



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

A recorded webcast of this meeting is available at
<https://www.youtube.com/watch?v=IfV5xX52FWs>

DATE October 11, 2024

TIME 10:00 a.m.

LOCATIONS

Primary Location Department of Consumer Affairs
1625 North Market Blvd., #S-102
Sacramento, CA 95834

Alternative Platform WebEx Video/Phone Conference

ATTENDEES

Members Present at Remote Locations

Christopher Jones, Chair, LEP Member (*arrived at 10:37 a.m.*)
Wendy Strack, Public Member
Abigail Ortega, LCSW Member
John Sovec, LMFT Member

Staff Present at Primary Location

Steve Sodergren, Executive Officer
Rosanne Helms, Legislative Manager
Christy Berger, Regulatory Manager
Christina Kitamura, Administrative Analyst
Syreeta Risso, Special Projects and Research Analyst
Kristy Schieldge, Legal Counsel
Sabina Knight, Legal Counsel

Staff Present at Remote Locations

Marlon McManus, Assistant Executive Officer

Other Attendees

Public participation via WebEx video conference/phone conference
and in-person at Department of Consumer Affairs

1. Call to Order and Establishment of Quorum

Wendy Strack, Vice Chair of the Policy & Advocacy Committee (Committee), called the meeting to order at 10:02 a.m. Roll was called, and a quorum was established.

2. Introductions

Committee members introduced themselves during role call; staff and public attendees introduced themselves.

3. Consent Calendar: Discussion and Possible Approval of August 9, 2024 Committee Meeting Minutes

This item was tabled.

4. Discussion and Possible Recommendation Regarding Proposed Amendments to the Business and Professions Code: Amend BPC §4999.46.2 Regarding Supervision for Professional Clinical Counselor Trainees; Amend BPC §§4980.43.3, 4996.23.2, and 4999.46.3 Regarding W-2 Forms for Supervised Experience Claimed; Amend BPC §§4982, 4989.54, and 4992.3 Regarding Unprofessional Conduct Provisions for Telehealth; and Amend BPC §4980.38 Regarding Degree Program Certification of Meeting Licensure Requirements

Additional amendments were proposed to include in the upcoming omnibus or sunset bill:

1) Amend Business and Professions Code (BPC) §4999.46.2: Supervision for Professional Clinical Counselor Trainees (Both Versions)

BPC §4999.46.2(a)(2): For experience gained after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.

Recommendation: Delete the above sentence in BPC §4999.46.2(a)(2).

2) Amend BPC §§4980.43.3, 4996.23.2, and 4999.46.3: W-2 Forms for Supervised Experience Claimed

BPC §§ 4980.43.3(a)(1), 4996.23.2(a)(1), and 4999.46.3(a)(1) require associates applying for LMFT, LCSW, and LPCC licensure to provide the Board with copies of their W-2 tax forms for each year of experience claimed upon application for licensure.

Recommendation: Add clarifying language to each of the listed sections stating if the W-2 is not available for experience gained during the tax year that has not yet ended, the associate needs to provide a copy of the most recent pay stub.

3) Amend BPC §§ 4982, 4989.54, and 4992.3: Unprofessional Conduct Provisions for Telehealth.

BPC §§4982, 4989.54, 4992.3, and 4999.90 contain a provision making it unprofessional conduct to violate BPC §2290.5, which is the section of law that outlines the requirements for the provision of health care services via telehealth. However, each section uses different language to state that violating BPC §2290.5 is unprofessional conduct.

Recommendation: Amend BPC §§4982(z), 4989.54(d), and 4992.3(aa) to reflect the same language used in LPCC statute (BPC §4999.90(ac)).

4) Amend BPC §4980.38: Degree Program Certification of Meeting Registration and Licensure Requirements.

BPC §4980.36 contains the current degree requirements for AMFT registration and LMFT licensure. BPC §4980.37 contains the requirements for older degrees for AMFT registration and LMFT licensure that were begun before August 1, 2012 and completed before December 31, 2018.

Applicants with older degrees qualifying under BPC §4980.37 must complete additional coursework before sitting for the licensing exams. These courses are alcoholism and other chemical substance dependency, and spousal or partner abuse assessment, detection, and intervention.

Prior to 2014, those two courses must have been completed within the qualifying master's degree program. If they were not, the courses could not be remediated, and the degree was considered non-qualifying. To address this, the Board sponsored AB 428, which allowed these two courses to be remediated outside of the degree program.

However, BPC §4980.38, which requires degree programs to certify that their degree meets the requirements for licensure, still requires schools with degrees that qualified under BPC §4980.37 (pre-2012 degrees) to certify that the two courses listed in BPC §4980.41(a)(4) and (5) are contained in their qualifying degree.

Recommendation: Strike the requirement in BPC §4980.38(b)(2) that a qualifying degree program certify that it meets the requirements in BPC §4980.41(a)(4) and (5), as those two courses are permitted to be remediated outside of the qualifying degree program.

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

M/S: Sovec/Ortega

Public Comments

Shanti Ezrine, California Association of Marriage and Family Therapists (CAMFT), and Selena Liu Raphael stated they had no concerns regarding the proposed amendments.

Motion carried: 3 yea, 0 nay, 1 absent

Member	Vote
Christopher Jones	Absent
Abigail Ortega	Yes
John Sovec	Yes
Wendy Strack	Yes

5. Discussion and Possible Recommendation Regarding Licensing Requirements for the “90-day Rule” (BPC §§4980.43(b), 4996.23(b), and 4999.46(b))

The 90-day rule has raised concerns due to gaps in regulatory oversight, as it allows new graduates to begin practicing and gaining clinical experience without a registration number, leaving them outside the Board's direct jurisdiction. Although the Board typically processes applications within 40 days, delays can occur due to deficiencies in an application, which applicants have up to one year to resolve. During this period, these individuals are practicing without an official registration number, limiting the Board's ability to monitor or regulate them. This lack of oversight poses a potential risk to consumer protection, as the Board has limited authority to address complaints or issues involving these practitioners before their registration is approved.

The debate over the 90-day rule centers on balancing consumer protection, workforce development, and the needs of professionals in training. Stakeholders have voiced concerns about eliminating the rule, as it enables new graduates to start accruing supervised hours immediately, helping to address the demand for mental health practitioners. In addition, many graduates would still be working in exempt settings, and there are no rules surrounding supervisors/supervision in those settings, nor for fingerprinting. This would result in reduced consumer protection in those settings. By following the rules for gaining hours of experience, they will have a qualified supervisor and will follow the rules for supervision. Although Live Scan background checks have been implemented, concerns persist about the Board's limited ability to oversee and regulate practitioners during this period

History

2013: BBS staff conducted a one-year study to track individuals within the 90-day period and determine if there were any significant abuses or concerns from the enforcement unit. One concern was that an applicant with a criminal background could be practicing until BBS denies their application or approves it, which in these cases, could take longer than a year.

Furthermore, applicants who apply within the 90-day rule can still practice while they are addressing deficiencies in their applications until their applications expire or until BBS approves it.

2018: AB 93 was introduced, which proposed to do away with the 90-day rule. The professional associations did not advocate for AB 93. The solution to AB 93 was to require Live Scan fingerprinting of individuals applying under the 90-day rule through their employers.

Discussion

The following questions were asked:

- What were the concerns in 2018, if nothing significant was found in the study? Answer: Lack of oversight over this population of practitioners and not knowing who is practicing.
- What are the percentages of deficiencies? Answer: About 20%
- If BBS implements a registration for trainees, will this slow the registration process? Answer: Sodergren believes it will benefit the registration process.
- To begin registering trainees, would it require statute and regulation? Answer: Yes
- Would the cost for trainees be included as part of the registration packet? Answer: The idea would be to make it as least burdensome as possible on the trainee.

Public Comments

Shanti Ezrine, CAMFT: CAMFT does not support removal of the 90-day rule for the following reasons: 1. Significant negative impacts on continuity of care. 2. Delays in processing applications can occur, and would lead to long wait times and losing out on clinical hours that those associations or those post-graduates would otherwise have gained working in exempt settings between graduation and the time that their registration is approved. 3. The Department of Healthcare Services provided their notice that allows Medi-Cal behavioral health delivery systems to utilize post-graduate candidates, who submitted their application for associate registration under the 90-day rule, to provide services to Medi-Cal beneficiaries.

Sara Carrasco, William Jessup University: Supports the 90-day rule. Also supports trainee registration.

Selena Liu Raphael, California Alliance of Child and Family Services: Does not support removal of the 90-day rule. Advocated for continuity of care and eliminating barriers to licensure.

Cathy Atkins, CAMFT: Emphasized the importance of ensuring that no harm is done to providers and patients.

Dr. Ben Caldwell: It is not clear whether there is a problem to be solved, and the study suggested that there were no significant concerns with the current 90-day rule. The current Live Scan requirement ensures public protection. Also noted that universities may have concerns with the notion of registering trainees. If there is any possibility of a trainee application being deficient, that will impact universities and timeliness of degree completion, which in turn affects accreditation status.

Dr. Nicholas Boyd: Disagreed that there are no issues with the Board not having oversight of those practicing in the field without a license or registration. The number of trainees or the status of trainees practicing in the field is unknown. There are over 50 universities in the state, and hundreds, potentially thousands of those practicing just from California institutions; and an unknown number of out-of-state trainees. Urges the committee to consider what the impact is, given that there is no mechanism to report issues with consumer protection.

Chiaki Nomoto: Supports trainee registration.

Natasha Wright: The 90-day rule provides a way for graduates to continue working. There can be long delays in getting the associate number, and it can impact the ability to obtain and maintain employment. If the 90-day rule is repealed, there should be another system in place that provides a way to continue working.

Staff was directed to conduct more research on potential registration for trainees.

6. Update on Board-Sponsored and Board-Monitored Legislation

Board-Sponsored Legislation

SB 1024 (Ochoa Bogh) Healing Arts: Board of Behavioral Sciences: Licensees and Registrants

Status: Signed by the Governor and becomes effective January 1, 2025

SB 1526 (Senate Business, Professions and Economic Development Committee) Consumer Affairs (Omnibus Bill Proposal)

Status: Signed by the Governor

Board-Supported Legislation

SB 26 (Umberg) Mental Health Professions: CARE Scholarship Program

Status: Vetoed by the Governor.

SB 1067 (Smallwood-Cuevas) Healing Arts: Expedited Licensure Process: Medically Underserved Area or Population

Status: Vetoed by the Governor.

Board-Monitored Legislation

AB 2270 (Maienschein) Healing Arts: Continuing Education: Menopausal Mental or Physical Health

Status: Signed by the Governor.

AB 2581 (Maienschein) Healing Arts: Continuing Education: Maternal Mental Health

Status: Signed by the Governor.

Public Comment

Elyse Springer: More legislation concerning maternal mental health screening is coming. The new bill is AB 1936, which builds on a prior maternal mental health screening bill (AB 2193) that required screening during pregnancy.

7. Update on Board Rulemaking Proposals

Disciplinary Guidelines

Status: Submitted to DCA Office of Legal Affairs to Begin Initial Review Process;
Additional Changes Approved by the Board at September 2024 Meeting

Unprofessional Conduct

Status: Public Comment Period for Modified Text Ended June 25, 2024;
Approved by Administrative Law for Approval

Telehealth

Status: Submitted to DCA Office of Legal Affairs for Initial Review Process

Continuing Education

Status: Submitted to DCA Office of Legal Affairs for Initial Review Process

Advertising

Status: Approved by the Board at its meeting in September 2024

8. Suggestions for Future Agenda items

None

9. Public Comment for Items not on the Agenda

Cathy Atkins, CAMFT expressed thanks to the Board staff and recognized its efforts while working with stakeholders/associations.

10. Adjournment

The Committee adjourned at 11:09 a.m.