



Board of Behavioral Sciences



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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

Policy and Advocacy Committee Minutes

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

DATE February 7, 2020

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

TIME 10:30 a.m.

ATTENDEES

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

Members Absent: Massimiliano “Max” Disposti, Public Member

Staff Present: Kim Madsen, Executive Officer
Steve Sodergren, Assistant Executive Officer
Sabina Knight, Legal Counsel
Rosanne Helms, Legislative Manager
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 10:36 a.m., and a quorum was established.

II. Approval of August 2, 2019 Committee Meeting Minutes

MOTION: Move to approve August 2, 2019 Committee meeting minutes.

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				
Max Disposti				x	
Christina Wong	x				

III. Approval of October 11, 2019 Committee Meeting Minutes

MOTION: Move to approve October 11, 2019 Committee meeting minutes.

Wong moved; Connolly seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

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

IV. Discussion and Possible Recommendation Regarding Notice to Clients About Filing a Complaint: Business and Professions Code Sections 4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22, and 4999.71

Last year, the Board sponsored AB 630, which amended the law to require that unlicensed or unregistered individuals providing psychotherapy services in exempt settings provide their clients with a notice about where to file a complaint about the therapist. AB 630 also requires Board licensed or registered therapists in any setting provide their clients with a similar notice stating that a complaint may be filed with the Board. These notices must be provided prior to initiating psychotherapy services.

The Board was asked to consider two clarifying amendments to the provisions of AB 630:

1. Additional Information to Clients of Unlicensed or Unregistered Therapists

The Senate Committee on Business, Professions, and Economic Development suggested additional language be included in the notice provided to clients of unlicensed or unregistered practitioners. The additional language would provide an additional resource to consumers unsure about their therapist's license status.

At its November 2019 meeting, the Board suggested adding the its website address to the language as an additional resource to consumers.

2. Timing of Providing the Notice to Clients

AB 630 requires the practitioner to provide the notice to clients about where to file a complaint prior to initiating psychotherapy services.

Stakeholders raised the concern that in crisis situations, it may not be feasible or appropriate to stop the delivery of immediate services to provide and/or discuss the required notice.

Staff recommends that the Board consider clarifying the notice requirement. The proposed amendment states that the notice must be provided prior to initiating psychotherapy services, or as soon as practically possible thereafter. This provides clarity that in a crisis situation with a new patient, the practitioner does not need to stop urgent services to provide the notice. Instead, they can provide the notice as soon as possible after the crisis has been addressed.

Staff also included proposed language stating that the delivery of the notice shall be documented.

MOTION: Direct staff to make any discussed changes, and any non-substantive changes, and bring to the Board for consideration as a legislative proposal.

Connolly moved; Brown seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

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

V. Discussion and Possible Recommendation Regarding Practice Setting Definitions Bill Proposal: Supervisor Work Setting Requirements: Business and Professions Code Sections 4980.43.4, 4996.23.3, and 4999.46.4

At its November 2019 meeting, the Board approved language for a bill proposal that provides concise definitions of the types of settings where its licensees and pre-licensees work.

The goal of the proposal is to reduce the confusion that often arises of where pre-licensees may or may not work based on how a business is structured. While the Board approved the bill, it determined one aspect should be brought back for further discussion.

Proposed Language

1. The proposal classifies all settings into two main types: exempt settings and non-exempt settings. The definition of exempt settings remains the same. Non-exempt settings are all settings that do not qualify as exempt settings.
2. The proposal carves out definitions of two special types of non-exempt settings: private practices and professional corporations. These definitions are used to place certain limitations on pre-licensees working in these specific types of settings.
3. The proposal limits supervisors in any non-exempt setting to six individual or triadic supervisees at a time.
4. The proposal requires that in a private practice or a professional corporation, the supervisor of an associate must be employed or contracted by the associate's employer or be an owner of the practice; and they must also provide psychotherapeutic services to clients at the same site.

The question that arose is whether it would be appropriate to extend this requirement to supervisors of associates and trainees in all non-exempt settings, not just those in a private practice or professional corporation.

Currently, the law does not place any such restrictions on a setting that does not qualify as a private practice or a professional corporation. Some items for consideration include the following:

- It is possible these sites (non-exempt settings that are not private practices or professional corporations) may have additional internal or government oversight that makes such a requirement less necessary.

- Some businesses that employ pre-licensed therapists may have several different sites or branches and may have employees that travel from site-to-site only to supervise. Therefore, the effects of requiring practice at the same site for these settings should be weighed against the often-limited supply of supervisors.
- The effect on trainees should also be considered. Since trainees are not permitted to work in a private practice or professional corporation, the proposed supervisor restrictions in #4 currently do not apply to them. However, if the proposed restrictions were extended to apply to all non-exempt settings, they would be affected, as the bill permits trainees to work in non-exempt settings that are not a private practice or a professional corporation. (This similarly would also affect applicants for registration who are utilizing the 90-day rule.)

Due to the uncertainty of how extending this limitation to all non-exempt settings would affect the supply of supervisors available to associates and trainees, staff suggests leaving the proposal as written for now (i.e. the restriction on requiring the supervisor to practice psychotherapeutic services at the same site would only apply to private practice and professional corporations). If concerns arose in the future, this topic could be reconsidered.

Ben Caldwell: Unintended consequence: Supervisees doing home visits. Does the supervisor have to be doing business in those same homes? In regard to telehealth and considering location where therapy takes place, when working with a client outside of California at time of service, that therapy is considered to have taken place where the client is located.

Helms: Responding to Dr. Caldwell's comment: Language was changed with AB 93. Section 4980.43.4(a) states that the trainee or associate should only perform mental health services where their employer permits business to be conducted.

Jennifer Alley, California Association of Marriage and Family Therapists (CAMFT): This needs more research and feedback before making additional changes to the exempt and non-exempt sites. CAMFT has questions about some school services, crisis hotlines, and those types of entities.

The Committee did not have changes to the approved language. No further action was taken.

VI. Discussion and Possible Recommendation Regarding Custody of Client Records Due to Licensee Death or Incapacitation

The Board's statutes and regulations do not address client records retention when a therapist dies or becomes incapacitated. At its October 2019 meeting, the Committee discussed amending statutes or regulations to provide further clarity. It directed staff to explore the issue further.

Informed Consent

The Committee discussed utilizing an informed consent document to provide clients with information about the transfer of records in the case of the therapist's death or incapacitation. Currently, the Board's licensing laws do not specifically require a single comprehensive informed consent document prior to the beginning of therapy. However, the law does require specified information be disclosed to the client.

Although the Board does not currently require a single informed consent document, many of the required disclosures are required at the beginning of the therapeutic relationship.

Staff surveyed some states. The following states have specific requirements in law for a comprehensive informed consent:

- Texas: Professional counselors are specifically required by law to obtain a signed informed consent form from their clients that covers certain topics, including fees, limits on confidentiality, counseling purposes and goals, and the plan for custody and control of the client's records in the event of the licensee's death or incapacity.
- Colorado: Requires a "mandatory disclosure" of information to clients. This is a document that all professional counselor licensees and registrants must provide to their clients during initial client contact. The law requires very specific information be included in this document, including an explanation of levels of regulation of mental health professionals, degrees, certifications, and licenses held by the practitioner, contact information for the regulating board, and information about confidentiality. However, it does not require any disclosure information about custody of records in the event of the practitioner's death or incapacitation.

Professional Associations

Several relevant professional associations touch on the importance of preparing a practice for the therapist's death or incapacitation in their codes of ethics:

- National Association of Social Workers (NASW) Code of Ethics (2017)

- California Association of Marriage and Family Therapists (CAMFT) Code of Ethics (2019)
- The American Counseling Association's 2014 ACA Code of Ethics
- American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (2017)

Other States

In addition to Texas, some other states have taken steps to require that their licensed mental health professionals ensure safekeeping of client records in the event of their death.

- **Florida:** Florida has a regulation for its licensed mental health professionals that requires that if client termination was due to the licensee's death, records must be maintained for at least two years. After that, the executor, administrator, or survivor must publish a notice once a week for 4 consecutive weeks in the highest circulated newspaper in each county of practice. The notice must state that the records will be disposed of or destroyed 4 weeks or later from the notice publication. (Florida Administrative Code §64B4-9.001(4))
- **Oregon:** The Oregon Board of Licensed Professional Counselors and Therapists requires its licensed marriage and family therapists and professional counselors to arrange for the maintenance of and access to records in the event of the death or incapacity of the licensee. Oregon licensees must file the name of a custodian of record with the board, along with that person's/organization's contact information. The custodian of record must be an Oregon-licensed mental health professional, a licensed medical professional, a health care or mental health organization, and attorney, a school, or a medical records company. (Oregon Administrative Rules Chapter 833, §833-075-0080)
- **Washington:** The state of Washington requires its licensed mental health counselors, marriage and family therapists, and social workers to make provisions for retaining or transferring records in the event of going out of business, death, or incapacitation. The provisions may be made in the practitioner's will, an office policy, or by ensuring another licensed counselor is available to review records with a client, or other appropriate means. (Washington Administrative Code §246-809-035(5))

HIPAA and Client Records

How does establishing a plan to transfer client records to another practitioner upon a therapist's death interact with the federal Health Insurance Portability and Accountability Act (HIPAA)? The U.S. Department of Health and Human Services (HHS) has an FAQ about HIPAA for professionals on its web site. It

states that health care providers are permitted to use health information for treatment purposes without the patient's authorization, including to consult with other providers or to refer the patient.

Connolly: There is no enforcement capability. Do we want to incorporate all of the codes of ethics into an informed consent form?

Madsen: Agrees with Ms. Connolly.

Sodergren: Agrees with Ms. Connolly – does not want to put language in place stating that therapists need to make arrangements for record management but would rather communicate to therapists to read their code of ethics or provide information about record-keeping.

Madsen: There's no enforcement mechanism, even if the Board mandates it.

Sodergren: The Board can educate consumers regarding their records and educate therapists as well.

Kenneth Edwards, California Association of Licensed Professional Clinical Counselors (CALPCC): Having this conversation puts the ball back in the association's court. They realize that this is an issue and they know to talk to its members about it. Suggests that the Board write an article about it and the association will pass it on.

Jennifer Alley, CAMFT: This is an issue, and CAMFT will continue to educate their members.

Ben Caldwell: This is a public protection issue. If the Board wishes to pursue this, there may be a way to do that (referred to Oregon's mandate); making that additional information provided by the licensee publicly accessible without the Board becoming the custodian of records.

Janlee Wong, National Association of Social Workers California Division (NASW-CA): Dr. Caldwell's suggestion would create a lot of workload for 120,000 licensees. How would the Board keep track of this information? Expressed concern regarding liability. Also pointed out that records should not be handed over to clients without a review of those records with a therapist. Prefers that this issue remains addressed by the Code of Ethics.

The Committee agreed to allow the associations address this matter via their codes of ethics to address this matter. No action taken.

VII. Update on Status of Board-Sponsored Legislation

Board staff is currently pursuing the following legislative proposals:

1. Practice Setting Definitions

This bill proposal seeks to eliminate the confusion about where pre-licensees may work by providing specific definitions of private practice, professional corporation, and non-exempt settings.

2. Fee Increase Proposal

This bill proposal would increase the licensing, registration, and examination fees charged by the Board.

3. Omnibus Proposal (Senate Business, Professions, and Economic Development Committee)

This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

VIII. Update on Board Rulemaking Proposals

1. Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

Status: DCA Final Review Process

Madsen: Staff received notification that there may be some suggested changes to the language that the Board previously approved. Staff may bring more language back to the Board at its March meeting.

2. Enforcement Process

Status: On Hold

This proposal would result in updates to the Board's disciplinary process. It would also make updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines," which are incorporated by reference into the Board's regulations.

The proposal was approved by the Board at its meeting in February 2017 and was submitted to DCA to begin the initial review process in July 2017. This regulation package was placed on hold due to the passage of AB 2138 and remains on hold pending passage of the AB 2138 regulations.

3. Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

Status: Submitted to OAL for Final Approval

This proposal would amend the Board's examination rescoring provisions to clarify that rescoring pertains only to exams taken via paper and pencil, since all other taken electronically are automatically rescored. This proposal would also make clarifying, non-substantive changes to the Board's application abandonment criteria, and clarify the fee required for subsequent Associate Professional Clinical Counselor registrations.

4. Supervision

Status: To be Noticed on February 7, 2020; Public Hearing on March 23, 2020

IX. Public Comment for Items Not on the Agenda

None

X. Suggestions for Future Agenda Items

Jerry Shapiro: Law and ethics testing for graduate students. Graduate students are in field placements seeing clients. There should be an instrument that formalizes the expectation. It also provides them the opportunity to prepare for the licensing examination. Suggested a 25-question, modified Law & Ethics exam that would cover key areas such as reporting, protection, confidentiality.

XI. Adjournment

The Committee adjourned at 11:53 a.m.