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July 18, 2017

Leslie J. Ungerman, Esq.
Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
100 Montgomery Street, Suite 200
San Francisco, California 94104

RE: Utilization of Marriage and Family Therapists in DHS/ICE Proceedings

Dear Ms. Ungerman:

On behalf of its 32,000 members, the California Association of Marriage and Family Therapists (“CAMFT”) is writing to address the issue of whether it is within the scope of practice for Licensed Marriage and Family Therapists (“LMFTs”) to perform psychological evaluations. Although CAMFT contends LMFTs can do so, in various immigration and detention proceedings, Homeland Security and Immigration Customs Enforcement (“DHS & ICE”) regularly bring motions to exclude LMFTs from testifying about such evaluations (“Motions”). CAMFT believes that DHS & ICE are interpreting the “scope of practice” laws for LMFTs in California incorrectly, and we would like to see LMFTs more fully utilized in DHS & ICE proceedings.

DHS & ICE Have an Incomplete Understanding of the Scope of Practice of MFTs

The scope of practice for LMFTs is not as restrictive as DHS & ICE characterize it to be in their Motions. LMFTs are trained and authorized by law to do much more than provide marriage counseling. Their scope of practice is set forth in California Business & Professions Code §§ 4980.02 **and** 4980.36, with the later section *expanding* the scope of practice to include the coursework and training LMFTs receive in their graduate programs. Such coursework and training includes assessing, diagnosing, and treating mental disorders, working with victims of trauma, and treating those with substance-abuse disorders.

The Federal Government Utilizes LMFTs to Provide a Variety of Mental Health Services

DHS & ICE’s belief that LMFTs can only do marriage counseling is contradicted by the fact that many federal agencies –as well as federally-funded agencies- allow LMFTs to diagnose and treat severe mental health disorders and substance-abuse. LMFTs provide these services for recipients of services from the Department of Veterans Affairs, the Department of Defense, the Department of Transportation, the Federal Employees Health Benefits Program, and Medicaid, among others.

MFTs and Psychological Evaluations

Psychiatrists and psychologists are not the only mental health professionals who can perform psychological evaluations. The phrase “psychological evaluation” is a term of art that generally refers to a clinician’s assessment, evaluation, and proposed treatment of a client. Such work is also frequently referred to as “case conceptualization” or an “initial evaluation.” In this sense, the word “psychological” means dealing with mental and emotional processes, and not what one license can or cannot do. The scope of practice for LMFTs, as set forth in B&P § 4980.36, includes education and training in all of the core tasks that comprise the conducting of psychological evaluations, including assessing, diagnosing, and treating mental disorders, and the writing of treatment plans.

Moreover, based on California Attorney General Opinion 83-810, LMFTs can also utilize psychological tests to help them work with clients so long as they are competent to utilize the tests and are utilizing such tests in their work as LMFTs. This Opinion also formally recognizes that LMFTs may perform services of a “psychological nature,” thereby abrading the boundary between the professions of psychology and marriage and family therapy.

The California Board of Behavioral Sciences and Psychological Evaluations

In California, an LMFT could not get licensed by the California Board of Behavioral Sciences (“BBS”) **without** being able to conduct a psychological evaluation. According to the BBS’s *Marriage and Family Therapist, California Clinical Examination Handbook* (“Handbook”), candidates for the LMFT license will be tested on, among other things, their ability to:

1. Identify presenting problems and collect information to assess clinical issues and formulate a diagnostic impression;
2. Identify, evaluate, and manage crisis situations; and,
3. Develop comprehensive treatment plans and prioritize treatment goals.

Again, these skills constitute the core components of conducting psychological evaluations.

LMFTs and Interpersonal Relationships

LMFTs are well-qualified by their education, training, and experience to make the types of determinations necessary in DHS & ICE proceedings because they are trained to *examine* interpersonal relationships. LMFTs, more than other mental health professionals, understand how culture, poverty, and social stress can affect such relationships. They also understand human development from infancy to old age, and the impact of financial stress, social stress, trauma, and substance-abuse disorders on individuals, couples, and families.

The Questionable Authority of the *Speaker* Case

In their Motions, DHS & ICE rely on *Speaker v City of San Bernardino* (2000) 82 F. Supp. 1109 for a very narrow conception of the scope of practice for LMFTs; however, such reliance is misguided. *Speaker* was decided in 2000, some nine years **before** B&P § 4980.36 was added to the MFT scope of practice law. As we have seen, the coursework added into the LMFT curriculum in 2009 significantly *expanded* the scope of practice for LMFTs in California.

Since such language was not part of the scope of practice law for LMFTs when *Speaker* was decided, it was not considered by the court. Given the breadth of activities added to the LMFT scope of practice law in 2009, most of which were included to prepare LMFTs for work in the public mental health system, which would actually include law enforcement agencies, it is highly unlikely *Speaker* would be decided the same way today.

There is currently no case, whether state or federal, that has analyzed the scope of practice of LMFTs in light of the addition of B&P § 4980.36. The underlying support for *Speaker* was eviscerated in 2009 when B&P § 4980.36 was added to California law, which, as we have seen, significantly expanded the scope of practice for LMFTs.

A Detainee Should be Able to Call His or Her Own Witnesses

A patient should be able call his or her own mental health provider as a witness in DHS & ICE proceedings. This fundamental principle is consistent with the Ninth Circuit's holding in *United States v. Gastelum-Almeida* (2002) 298 F.3d 1167, which states that defendants should be allowed to call their own witnesses, although a district court may assign greater weight to the findings of experts produced by the government.

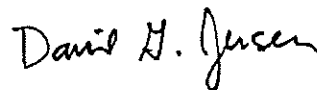
Conclusion

As set forth in B&P §§ 4980.02 and 4980.36, the expanded scope of practice for LMFTs prepares them to perform "psychological evaluations," which they should then be allowed to testify about in DHS & ICE proceedings. Consequently, we are requesting that DHS & ICE allow them to do so. We are respectfully requesting a written response to our request within thirty days.

Sincerely,



Jill Epstein, JD
Executive Director



David G. Jensen, JD
Staff Attorney