

BBS Board Update
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A. Budget

The Board's budget for FY 2015/2016 is \$9,039,000. Expenditures as of August 31, 2015 total \$2,285,909 or 25% of the Board's budget.

Since 2002, the BBS has made three loans to the General Funds, totaling \$12.3 million. To date, the BBS has received re-payments totaling \$2.4 million. The BBS is scheduled to receive \$2.4 million in FY 2015-16, and \$6.3 million in FY 2016-17, for a total repayment of \$11.1 million. The remaining \$1.2 million dollars will be paid in FY 2017-18 or later depending on the BBS's fund balance.

B. Operations/Personnel

There was a considerable increase in MFT Intern and LPCC Intern applications, primarily due to graduations. For the week of November 16, 2015, staff is working on MFT Exam Eligibility applications received during the week of September 8, 2015, well within the 90-day goal.

As of November 3, 2015 the Board has 103,760 licensees and registrants. This figure encompasses licenses that have been issued that are current or eligible to renew.

27% of renewals are now being handled online.

The BBS has been able to increase outreach efforts – in person or virtually. This includes participation in MFT Consortium and professional conferences and forums.

A new LMFT Evaluator was hired by the BBS, effective October 7, 2015. The BBS received approval to hire a 2-year Limited-Term position to assist with the Exam Restructure. This position, along with an existing position, will be dedicated to processing exam applications for the new law and ethics exam. 61,000 applications for this exam are expected annually. CAMFT questioned whether a 2-year limited term is sufficient. BBS indicated that they will track workload and request that the positions be made permanent in future budgets.

C. 2014/2015 Year End Summary

The BBS sponsored two bills, submitted language for technical amendments for the annual omnibus bill, identified 10 bills impacting Board licensees, and introduced or implemented three regulations packages.

Major accomplishment was ability to re-engage with public via outreach and publications of Board newsletter. Additional staff and online renewal option also helped the BBS with better service.

As of June, 2015 (the end of the fiscal year), there were 101,455 licensees and registrants with the BBS.

D. Sunset Report Update

The Sunset Oversight Review process affords the legislature the opportunity to review Board operations and performance as well as discuss current issues facing the Board. The purpose of the Sunset Oversight Review is to determine if the Board should continue to license and regulate LCSWs, LMFTs, LEPs, LPCCs, ASWs, MFTIs, and PCIs and for how long (maximum 4 years).

The Board's Sunset Report is complete and will be submitted to the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions no later than December 1, 2015. The report will be available on the Board's website after December 1, 2015. A hearing is expected at some point in the first quarter of 2016, likely in March.

E. Supervision Committee Update

In November 2013, the Supervision Committee was appointed to conduct a holistic review of the current requirements for supervised work experience and requirements for supervisors. The Supervision Committee held its eighth meeting on October 23, 2015 in Sacramento. CAMFT's minutes from the meeting can be found [here](#). The next Committee meeting is February 5, 2016, in Southern California. The BBS strongly encouraged more people to attend and provide input.

The Committee has made informal decisions on: initial and ongoing Supervisor training, triadic Supervision, and off-site supervision laws. Upcoming agenda topics include supervision requirements, Supervisor responsibilities, and several other issues. The BBS welcomes stakeholders and others to identify priorities within the broader discussions.

Upon completion of the Committee's work, formal decisions will be presented to the Board for consideration, and will require the passage of legislation and/or regulations in order to implement.

F. Exam Restructure Update

Effective January 1, 2016, the Board's Examination restructure will be implemented. Currently, the licensing exams are taken upon completion of all other requirements for licensure which includes supervised experience hours. Under the new process, individuals who hold an ASW, MFT or PCC Intern registrations will be required to take a California Law and Ethics Exam a minimum of once per renewal period, until the exam is passed.

To prepare interns, the BBS has posted three instructional videos on its Examination News webpage. Staff continues to develop new instructional materials that will be either mailed to individual applicants or posted to the Board's website and respond to the increased volume of questions. At least one video has already received 1500 hits since September. (Note: [CAMFT created a flow chart](#) to explain the process, which is being referenced by the BBS as a tool for applicants.)

There will be a testing blackout period for LMFT and LCSW exam applicants for the month of December. During this period, LMFTs and LCSWs will be unable to schedule or test. This will allow for staff to manually convert and validate the thousands of current exam applicant files in the BreZE system to ensure a successful transfer of information to the exam vendors. Staff will be continuing their review of applications for examination during this time. This quarter, 4,300 exams have been issued (up from about 3,100 exams issued in the last quarter) as many people are taking the exam before the black out and re-structure.

The law and ethics forms will not be available until January 1, 2016. Applicants must wait until these forms are available before they can apply for this exam. The BBS expects these applications to be reviewed quickly (likely within 1-2 weeks). BBS is working with BreEZe to automate that application process in the future, but this will not be available for at least six months. All existing forms for hours, etc., are being accepted, as usual. The exam plan for the new clinical exam will follow the same exam plan as the currently clinical vignette exam. A clinical handbook is expected to be available in December. Law and Ethics handbook is already available.

The exam restructure, as well as other new requirements that go into effect on January 1, 2016, has necessitated the creation of new application forms. This has allowed staff the opportunity to review the current forms and amend them in order to increase clarity in the application process. Staff will be seeking legal review of forms in November and December.

The initial results of tests from January and February will be held for 4-6 weeks to review and analyze the questions, as is common for any new test.

G. Additional Examination Time for English as a Second Language Applicants

The Board does not currently offer any type of special accommodations for examinees who speak English as a Second language (ESL).

The BBS discussed a proposal that allows the BBS, in its sole discretion, to grant additional examination time to an applicant for whom English is his or her second language. To qualify for consideration, the applicant must complete and submit a request for additional time that states under penalty of perjury that English is his or her second language, and provide one of the following:

(a) A Test of English as a Foreign Language, Internet Based Test (TOEFL-iBT) certification score of 85 or below, sent by Educational Testing Service directly to the board. The TOEFL must have been taken within the previous two years prior to application.

(b) Documentation, to the satisfaction of the board, from the qualifying master's degree program that the program had granted the applicant additional examination time or other allowance due to speaking English as a second language while he or she was enrolled in the program.

(c) Documentation, to the satisfaction of the board, that the qualifying master's degree was obtained from an educational institution outside the United States, and that coursework was presented primarily in a language other than English.

If approved, the applicant will be allotted time--and-a-half (1.5x) when taking the required board-administered examination. Allowance of this option for a required national examination is subject to availability from the exam-administering entity. It was noted that the accommodation can be requested on a subsequent exam; it does not need to be requested for the initial exam.

CAMFT thanked the BBS for re-visiting and addressing the issue.

The Board voted to pursue this a regulatory motion.

H. Policy and Advocacy Committee Report

i. Defining Out-of-State Education for LMFT and LPCC Applicants

Currently, out-of-state education requirements are triggered based on the residence of the applicant while obtaining his or her degree. Applicants may not be aware that a degree program taken from an online school while they reside in California can make them ineligible for licensure because they are considered an in-state applicant and remediation outside the degree program is not permitted for in-state applicants. In addition, it can be difficult for the Board to obtain proof of where an applicant resided while he or she completed his or her degree program, especially if the degree program was completed several years prior.

This Committee voted to send the Board a proposed amendment that triggers out-of-state education requirements based on the location of the school, rather than the location of the student while he or she gained the education. It will allow applicants who live in California, but who obtained an online degree from a school located outside of California, to remediate California-specific course content that may have not been in the degree program.

CAMFT and AAMFT previously raised the issue about an online, out-of-state program that has a California “building” and whether that degree is from an out-of-state program. The BBS indicated that the intent of the language is to be vague enough to give discretion to staff to determine whether the program is geared to California licensure.

The Board voted to pursue the proposed amendment.

ii. LPCC Counselor Degree content

Pursuant to law, applicants shall possess a master’s or doctoral degree that is counseling or psychotherapy in content, as described in the Code. The Board is receiving LPCC applications from applicants who have degrees that may not be intended to lead to licensure as a clinical counselor, but have counseling content. Although the law does require the degree to contain practicum and certain specified core content areas, the new out-of-state licensure requirements, which become effective January 1, 2016, allow remediation of most degree requirements, including up to 6 out of the 13 core content areas. Practicum may also be remediated if licensed out-of-state, and the practicum requirement is waived if the applicant has been licensed in another state for two or more years.

The Committee approved a proposal that: prohibits remediation of two core content areas: assessment and diagnosis. (Remediation of these areas is prohibited for both in-state and out-of-state applicants.); tightens in-state practicum requirements to require direct client contact. (The language has also been amended to no longer allow any equivalencies to in-state supervised practicum/field study experience.); and amends practicum requirements for out-of-state applicants to specify that the 280 hours of face-to-face experience must now be “supervised clinical experience counseling individuals, families, or groups” instead of just experience doing “face-to-face counseling”.

The Board voted to initiate a legislative proposal using the proposed language.

iii. Change Marriage and Family Therapist Intern Title to Associate Marriage and Family Therapist

AAMFT has raised the issue that the title “Intern” is confusing to the public and that “Associate” would better reflect the position of MFT registrants. The Board research demonstrated that many states have moved away from the term “Intern” for post-graduates, in favor of “Associate”. The term “Associate” is used to describe a post-graduate Social Worker in California.

The Board discussed whether the term “Associate” implies that the person is under supervision. AAMFT noted that the concern about “Intern” is beyond just for public perception and also covers how the “Intern” is being treated by the employer.

The Committee recommended that the Board consider legislation to change the MFT and LPC licensing law from Intern to Associate, including a one-year phase-in period to allow Interns to transition marketing materials, etc.

The Board voted to direct staff to make legislative proposal changing the title to “Associate” for MFT and LPC registrants.

I. Proposed Omnibus Bill

The Board reviewed the following proposed changes:

- Delete references to the Business and Professions Code sections that define the old exam processes and requirements.
- Clarify that interns, trainees, and associates may not be employed as independent contractors, and that they may not gain any experience hours for work performed as an independent contractor and/or reported on an IRS Form 1099. The law allows LMFT, LCSW, and LPCC applicants to gain experience hours as a W-2 employee or a volunteer, but not as an independent contractor and the BBS reported significant confusion.
- Require LPCC applicants to provide a program certification to the Board, just as LMFT applicants are required to do.
- Change Associate Social Worker to Associate Clinical Social Worker to make it consistent with the term used in every other spot in the statute
- Allow LCSW Registrants to take the law and ethics exam so that they may continue renewing their registrations and only prohibit them from taking the clinical exam (which is taken later, at the end of gaining hours) until the school has achieved accreditation.
- Delete references to the grandparenting period at the beginning of the LPCC licensing program since the period has ended.

The Board voted to pursue these changes in an Omnibus bill.

J. Acceptance of Accreditation Agencies

Current LMFT law requires the qualifying degree be obtained from a school, college or university that is approved by the state Bureau for Private Postsecondary Education, or accredited by either the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) or by a regional accrediting agency that is recognized by the United States Department of Education (USDE). LPCC law also requires qualifying degree be obtained from an accredited or approved school. It defines “accredited” as a school, college, or university that is accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

The Committee recommended the proposal of accepting a degree from a program accredited by a “regional or national institutional accrediting agency” that is recognized by the USDE, rather than simply referring to a USDE-recognized regional accrediting entity (as currently written in law). This amendment would make Board’s statute consistent with the categories recognized by USDE.

The Board voted to submit these changes as a legislative proposal.

K. Status of Board-Sponsored Legislation

i. SB 531 (Bates) Board of Behavioral Sciences Enforcement Process

This bill makes two separate amendments to the law governing the enforcement process: a) it modifies the Board's requirements for an individual to petition for a termination of probation or modification of penalty. Under the proposal, the Board may deny a petition without hearing if the petitioner is not in compliance with the terms of his or her probation; b) the status of a license or registration changes or if the license or registration expires.

The goal of these changes is to increase the efficiency of the enforcement process. This bill was signed by the Governor.

ii. SB 620 (Block) Board of Behavioral Sciences: Licensure Requirements

This bill streamlines the experience requirements for LMFT and LPCC applicants. It eliminates the complex assortment of minimum and maximum hours of differing types of experience required for licensure (also known as the "buckets" of experience) and instead requires 1,750 hours of the experience to be direct clinical counseling hours. The remaining required 1,250 hours may be non-clinical experience.

The bill also makes amendments to LCSW law to allow LCSW applicants to count some direct supervisor contact hours, as well as some hours spent attending workshops, trainings, conferences, and seminars, toward their required experience.

This bill was signed by the Governor.

iii. SB 800 (Senate Business, Professions, and Economic Development Committee) Healing Arts (Omnibus Bill)

This bill proposal, approved by the Board at its November 20, 2014 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

This bill was signed by the Governor.

L. Rulemaking Update

i. Uniform Standards for Substance Abuse

Regulations were approved by the Secretary of state on June 23, 2015 and took effect October 1, 2015.

ii. Implementation of Exam Restructure

Proposed regulations are under concurrent review by the Office of Administrative Law and the Department of Finance, and is expected to take effect January 1, 2016.

iii. Requirements for Licensed Professional Clinical Counselors to Treat Couples or Families

This proposal is under concurrent review by the Office of Administrative Law and the Department of Finance, and is expected to take effect January 1, 2016.

iv. Standards of Practice for Telehealth

This proposal is currently under review by the Department of Consumer Affairs.

M. Request from American Association of State Counseling Boards (AASCB) and American Counseling Association (ACA) to Adopt the Consensus Licensure Title and Scope of Practice for Professional Counseling

AASCB has submitted two proposals for the BBS to consider. The first proposal requests that the Board consider adoption of the consensus licensure title and scope of practice for professional counseling. The second proposal defines criteria for out-of-state licensees that will be accepted for licensure in any state.

i. Consensus licensure title and Scope of Practice for Professional Counseling

The proposal is:

Licensure title: *Licensed Professional Counselor.*

Licensure Scope of Practice:

The independent practice of counseling encompasses the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, and ethics.

Counseling promotes mental health wellness, which includes the achievement of social, career, and emotional development across the life span, as well as prevents and treats mental disorders and provides crisis intervention.

Counseling includes, but is not limited to, psychotherapy, diagnosis, and evaluation; administration of assessments, tests, and appraisals; referral; and the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders. Counseling encompasses consultation and program evaluation; program administration within and to schools and organizations; and training and supervision of interns, trainees, and prelicensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision.

The practice of counseling does not include functions or practices that are not within the professional's training or education

The Board noted that when the LPCC title was being discussed, there was a strong desire to clarify that the new license was intended to be an additional license to provide psychotherapy and that the new license would not be a license providing non-clinical services. Therefore, the title Licensed Professional Clinical Counselor was established.

The Board also noted that California's LPCC scope of practice aligns with the intent that LPCC licensure would be an additional mental health professional providing psychotherapeutic services and not a broad or all-encompassing license.

The Board expressed concern about the ramifications of opening up a practice act to these changes since the Author would have to entertain other proposals. It was also discussed that changing the title might be premature since there is not a universal title within the professional counseling world.

ii. Out-Of-State Licensees

The proposal is:

A fully-licensed counselor, who is licensed at the highest level of licensure available in his or her state, and who is in good standing with his or her licensure board, with no disciplinary record, and who has been in active practice for a minimum of five years post-receipt of licensure, and who has taken and passed the NCE or the NCMHCE, shall be eligible for licensure in a state to which he or she is establishing residence. The state to which the licensed counselor is moving may require a jurisprudence examination

based on the rules and statutes of said state. An applicant who meets these criteria will be accepted for licensure without further review of education, supervision, and experiential hours.

The Board reviewed recent legislation and other steps taken to improve portability of licenses and discussed the high standards in California.

The Board directed staff to communicate with AASCB that the requests have been thoroughly discussed, but the concerns about the lack of a universal title and the concerns about opening up the practice act, and the concerns about varying requirements of out-of-state licensees outweighed any desire to proceed at this time.

N. North Carolina State Board of Dental Examiners v. Federal Trade Committee

In North Carolina, the legislature delegated regulation of dentists to a dental board. By state law, practicing dentists must fill a majority of the seats on the dental board. This type of “self-regulation” is common among state licensing boards. But it has the natural tendency to become anticompetitive.

In this case, the dental board tried to exclude non-dentists from the market for teeth-whitening services after dentists complained about the low prices non-dentists charged for teeth whitening. It sent threatening letters to non-dentists who offered teeth-whitening services and even encouraged mall operators to kick out kiosks used for teeth whitening. The dental board’s actions were not supervised by any state officials from North Carolina other than the members of the dental board itself. On these facts, the FTC took action against the dental board. The FTC and the Fourth Circuit both rejected the dental board’s attempt to invoke the defense of state action immunity.

The Supreme Court upheld the Fourth Circuit and found that when a controlling number (not necessarily the majority) of the decision makers on a state licensing Board are active participants in the occupation the Board regulates, the Board can invoke state-action immunity only if it is subject to active supervision by the state.

The BBS noted that the facts and circumstances of each situation must be considered, though certain acts of supervision are spelled out. The California Attorney General has issued an opinion about active supervision in the context of California. Since a Board decision that is controlled by active market participants must be supervised to be exempt from antitrust regulation, Boards are encouraged to ensure that consumer protection is the rationale for all decisions and conduct analysis of pro-competitive and anti-competitive impact of the decision.

O. 2016 Meeting Dates

The November, 2016 meeting was moved to November 3-4, 2016.