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August 15, 2017

The Honorable [REDACTED]
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
100 Montgomery Street, Suite 200
San Francisco, California 94104

RE: In the Matter of [REDACTED]
File No: [REDACTED]

Dear Judge [REDACTED]

The California Association of Marriage and Family Therapists is the professional association for such therapists in California. Currently, CAMFT has over 32,000 members. We are writing in response to DHS's motion to exclude the report and testimony of [REDACTED], LMFT in [REDACTED], removal proceeding.

In its Motion to Exclude, DHS contends that [REDACTED] is "not qualified to opine on how the respondent's mental health has been affected as a result of the genocide and civil war violence in Guatemala, as he is rendering an opinion completely outside of his field – marriage counseling or family therapy." CAMFT contends that [REDACTED] is qualified to provide such an opinion, and that his opinion is well-within the scope of practice for LMFTs in California. Our contention is based on the following five reasons.

1. DHS has an Incomplete Understanding of the Scope of Practice of MFTs

The scope of practice for LMFTs is not as restrictive as DHS characterizes it to be in its Motion to Exclude. A careful reading of California Business & Professions Code § 4980.02 indicates that the scope of practice for LMFTs is also set forth in B&P § 4980.36, which links it to the graduate school curriculum of LMFTs. Hence, any consideration of the scope of practice for LMFTs must include the knowledge and skills they obtain in graduate school. The working axiom is this: If they learned it in graduate school, with their program being designed to prepare them for state licensure as LMFTs, it must be within the scope of practice for them to do as mental health professionals.

2. [REDACTED]; Work is Consistent with the LMFT Curriculum

In his work, which is reflected in his detailed report, [REDACTED] conducted a "diagnostic clinical interview" to assess, evaluate, and formulate a treatment plan for [REDACTED]; all of these skills are taught to LMFT graduate students (B&P § 4980.36(d)).

Based on the diagnostic interview, ██████████ learned that ██████████ had witnessed his parents -and others- being murdered by the Guatemalan military, and that ██████████ was forced to live in squalor and in hiding for many years to avoid a similar fate, obviously horrendous life events. As part of the treatment with his client, ██████████ lawfully considered and addressed how trauma, culture, poverty, and social stress affected ██████████ life (B&P § 4980.36(c) and (d)).

Based on his assessment and evaluation of ██████████, ██████████ diagnosed him with post-traumatic stress disorder, major depressive disorder with anxious distress, and panic disorder, and he utilized Eye Movement Desensitization and Reprocessing to help alleviate ██████████'s symptomatology. Diagnosing and treating mental disorders, including severe ones, are skills taught to LMFT students in graduate school (B&P § 4980.36(d)).

Additionally, one could not get licensed by the California Board of Behavioral Sciences as an LMFT without being able to do the work ██████████ did on ██████████'s behalf. 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:

- A. Identify presenting problems and collect information to assess clinical issues and formulate a diagnostic impression;
- B. Administer standardized assessment instruments to obtain diagnostic information;
- C. Explore client's trauma history to determine impact on current crisis; and,
- D. Develop comprehensive treatment plans and prioritize treatment goals.

3. The "Authority" of *Speaker* and the California Attorney General's Opinion

In its Motion to Exclude, DHS relies on two sources of authority to construct a very narrow scope of practice for LMFTs, which basically relegates them to doing only "marriage counseling" and "family therapy." The first is *Speaker v City of San Bernardino* (2000) 82 F. Supp. 1109 and the second is California Attorney General Opinion 83-810 (1984). DHS's reliance on these sources is misguided because they are antiquated as legal precedent. The state legislature enacted B&P § 4980.36 in 2009, which is nine years after *Speaker* was decided and twenty-five years after AG Opinion 83-810 was issued.

Since B&P § 4980.36 was not part of the scope of practice law when *Speaker* was decided and when AG Opinion 83-810 was issued, the training and experience graduate students now receive in preparation for licensure as LMFTs was not considered by the court or the California Attorney General in these "authorities." Given the depth and breadth of such training and experience, it is unlikely that *Speaker* and the AG Opinion 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 *expanded* curriculum for LMFTs set forth in B&P § 4980.36. The underlying support for *Speaker* and AG Opinion 83-810 was eviscerated in 2009 when B&P § 4980.36 was added to California law.

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

A patient such as ██████████ should be able call his own mental health provider as a witness in a DHS removal proceeding. 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.

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

DHS's belief that LMFTs can only do "marriage counseling" and "family therapy" 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.

Conclusion

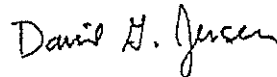
All of the work that ██████████ did with ██████████ was within the scope of practice for LMFTs as set forth in B&P §§ 4980.02 and 4980.36. These two statutes must be read together to get an accurate and up to date picture of the scope of practice for LMFTs. The skills and knowledge ██████████ applied to ██████████ case are taught to LMFT students throughout the state, and thousands of LMFTs use that same knowledge and skill to help Californians with their mental health issues. Consequently, we are requesting that ██████████ be allowed to testify, and that his report be admitted as evidence, in ██████████'s removal proceeding.

Should you need any additional information from us regarding the issues set forth herein, please do not hesitate to contact us.

Sincerely,



Jill Epstein, JD
Executive Director



David G. Jensen, JD
Staff Attorney

cc: ██████████ LMFT