



Board of
Behavioral
Sciences

BOARD UPDATE

May 23, 2013

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A. Budget

The Governor's proposed budget projects the BBS 2013/2014 budget at \$8,063,000 and does not reflect any additional staffing.

Although the receipt revenues thus far have exceeded projections, the Governor's priority is to maintain a structurally balanced budget. Therefore, any significant changes in funding are unlikely.

B. Operations

The first quarter statistics reflect an overall decrease in MFT Intern and MFT Exam application volume, though the second quarter typically reflects significant increases as a result of graduations. MFT Exam Application processing is currently at 197 days, which is 26 more days than last quarter. The increased processing times reflect BBS staff's efforts to assist with the BreZE testing and reassignments. When asked about how the BBS plans to address the ongoing and increasing delays in MFT Exam Application processing, the Executive Officer responded that a vacant position was recently re-classified and is being advertised as an MFT evaluator. BBS hopes to have someone in the position by July 1, but drops in the processing delays are not likely to be realized until the fall or winter. The BBS acknowledged it would need to add one staff member to each exam evaluation department to process exam applications within 30-60 days.

The BBS is evaluating the current phone system and will remind staff to answer phones and return calls promptly.

368 new LMFT licenses were issued in the first quarter of 2013. 519 new LMFT licenses were issued in the last quarter of 2012.

The BreZE database project has been delayed again. At this time, there is no firm "go live" date, though the vendor is hoping to launch in summer, 2013. When launched, the BreZE database system will have a positive impact on BBS operations. It will allow licensees and registrants to renew online and pay their renewal fees via credit card online. It will also streamline and simplify many tasks for staff. The launch will also allow staff to return to their

primary responsibilities. Currently, staff are required to spend significant time in trainings leading up to the launch.

C. LPCC Grandparenting

To date, 60percent of the 2196 grandparent applications from LMFTs have been evaluated. The BBS estimates that the remainder of the applications will be evaluated within nine months.

669 LPCC candidates were affected by the suspension of the Gap exam in January. The exam is scheduled to be offered again starting July 1, 2013. The affected candidates are being notified. The core content being tested is the same and candidates who prepared for the exam in January should not experience any additional challenges.

To date, 381 LPCC licenses and 238 PCI registrations have been issued.

D. Examination Re-structuring

SB 704 (2011) restructured the examination process for the Board's Marriage and Family Therapist (LMFT), Professional Clinical Counselor (LPCC) and Clinical Social Worker (LCSW) licensees. Last year, SB 1575 extended the effective date of the exam restructure from January 1, 2013 to January 1, 2014.

Based on continuing implementation conflicts with the Department of Consumer Affairs' (DCA's) new database system, BreEZe, staff recommended extending the effective date of the exam restructure a second time. This would ensure that once implemented, both the BreEZe and the exam restructure projects will run smoothly. Staff is concerned that if the BreEZe system needs to be delayed until fall or beyond, it would coincide too closely with the exam restructure effective date of January 1, 2014. In addition, if BreEZe were not operational on January 1, 2014, the exam restructure could not be implemented since the exam restructure changes are being programmed into the BreEZe system and no exams could be offered.

It was recommended that the BBS use its website to broadly promote that it is pursuing the proposed change. While the change will not be effective until and unless the Governor signs the legislation, the BBS acknowledged that it would be best for the schools, professional associations and the BBS to promote this pending change as soon as possible.

In order to avoid a situation in which the exam restructure cannot be implemented properly due to the implementation of the BreEZe system, and to avoid additional future requests to delay the effective date of the exam restructure, the BBS directed staff to add language to delay the implementation date of the exam to January 1, 2016 into SB 821 (the BBS Omnibus bill).

E. Out-Of-State Education Review Committee Update

On April 26, 2013, the Out-of-State Education Review Committee held its first meeting. The committee was established to consider the potential barrier to licensure that out-of-state applicants may face after January 1, 2014.

After January 1, 2014, out-of-state applicants are required to enroll and complete graduate level coursework to remediate educational deficiencies. These applicants are no longer able to remediate coursework deficiencies through continuing education classes. Consequently, an out-of-state applicant may incur several thousands of dollars to become licensed in California.

The committee, stakeholders, and Board staff discussed the current and future educational requirements, as well as the current and future options to remediate coursework. The Committee will meet June 28 and September 6, 2013.

F. Legislation

AB 186 (Maienschein) – Military Spouses; Temporary License

This bill would require the BBS to issue a provisional license to an applicant who holds a current license in another state in the same profession for which he/she is seeking a California license and is married to, or in a domestic partnership with, an active member of the U.S. military who is on active duty in California. The bill does NOT require that the licensing requirements from the other state be substantially equivalent to the requirements in California nor does it require the applicant to pass the required Board administered exams.

The Policy and Advocacy Committee previously discussed additional concerns that there is no requirement of proof of an out-of-state license, no fingerprint requirements, and no requirement to take the California law and ethics exam. Some of these concerns have since been resolved through amendments.

The BBS voted to oppose unless amended to require the applicant to provide a transcript to the Board, to allow delayed implementation to accommodate DCA's transition to the BreEZe database system, and to require the applicant to pass the California law and ethics examination prior to issuance of a temporary license.

AB 213 (Logue) – Licensure/Certification; Military Experience

This bill would require that schools accredited or approved by Boards offer credits towards licensing requirements to submit proof that they have procedures in place to evaluate an applicant's military education, experience and training.

While the BBS does review a school's curriculum to determine whether or not that curriculum meets the Board's requirements for licensure, the BBS does not accredit or approve schools (relying, instead, on the accreditations and approvals of other specified entities).

The Policy and Advocacy Committee discussed that this bill does not promote consumer protection, which is the Board's scope. The Committee recommended that no position be taken. The Board agreed with the Committee's recommendation and took no position.

AB 252 (Yamada and Eggman) – Social Worker Title

This bill would only allow the job title "Social Worker" to be used by a person who has a degree from an accredited school of social work. This title protection applies to all individuals,

including those who work in exempt settings. (Those people in Social Worker positions prior to January 1, 2014, may continue in that title.) If an employer hires someone without a degree in social work to fulfill duties similar to a social worker, the employer would be required to give that person a different title. The BBS would have the ability to impose discipline against licensees who are employed as “social workers” and do not have the requisite social work degree, though the main intent of the bill is to ensure that agencies do not misuse the title.

CAMFT noted that it has a position of “oppose unless amended.” CAMFT would like to see the implementation of this bill delayed to allow for adequate time to educate agencies about the changes and for the agencies to make the requisite title changes. Furthermore, CAMFT believes the enforcement remedy is too severe and recommends that agencies be allowed to take corrective action once they are aware of the possible charge before charges are instituted. NASW-CA indicated that it would be open to modifying the enforcement mechanism and delaying the implementation.

The Policy and Advocacy Committee recommended that title protection be supported, in theory. The Committee supported delayed implementation, but wants the bill to be amended to clarify that other qualified professionals should be considered for positions and that the employer is the responsible party for titles. The Committee also noted that the BBS would not be able to enforce the bill as presented. The Committee recommended that the grandfather period be eliminated based on the fact that there would be delayed implementation.

The bill is currently on Appropriations Suspense file.

Several amendments were submitted by the author’s office to the Appropriations Committee, including: delayed implementation until counties next bargaining agreement (2-5 years), language clarifying that this is a title act and does not tighten any hiring requirements, dropped enforcement against individuals and allow BBS to file cease-and-desist letters. The grandfather period remains in the language, but it is being modified so that it only applies to those who are continuously employed in the same classification by the same employer. NASW-CA would like to remove the entire grandfather period. If the bill gets off the Suspense File, these amendments will be added.

The Board voted to support, if amended as recommended by the Policy and Advocacy Committee.

AB 376 (Donnelly) – Regulations; Notice

The bill would require the BBS to notify all affected parties when it enforces a regulation that has been promulgated. Currently, when there are pending regulations, the BBS notifies everyone who subscribes to the Board’s notification service and posts the notice on the BBS website.

The Policy and Advocacy Committee discussed the resources involved with collecting emails for every licensee and/or sending the information via USPS. This could impact the Board's ability to run regulations when needed.

The Board voted to accept the Policy and Advocacy Committee recommendation to oppose this bill.

AB 512 (Rendon) – Healing Arts – Licensure/Certification

This bill extends provisions of current law until January 1, 2018. Current law allows out-of-state healing arts practitioners to participate in government or non-profit sponsored health care events to provide health care services to the uninsured. To date, the BBS has not had any requests from out-of-state practitioners to participate in such an event.

The Board voted to support if amended to remove BBS from the bill.

AB 790 (Gomez) – Child Abuse; Reporting

This bill deletes a provision in the current law that allows a team of mandated reporters to designate one member to make a single mandated report. Therefore, all mandated reporters who obtain knowledge of suspected child abuse or neglect would be required to make their own report.

CAMFT opposes this bill because the reporting requirements would be duplicative and inefficient for both the mandated reporters as well as for the county and community departments that receive the reports and are already overburdened.

The Policy and Advocacy Committee believes this bill protects children because it encourages multiple reports to build a case. But, the Committee also acknowledged the challenges with the bill as written. The Committee decided to stay neutral.

The Board voted to offer technical support regarding the potential for overburdening teams and systems, while recognizing that there are reporting issues and accountability issues. The Board will suggest that a written statement from a team and to the team could fulfill the intent of the bill.

AB 809 (Logue) – Telehealth

This bill allows the verbal consent to telehealth given by the patient at its initial use to apply in any subsequent use of telehealth. However, it does not correct another problem, which requires the health care provider to obtain the verbal consent at the originating site (the location of the patient), which seems contrary to the purpose of telehealth. The author is still working to resolve this issue in a subsequent version of the bill. This bill is an urgency measure, which means it would become effective immediately upon signature by the Governor.

The Board took no position on the bill.

AB 1057 (Medina) – Licenses; Military Service

This bill would require the BBS licensing application to inquire whether the applicant is serving, or has previously served, in the military. The intent of the bill is to make it easier for Boards to identify applicants who may have applicable military training or experience. The implementation date is January 1, 2015, to accommodate the upcoming, new BrEZe database.

The Committee noted that the BBS forms will need to be revised when the BrEZe database is functional. The Board voted to approve the Policy and Advocacy Committee recommendation to support this bill.

SB 22 (Beall) – Health Care Coverage; Mental Health Parity

This bill requires health care service plans and insurers to submit an annual report to the Department of Managed Health Care or Department of Insurance which would contain an analysis of the plans' compliance with state law. The reports must contain a survey of plan enrollees and a survey of plan providers. The intent is to enforce mental health parity laws.

The Board voted to approve the Policy and Advocacy Committee recommendation that the Board support this bill.

SB 126 (Steinberg) – Health Care Coverage; PDD or Autism

This bill extends the operation of existing law until January 1, 2020. The existing law requires health care service plans contracts and policies to provide benefits, including coverage, for behavioral health treatment for pervasive developmental disorder or autism, except as specified.

The Board voted to accept the Policy and Advocacy Committee recommendation that the Board support this bill.

SB 243 (Wyland) – LPCC

This bill amends the requirements for an LPCC who opts to treat couples and families so that the required training and education in order to do this does not need to be in addition to the minimum training and education required for licensure. The intent of the original bill was that this training and coursework may be taken as part of the education and experience that is required for licensure. The bill also references that the licensee have not less than 1750 hours of direct counseling with individuals, groups, *couples or families*.

The Board voted to support the bill.

SB 282 (Yee) – Confidential Medical Information

This bill extends a provision in existing law to LMFTS. Current law requires that a settlement or compromise offer against a physician or surgeon be accompanied by an authorization to disclose medical information to the malpractice insurer.

CAMFT is the sponsor of this legislation. AAMFT-CA supports this bill.

The Policy and Advocacy Committee discussed the benefits of this bill and recommended support if amended to include LCSWs and LPCCs.

The Board voted to approve the Policy and Advocacy Committee recommendation.

SB 578 (Wyland) – LMFTs; Unprofessional Conduct

This bill adds certain dual relationships to the list of provisions that may be considered unprofessional conduct. It clarifies that dual relationships that constitute unprofessional conduct are relationships that are likely to impair professional judgment or lead to exploitation of the patient. The BBS currently categorizes unethical dual relationships under other provisions of the unprofessional conduct code section.

CAMFT is the sponsor of this legislation. AAMFT-CA has been working with CAMFT to refine the language to ensure practitioners in rural communities are not limited and can reduce their risk.

The Policy and Advocacy Committee noted that dual relationship issues affect all of its licensees. There was concern that there are multiple ethical codes governing the licensees and having a law that only governs LMFTs could be confusing. The Committee was concerned that specifying unethical dual relationships is confusing, though Counsel noted that adding a definition would alleviate confusion and will not hinder BBS in other enforcement actions. Since the Committee meeting, language was added that exempts a violation of this proposed dual relationship unprofessional conduct subsection from BPC Section 4983.

CAMFT appealed to the BBS to refrain from taking a position so CAMFT can continue working with stakeholders to tweak the language. The BBS indicated that if they do not take a position, they will not have an opportunity to take a position at a later date due to the legislative calendar and Board meeting dates. There was a discussion about whether the other licenses should be included and it was argued that every profession has its own Code of Ethics.

The Board wanted to have more information and pondered whether this could be turned into a 2-year bill, though they acknowledged that they do not have the authority to do so. BBS staff indicated that most subject matter experts do understand the concept of dual relationships. The Board discussed whether to support, if amended or oppose, unless amended, in order to continue the conversation. The Board agreed that it wanted to amend the language regarding BPC Section 4983 and to add language about the necessity of dual relationships in settings where dual relationships cannot be avoided. The Board agreed that if the language is changed in other ways that is of concern to the BBS, the Board could convene a special meeting.

The Board voted to support, if amended to remove the reference to BPC section 4983.

The Committee discussed the following pieces of BBS-sponsored legislation:

AB 404 (Eggman) – Retired Licenses

This bill would clarify the law regarding eligibility for a retired license. This bill has passed through the Assembly and has been referred to the Senate Business, Professions, and Economic Development Committee.

CAMFT supports this bill.

AB 428 (Eggman) – LMFT and LCSW

This bill would allow LMFT and LCSW applicants to remediate certain degree deficiencies. This bill is on its third reading in the Assembly.

CAMFT supports this bill.

AB 451 (Eggman) – LMFT and LPCC Out-of- State Applicant Requirements

This bill would extend the effective date of the new education requirements for out-of-state licensees from January 1, 2014 to January 1, 2015. This bill has passed the Assembly Committees and is now in the Senate Business, Professions, and Economic Development Committee. CAMFT supports this bill.

Due to delays in the implementation of DCA's new BreZE database system and the reality that the new requirements for out-of-state applicants are affected by the examination restructure, staff is recommending that AB 451 also be delayed from January 1, 2014 to January 1, 2016.

The Board voted to delay the implementation to January 1, 2016.

AB 958 (Jones) – Child Custody Evaluators

This bill would specify that the BBS may access a child custody evaluation report for the purpose of investigating allegations that a licensee, serving as a child custody evaluator, engaged in unprofessional conduct. This bill is now a 2-year bill.

CAMFT opposes this bill.

SB 821 (Senate Business, Professions, and Economic Development Committee) – Omnibus Legislation

This bill makes minor, technical, and non-substantive amendments to add clarity and consistence to current Board licensing law. This bill has been referred to the Senate Appropriations Committee.

CAMFT supports this bill.

G. Rulemaking Update

Regulations regarding advertising and the two-year practice requirement for supervisors of Associate Social Workers were approved by the Office of Administrative Law and became effective April 1, 2013.

Regulations regarding enforcement were approved by the Office of Administrative Law and will become effective on July 1, 2013.

Regulations regarding revisions to the Disciplinary Guidelines were approved by the Office of Administrative Law and will become effective on July 1, 2013.

Regulations regarding continuing education are being prepared to submit to the Office of Administrative Law for publication in its Notice Register. This publication will begin the 45-day public comment period.

Several other regulatory proposals have been submitted or will be submitted shortly.

H. Revisions to BBS Continuing Education Program

The proposed regulations provide for a transition process for approving new agencies, for renewing current BBS CE providers, and for ceasing to accept new applications. The rulemaking package would take about a year and would be effective July 1, 2014. In January 1, 2015, the continuing education content section of the regulations would become effective.

This delayed implementation allows the BBS approved CE providers to continue offering courses through the end of 2014 and also provides time for the providers to find an approval agency before the end of 2014. The BBS will set a schedule for notifying BBS CE providers of the upcoming changes.

The Board directed staff to initiate the Continuing Education rulemaking process with the authority to make non-substantive changes.

I. 90-Day Rule and Enforcement Action Research Update

Under current law, an applicant for marriage and family therapy (MFT) or professional clinical counselor (PCC) intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern. This is referred to as "the 90-day rule."

There were concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board's enforcement process. The Board directed staff to gather data for a period of one year to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule.

The statistics demonstrate that there is not a significant problem with criminal applicants abusing the 90-day rule.

The BBS determined that it is not necessary to revise the existing process and no changes will be made to the 90-day rule.

J. Revisions to the BBS 2010 Strategic Plan

It is the hope of the executive management that a new strategic plan (to be complete after a 7-month process) will be the framework that will ensure the Board is successful in its mission: protect Californians by promoting consumer awareness, advocating for improved mental health services, and setting, communicating, and enforcing standards.

K. Practice in Exempt Settings

The BBS discussed whether it should further research and analyze the issues regarding “exempt settings” and “exempt professions.” Board staff has recognized an increasing trend in individuals who have been licensed with the Board as interns or associates, or who have the necessary education and/or qualifications for licensure, and are opting to work within an exempt/profession instead of pursuing full licensure. Consumer complaints regarding services provided by an individual in an exempt setting are usually deemed non-jurisdictional because the oversight of the individual’s practice is the responsibility of the employer and not the Board. Also, it has been difficult for Board staff to make a determination of unlicensed activity in complaints regarding individuals who claim to be practicing within an exempt profession.

The Board discussed their concern that therapy is provided at schools, non-profits and government entities by unlicensed people.

The Board agreed that is time to re-visit the exempted settings, particularly the non-profit and charitable settings as they are not accountable to any regulatory agency. The Board will review the history and intent of these exemptions and provide initial findings at the November 2013 Board meeting.

L. Mandated Reporting of Sexual Activities of Minors

Current law specifies the types of sexual contact that must be reported as child abuse to law enforcement by mandated reporters. Ben Caldwell, AAMFT-CA, previously presented that the law does not treat other types of sexual activity, including oral copulation and anal sex, in the same manner.

DCA legal counsel found that the child abuse reporting act does not require a mandated reporter to report incidents of consensual sex between minors of a similar age unless there is reasonable suspicion of force, exploitation or other abuse. Counsel reviewed case law and concluded that courts have determined the legislative intent is to leave the distinction between abusive and non-abusive sexual relations to the judgment of professionals who deal with children. Further review of other cases found that the law does not require reporting of consensual sexual activities between similarly-aged minors *for any sexual acts*, unless there is evidence of abuse. Reporting is required for children under age 14 if it is non-consensual or with someone of another age. This opinion was shared with the Board of Psychology as well.

M. Election of Officers

The Board re-elected Christine Wietlisbach as Chair and elected Christina Wong as Vice Chair for 2013-2014.