



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 was webcasted. A record of the webcast is available at <https://youtu.be/TZcF6CCLu28>.

DATE February 8, 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
Betty Connolly, LEP Member
Jonathan Maddox, LMFT Member
Dr. Christine Wietlisbach, Public 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 Committee Meeting Minutes

a. August 24, 2018

MOTION: To approve the August 24, 2018 minutes. Wietlisbach moved; Wong seconded. Vote: 4 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Betty Connolly	x				
Jonathan Maddox	x				
Dr. Christine Wietlisbach	x				
Christina Wong	x				

b. October 19, 2018

MOTION: To approve the October 19, 2018 minutes. Wong moved; Maddox seconded. Vote: 3 yea, 0 nay, 1 abstention. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Betty Connolly	x				
Jonathan Maddox	x				
Dr. Christine Wietlisbach			x		
Christina Wong	x				

III. Discussion and Possible Recommendation Regarding for Proposed Revisions to *Professional Therapy Never Includes Sex Informational Brochure*

AB 2968 was sponsored by the Board of Psychology and signed into law in 2018. AB 2968 does the following:

- Requires the Board of Psychology, Board of Behavioral Sciences, Medical Board and Osteopathic Medical Board to update the content of the “Professional Therapy Never Includes Sex” brochure.
- Included Licensed Educational Psychologists (LEP) in the list of professionals who must provide the brochure to clients who have indicated sexual behavior or contract with a previous therapist.
- Includes “sexual behavior” and defines it as inappropriate contact or communication of a sexual nature.

The Board of Psychology drafted language for the brochure. The draft was provided to the Board for review and feedback.

Board members and stakeholders provided feedback and wordsmithing recommendations. Board staff will present the recommendations to the Board of Psychology.

IV. Discussion and Possible Recommendation to Amend Business and Professions Code Sections 4980.36 and 4980.37 Adding Clinical Mental Health Counseling Degree Title

The Board has been asked to consider adding a new degree title to those accepted for licensure as a marriage and family therapist (LMFT). At its August 2018 meeting, the Board approved the addition of a new title, "Clinical Mental Health Counseling with a concentration in Marriage, Family, and Child Counseling" to increase portability of licensure to other states. However, upon further review, staff has determined that additional fine-tuning of the proposed title is needed.

Staff proposed language that permits a degree in either counseling or clinical mental health counseling, with an emphasis in either marriage, family, and child counseling or marriage and family therapy.

MOTION: To direct staff to make any discussed changes and any non-substantive changes and recommend to the Board for consideration as legislative proposal. Wietlisbach moved; Wong seconded. The motion carried; 4 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Betty Connolly	x				
Jonathan Maddox	x				
Dr. Christine Wietlisbach	x				
Christina Wong	x				

V. Discussion and Possible Recommendations Regarding Practice Setting Definitions and Subsequent Registration Numbers (Licensed Marriage and Family Therapist)

Christy Berger provided background on the Exempt Setting Committee's work. The Exempt Setting Committee explored different types of settings offering mental health services. It concluded that these settings need better definitions in law for the following reasons:

- To clarify acceptable practice settings for those in various stages of the licensing process; and

- To provide clarity in applying laws that reference or place limits on setting types that are not defined.

Language pertaining to LMFT statute was proposed.

Ms. Berger outlined the Exempt Setting Committee's findings on types of settings:

- Exempt settings
- For-profit business entities

Staff proposed an approach to address the numerous setting variations. Ms. Berger outlined the new proposal.

Discussion Topic

Is it appropriate for trainees to provide services in any setting, given that they will be under the oversight of their school as well as subject to a written agreement between the school and the site? What about applicants following the 90-day rule?

Mr. Maddox: It's important to consider limiting the placements or settings where trainees can provide services because:

1. They're inexperienced and need consistent oversight;
2. They need didactic training weekly;
3. The benefit of multidisciplinary exposure that would support their clinical growth.

Committee members expressed a concern regarding quality of experience.

Ms. Berger: Suggested to avoid defining settings, and instead, define "characteristics" of practice settings as a guide for trainees.

Kenneth Edwards, California Association for Licensed Professional Clinical Counselors (CALPCC): Agreed with Ms. Berger's comment about expanding what should happen in those settings, rather than outlining exactly how many people should be in the practice. However, he expressed hesitation to having a one-person practice.

Angela Blanchard, California Association of Marriage and Family Therapy (CAMFT): CAMFT is concerned about how to define private practice, what is best for the consumer and what is best for the trainee. CAMFT will work with the Board on this issue.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA): It's important to have an idea that whatever actions are taken, could have unintended consequences. One of the unintended consequences is

that the Board is starting to influence or dictate education policy. If the goal is to strengthen the degree, one way to do that is to require national accreditation for MFT degrees.

Ms. Connolly: The Board already dictates the setting in which a trainee can practice because the Board dictates whether it's going to accept those hours or not. The Board is not exceeding what it's already doing. We're only clarifying for trainees where they can get their hours that will be accepted.

Ms. Helms: The Exempt Setting Committee received feedback from schools that they want more clarity.

Discussion Topic

Are there any potential adverse effects of allowing 3rd party supervision in all settings?

Mr. Maddox: There should be a clinical supervisor onsite to help mitigate "inexperience" of an associate or trainee.

Ms. Berger: The law states that a supervisor must be employed full-time and practicing at the private practice site where associates are working.

Ms. Wong: Concerned that the term "all settings" in the proposed language would be interpreted as "any setting."

Ms. Madsen: Tabled this topic for further in-depth discussion.

Mr. Wong, NASW-CA: In the example of a one-person private practice that hires a third-party supervisor, and potential legal liability, does the consumer sue the private practice, the practitioner or the third-party supervisor? Suggested that this question be addressed in future discussion of this topic.

Mr. Edwards: Another consideration for discussion is when the third-party supervisor does not have the experience working with the trainee/associate that he/she is hired to work with.

Discussion Topic

Are there any thoughts about limiting supervisors in a non-exempt setting to four individual/triadic supervisees?

Darlene York: Staff's interpretation of current law: The supervisor can only have 3 associates in a private practice setting or a corporation. There is no limit in an exempt setting. However, they can have up to two people in their individual hour of supervision, which is now triadic. There is still no limit on how many they can supervise; so, when they go to their group, there are other

supervisors. But there's still no limit because now they are doing two hours of group. They're able to have up to eight in that group.

Ms. Madsen: The supervisor is responsible for those on the signed responsibility statement.

Mr. Wong, NASW-CA: Individual supervision and triadic supervision are very different types of supervision than group supervision.

Ms. Helms: Suggested leaving group supervision silent and removing it from the proposed language.

There were no comments opposing to increase supervision to one-to-four.

Ms. Berger: Pointed out that current law states one-to-three for private practice and professional corporations. This new proposal would subject a ratio to other certain types of for-profit settings that do not currently have a limit. It might have some unintended consequences.

Ms. Wong: Recommended to request that the Board Chair reconstitute the Exempt Setting Committee to work on this matter further and carve out the language and bring it back to the Policy and Advocacy Committee.

Discussion Topic

Should registration length be expanded to 8 years? Should subsequent registrants be allowed to work in any setting?

Ms. Connolly: Strongly supports extending to 8 years. However, concerned about how the language is written in regard to taking additional graduate-level coursework for those needing a subsequent registration. The language implies that the associate would have to re-enroll in a graduate program.

Mr. Maddox: Believes that coursework can be taken without enrolling in the MFT program, but it should be researched to ensure that is the case. Concerned about allowing the associate to practice in any setting after the initial registration. Allowing "perpetual associates" to work in those settings is a disincentive to get licensed.

Dr. Wietlisbach read a piece of Dr. Ben Caldwell's written comments:

"A greater concern is the requirement for the 15 units of graduate-level coursework." As CSU schools generally do not accept non-matriculating students, associates needing a second registration number would need to find a private university willing to offer this coursework to them. And even if they were able to find such a university, completion of these units requires significant investment in both time and money. At many private universities, graduate courses

cost \$1,000 or more per unit, and this cost is rising faster than general inflation. The education and testing necessary for a second registration number under this proposal is likely to be greater than \$20,000 for many.

Dr. Wietlisbach: This is very concerning. Is continuing education more appropriate in this situation? Supports extending the registration to 8 years; however, it needs to be limited because the intent of the law was not to allow associates to apply for subsequent registrations in order to continue working without obtaining licensure.

Mr. Maddox: Supports extending the registration to 8 years. Limiting the number of subsequent registrations is critical so that associates are pushed to get licensed. Also, limiting their capacity to work in private practice settings after their initial registration is important because associates who are not pursuing licensure should not work in independent settings.

Mr. Maddox: Suggested leaving the registration at 6 years and limiting the number of subsequent registrations so that the associate will have 12 years instead of 18 years of registration.

Ms. Connolly: That does not help the people that need a little more time to gain hours or pass the exam. Suggested considering an 8-year initial registration and a 4-year subsequent registration.

Mr. Sodergren: Subsequent registrations cause a lot of confusion. Suggested to eliminate subsequent registrations, determine what is an appropriate amount of time, and have a discussion on what happens after that period. After that, the associate may need to have current education instead of a subsequent registration.

Ms. Helms: Questions whether the Board can legally do that.

Ms. Knight: Suggested surveying other boards.

Ms. Berger: Likes the idea of eliminating subsequent registrations. If eliminated, the Board will not have to be concerned about defining private practice yet again. Concerned about how the legislature will receive this. Currently, perpetual associates are employed in settings, mostly exempt settings. And this is how those settings get Medi-Cal reimbursement, which is not what it's intended for. There may be workforce issues that need to be discussed.

Mr. Edwards: Eight years is a good number for registration. Supports the idea of eliminating subsequent registrations.

Ms. Blanchard: The additional 2 years above the 6-year registration is appropriate.

Ms. Wong: Recommended that this discussion will be deferred to the Exempt Setting Committee.

Dr. Wietlisbach: Suggested adding an LMFT member to the Exempt Setting Committee. The subject matter is very technical so it's important to have licensees on that committee.

Discussion Topic

Should the 6-year age of experience hours requirement remain, or should it be extended?

Staff will work on the language and defer this topic to the Exempt Setting Committee.

Discussion Topic

Is 15 semester units of graduate coursework an acceptable amount if a new registration number is needed after 8 years? What specific course topic areas should be covered in order to ensure the registrant remains current in a way that provides for public protection?

Ms. Helms: Suggested that the number of units follow the number of years of the registration.

Staff will work on the language and defer this topic to the Exempt Setting Committee.

VI. Discussion and Possible Recommendation for Proposed Rulemaking to Implement Assembly Bill 2138 Substantial Relationship and Rehabilitation Criteria

Ms. Helms provided a summary of AB 2138 and proposed regulations. AB 2138 made significant changes to the Board's enforcement process. It becomes effective on July 1, 2020.

Summary of AB 2138

Key provisions are as follows:

1. Only permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of the following criteria are met:

- The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony, or for those who must register as a sex offender.
 - The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession.
2. Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such case, the applicant must be informed that the disclosure is voluntary, and failure to disclose will not be a factor in a board's decision to grant or deny an application.
 3. Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession. These criteria will aid the board when considering the denial, suspension, or revocation of a license. The criteria must include all of the following:
 - The nature and gravity of the offense.
 - The number of years elapsed since the date of the offense.
 - The nature and duties of the profession in which the applicant seeks licensure or is licensed.
 4. Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation.
 5. Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has completed their criminal sentence without a violation of parole or probation or if the board finds its criteria for rehabilitation has been met.

Proposed Regulations

The Board must amend its regulations in order to implement the requirements of AB 2138. Currently, the Board defines substantial relationship criteria and criteria for rehabilitation. However, AB 2138 requires the criteria to be outlined in greater detail.

Key amendments to the regulations are as follows:

1. Substantial Relationship Criteria (§1812): Includes professional misconduct in the substantial relationship determination.

2. Substantial Relationship Criteria (§1812): Includes the nature and gravity of the offense, years elapsed since the offense, and the nature and duties of the profession as criteria for determining whether a crime is substantially related.
3. Substantial Relationship Criteria (§1812): Adds language that substantially related crimes include, but are not limited to, violations of Chapter 1 of Article 6 of Division 2 of the Business and Professions Code (these provisions cover rebates, refunds, and discounts, and also false advertising) or violations of any of the Board's practice acts.
4. Criteria for Rehabilitation (§§1813 and 1814): The criteria for rehabilitation for denial of licensure and for suspensions or revocations was expanded upon based on the requirements of AB 2138 and based upon guidance from the DCA Legal Affairs Division.
5. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (§1888): The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines are incorporated by reference via §1888 of the regulations. A portion of Uniform Standards need to be updated because they detail the Board's criteria for rehabilitation, which AB 2138 updated.
6. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines: Page 38 of this document references the Board's criteria for rehabilitation. AB 2138 updated these criteria, and therefore, the criteria listed on this page are outdated. Therefore, the section has been updated to directly reference the criteria as listed in section 1814 of the regulations. A section reference on this page has also been updated.

As regulations affecting the same text cannot run concurrently, the urgency of the AB 2138 regulations requires that the Board's Enforcement Process Regulation Proposal, which proposed significant changes to the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" and had been in DCA's initial review process since July 2017, must be placed on hold.

7. Required Actions Against Registered Sex Offenders (§1888.1): AB 2138 permits denial of a license for sex offense crimes that require registration pursuant to Penal Code (PC) Section 290(d)(2) or (3). PC §290 outlines sex offense violations by type of offense and length of registration required.

By specifying PC 290(d)(2) or (3) for sex offense denials, AB 2138 narrowed denials for sex offenses. Therefore, §1888.1 of the regulations must be amended to reflect this.

MOTION: To direct staff to make any discussed changes and any non-substantive changes and recommend to the Board for consideration as a regulatory proposal. Maddox moved; Wong seconded. The motion carried; 4 yea, 0 nay.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Betty Connolly	x				
Jonathan Maddox	x				
Dr. Christine Wietlisbach	x				
Christina Wong	x				

VII. Update on Board-Sponsored Legislation

Ms. Helms provided a brief update on Board-sponsored legislation.

Board staff is currently pursuing the following legislative proposals:

1. Licensed Portability to California (No Bill Number Assigned at This Time)

Staff found an author for this bill. The legislative council is drafting the finalized language with changes. The bill is expected to be introduced around February 22nd and before the Board in March.

2. Psychotherapy Services: Required Notice to Clients (No Bill Number Assigned at This Time)

Staff found an author for this bill. The bill should be introduced by next week.

3. Omnibus Legislation (Senate Business, Professions, and Economic Development Committee) (No Bill Number Assigned at This Time)

This bill has been submitted to the Senate Business and Professions Committee for consideration.

VIII. Update on Board Rulemaking Proposals

Ms. Berger provided a brief update on Board regulation proposals.

1. Enforcement Process

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 began the DCA initial review process in July 2017. This regulation package is currently on hold due to the passage of AB 2138.

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

The proposal was approved by the Board at its meeting in November 2017 and began the DCA initial review process in April 2018. It was approved for filing with OAL on January 11, 2019. Staff is preparing the documents to file with OAL for publishing to initiate the 45-day public comment period.

3. Supervision

The proposal was approved by the Board at its meeting in November 2016 and was held aside while awaiting passage of the Board’s supervision legislation (AB 93). Staff is currently preparing the documents necessary to begin the DCA initial review process.

IX. Public Comment for Items Not on the Agenda

None

X. Suggestions for Future Agenda Items

None

XI. Adjournment

The Committee adjourned at 12:02 p.m.