



Board of  
Behavioral  
Sciences

## Policy and Advocacy Committee Update

### BBS Policy and Advocacy Meeting Minutes

April 23<sup>rd</sup>, 2015

Sacramento, CA

Alain Montgomery, JD

### Legislation

#### AB 85 (Wilk) – Open Meetings:

This bill would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if a member of the state body is serving on it in his or her official capacity, and if the advisory body is supported, wholly or partially, by funds from the state body.

The Committee discussed whether or not this bill would actually further the legislative intent as stated by the author.

The Committee made a motion to oppose the bill. APPROVED.

#### AB 250 ( Obernolte) -- Telehealth:

Business and Professions Code (BPC) §2290.5 does not specify that MFT trainees may practice telehealth. This bill would clarify that MFT interns and trainees may do this. This bill would authorize a marriage and family therapist intern and trainee to provide services via telehealth if he or she is supervised acting within the scope authorized and in accordance with any regulations governing the practice of telehealth.

The Committee discussed how this bill clarifies that MFT interns *and* trainees may provide services via telehealth (BPC §4980.43(i)). Further, the bill specifies that MFT interns and trainees must be under licensed supervision as specified in BPC §4980.43(b), and must also comply with any telehealth regulations adopted by the Board. (BPC §4980.43(i))

The Committee recognized that statutorily, an MFT trainee is not considered a recognized "health care provider" under Business and Professions Code, Section 2290.5. Under Section 2290.5, a health care provider is someone who possesses a "license." A "license," as defined under Business and Professions Code Section 23.7, means license, certificate, or registration; a trainee does not have a license, a certificate, or a registration.

The Committee acknowledged that the bill amends licensing regulations so that registered interns and trainees are identified as individuals who can perform telehealth while under supervision.

CAMFT asked for BBS support.

The Committee made a motion to support the bill. APPROVED.

**AB 333 (Melendez) – Healing Arts Continuing Education:**

This bill would allow a Board licensee who takes coursework toward, and becomes a certified instructor of, cardiopulmonary resuscitation (CPR) or automated external defibrillator (AED) use, to count one unit of credit toward his or her continuing education (CE) requirement.

The Committee discussed bill's definition of a "unit." The bill defines a "unit" of any measure of CE, such as hours or course credits. The number of CE hours this bill intends to apply toward the CE requirements is unclear. Several nonprofit entities offer CPR and AED instructor courses, and while the programs vary, all programs appear to require many hours of training. The Board's continuing education regulations state that one academic semester unit equals 15 hours of continuing education coursework. If the instructor training course was offered in academic units, this interpretation may apply. However, the board's regulations also define one hour of instruction as equaling one hour of continuing education credit. If the coursework is not offered in academic units, this interpretation may apply.

The Committee felt that the bill's definition of a "unit" is unclear. The Committee discussed whether BBS Licensees should be excluded from the purview of this bill.

The Committee made a motion to oppose the bill. APPROVED.

**AB 690 (Wood) – Medi-Cal : Federally Qualified Health Centers: Rural Health Clinics:**

This bill adds marriage and family therapists (MFTs) to the list of health care professionals whose services are reimbursed through Medi-Cal on a per-visit basis to federally qualified health centers (FQHC) or rural health clinics (RHCs).

The Committee discussed the impact this bill has in creating and expanding access to behavioral health care services. The Committee agreed that MFTs are equipped to provide services to the populations and communities served by FQHC's and RHC's.

In the interest of consistency in statutory language, the Committee suggested the word "licensed" be added to any reference of a marriage and family therapist so that MFTs are referred to as "licensed marriage and family therapists."

CAMFT asked for BBS support.

The Committee made a motion to support the bill. APPROVED.

**AB 796 (Nazarian) – Health Care Coverage: Autism and Pervasive Developmental Disorders:**

This bill would expand the eligibility for a person to be a qualified autism service professional to include a person who possesses a bachelor of arts or science degree and meets other specified requirements, a registered psychological assistant, a registered psychologist, or an associate clinical social worker. The bill would also expand the eligibility for a person to be a qualified autism service paraprofessional to include a person with a high school diploma or equivalent and, among other things, 6 months experience working with persons with developmental disabilities.

The Committee discussed that it is not concerned this bill would have an impact on the BBS or BBS licensees. The licensing act proposed by the bill – which requires licensure of Behavior Analysts and Behavior Analysts Assistants – will be the responsibility of a committee under the Board of Psychology.

The Committee made a motion to adopt a neutral position on the bill. APPROVED.

**AB 832 (Garcia) – Child Abuse: Reportable Conduct:**

This bill would specify that voluntary acts of sodomy, oral copulation, and sexual penetration are not considered acts of sexual assault that must be reported by a mandated reporter, unless it is between a person age 21 or older and a minor under age 16.

Counsel for the DCA affirmed its opinion that CANRA does not require a mandated report for consensual sex between minors of similar age unless there is suspicion of force, coercion, or abuse.

The Committee discussed whether the word "consensual" was more appropriate than the word "voluntary." However, the semantic difference between the two words does not negatively impact purpose or affect of the bill.

The Committee made a motion to support the bill. APPROVED.

**AB 1001 (Maienschein) – Child Abuse: Reporting:**

This bill would prohibit a person from impeding or interfering with the making of a report of suspected child abuse or neglect by a mandated reporter. The bill would provide that an intentional violation of these provisions is a misdemeanor and may subject the offender to

liability for actual damages sustained by a victim of child abuse or neglect for any abuse or neglect that occurs after the person impeded or interfered with the report being made.

The Committee felt that the bill, on its face, is straightforward.

The Committee made a motion to support the bill. APPROVED

**AB 1279 (Holden) – Music Therapy:**

This bill seeks to define music therapy in statute and to provide guidance to consumers and agencies regarding the education and training requirements of a qualified music therapist. This bill would provide that only a qualified person, defined as an individual who prohibit a person who provides music therapy interventions, as defined, from using the title of “Board Certified Music Therapist” unless the person has completed the education and clinical training requirements established by a specified music therapy association the American Music Therapy Association and who holds current board certification and an MT-BC credential from a specified certification organization, shall be permitted to perform music therapy interventions. This bill would prohibit its provisions from being construed to authorize a person engaged in music therapy to state or imply that he or she provides mental health counseling or psychotherapy for which a license is required and provide that use of music therapy shall not imply or suggest that the person is a Board Certified Music Therapist, if he or she does not meet specified criteria.

The Committee discussed the distinction between the affect this bill has on regulating the "title" of a music therapist versus regulating the "practice" of music therapy. The Committee believes this bill does not attempt to regulate the practice of psychotherapy and does not adversely impact licensees. However, consumer protection concerns were duly noted.

The Committee made a motion to adopt a neutral position on the bill. APPROVED.

**SB 479 (Bates) – Healing Arts: License and Regulate Applied Behavioral Analysis:**

This bill establishes licensure for behavior analysts and assistant behavior analysts under the Board of Psychology.

See analysis of AB 796 above.

The Committee made a motion to adopt a neutral position on the bill. APPROVED.

**SB 614 (Leno) – Medi-Cal: Mental Health Services: Peer and Family Support Specialist Certification:**

This bill Requires the Department of Health Care Services (DHCS) to establish a program for certifying peer and family support specialists and to collaborate with interested stakeholders, as specified; allows DHCS to seek any federal waivers or state plan amendments to implement

the certification program; and allows DHCS to implement, interpret, and make specific the certification program through available means, as specified, until regulations are adopted by July 1, 2018.

The Committee expressed concerns about the following: 1) the lack of a definition in the law regarding a peer and family support specialists scope of practice, 2) the lack of defining what "peer and family support" actually is (so as to avoid any misconception that peer support is the same as psychotherapy, 3) supervision requirements for peer support specialists, and 4) fingerprinting requirements. Generally, the primary and upmost concern is consumer protection. The Committee wants the above mentioned issues addressed.

The Committee made a motion to oppose the bill unless amended. APPROVED.

**SB 689 (Huff) – Veterans: Housing:**

This bill was not discussed

**Other Items**

**Update and Possible Action on Text of Proposed Legislation for 2015: Crime Victims: Compensation for Reimbursement of Violence Peer Counseling Expenses:**

Update provided

**Discussion and Recommendation for Possible Action Regarding Other Pending Legislation Efforts Affecting the Board:**

**SB 594 (Wieckowski) Child Custody:**

The Committee discussed the potential administrative impact of the bill if the Board was charged with the responsibility of investigating claims against family court mediators. This would not be an absorbable or realistic task without the hiring of more staff. The concern is that two different standards would have to be created in order for the BBS to investigate claims against non-licensed mediators and mediators who are BBS licensees. Further, investigations would likely be impeded by the lack of information available for mediated cases.

The Committee made a motion to oppose the bill. APPROVED

**Discussion and Recommendation for Possible Action Regarding Proposed Regulations for Telehealth:**

CAMFT presented the following concerns:

- I. First, Section 1815.5(b) states, *“All psychotherapy services offered by board licensees and registrants via telehealth fall within the jurisdiction of the board . . . all psychotherapy services offered via telehealth are subject of the board’s statutes and regulations.”*

MFT trainees are not expressly mentioned in Section 1815.5(b) as providers of telehealth services.

The concern is that failing to expressly identify “trainees” in the regulation creates – or perpetuates – confusion about an MFT trainee’s ability to provide telehealth services.

The Committee’s response was that MFT trainees are not *technically* under the jurisdiction or purview of the board. The Committee felt the cross reference to the statutes and regulations regarding telehealth, make it clear that MFT Trainees can provide telehealth services while under supervision. Counsel for the DCA agreed.

- II. Second, Section 1815.5(c) (iv) states, *“. . . upon initiation of telehealth services, a licensee or registrant shall do the following . . . provide the client with written procedures to follow in an emergency situation. This shall include contact information for emergency services near the client’s location.”*

The section does not specifically identify what type of writing would be sufficient (paper or electronic), or what type of emergency contacts should be provided.

The concern is two-fold: 1.) without defining or explaining what type of writing would be acceptable; and, 2.) what emergency services the client should be apprised of, the section is vague.

The Committee discussed that this issue is addressed in ethical practice and standards. As such, the regulation would not have to explicitly state what type of writing is required or state exactly what types of services the patient should be apprised of. Ethical practice requires providers to provide clients with emergency contact information (See CAMFT Code of Ethics, Sections 1.3 7 1.5.3).

- III. Third, Section 1815.5 (d) (i) states, *. . . a licensee or registrant shall . . . verify and document the identity of and physical location of the client prior to the beginning each telehealth session.”*

This section requires the provider to “verify” and “document” the location of the patient.

The concern is two-fold: 1.) the section is unclear as to what type of documentation would be sufficient; and, 2.) whether the provider has the means and capability to actually “verify” the client’s whereabouts or physical location.

The Committee, and Counsel for the DCA, agreed that there are limits regarding a provider's ability to actually "verify" where a patient is located. With input from DCA counsel, the following amended language was suggested: ". . . verbally obtain from the client and document the client's full name and physical address of present location at the beginning of each telehealth session."

- IV. Fourth, Section 1815.5 (f) states, "Failure to comply with these provisions shall be considered unprofessional conduct."

This section prescribes "unprofessional conduct" as consequence for violating the regulation.

The concern is that the telehealth regulations will be new. If they are not written clearly, providers could be placed in situations where they inadvertently fail to meet prescribed standards. The issue is whether the severity of "unprofessional conduct" for a violation is too harsh if the provider substantially complies.

BBS Executive Officer, Kim Madsen explained that any violations of regulations – from the minor infractions to the more serious offenses – are treated as "unprofessional conduct." The purpose is not intended to be unduly punitive as much as it is to maintain standards and consistency in enforcing regulations.

The Committee made a motion to bring and discuss the suggested changes to the Board.  
APPROVED.

**Suggestion for Future Agenda Items:** None

**Public Comment for Items not on the Agenda:** None