

BBS Board Meeting

February 22, 2018

Closed Session

The BBS met in closed session to discuss the clinical examination for marriage and family therapists. Concerns about the examination had been raised because of falling pass rates over the last few examination cycles. For instance, in 2016, the clinical examination had a 90% pass rate. But, in 2017, the pass rate dropped for one examination to 56%. After meeting in closed session to discuss issues pertaining to the fairness and integrity of the clinical examination, the BBS announced that there were no problems with the clinical examination and that it was “legally defensible.”

General Action

After consideration, the Board approved the August 18-19, 2016 and October 19, 2017 board minutes.

Deborah Brown, the Board Chair, reported to the Board on various board member activities and recognized various BBS staff for their years of dutiful service.

Executive Officer Report

Kim Madsen, the BBS’s Executive Officer, reported to the Board on the BBS’s budget, operations, personnel, and strategic plan. In terms of “operations,” the BBS is instituting a new email system, which will allow emails to be directed to specific boxes as opposed to one generic email destination. Additionally, the Board Members were presented with copies of the BBS’s Strategic Plan for 2018-2021.

Committee Reports

The Board listened to and discussed a report by Christy Berger, Regulatory Analyst for the BBS, concerning activities of the Exempt Setting Committee. Ms. Berger summarized results of the practicum coordinator survey and provided the Committee with the results of a second survey that was sent to licensees, registrants, and exempt setting agency directors. Ms. Berger explained that full results of these surveys will be provided to the Board at a later date due to the need to conduct additional research on some of the issues.

The Board listened to and discussed a report by Kim Madsen, Executive Officer of the BBS, concerning activities of the License Portability Committee taken at its November 3, 2017 meeting. Ms. Madsen explained that:

- The Committee had reviewed current licensing requirements for LMFTs, LCSWs, and LPCCs.
- The Committee had reviewed and compared various curriculum requirements set forth by various accrediting agencies.
- The Committee had reviewed and compared current proposals to improve license portability from the following national associations: Association of Marriage and Family Regulatory Boards; Association of Social Work Boards; the National Board of Certified Counselors; the American Association of State Counseling Boards, and the Association for Counselor Education and Supervision.
- The Committee identified barriers to license portability as well as possible solutions.
- Ultimately, the Board directed BBS staff to draft proposed language for California on the issue of license portability.

Report on Degenerative Neuro-Cognitive Disorders

The Board listened to a concern of Attorney Steve Frankel concerning licensees who may be suffering from degenerative neurocognitive disorders. Mr. Frankel requested the Board not publish “Accusations” against such individuals. He believes that the “legacy” of such practitioners should not be tarnished by a disease that likely originated late in the licensee’s career. The Board took no action on Mr. Frankel’s request.

Legislative Report

The Board listened to and discussed a report by Roseanne Helms, Legislative Analyst for the BBS, concerning recommendations to be made by the Policy and Advocacy Committee. After discussion, the Board:

- Voted unanimously to support AB 93, including maintaining continued utilization of California’s 90-day rule for unlicensed practitioners.
- Took no action concerning possible revisions to California Business & Professions Code §§ 337 and 728, which would affect definitions in law and regulation concerning unlawful sexual behavior of licensees/registrants with patients.
- Took no action concerning required degree program content for LPCCs in the areas of assessment and diagnosis. Ms. Helms advised the Board of the status of certain legislative proposals of interest to the Board. In particular, Ms. Helms stated that:
- AB 93 was on hold pending approval of the Board, but should now begin moving through the requisite committees towards adoption as law.
- The BBS is proposing a bill to make some amendments to the licensing process, including specifying how an expired registration may be renewed and clarifying the hours required under supervision of long term out-of-state license holders.

Regulatory Report

Christy Berger, Regulatory Analyst for the BBS, advised the Board of the status of certain rulemaking changes of interest to the Board. She stated that:

- The rules on associate advertising and minimum and maximum processing times for applications were under final review by the Office of Administrative Law.
- The rules requiring personal contact information be on-file with the BBS, that certain forms and applications be signed under penalty of perjury, and that certain standardized procedures be adopted for cases where a registrant’s supervisor dies or is incapacitated *before* hours of experience have been signed off is in the “initial review phase.”

BBS Exempt Setting Committee Meeting

February 23, 2018

The Exempt Setting Committee was appointed in November 2016 to review the practice of mental health professionals within exempt settings. The goal is to determine if consumers are receiving services consistent with the standard of care for such professionals within exempt settings.

Practice Settings

The Committee discussed the issue of practice settings for LCSW, LMFT, and LPCC students and recommended that BBS staff:

- Develop an initial framework for definitions of different settings types.
- Decide on critical concepts for strengthening school-site agreements.
- Determine how to better define allowable work settings for LMFT and LPCC students.
- Determine whether to increase consistency between LMFT and LPCC requirements where it makes sense to do so.
- Reach out to the schools prior to the next Exempt Committee meeting to solicit information and feedback.

BBS Outreach

The Committee heard a report on a meeting that BBS staff had with four nonprofit and charitable organizations from the Los Angeles area, all of which provide clinical mental health services to the greater Los Angeles community. The purpose of this meeting was for the BBS to learn more about how these settings function, the populations they serve, how they are funded, how they are staffed, and the challenges they face as well as their successes.

BBS Survey Results

The Committee reviewed and discussed responses to the BBS's Exempt Setting Survey. In general, the survey results indicate wide spread concern for the practice of therapy by unlicensed/unregistered individuals in exempt settings. Of particular concern is the use of unlicensed/ unregistered individuals in elementary and secondary schools. Based on the responses to the survey, the Committee recommended that BBS staff gather more information regarding the development of standards for the provision of clinical services by unlicensed/unregistered individuals in exempt settings, especially within elementary and secondary schools.

Psychotherapist Title Concerns

The Committee discussed the problem of unlicensed masters of social work student/employees, who, while working in various exempt settings, are billing as "psychotherapists." This creates a consumer protection issue because of the unique qualifications and laws pertaining to psychotherapists. Because this phenomena involves MSW students and is occurring in exempt settings, the BBS technically does not have jurisdiction over the students or their settings. The Committee requested BBS staff to conduct more research on possible consumer protection issues.

BBS License Portability Committee Meeting

February 23, 2018

The License Portability Committee was established by the Board in August of 2017, and its work focuses on reviewing the licensure requirements for California and other states as they pertain to improving license portability. The Committee and stakeholders will develop recommendations to remove barriers to licensure and improve portability for out of state licensees, seeking licensure in California.

The Committee reviewed current licensure requirements for out of state applicants, curriculum requirements for various program accrediting agencies, and proposals by various national associations to increase license portability. The Committee then directed BBS staff to draft framework license portability language to be reviewed and this meeting. BBS staff drafted such language for LPCC out-of-state applicants, and such language was discussed and it was recommended that:

- The criteria for being granted an out-of-state license would include:
 - The license being current, active, and unrestricted for two years prior to the time of application.
 - The qualifying degree is a master's or doctoral degree that was obtained from an accredited or approved school.
 - The applicant submits fingerprints.
 - The applicant passes the BBS's California law and ethics examination.
 - The applicant completes a 12-hour California law and ethics course.
 - The applicant completes 15 hours of coursework in California cultures
- The language allowing the BBS to issue an LPCC license to a qualifying applicant if he or she "holds a license as a professional clinical counselor, or other equivalent counseling license that allows the applicant to independently provide clinical mental health services" be modified to reflect the fact that the person seeking California licensure as an out-of-state LPCC must hold the license "at the highest level" within that state for providing clinical mental health services.
- The requirements for the out-of-state license be current, active, and unrestricted for at least 2 of the past 5 years be replaced with language specifying a 2-year time frame.
- Any such rules for out-of-state applicants for licensure, whether as an LMFT, LCSW, or LPCC, should be equivalent.

Policy and Advocacy Committee Meeting

April 12, 2018

The purpose of this committee is to review and discuss legislative, regulatory, and policy issues affecting the Board of Behavioral Sciences (“BBS”) and the professions it regulates, and to make recommendations to the BBS concerning such matters.

Committee Members in Attendance

Christina Wong, Chair; Deborah Brown; Samara Ashley; and Dr. Christine Wietlisbach

BBS Staff in Attendance

Kim Madsen, Executive Director; Steve Sodergren, Assistant Executive Director; Christy Berger, Regulatory Analyst; and, Rosanne Helms, BBS Legislative Analyst

After introducing the committee members and BBS staff, the public was invited to introduce themselves. Thereafter, Christina Wong, Committee Chair, announced that AB 1973 (Quirk) and AB 2483 (Voepel) would not be considered.

The following bills were reviewed and discussed:

- **AB 456 (Thurmond):** This bill extends the Board’s “90-day rule” to applicants for registration as an associate clinical social worker. The Committee voted to support this bill.
- **AB 767 (Quirk-Silva):** This bill creates a master business license system under the Governor’s Office of Business and Economic Development Office.

NASW testified that the idea has some merit if it will help clinicians who are sole-proprietors to identify all of the licenses and permits they would need to obtain to establish a private practice in a particular city and county.

The BBS stated that it had requested to be removed from such master list because the BBS believes licensing issues are best left addressed by the BBS only. A motion was made to recommend to the BBS that this bill be “supported, if amended,” and such motion carried.

- **AB 1436 (Berman/Levine):** This bill requires applicants for licensure and current licensees to demonstrate completion of at least six hours of coursework or supervised experience in suicide risk assessment and intervention.

The Committee heard public comment arguing the necessity for extra training, as well as concerns notated for any additional continuing education generally.

CAMFT expressed empathy for the victims of suicide themselves, for the families who have lost loved ones to suicide, and for providers who have lost patients to suicide. CAMFT gave testimony that clinicians should be free to choose the continuing education courses that they believe they need for their practices. However, added was that should the committee make a recommendation to the BBS regarding adopting the requirement such requirement should focus on the clinical aspect of risk assessment but not the legal aspect of risk assessment.

The Committee noted that while the subject matter was important, there did not seem to be anything new added that was not already taught. Also discussed was that the schools appeared to be doing an adequate job of teaching the subject matter.

Because the bill’s language was not in final print, no action was taken at this time.

- **AB 1779 (Nazarian):** This bill prohibits sexual orientation change effort therapy with a patient who is under a conservatorship or guardianship. The Committee took a position of support.
- **AB 2088 (Santiago):** This bill, sponsored by CAMFT, allows minors to addend their records, just as adult patients may do. The Committee voted to support this bill.
- **AB 2138 (Chiu/Low):** This bill makes it easier for those applicants for licensure who have criminal histories to get licensed by the BBS.

The BBS reviewed the numbers to get a demographic perspective on the issue. It was reported that in year 2015 and 2016 there were 7,300 applications for registrations for all license types with the BBS; however, the BBS only denied 28 of them due to criminal history issues. The BBS believes that supporting this law will take away the discretion that the BBS has to address these issues and that consumer protection may be undermined.

NASW testified in support of this bill, believing that such individuals, so long as they could demonstrate rehabilitation, could be assets to the profession and that gainful employment would be a great way to check recidivism.

The Committee expressed concerns as to both consumer protection is important to the process, but also how critical the ability to move on in life is to the rehabilitation process and recovery.

The BBS indicated it would meet with the author to see if certain amendments to the bill could be made. Arguing while emphasis should be on recent convictions, but that you cannot ignore a very dark criminal history. Also pointed out was that the BBS must retain the discretion it has in this area.

A motion was made to recommend to BBS staff that it work with the bill's author to identify the weak points in the law in an effort to speed the process, but that the BBS not lose any of the discretion that is currently in the law. The motion carried.

- **AB 2143 (Caballero):** This law includes licensed educational psychologists in the Mental Health Practitioner Education Fund loan repayment grant program.

The Committee voted to support this bill.

- **AB 2296 (Waldron):** This bill adds LPCCs and LCSWs to areas of California law where other comparable licensed mental health professionals are included. It also makes some changes to LPCC education requirements.

The Committee voted to support this bill.

- **AB 2409 (Kiley):** This bill makes it easier for those with criminal convictions to get licensed by the BBS.

The BBS reiterated the same concerns for this bill that she has for AB 2138. NASW pointed out that the bill's supporters have very different political agendas than the supporters of AB 2138. The committee decided to monitor this bill.

- **AB 2608 (Stone):** This bill creates a new fund under the Mental Health Practitioner Education fund repayment grant program specifically for loan repayment grants for LMFT and LCSW licensees and registrants who were formerly in California's foster youth care system. This program would be funded by levying an additional \$10 fee on LMFT and LCSWs each license renewal.

The BBS argued that the timing of a fee increase was bad because the BBS would be looking at a fee audit/increase shortly. CAMFT stated that such fee programs of this sort should be voluntary for licensees and not compelled. The committee requested BBS staff to make its concerns known to the bill's author.

- **AB 2780 (Bloom):** This bill adds mediators and court expert witnesses to the list of individuals a court can appoint to do child custody evaluations.

After hearing public comment, the Committee expressed concerns generally about the bill and determined to watch the bill.

- **AB 2943 (Low):** This bill prohibits advertising and engaging in sexual orientation change efforts an unfair or deceptive act under the Consumer Legal Remedies Act, which would allow consumers harmed by such efforts to recover damages.

The Committee voted to support this bill.

- **AB 2968 (Levine):** This bill makes changes to the brochure that the Department of Consumer Affairs publishes regarding therapists and sexual misconduct with patients.

The Committee supported this bill.

- **SB 906 (Beall/Anderson):** This bill requires the State Department of Health Care Services to establish a peer support specialist certification program, with appropriate supervision.

The BBS was directed to amend LPCC into the bill, as well as better define the scope of practice.

- **SB 968 (Pan):** This bill requires specified higher educational entities in California to hire one full-time equivalent mental health counselor per 1,000 students enrolled at each campus.

CAMFT testified that associates should be included in the definition of “mental health counselors” as they would be able to provide mental health services to college and university students. CALPCC, supported the idea of including associates in the language of the bill. The Committee indicated that the intent of the bill is good but expressed concerns about the fiscal impact on colleges and universities. The Committee voted to recommend to the BBS that it support this bill if associates are added to the language of the bill.

- **AB 1116 (Grayson):** This bill establishes that a communication between an emergency service personnel worker and a peer support team member, crisis hotline staffer, or a crisis referral service staffer is privileged for a noncriminal proceeding.

After public commented, the Committee decided that this bill should be watched.

- **SB 399 (Portantino):** This bill attempts to close some of the loopholes that insurance companies use to deny behavioral health treatment for those with pervasive developmental disorder or autism.

The committee decided not to take a position on this bill.

Review of the Telehealth Regulations

The BBS gave background information on the history and implementation of the telehealth regulations.

CAMFT discussed problems with the regulations as written, including the fact that they may lead to unintended consequences because practitioners are too afraid to interact with patients who have gone out of California temporarily. CAMFT pointed out that such a position is in conflict with case law, which generally allows for some communication with patients who have gone out of state. CAMFT requested that the committee recommend to the BBS that the language in the telehealth regulations be revisited.

NASW expressed concerns as well.

The BBS recognized that the telehealth regulations were never meant to be static and would benefit from updating. The Committee suggested forming a working group to review these important issues. The BBS suggested that a work group could not likely be established until early 2019. The committee recommended that the language of the telehealth regulations be updated.

Catherine L. Atkins, JD, is a staff attorney and the Deputy Executive Director at CAMFT. Cathy is available to answer members' questions regarding legal, ethical, and licensure issues.