



Policy and Advocacy Committee Minutes

This Policy and Advocacy Committee Meeting webcast is available at <https://www.youtube.com/watch?v=A-HdUtV2MzM&feature=youtu.be>.

DATE August 2, 2019

LOCATION Department of Consumer Affairs
Lou Galiano Hearing Room
1625 North Market Blvd., #S-102
Sacramento, CA 95834

TIME 9:00 a.m.

ATTENDEES

Members Present: Christina Wong, Chair, LCSW Member
Deborah Brown, Public Member
Betty Connolly, LEP Member

Members Absent: *All members present*

Staff Present: Kim Madsen, Executive Officer
Steve Sodergren, Assistant Executive Officer
Sabina Knight, Legal Counsel
Rosanne Helms, Legislative Analyst
Christy Berger, Regulatory Analyst
Christina Kitamura, Administrative Analyst

Other Attendees: *See voluntary sign-in sheet (available upon request)*

I. Call to Order, Establishment of Quorum, and Introductions

Christina Wong, Chair of the Policy and Advocacy Committee (Committee), called the meeting to order at 9:02 a.m. Christina Kitamura called roll, and a quorum was established.

II. Approval of April 5, 2019 Committee Meeting Minutes

An amendment was proposed on page 1, line 5.

MOTION: Approve the April 5, 2019 meeting minutes as amended. Connolly moved; Wong seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Betty Connolly	x				
Christina Wong	x				

III. Discussion and Possible Recommendation Regarding Practice Setting Definitions, Subsequent Registration Numbers, and Exam Limits. Proposed Amendments to Business and Professions Code Sections 4980.01, 4980.399, 4980.42, 4980.43, 4980.43.2, 4980.43.3, 4980.43.4, 4980.46, 4980.50, 4980.54, 4980.01, 4992.09, 4992.1, 4992.10, 4996.13, 4996.14, 4996.15, 4996.22, 4996.23, 4996.23.1, 4996.23.2, 4996.23.3, 4996.28, 4999.22, 4999.36, 4999.46, 4999.46.1, 4999.46.2, 4999.46.3, 4999.46.4, 4999.52, 4999.55, 4999.72, 4999.76, 4999.100: Add Business and Professions Code Sections 4980.05, 4980.06, 4996.141, 4996.142, 4999.25, 4999.26: Amend and Renumber BPC Sections 4984.74 (4980.51), 4996.4 (4992.11), 4999.24 (4999.27), 4999.64 (4999.54)

The Exempt Setting Committee met in June 2019 to discuss the following topics:

1. Clarifying practice setting definitions
2. Extending registration numbers to 8 years; allowing private practice with a subsequent registration number
3. Requiring continuing education for registrants

1. Clarifying Practice Setting Definitions

The proposal:

- Classifies all settings into two categories: exempt settings and non-exempt settings. The definition of exempt settings remains the same. The definition of non-exempt settings is all settings that do not qualify as exempt settings.
- Carves out definitions of two specific types of non-exempt settings: private practices and professional corporations. These definitions are used to place certain limitations on these specific types of settings.

- Reiterates that an individual working in an exempt setting who holds a Board-issued license or registration is under the jurisdiction of the Board.
- Reiterates that an active license or registration number is required to provide psychotherapeutic services in any non-exempt setting with two exceptions:
 - A trainee may provide services in a non-exempt setting as long as it is not a private practice or a professional corporation, and the trainee is under the jurisdiction and supervision of their school.
 - An applicant for associate registration following the 90-day rule may provide services in a non-exempt setting as long as it is not a private practice or a professional corporation, and they are in compliance with the laws pertaining to the 90-day rule.
- Specifies that an entity that is licensed or certified by a government agency is not considered a private practice setting.
- Limits supervisors in a private practice or professional corporation to six individual or triadic supervisees at a time.
- Permits contracted supervisors in a private practice or professional corporation. A supervisor must provide psychotherapeutic services to clients at the same site as the associate.
- Prohibits any licensee who owns a business utilizing a fictitious business name from using a false or misleading business name.

Discussion Points

Definition of Exempt Settings

Business and Professions Code (BPC) §4980.01(c) specifies that certain settings are exempt if the employee or volunteer is supervised solely by the entity where he or she is working. However, staff believes that this provision is outdated. The Exempt Setting Committee recommended revising the language to state that a setting is exempt if the employee or volunteer's work "is performed under the oversight and direction" of one of the specified exempt entities.

No discussion from Committee members regarding §4980.01(c)

Entities Licensed or Certified by a Government Entity

The Exempt Setting Committee wanted to specify that an entity licensed or certified by a government entity should not be considered a private practice setting. The Exempt Setting Committee believes that such a certification or

license provides a level of oversight that distinguishes the setting from a private practice. However, staff believes that the language originally proposed could be too vague and recommends the following language:

An entity that is licensed or certified by a government agency (OR an entity that is licensed or certified by a state or federal agency to provide health care services) shall not be considered a private practice setting.

Discussion

Ms. Connolly: Concerned about not including county agencies, unless all counties are registered by the state.

Ms. Wong: Does not believe the county agencies will be excluded and feels this language should be sufficient.

Lynn Thill, California Alliance of Child and Family Services: Via the California waiver with Centers for Medicare & Medicaid Services, they subcontract with the counties. The counties subcontract with other contractors. Therefore, the counties are the entities charged with ensuring that the mental health services are provided to beneficiaries eligible for it. She expressed concern to not include counties in the language.

Board staff proposed the following edit:

An entity that is licensed or certified by a government agency (OR an entity that is licensed or certified by a county, state or federal agency to provide health care services) shall not be considered a private practice setting.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA): In family court, juvenile dependency court, or juvenile delinquency court, the court frequently mandates therapy for its wards. At times, wards may see private practitioners that are contracted by the courts.

The Committee and staff were comfortable that the language will not affect court-appointed private practitioners.

Mr. Wong, NASW-CA: Although the city of Berkeley is in Alameda County, mental health services is provided by the city of Berkeley; concerned that cities will be excluded.

Ann Tran, CAMFT: Suggested “government regulatory agency” instead of “county, state or federal agency”.

The Committee and Board staff agreed to move forward with Ms. Tran’s suggestion.

Allowing Contract Supervisors in Private Practice

Current law requires supervisors in a private practice to practice at the same site as their supervisees or be an owner of a private practice. If a professional corporation, the supervisor must be employed full time for the corporation and be “actively engaged in providing professional services” there.

This requirement leads to significant confusion about what is acceptable, especially for corporations. To clear up this confusion, the Committee discussed re-wording this section, and decided to allow contract supervisors in a private practice or professional corporation.

Discussion regarding the issue of potential exploitation

Ms. Connolly: In order to protect against the possibility for exploitation, additional barriers would be created. Additional supervisory requirements will result in reduction of abuse; feels comfortable with the language as proposed.

Discussion regarding the requirement that supervisors must provide services at the same site

The Committee was comfortable with the language as proposed.

Limit of Six Supervisees Per Supervisor in Private Practice/Professional Corporation

A recommendation was made to increase the limit to six supervisees per supervisor in private practice/professional corporations. The Committee was comfortable with the proposed recommendation.

Supervisee Limit: Should it Apply in Private Practice/Professional Corporations Only, or in all Non-Exempt Settings?

The number of supervisees per supervisor in private practices and professional corporations are limited; however, there are no limits in other non-exempt settings. Was this the intent?

The proposed language was amended as follows:

Supervisors of supervisees in a non-exempt setting shall not serve as an individual or triadic supervisor for more than a total of six supervisees at any time.

MOTION: Move to amended §4980.05, §4980.06, and §4980.43.4, and recommend amended and discussed items to the Board for consideration as a legislative proposal. Connolly moved; Wong seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Betty Connolly	x				
Christina Wong	x				

2. Extending Registration Numbers to 8 Years (with Coursework Required for a Subsequent Number) and Allowing Private Practice with a Subsequent Number

Staff recommended a solution that would extend the length of a registration number and eliminate the private practice prohibition on a subsequent registration number.

- The length of a registration number would increase from 6 years to 8 years.
- The allowable age of experience hours would increase from 6 years to 8 years.
- If a subsequent registration number is needed, the applicant must:
 - Obtain a passing score on the California law and ethics exam within the past two years; and
 - Demonstrate successful completion of 15 semester units of graduate level coursework within the past two years. Some of the graduate level coursework must cover specified topic areas.
- Removal of private practice prohibition on a subsequent registration.

Discussion

Ms. Wong: Concerned about consumer protection and oversight of those in private practice. There is no mechanism for oversight.

Ms. Connolly: Stakeholders were passionate about this issue and were willing to make any compromises to have the Board revisit this matter. The Committee heard that the few applicants who need the subsequent registrations tend to be underrepresented, come from disadvantaged backgrounds, have more life challenges and encounter more barriers.

Ms. Madsen: Stated that consumer protection is present because those applicants are still under normal supervision and have not taken their clinical exams yet.

Ms. Wong: Concerned about consumer protection regarding applicants who have completed their hours and cannot pass the examination.

Ms. Madsen: Those applicants must take additional coursework and pass the law and ethics exam with a specified time frame before they can practice.

Ms. Wong: Concerned about the group that is in the exam cycle, obtaining one hour/week, because there is no regulatory mechanism for the supervision.

Ms. Berger: Responded that there is some regulatory mechanism carved out in law.

Ms. Madsen: Stated that this proposal is not intended to address supervision, which was addressed in AB 93; this is intended to address the number of exam attempts and motivate associates to become licensed.

Mr. Wong, NASW-CA: Problem with proposal requiring graduate-level coursework: 1) cost of 15 units, 2) cannot take coursework in a degree program when the applicant already has a degree, 3) applicant can only attend extended studies to obtain additional coursework (the required coursework, if available, is very limited).

Ms. Tran, CAMFT: Concerned about all points discussed. Recommended further discussions.

Ms. Connolly: Agrees with Mr. Wong; impossible to enroll in university to take courses. Recommended tabling this issue and referring the matter to a subcommittee.

This item will be referred to a subcommittee for further discussion.

3. Requiring Continuing Education for Registrants

This item will be referred to a subcommittee for further discussion.

4. Limiting Clinical Exam Attempts

This item will be referred to a subcommittee for further discussion.

IV. Discussion and Possible Recommendations Regarding Proposal to Increase Board Fees. Proposed Amendments to Business and Professions Code Sections 4980.54, 4984.7, 4989.34, 4989.36, 4989.40, 4989.68, 4996.3, 4996.22, 4999.76, 4999.104, 4999.120, 4999.122. Proposed Amendments to Title 16, California Code of Regulations Sections 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7

The Board has not raised its licensing fees in at least 20 years. A recent audit of the Board’s licensing fees found that they are no longer sufficient to recover operating costs. Therefore, staff is proposing the following fee increases.

Marriage and Family Therapists

Fee Type	Current Fee	Proposed Fee
Associate Registration	\$75	\$150
Associate Renewal	\$75	\$150
Application for Licensure	\$100	\$250
Law & Ethics Exam	\$100	\$150
Clinical Exam	\$100	\$250
Initial License Issuance	\$130	\$200
License Renewal	\$130	\$200

Licensed Educational Psychologists

Fee Type	Current Fee	Proposed Fee
Application for Licensure	\$100	\$250
Written Exam	\$100	\$250
Initial License Issuance	\$80	\$200
License Renewal	\$80	\$200

Clinical Social Workers

Fee Type	Current Fee	Proposed Fee
Associate Registration	\$75	\$150
Associate Renewal	\$75	\$150
Application for Licensure	\$100	\$250
Law & Ethics Exam	\$100	\$150
Clinical Exam	n/a	n/a
Initial License Issuance	\$100	\$200
License Renewal	\$100	\$200

Professional Clinical Counselors

Fee Type	Current Fee	Proposed Fee
Associate Registration	\$100	\$150
Associate Renewal	\$100	\$150
Application for Licensure	\$180	\$250
Law & Ethics Exam	\$100	\$150
Clinical Exam	n/a	n/a
Initial License Issuance	\$200	\$200
License Renewal	\$175	\$200

Background

In August 2018, the Board contracted with CPS HR Consulting (CPS) to provide performance auditing and consulting services to review the Board's fee structure and staff workload to determine if fee levels are appropriate for the recovery of the actual cost of conducting its programs. In April 2019, CPS submitted the final report.

- 25 fees that represent approximately 90% of the Board's fee revenue: applications for registrations, licenses, examination and renewals.
- During the last four years, revenues for 25 fees increased by nearly 39%; the Board's expenditures increased by approximately 42%.
- Increases due to steady increase of application volume and registrant/licensee population.

To determine appropriate fees, CPS used three years of average expenditures and staff hours. Dividing the average expenditures by staff hours for the three years resulted in a \$120 per hour/\$2.00 per minute fully absorbed cost rate. The resulting proposed fee increases ranged from \$0 to \$315. These proposed fees were used to make projections for the fund condition for the next five years. The fees proposed would increase the Board's revenue by \$6,016,000 per full fiscal year and would result in a five-month reserve by fiscal year 2023-2024.

In developing the proposed fees, staff took into consideration the impact a fee increase may have on the registrants and licensees. Higher number of staff hours are typically spent on registrants; however, registrants earn less money than licensees. Therefore, proposed fees were adjusted from fees based solely on workload to achieve a more equitable result.

Proposal

A two-step proposal for fee increase:

- Step 1: Run legislation to increase the fees in statute, setting a baseline amount, and a maximum amount so that fees may be increased in the future via regulations if necessary.
- Step 2: Amend the Board's regulations relating to licensing fees. Initially, the regulations would reflect the baseline fees established in statute. If the Board wished to seek additional fee increases in the future, it could do so by solely running regulations, as long as the fee amounts did not exceed the maximum amounts specified in statute.

Staff is also proposing to delete obsolete language or clarify language in regulations:

- Delete certain references to inactive license fees because it is already specified in law;
- Delete language in LEP and LPCC law regarding payment of accrued renewal fees for expired licenses;
- Specify in statute that the delinquency fee equals half of the renewal fee;
- Delete language in LPCC law regarding start-up fund.

Discussion

Kenneth Edwards, California Association for Licensed Professional Clinical Counselors (CALPCC): Supports proposal to increase fees. Suggested implementing the increase in a graduated percentage amount. The fee increase, along with all other costs, may create a barrier to entry.

Mr. Wong, NASW-CA: Supports proposal to increase fees. Added that it is unfair that LPCCs and LCSWs subsidize the fees for LMFTs by making the fees equal across the board. The subsidizing of fees does not take workload into consideration; the staff's workload for LMFTs is much greater than LCSWs.

Mr. Sodergren: CPS presented a very aggressive approach to building the Board's reserve. Staff responded by slowing it down to gradually increase the reserve. In terms of incremental fee adjustments, the legislature would frown upon yearly legislation to increase fees.

A presentation regarding fee increases will be presented at the upcoming Board meeting.

MOTION: Recommend to the Board to support as a legislative proposal. Wong moved; Connolly seconded. The motion carried; 3 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Betty Connolly	x				
Christina Wong	x				

V. Discussion and Possible Action Regarding Continuing Education Requirements: Title 16, California Code of Regulations: Add Section 1810.5; Amend Sections 1807, 1807.2, 1810, 1887, 1887.1, 1887.2, 1887.3, 1887.4.0, 1887.4.1 and 1887.4.3; Repeal Sections 1810.1, 1810.2, 1887.4, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11 and 1887.15

The purpose of this agenda item is to consider possible regulation changes pertaining to both continuing education (CE) and “additional training” requirements. This proposal would do all of the following:

- Delete the regulations that were necessary for the CE program’s 2015 transition away from Board-approval of individual CE providers
- Clarify and update provisions of the current regulations
- Propose several minor changes
- Amend the requirements to qualify for a CE waiver
- Update, clarify and streamline the regulations pertaining to “additional training” requirements (coursework required to be completed by applicants for licensure, as well as LEPs renewing for the first time).

A draft of this proposal was initially brought before the Policy and Advocacy Committee at its January 2018 meeting and has been revised based on feedback from the Committee as well as stakeholders.

Proposed Changes

The proposed language would do all of the following:

1. Update the list of acceptable providers for the following courses and streamline the lists of acceptable providers into one section:
 - Human Sexuality
 - Child Abuse Assessment and Reporting
 - Alcoholism and Other Chemical Substance Dependency
 - California Law and Ethics
 - Crisis or Trauma Counseling
2. Update the content required for the Human Sexuality course for consistency with statute, the DSM-V and to ensure currency (it has not been updated in over 30 years).

3. Update the content required for the Alcoholism and Other Chemical Substance Dependency class to clarify that it should also include substance abuse.
4. Clarify that dual licensees must only complete a total of 36 hours per renewal period (as opposed to 36 hours per license type).
5. Clarify that an individual who holds a retired license is exempt from CE requirements.
6. Delete the requirement that LMFTs and LCSWs who began graduate study prior to January 1, 1986 take a CE course in Alcoholism and Other Chemical Substance Dependency. All applicants for LMFT and LCSW licensure must now meet this requirement prior to license issuance.
7. Clarify that a CE course taught by a licensee may only count toward his or her CE if it is a course taught for a board-accepted provider.
8. Specify that teaching a CE course may only count for 18 of the 36 hours of CE required to be taken every two-year renewal period. Current law specifies that the licensee may count the same number of hours as a licensee who took the course and may only claim a course once per renewal cycle. However, licensees may count the same class(es) taught each renewal period.
9. Allow a licensee who completes a board occupational analysis survey to be awarded with six hours of CE.
10. Update the list of approval agencies and acceptable providers.
11. Delete outdated sections that pertained to the Board's former CE regulatory program and delineated the transition to the new program.
12. Make other technical changes.

Additional Changes – CE Exceptions

This proposal would also update and clarify the requirements for obtaining an exception from (waiver of) CE requirements. CE waivers allow the licensee to renew in an active status without completing the required 36 hours of CE during the two-year renewal period.

The proposed amendments are as follows:

- Strike the provision that allows a licensee in their initial renewal period to complete 18 hours of CE rather than 36 hours.

- Update the CE waiver request forms and instructions, which are incorporated by reference into the Board’s regulations.
- Clarify that a CE waiver is temporary and applies only to the current renewal cycle.
- Delete the reference to “reasonable accommodation.”
- Delete the waiver for active duty military members.
- Delete the waiver for licensees who resided in another country for at least one year.
- For licensees who were a primary caregiver of an immediate family member for at least one year during the renewal period, the proposal would provide a definition of a “total physical or mental disability” meaning the family member is both unable to work and unable to perform activities of daily living without substantial assistance.
- For licensees who have a physical or mental disability of their own for at least one year during the renewal period, staff had originally proposed to require the evaluating professional to certify that the condition substantially limited the licensee’s ability to practice and complete the required CE. However, there were concerns expressed that this language was too vague and that professional evaluators would need more clarity. The current proposal would do the following:
 - No longer require “total disability”. Instead, require that the licensee had a condition that substantially limited one or more life activities, consistent with the wording of the Americans with Disabilities Act and California law; and,
 - Require the licensee to demonstrate that their condition caused earned income to drop below the “substantial gainful activity” (SGA) amount for non-blind individuals as set by the Social Security Administration (SSA).
 - Eligibility would be demonstrated through a combination of a physician or psychologist verification of disability, along with proof of income during the period of disability.
- Require licensees who are granted a CE waiver to take the 6-hour law and ethics course despite the waiver.

CAMFT Letter

The California Association of Marriage and Family Therapists sent a letter requesting consideration of the following:

- Discuss concerns that requiring 6 hours of law and ethics from those who were granted a temporary CE waiver would be an undue burden, due to a need to focus on the health and recovery for themselves or a family member.

Discussion

No change to staff proposal.

- Consider allowing “microlearning”.

Discussion

Microlearning is valuable; however, it is not practical to change the Board’s processes to accommodate that level of learning. The complexity to track the CE and increased staff demands to track the CE is impractical. Staff recommended that CE providers allow for modules less than one hour in length, and provide certification showing accumulation of modules equaling one hour.

- Clarification on whether a course on “Law and Ethics for Supervisors” should be allowed to meet both of the following:
 - The 6-hour Law and Ethics course required for all licensees each renewal period, and
 - The 6-hour supervisor training refresher required of LMFT and LPCC supervisors each renewal period.

Discussion

The Law and Ethics for Supervisors cannot be double-counted. Staff will develop clarifying language.

- Clarification of course content requirements.

Discussion

Staff proposed clarifying language.

- Streamline subsection (c) of the section on course content, and no longer require educational goals and specific learning objectives to be “measurable”.

Discussion

No changes were made.

- Retain the section pertaining to required content for course advertisements and make it applicable to CE providers operating under an approval agency. Since the Board no longer approves individual CE providers, and because

approval agencies are now responsible for setting standards for CE providers, this section is proposed to be deleted.

Discussion

No change to staff proposal to delete this section.

- Retain the section pertaining to course instructor qualifications and make it applicable to CE providers operating under an approval agency. Since the Board no longer approves individual CE providers, and because approval agencies are now responsible for setting standards for CE providers, this section is proposed to be deleted.

Discussion

No change to staff proposal to delete this section.

MOTION: Direct staff to make any discussed changes and any non-substantive changes, and recommend to the full Board as a regulatory proposal. Wong moved; Brown seconded. The motion carried; 3 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Betty Connolly	x				
Christina Wong	x				

VI. Update on Board-Sponsored and Board-Considered Legislation

Board-Sponsored Legislation

SB 679 Healing Arts: Therapists and Counselors: Licensing

Status: This bill is in the Assembly Appropriations Committee.

AB 630 Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Educational Psychologists: Professional Clinical Counselors: Required Notice

Status: This bill is on its third reading in the Senate.

SB 786 (Senate Business, Professions, and Economic Development Committee): Healing Arts (Omnibus Bill)

The Board requested eight items be included in the bill. One item was rejected for inclusion due to being too substantive. All other requested items were included.

Status: This bill is in the Assembly Appropriations Committee.

Board-Supported Legislation

AB 769 (Smith): Federally Qualified Health Centers and Rural Health Clinics: Licensed Professional Clinical Counselor

Status: This is a two-year bill. It is in the Senate Appropriations Committee.

AB 1651 (Medina): Licensed Educational Psychologists: Supervision of Associates and Trainees

Status: This bill is on its third reading in the Senate.

Many of the bills that the Board supported had substantial amendments; therefore, those bills lost the Board's positions until it meets again to discuss.

VII. Update on Board Rulemaking Proposals

Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

Status: Submitted for notice to the public. Public comment period will begin on August 16th. The public hearing will be held on at September 30th in the DCA El Dorado Room.

Enforcement Process

Status: On hold until passage of AB 2138 regulations.

Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

Status: Submitted to Office of Administrative Law for final approval.

Supervision

Status: DCA Initial Review

VIII. Public Comment for Items Not on the Agenda

No public comments

IX. Suggestions for Future Agenda Items

No suggestions

X. Adjournment

The Committee adjourned at 12:33 p.m.