

Policy and Advocacy Committee Meeting Minutes February 3, 2017

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #N220
Sacramento, CA 95835

Members Present

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

Members Absent

Samara Ashley, Public Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Assistant Executive Officer
Rosanne Helms, Legislative Analyst
Christy Berger, Regulatory Analyst
Kurt Hepler, Legal Counsel
Spencer Walker, Legal Counsel
Christina Kitamura, Administrative Analyst

I. Call to Order and Establishment of Quorum

Christina Wong, Chair of the Policy and Advocacy Committee (Committee), called the meeting to order at 10:48 a.m. Christina Kitamura called roll, and a quorum was established.

II. Introductions

The Committee, Board staff, and attendees introduced themselves.

III. Approval of the September 30, 2016 Committee Meeting Minutes

Three minor amendments were recommended.

Christina Wong moved to approve the September 30, 2016 Committee Meeting Minutes as amended. Deborah Brown seconded. The Committee voted to pass the motion.

Committee vote:

Deborah Brown – yes

Betty Connolly – yes

Christina Wong – yes

IV. Discussion and Possible Recommendation Regarding Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1823 – Unprofessional Conduct; 1845 - Unprofessional Conduct; 1858 - Unprofessional Conduct; 1881 – Unprofessional Conduct; and 1886.40 - Amount of Fines

Staff proposed several revisions to the Board's enforcement regulations.

1. Unprofessional Conduct Sections: Delete Provisions that are Already in Statute (§§ 1845 (LMFTs), 1858 (LEPs), and 1881 (LCSWs))

Proposed amendments delete the duplicative provisions in regulation.

2. Unprofessional Conduct Sections: Certified Copies of Records (§§1823 (LPCCs), 1845, 1858, and 1881)

The unprofessional conduct sections requires licensees or registrants to provide copies of records to the Board upon request for investigative purposes. In order to ensure the authenticity of the records, certified copies from the issuing agency are required; however, the guidelines do not currently state that the copies must be certified. The proposed amendments will specify that the records must be certified documents.

3. Unprofessional Conduct Sections: Failure to Cooperate in an Investigation (§§1823, 1845, 1858, and 1881)

Current regulations state that it is unprofessional conduct to fail to cooperate in a board investigation pending against *the* licensee or registrant. The proposed amendment states that it is unprofessional conduct to fail to cooperate in a board investigation pending against *a* licensee or *a* registrant. This amendment clarifies that failure to cooperate in an investigation involving another licensee or registrant is a violation.

4. Unprofessional Conduct Sections: Failure to Provide Documentation Regarding Arrest and/or Conviction (§§1823, 1845, 1858, and 1881)

The unprofessional conduct sections currently state that a licensee or registrant must, upon request, provide documentation regarding his or her arrest.

To determine if disciplinary action is necessary for public protection purposes, the Board also requires documentation regarding a *conviction* of a licensee or registrant. The proposed amendment states that it is unprofessional conduct for failure to provide, upon request of the Board, documentation regarding an arrest *and/or conviction*. The proposed amendment also includes language requiring that the documentation must be certified copies.

5. Violation of Confidentiality of Medical Information Act: Amount of Fines
The Confidentiality of Medical Information Act begins with Civil Code (CC) §56, and discusses how medical providers may and may not disclose confidential medical information. CC §56.36 discusses the amount of fines that may be levied for disclosing confidential medical information.

§1886.40 of the Board's regulations defines a "citable offense" and lists the amount of fines the Board may levy for various violations of the law. It states that the Board may assess a fine of up to \$5,000 for a violation involving unlawful or unauthorized breach of confidentiality. This amount was derived from CC §56.36.

To establish a point of reference for the origin of the \$5,000 maximum fine, the proposed amendment references the Confidentiality of Medical Information Act in regulation §1886.40.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), expressed concerns regarding the failure to cooperate in an investigation, stating that the concept is vague. For example, the witness may have a conflict regarding attorney/client privilege. Ms. Epstein explained that the CAMFT code of ethics permits members to assist colleagues, if they choose to, without turning the colleague in.

Dr. Ben Caldwell, American Association for Marriage and Family Therapy, California Division (AAMFT-CA), expressed concern in compelling a witness to cooperate with an investigation under the threat of an unprofessional conduct charge versus providing an opportunity for the witness to be helpful with an investigation if they so choose.

Rosanne Helms stated that the revision was recommended by the Board's former legal counsel.

Spencer Walker, Legal Counsel, stated that if it has not posed any problems in the past, then it is his opinion to be an unnecessary change.

Janlee Wong, National Association of Social Workers, California Division (NASW-CA), agreed with Ms. Epstein and Dr. Caldwell.

Kurt Hepler, Legal Counsel, opined that if the Board's "enforcement staff and the Deputy Attorney General have not recognized the need for this to be changed as an impediment or impairment to an investigatory case," then he would be reluctant to advise the Board to make the change.

Christina Wong moved to recommend to the Board to commence rulemaking to amend California Code of Regulations, Title 16, sections 1823, 1845, 1858, 1881, and 1886.40; and to leave the language as is in sections 1823(b), 1845(b), 1858(b), 1858(c), and 1881(d). Betty Connolly seconded. The Committee voted to pass the motion.

Committee vote:

Deborah Brown – yes
Betty Connolly – yes
Christina Wong – yes

V. Discussion and Possible Recommendation Regarding Proposed Rulemaking to Amend California Code of Regulations, Title 16, Section 1888 – Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

Staff is proposing several revisions to the Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, which are incorporated by reference into California Code of Regulations (CCR) Title 16, §1888.

- Amendment to CCR §1888: References to Disciplinary Guidelines

This section refers to the “Disciplinary Guidelines” as listed in the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” document, which is incorporated by reference in this section. However, there is not an actual section in the document identified as “Disciplinary Guidelines.” There is a section identified as “Penalty Guidelines.” Language referencing sections of this document have been revised for clarity. The proposed language provides references to “Uniform Standards Related to Substance Abuse,” and to “Penalty Guidelines.”

- Amendment to CCR §1888 and Uniform Standards: Violations Involving Abuse of Drugs and/or Alcohol

As written, this section states that every violation that involves the use of drugs and/or alcohol must comply with the Uniform Standards Related to Substance Abuse.

The Attorney General’s Office issued a formal opinion stating that boards must use the Uniform Standards in all cases which they apply, and that boards may establish a regulation defining a “substance abusing licensee” for purpose of determining who is subject to the Uniform Standards, as long as the regulation is consistent with Business and Professions Code (BPC) §315. The Department of Consumer Affairs’ (DCA) Legal Division has since concurred that a board may use discretion in imposing the Uniform Standards based on whether a licensee is found to be a substance abusing licensee.

Based on these new determinations, DCA Legal has recommended §1888 be amended to clarify that if a violation involves the abuse of drugs and/or alcohol, then the violation is presumed to be a substance abuse violation. If the licensee does not rebut the presumption, then the Uniform Standards apply.

A paragraph clarifying the process of determining substance abuse has also been added to Section I of the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.”

- Add to Penalty Guidelines: Engaging in Sexual Orientation Change Efforts with a Patient Under Age 18

SB 1172 made it unprofessional conduct to engage in any sexual orientation change efforts with a patient under the age of 18. This violation is not included in the Penalty Guidelines.

The proposed amendment would add minimum and maximum penalties for engaging in sexual orientation change efforts with a minor, to the Penalty Guidelines.

- Add to Penalty Guidelines: Consumer Protection Enforcement Initiative Unprofessional Conduct Provisions

The Board added five unprofessional conduct provisions via regulation for each license type based on direction from the DCA's Consumer Protection Enforcement Initiative. These provisions, which became effective July 1, 2013, pertain to Board investigations, and include such violations as failing to provide records or arrest documentation, or failure to cooperate in a Board investigation. These new violations are not included in the Penalty Guidelines.

The proposed amendment would add minimum and maximum penalties for each of these five new unprofessional conduct provisions to the Penalty Guidelines.

- Amendment to Optional Term and Condition of Probation: Education and Law and Ethics Course

Proposed language specifies that required educational coursework must be taken either from an approved educational institution, or through a course approved by the Board. Language specifying the course must be taken at a graduate-level institution offering a qualifying degree has been removed.

At its August 2016 meeting, the Board indicated that in some cases, requiring a probationer to take and pass the California Law and Ethics examination may be more meaningful than requiring a law and ethics course. There are currently three violations for which taking a law and ethics course is listed as a minimum penalty:

- General Unprofessional Conduct;
- Commission of a Dishonest, Corrupt, or Fraudulent Act; and
- Paying, Accepting, or Soliciting a fee for Referrals.

Proposed language in the Penalty Guidelines state that if warranted, the minimum penalty can be either taking a law and ethics course or taking and passing the licensure examination(s).

- Amendment to Optional Term and Condition of Probation: Take and Pass Licensure Examinations

At its August 2016 meeting, the Board directed staff to add a requirement to take and pass the California law and ethics examination as an optional term and condition of probation.

Currently, the Guidelines include optional term #7, "Take and Pass Licensure Examinations." Upon review of the term, staff believes that as written, this term could be interpreted to mean that the probationer must take the California Law and Ethics exam, the clinical exam, both of these exams, or the LEP exam (as applicable). However, it is not completely clear if all licensing exams must be taken, or if only one may be prescribed.

Instead, staff has amended the existing language to clarify that the Board may prescribe a probationer to take one or both of the required licensing exams, as it deems appropriate.

- New Optional Term and Condition of Probation: Attend Dependency Support Program

The proposed language adds a new optional term of probation requiring, if the Board so chooses, the probationer to attend a dependency support program.

Attending a dependency support program has also been added, if warranted, as a minimum term in the Penalty Guidelines for violations involving substance abuse.

- New Optional Term and Condition of Probation: Relapse Prevention Program

The proposed language adds a new optional term of probation requiring, if the Board so chooses, the probationer to attend a dependency support program.

Attending a relapse prevention program has also been added, if warranted, as a minimum term in the Penalty Guidelines for violations involving substance abuse.

- Amendment to Standard Term and Condition of Probation: Change of Place of Employment or Place of Residence

This item will be cut from the amendments. Regulation §1804 will be amended since a change of address notification for a place of employment is not required to be reported to the Board.

Discussion

- New Optional Term and Condition of Probation: Attend Dependency Support Program

Dr. Caldwell expressed concern regarding mandating methods of rehabilitation that are not well-supported by research.

- New Optional Term and Condition of Probation: Relapse Prevention Program

Dr. Caldwell expressed the same concern as expressed for the dependency support program.

- Amendment to Standard Term and Condition of Probation: Failure to Practice – Tolling

Proposed amendment: *“The failure to practice for a total of two years shall be a violation of probation.”*

Alternative amendment agreed by the Committee and staff: *“The failure to practice for a total of two years, absence of good cause, shall be a violation of probation.”*

Christina Wong moved to recommend to the Board that it commence rulemaking to amend California Code of Regulations, Title 16, §1888 as amended. Betty Connolly seconded. The Committee voted to pass the motion.

Committee vote:

Deborah Brown – yes
 Betty Connolly – yes
 Christina Wong – yes

Ms. Wong called for a break at 12:32 p.m. The Committee reconvened at 1:09 p.m.

VI. Discussion and Possible Recommendation Regarding Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1804 – Filing of Addresses; 1805 – Applications; 1820.7 – Confirmation of Qualifications to Treat Couples and Families; and 1856 - Experience Equivalent to Three (3) Years Full-Time Experience as Credentialed School Psychologist

Legal counsel suggested that the Board put its current practices into regulations.

A. Amendments to §1804 – Applicant and Licensee Contact Information

1. 1804(a): Reporting of Addresses:

- Remove “professional corporation” as the Board discontinued registration of corporations in 2000.
- Clarify the acceptable types of addresses.
- Clarify that each licensee’s and registrant’s address of record will be disclosed to the public.
- Clarify that applicants must provide an address of record, but it will not be made public until a license or registration is issued.
- Disallow the use of an address in “care of” or “c/o” another person.

2. 1804(b),(c),(d): Reporting of Telephone Numbers and Email Addresses

- State that telephone numbers and email addresses are confidential information.
- Codify the Board’s current practice of requiring an applicant’s telephone number and email address on applications for licensure or registration.
- Newly require all current licensees and registrants to provide the Board with a telephone number and email address.
- Require Board notification of changes to a telephone number or email address within 30 calendar days in writing.

B. Amendments to §1805 – Applications

1. 1805(b): Specify the documentation required to be submitted with an application for registration or licensure, in order to codify current practice.

2. 1805(b) & (c): Specify the documentation required to be submitted with an application for licensure in order to codify current practice, and to clarify that those who previously applied for a registration are not required to resubmit specified documentation if still on file.

3. Required documentation may include:

- Verification of supervised experience including contact information for the supervisor and employer.
- Verification of passing a national clinical examination, if required.

- A signed examination security agreement.
4. 1805(d) & (e): Specify the documentation required to be submitted with an application expedite request for a veteran or military spouse/domestic partner.
 5. 1805(f): Require applications for registration or licensure to be signed under penalty of perjury.
 6. 1805(g): Allow the Board to use discretion in accepting other documentation that establishes the applicant's qualifications.
- C. Amendments to §1820.7 – LPCC Confirmation of Qualifications to Assess or Treat Couples and Families
- Clarify that confirmation of qualifications is necessary not just to treat, but also to assess couples and families, consistent with the wording of §4999.20 of the BPC.
 - 1820.7(c): Codify the Board's current practice of requiring official transcripts, and course descriptions or syllabi when necessary.
 - 1820.7(d): Clarify the specific information that must be included on the required documentation of experience with couples, families or children.
 - 1820.7(e): Minor technical changes.
 - Change "intern" to "associate" in accordance with SB 1478.

D. Amendments to §1856 – LEP Experience Requirements

The proposed changes would codify the Board's current practice pertaining to verification of the experience required for licensure as an educational psychologist, and specifies the information that must be included in the verifications.

E. Signatures under Penalty of Perjury

The proposed changes would require signatures on certain forms and applications to be made under penalty of perjury:

- Applicant's signature on licensure and registration applications;
- Supervisor's signature on verification of experience forms;
- A school district employee verifying LEP experience;
- Licensee and registrant signatures on renewal applications;
- Applicant's signature on license "reactivation" applications.

Christina Wong moved to recommend to the Board that it commence rulemaking to amend California Code of Regulations, Title 16, sections 1804 - filing of addresses, 1805 - applications, 1820.7 - confirmation of qualifications to treat couples and families, and 1856 - experience equivalent to three years, full-time experience as credentialed school psychologist as proposed. Betty Connolly seconded. The Committee voted to pass the motion.

Committee vote:

- Deborah Brown – yes
- Betty Connolly – yes

Christina Wong – yes

VII. Discussion and Possible Recommendation Regarding Proposed Rulemaking to Amend California Code of Regulations, Title 16, Section 1820.5 – Exemptions for Working with Couples or Families

An LPCC cannot assess or treat couples or families until a licensee has met certain educational and supervised experience requirements. One of those requirements is 500 hours of supervised experience with couples, families or children. Current regulations state that an intern or a licensee can treat couples or families only if they are gaining that supervised experience.

The proposed regulatory changes would clarify who can supervise LPCCs and PCIs who are gaining experience in assessing or treating couples, families or children, and who wish to count that experience toward meeting the 500-hour requirement. The acceptable types of supervisors are currently implied by the regulation but needs to be made explicit.

The proposal would clearly specify that the required 500 hours of experience with couples, families or children must be supervised by one of the following licensees:

- A licensed professional clinical counselor who already meets the requirements specified in Section 4999.20(a)(3) of the Code.
- A supervisor who is an LCSW, licensed psychologist, or licensed physician who is board certified in psychiatry, who has sufficient education and experience in treating couples and families to competently practice couple and family therapy in California.

Christina Wong moved to recommend to the Board that it commence rulemaking to amend California Code of Regulations, Title 16, section 1820.5 – exemptions for working with couples or families. Betty Connolly seconded. The Committee voted to pass the motion.

Committee vote:

- Deborah Brown – yes
- Betty Connolly – yes
- Christina Wong – yes

VIII. Discussion and Possible Recommendation Regarding Assembly Bill 93 (Medina) – Healing Arts: Marriage and Family Therapists, Clinical Social Workers, Professional Clinical Counselors: Required Experience and Supervision

The Board approved the original language for AB 93 at its November 2106 meeting. The bill was introduced in January 2017.

Staff identified and suggested minor technical changes:

1. Change section references in statute that need to be updated due to renumbering.
2. Update title designations of individuals in the licensure process to more accurately identify them.

3. Change references from “intern” to “associate” to be in compliance with the title change effective January 1, 2018.
4. Clarify 9-Day Rule for LMFT and LPCC Applicants.
5. Clarify Six-Year Rule.
6. Clarify Pre-Degree Practicum/Field Study Experience.
7. Clarify Limits on Supervisees.

Deborah Brown moved to recommend to the Board that it approve statutory amendments to AB 93. Christina Wong seconded. The Committee voted to pass the motion.

Committee vote:

- Deborah Brown – yes
- Betty Connolly – yes
- Christina Wong – yes

IX. Discussion and Possible Recommendation Regarding Proposed Board Policy to Remove Board Newsletters from the Board Website

At its April 2016 meeting, the Policy and Advocacy Committee discussed whether the Board should retain the newsletter on its website and the length of time it should remain on the website. The Committee addressed concerns regarding the newsletter’s reference to citations, fines, and formal disciplinary actions.

The Committee decided that “Enforcement Citations” should be revised to “Administrative Actions”. Also, revising “Administrative Actions” to “Formal Disciplinary Actions” and revise the definition to indicate a higher level of discipline would provide further clarification to the public and licensees/respondents. The Committee was advised that these modifications could be done without any formal direction from the Board.

The remaining issue to consider was should the Board establish a policy to specify the removal of newsletters from the Board’s website that complies with five-year requirement specified in BPC §4990.09. Currently, a policy does not exist.

The Committee voted to recommend the Board establish a policy to remove the Board’s newsletters from its website within a specified period of time.

At its August 2016 meeting, the Board voted to establish a policy to remove the Board newsletters five years from the date the newsletter was posted on the Board’s website.

Christina Wong moved to recommend that the Board approve the proposed policy number B-17-1 regarding retention schedule for Board newsletters on the Board’s website. Betty Connolly seconded. The Committee voted to pass the motion.

Committee vote:

- Deborah Brown – yes
- Betty Connolly – yes
- Christina Wong – yes

X. Discussion and Possible Recommendation to Rescind Board Policy L-98-01 Inactive Licenses

This item was removed.

XI. Status of Board-Sponsored 2017 Legislation

AB 93 Healing Arts: Marriage and Family Therapists: Clinical Social Workers: Professional Clinical Counselors: Required Experience and Supervision.

This bill was discussed under agenda item VIII.

Omnibus Legislation

This bill is run every year by the Senate Business, Professions, and Economic Development Committee. The bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law. Language has been submitted, but has not been introduced yet. The deadline for the legislators to introduce bills for the year is February 17th.

XII. Status of Board Rulemaking Proposals

English as a Second Language: Additional Examination Time: Add Title 16, CCR Section 1805.2

Office of Administrative Law (OAL) did not approve this regulatory proposal. However, the Board has a 120-day extension to make revisions.

The proposed language outlined three criteria to qualify for an ESL accommodation. Two of the criteria were not clear enough:

1. Requirement to provide documentation, acceptable to the Board, that the school had granted an accommodation for English as a second language;
2. Requirement to provide documentation to the satisfaction of the Board, proving that the school's program was outside of the United States and presented in a language primarily other than English.

OAL stated that the Board must specify acceptable documentation. OAL also requested a more specific term for "primarily."

Board staff will update the language and bring it back to the Board for approval in March. OAL has agreed to review the language before staff brings it to the Board. If the Board approves the language, staff will run a 15-day notice. Staff has until June 2nd to get the new language back to OAL for approval.

XIII. Suggestions for Future Agenda Items

1. Dependency support groups:
 - Consider alternatives to dependency support that have some demonstrative research;
 - Research the effectiveness of AA or similar groups;
 - Invite a subject matter expert in substance abuse to present to the Board on new modalities.

2. Discuss LEPs supervision duplication and determine if there is need to keep it, or if it is appropriate to remove it.
3. Discuss changing the titles of registrants to a “limited license” or an “associate license” in a manner that is consistent with other states.

XIV. Public Comment for Items not on the Agenda

No public comments were presented.

XV. Adjournment

The Committee adjourned at 2:15 p.m.