical social workers pay upon license renewal from \$10 to \$20. It would also require LPCCs to pay a \$20 fee into the fund upon renewal, and would allow LPCCs and PCC interns to apply for the loan repayment grant if they work in a mental health professional shortage area. At its May 12, 2017 meeting, the Board took a "support if amended" position on this bill, asking for minor amendments and a delayed implementation until July 1, 2018. Since the Board meeting, the Board's requested

amendments were made, and therefore the Board now has a “support” position. Status: This bill was signed by the Governor (Chapter 557, Statutes of 2017).

AB 1372 (Levine): Health Professions Development: Loan Repayment: This bill allows a certified crisis stabilization unit that provides specialty mental health services, at its discretion, to provide medically necessary crisis stabilization services to individuals beyond the allowable treatment time of 24 hours under certain circumstances. At its May 12, 2017 meeting, the Board took a “support” position on this bill. Status: This is a two-year bill.

AB 1591 (Berman): Medi-Cal: Federally Qualified Health Centers and Rural Health Centers: Licensed Professional Clinical Counselor: This bill would allow Medi-Cal reimbursement for covered mental health services provided by a licensed professional clinical counselor employed by a federally qualified health center or a rural health clinic. At its May 12, 2017 meeting, the Board took a “support” position on this bill. Status: The Governor vetoed this bill.

SB 27 (Morrell): Professions and Vocations: Licensees: Military Service: This bill would require licensing boards within the Department of Consumer Affairs (DCA) to grant fee waivers for the application for and issuance of an initial license to an applicant who has served as an active duty member of the California National Guard or the U.S. Armed Forces and was honorably discharged. At its May 12, 2017 meeting, the Board took a “support” position on this bill. Status: This is a two-year bill.

SB 244 (Lara): Privacy: Agencies: Personal Information: This bill would provide additional privacy protections for personal information that is submitted to state agencies from an applicant for public services or programs. At its May 12, 2017 meeting, the Board took a “support” position on the May 3, 2017 version of this bill. Amendments have been made to the bill since that time, some of which may be substantive. Status: This is a two-year bill.

SB 374 (Newman): Health Insurance: Discriminatory Practices: Mental Health: This bill grants the Department of Insurance the authority to require that large group health insurance policies and individual or small group health insurance policies must provide all covered mental health and substance use disorder benefits in compliance with federal law. This is parallel to current authority already given to the Department of Managed Health Care for its regulation of large, individual or small group health care service plans. At its May 12, 2017 meeting, the Board took a “support” position on this bill. Status: This bill was signed by the Governor (Chapter 162, Statutes of 2017).

#### *BOARD-MONITORED LEGISLATION*

AB 89 (Levine) Psychologists: Suicide Prevention Training: This bill requires, beginning January 1, 2020, an applicant for licensure as a psychologist, or a licensed psychologist, upon renewal of his or her license, to demonstrate completion of at least six hours of coursework or supervised experience in suicide risk assessment and intervention. At its May 12, 2017 meeting, the Board decided to remain neutral on this bill. Status: This bill was signed by the Governor (Chapter 182, Statutes of 2017).

AB 700 (Jones-Sawyer) Public Health: Alcoholism or Drug Abuse Recovery: Substance Use Disorder Counseling: This bill would establish a career ladder for substance use disorder counselors, with classifications for substance use disorder counselor certification or registration. At its May 12, 2017 meeting, the Board discussed the bill, and requested an amendment to clarify that Board trainees and

registrants do not have to have a substance use disorder certification to engage in the practice of substance use disorder counseling. This amendment has now been made. Status: This is a two-year bill.

AB 767 (Quirk-Silva) Master Business License Act: This bill creates a master business license system under the Governor's Office of Business and Economic Development. It would allow a person who needs to apply for more than one business license to submit a single master application through GO-Biz, which would then distribute the application information to the various relevant licensing entities. At its May 12, 2017 meeting, the Board decided to take a "support if amended" position on this bill, and ask that the Board be exempted from the bill's provisions. Status: This is a two-year bill.

SB 715 (Newman) Department of Consumer Affairs: Regulatory Boards: Removal of Board Members: This bill would allow the Governor to remove a board member appointed by him or her for failure to attend board meetings. At its May 12, 2017 meeting, the Board decided to watch this bill. Status: This is a two-year bill.

SB 762 (Hernandez) Healing Arts Licensee: License Activation Fee: Waiver: This bill would require all healing arts boards under the Department of Consumer Affairs (DCA) to waive the renewal fee for an inactive licensee returning to active status, if the licensee will solely be providing voluntary, unpaid services to indigent patients in medically underserved or critical-need population areas. At its May 12, 2017 meeting, the Board took an "oppose unless amended" position on this bill, asking that it be excluded from the bill's provisions. Status: This is a two-year bill.

## **10. Status of 2017 Rulemaking**

Application Processing Times and Registrant Advertising: This proposal would amend the Board's advertising regulations in line with SB 1478 (Chapter 489, Statutes of 2016) which changes the term "intern" to "associate" effective January 1, 2018, and makes several technical changes. This proposal would also amend the regulation that sets forth minimum and maximum application processing time frames.

The final proposal was approved by the Board at its meeting in November 2016. The proposal has completed the new "initial review phase" process required by DCA, and was published in the California Regulatory Notice Register on July 7, 2017. The 45-day public comment period has ended, and the public hearing was held on August 22, 2017. The rulemaking package is currently under review by DCA as part of the final phase of the regulation process.

Contact Information; Application Requirements; Incapacitated Supervisors: This proposal would: • Require all registrants and licensees to provide and maintain a current, confidential telephone number and email address with the Board. • Codify the Board's current practice of requiring applicants for registration or licensure to provide the Board with a public mailing address, and ask applicants for a confidential telephone number and email address. • Codify the Board's current practice of requiring applicants to provide documentation that demonstrates compliance with legal mandates, such as official transcripts; to submit a current photograph; and for examination candidates to sign a security agreement. • Require certain applications and forms to be signed under penalty of perjury. • Provide standard procedures for cases where a registrant's supervisor dies or is incapacitated before the completed hours of experience have been signed off.

The proposal was approved by the Board at its meeting in March 2017, and is in the new “initial review phase” process required by DCA, which can take up to four months. Upon completion of the DCA review, the proposal will be submitted to OAL for publishing to initiate the 45-day public comment period.

Enforcement: This proposal would result in updates to the Board’s disciplinary process. It would also make updates to the Board’s “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015),” which are incorporated by reference into the Board’s regulations. The proposed changes fall into three general categories: 1. Amendments seeking to strengthen certain penalties that are available to the Board; 2. Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the Business and Professions Code; and 3. Amendments to clarify language that has been identified as unclear or needing further detail.

The proposal was approved by the Board at its meeting in February 2017, and is in the new “initial review phase” process required by DCA. Upon completion of the DCA review, the proposal will be submitted to OAL for publishing to initiate the 45-day public comment period.