

Policy and Advocacy Committee Minutes

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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.

1 **II. Approval of August 2, 2019 Committee Meeting Minutes**

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

4
5 Connolly moved; Wong seconded. Vote: 3 yea, 0 nay. Motion carried.

6
7 Roll call vote:

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

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10 **III. Approval of October 11, 2019 Committee Meeting Minutes**

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

13
14 Wong moved; Connolly seconded. Vote: 3 yea, 0 nay. Motion carried.

15
16 Roll call vote:

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

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19 **IV. Discussion and Possible Recommendation Regarding Notice to Clients**
20 **About Filing a Complaint: Business and Professions Code Sections**
21 **4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22, and 4999.71**

22
23 Last year, the Board sponsored AB 630, which amended the law to require that
24 unlicensed or unregistered individuals providing psychotherapy services in
25 exempt settings provide their clients with a notice about where to file a
26 complaint about the therapist. AB 630 also requires Board licensed or
27 registered therapists in any setting provide their clients with a similar notice
28 stating that a complaint may be filed with the Board. These notices must be
29 provided prior to initiating psychotherapy services.

30
31 The Board was asked to consider two clarifying amendments to the provisions
32 of AB 630:

33 1. Additional Information to Clients of Unlicensed or Unregistered Therapists

34 The Senate Committee on Business, Professions, and Economic
35 Development suggested additional language be included in the notice

1 provided to clients of unlicensed or unregistered practitioners. The
2 additional language would provide an additional resource to consumers
3 unsure about their therapist's license status.
4

5 At its November 2019 meeting, the Board suggested adding the its website
6 address to the language as an additional resource to consumers.
7

8 2. Timing of Providing the Notice to Clients

9 AB 630 requires the practitioner to provide the notice to clients about where
10 to file a complaint prior to initiating psychotherapy services.
11

12 Stakeholders raised the concern that in crisis situations, it may not be feasible
13 or appropriate to stop the delivery of immediate services to provide and/or
14 discuss the required notice.
15

16 Staff recommends that the Board consider clarifying the notice requirement.
17 The proposed amendment states that the notice must be provided prior to
18 initiating psychotherapy services, or as soon as practically possible thereafter.
19 This provides clarity that in a crisis situation with a new patient, the practitioner
20 does not need to stop urgent services to provide the notice. Instead, they can
21 provide the notice as soon as possible after the crisis has been addressed.
22

23 Staff also included proposed language stating that the delivery of the notice
24 shall be documented.
25

26 **MOTION:** Direct staff to make any discussed changes, and any non-
27 substantive changes, and bring to the Board for consideration as a legislative
28 proposal.
29

30 Connolly moved; Brown seconded. Vote: 3 yea, 0 nay. Motion carried.
31

32 Roll call vote:

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

33

1 **V. Discussion and Possible Recommendation Regarding Practice Setting**
2 **Definitions Bill Proposal: Supervisor Work Setting Requirements:**
3 **Business and Professions Code Sections 4980.43.4, 4996.23.3, and**
4 **4999.46.4**

5
6 At its November 2019 meeting, the Board approved language for a bill proposal
7 that provides concise definitions of the types of settings where its licensees and
8 pre-licensees work.

9
10 The goal of the proposal is to reduce the confusion that often arises of where
11 pre-licensees may or may not work based on how a business is structured.
12 While the Board approved the bill, it determined one aspect should be brought
13 back for further discussion.

14
15 Proposed Language

- 16 1. The proposal classifies all settings into two main types: exempt settings and
17 non-exempt settings. The definition of exempt settings remains the same.
18 Non-exempt settings are all settings that do not qualify as exempt settings.
19
20 2. The proposal carves out definitions of two special types of non-exempt
21 settings: private practices and professional corporations. These definitions
22 are used to place certain limitations on pre-licensees working in these
23 specific types of settings.
24
25 3. The proposal limits supervisors in any non-exempt setting to six individual or
26 triadic supervisees at a time.
27
28 4. The proposal requires that in a private practice or a professional
29 corporation, the supervisor of an associate must be employed or contracted
30 by the associate's employer or be an owner of the practice; and they must
31 also provide psychotherapeutic services to clients at the same site.
32

33 The question that arose is whether it would be appropriate to extend this
34 requirement to supervisors of associates and trainees in all non-exempt
35 settings, not just those in a private practice or professional corporation.
36

37 Currently, the law does not place any such restrictions on a setting that
38 does not qualify as a private practice or a professional corporation. Some
39 items for consideration include the following:
40

- 41 • It is possible these sites (non-exempt settings that are not private
42 practices or professional corporations) may have additional internal or
43 government oversight that makes such a requirement less necessary.
44

- 1 • Some businesses that employ pre-licensed therapists may have several
2 different sites or branches and may have employees that travel from
3 site-to-site only to supervise. Therefore, the effects of requiring practice
4 at the same site for these settings should be weighed against the often-
5 limited supply of supervisors.
6
- 7 • The effect on trainees should also be considered. Since trainees are not
8 permitted to work in a private practice or professional corporation, the
9 proposed supervisor restrictions in #4 currently do not apply to them.
10 However, if the proposed restrictions were extended to apply to all non-
11 exempt settings, they would be affected, as the bill permits trainees to
12 work in non-exempt settings that are not a private practice or a
13 professional corporation. (This similarly would also affect applicants for
14 registration who are utilizing the 90-day rule.)
15

16 Due to the uncertainty of how extending this limitation to all non-exempt
17 settings would affect the supply of supervisors available to associates and
18 trainees, staff suggests leaving the proposal as written for now (i.e. the
19 restriction on requiring the supervisor to practice psychotherapeutic services at
20 the same site would only apply to private practice and professional
21 corporations). If concerns arose in the future, this topic could be reconsidered.
22

23 Ben Caldwell: Unintended consequence: Supervisees doing home visits.
24 Does the supervisor have to be doing business in those same homes? In
25 regard to telehealth and considering location where therapy takes place, when
26 working with a client outside of California at time of service, that therapy is
27 considered to have taken place where the client is located.
28

29 Helms: Responding to Dr. Caldwell's comment: Language was changed with
30 AB 93. Section 4980.43.4(a) states that the trainee or associate should only
31 perform mental health services where their employer permits business to be
32 conducted.
33

34 Jennifer Alley, California Association of Marriage and Family Therapists
35 (CAMFT): This needs more research and feedback before making additional
36 changes to the exempt and non-exempt sites. CAMFT has questions about
37 some school services, crisis hotlines, and those types of entities.
38

39 The Committee did not have changes to the approved language. No further
40 action was taken.
41

1 **VI. Discussion and Possible Recommendation Regarding Custody of Client**
2 **Records Due to Licensee Death or Incapacitation**
3

4 The Board’s statutes and regulations do not address client records retention
5 when a therapist dies or becomes incapacitated. At its October 2019 meeting,
6 the Committee discussed amending statutes or regulations to provide further
7 clarity. It directed staff to explore the issue further.
8

9 Informed Consent

10 The Committee discussed utilizing an informed consent document to provide
11 clients with information about the transfer of records in the case of the
12 therapist’s death or incapacitation. Currently, the Board’s licensing laws do not
13 specifically require a single comprehensive informed consent document prior to
14 the beginning of therapy. However, the law does require specified information
15 be disclosed to the client.
16

17 Although the Board does not currently require a single informed consent
18 document, many of the required disclosures are required at the beginning of the
19 therapeutic relationship.
20

21 Staff surveyed some states. The following states have specific requirements in
22 law for a comprehensive informed consent:
23

- 24 • Texas: Professional counselors are specifically required by law to obtain a
25 signed informed consent form from their clients that covers certain topics,
26 including fees, limits on confidentiality, counseling purposes and goals, and
27 the plan for custody and control of the client’s records in the event of the
28 licensee’s death or incapacity.
29
- 30 • Colorado: Requires a “mandatory disclosure” of information to clients. This
31 is a document that all professional counselor licensees and registrants must
32 provide to their clients during initial client contact. The law requires very
33 specific information be included in this document, including an explanation
34 of levels of regulation of mental health professionals, degrees, certifications,
35 and licenses held by the practitioner, contact information for the regulating
36 board, and information about confidentiality. However, it does not require
37 any disclosure information about custody of records in the event of the
38 practitioner’s death or incapacitation.
39

40 Professional Associations

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

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

- 1 • California Association of Marriage and Family Therapists (CAMFT) Code of
2 Ethics (2019)
- 3 • The American Counseling Association's 2014 ACA Code of Ethics
- 4 • American Psychological Association's (APA's) Ethical Principles of
5 Psychologists and Code of Conduct (2017)
- 6

7 Other States

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

- 11
- 12 • **Florida:** Florida has a regulation for its licensed mental health professionals
13 that requires that if client termination was due to the licensee's death,
14 records must be maintained for at least two years. After that, the executor,
15 administrator, or survivor must publish a notice once a week for 4
16 consecutive weeks in the highest circulated newspaper in each county of
17 practice. The notice must state that the records will be disposed of or
18 destroyed 4 weeks or later from the notice publication. (Florida
19 Administrative Code §64B4-9.001(4))
- 20
- 21 • **Oregon:** The Oregon Board of Licensed Professional Counselors and
22 Therapists requires its licensed marriage and family therapists and
23 professional counselors to arrange for the maintenance of and access to
24 records in the event of the death or incapacity of the licensee. Oregon
25 licensees must file the name of a custodian of record with the board, along
26 with that person's/organization's contact information. The custodian of
27 record must be an Oregon-licensed mental health professional, a licensed
28 medical professional, a health care or mental health organization, and
29 attorney, a school, or a medical records company. (Oregon Administrative
30 Rules Chapter 833, §833-075-0080)
- 31
- 32 • **Washington:** The state of Washington requires its licensed mental health
33 counselors, marriage and family therapists, and social workers to make
34 provisions for retaining or transferring records in the event of going out of
35 business, death, or incapacitation. The provisions may be made in the
36 practitioner's will, an office policy, or by ensuring another licensed counselor
37 is available to review records with a client, or other appropriate means.
38 (Washington Administrative Code §246-809-035(5))
- 39

40 HIPAA and Client Records

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

1 states that health care providers are permitted to use health information for
2 treatment purposes without the patient's authorization, including to consult with
3 other providers or to refer the patient.
4

5 Connolly: There is no enforcement capability. Do we want to incorporate all of
6 the codes of ethics into an informed consent form?
7

8 Madsen: Agrees with Ms. Connolly.
9

10 Sodergren: Agrees with Ms. Connolly – does not want to put language in place
11 stating that therapists need to make arrangements for record management but
12 would rather communicate to therapists to read their code of ethics or provide
13 information about record-keeping.
14

15 Madsen: There's no enforcement mechanism, even if the Board mandates it.
16

17 Sodergren: The Board can educate consumers regarding their records and
18 educate therapists as well.
19

20 Kenneth Edwards, California Association of Licensed Professional Clinical
21 Counselors (CALPCC): Having this conversation puts the ball back in the
22 association's court. They realize that this is an issue and they know to talk to
23 its members about it. Suggests that the Board write an article about it and the
24 association will pass it on.
25

26 Jennifer Alley, CAMFT: This is an issue, and CAMFT will continue to educate
27 their members.
28

29 Ben Caldwell: This is a public protection issue. If the Board wishes to pursue
30 this, there may be a way to do that (referred to Oregon's mandate); making that
31 additional information provided by the licensee publicly accessible without the
32 Board becoming the custodian of records.
33

34 Janlee Wong, National Association of Social Workers California Division
35 (NASW-CA): Dr. Caldwell's suggestion would create a lot of workload for
36 120,000 licensees. How would the Board keep track of this information?
37 Expressed concern regarding liability. Also pointed out that records should not
38 be handed over to clients without a review of those records with a therapist.
39 Prefers that this issue remains addressed by the Code of Ethics.
40

41 The Committee agreed to allow the associations address this matter via their
42 codes of ethics to address this matter. No action taken.
43

1 **VII. Update on Status of Board-Sponsored Legislation**

2
3 Board staff is currently pursuing the following legislative proposals:

4 1. Practice Setting Definitions

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

8
9 2. Fee Increase Proposal

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

12
13 3. Omnibus Proposal (Senate Business, Professions, and Economic
14 Development Committee)

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

17
18
19 **VIII. Update on Board Rulemaking Proposals**

20
21 1. Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

22 Status: DCA Final Review Process

23
24 Madsen: Staff received notification that there may be some suggested
25 changes to the language that the Board previously approved. Staff may
26 bring more language back to the Board at its March meeting.

27
28 2. Enforcement Process

29 Status: On Hold

30
31 This proposal would result in updates to the Board's disciplinary process. It
32 would also make updates to the Board's "Uniform Standards Related to
33 Substance Abuse and Disciplinary Guidelines," which are incorporated by
34 reference into the Board's regulations.

35
36 The proposal was approved by the Board at its meeting in February 2017
37 and was submitted to DCA to begin the initial review process in July 2017.
38 This regulation package was placed on hold due to the passage of AB 2138
39 and remains on hold pending passage of the AB 2138 regulations.

40
41 3. Examination Rescoring; Application Abandonment; APCC Subsequent
42 Registration Fee

43 Status: Submitted to OAL for Final Approval

1
2 This proposal would amend the Board’s examination rescoring provisions to
3 clarify that rescoring pertains only to exams taken via paper and pencil,
4 since all other taken electronically are automatically rescored. This proposal
5 would also make clarifying, non-substantive changes to the Board’s
6 application abandonment criteria, and clarify the fee required for subsequent
7 Associate Professional Clinical Counselor registrations.
8

9 4. Supervision

10 Status: To be Noticed on February 7, 2020; Public Hearing on March 23,
11 2020
12

13
14 **IX. Public Comment for Items Not on the Agenda**

15
16 None
17

18
19 **X. Suggestions for Future Agenda Items**

20
21 Jerry Shapiro: Law and ethics testing for graduate students. Graduate
22 students are in field placements seeing clients. There should be an instrument
23 that formalizes the expectation. It also provides them the opportunity to
24 prepare for the licensing examination. Suggested a 25-question, modified Law
25 & Ethics exam that would cover key areas such as reporting, protection,
26 confidentiality.
27

28
29 **XI. Adjournment**

30
31 The Committee adjourned at 11:53 p.m.