

POLICY AND ADVOCACY COMMITTEE MINUTES

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

DATE February 5, 2021

MEETING PLATFORM WebEx Video/Phone Conference

Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

TIME 8:30 a.m.

ATTENDEES

Members Present: Christina Wong, Chair, LCSW Member
Deborah Brown, Public Member
Max Disposti, Public Member
Wendy Strack, Public Member (joined at 8:50 a.m.)

Members Absent: *All members present*

Staff Present: Steve Sodergren, Interim Executive Officer
Rosanne Helms, Legislative Manager
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel

Other Attendees: Public participation via WebEx video conference/phone conference

1 **I. Call to Order and Establishment of Quorum**

2
3 Christina Wong, Chair of the Policy and Advocacy Committee (Committee)
4 called the meeting to order at 8:40 a.m. Roll was called, and a quorum was
5 established.
6

7 **II. Introductions**

8
9 Committee members and Board staff introduced themselves.
10

11 **III. Discussion and possible recommendation regarding amendments to**
12 **Practice Setting Definitions bill proposal: Business and Professions Code**
13 **Sections 4980.01, 4980.43, 4980.43.2, 4980.43.3, 4980.43.4, 4980.46,**
14 **4992.10, 4996.13, 4996.14, 4996.15, 4996.23, 4996.23.1, 4996.23.2,**
15 **4996.23.3, 4999.22, 4999.46, 4996.46.2, 4996.46.3, 4996.46.4, 4999.72: Add**
16 **Business and Professions Code Sections 4980.05, 4980.06, and 4996.14.1,**
17 **4996.14.2, 4999.25, and 4999.26: Renumber and Amend Business and**
18 **Professions Code Section 4999.24 (Renumber to 4999.27)**
19

20 The purpose of this bill is to provide definitions of the specific types of practice
21 settings where Board licensees, applicants, and registrants are employed. The
22 bill provides clarification about where trainees may work, what constitutes a
23 private practice, and opportunities for supervision in private practice settings.
24

25 The Board attempted to run this bill in 2020 as AB 2363. The Board is pursuing
26 the proposal again this year, moving forward with the current language.
27 However, after further review of the language and stakeholder discussions,
28 staff requested further discussion regarding the following issues:
29

- 30 1. BPC sections §4980.06(a)(4) for LMFTs, 4996.14.2(a)(4) for LCSWs, and
31 4999.26(c)(8) for LPCCs. These proposed subsections provide that an
32 “entity that is licensed or certified by a government regulatory agency to
33 provide health care services shall not be considered a private practice
34 setting.” Staff believes that as written, this sentence could lead to possible
35 implementation issues. Additionally, a revision to make it more specific may
36 address an ongoing concern that certain stakeholders have raised.
37
- 38 2. Kaiser’s employment of Associates across multiple entities.
39

40 **Kaiser Employs Associates Across Multiple Entities**

41 Kaiser is split into three employing entities:
42

- 43 • **Kaiser Foundation Health Plan, Inc. (KFHP):** KFHP is a California
44 nonprofit, public benefit corporation that is licensed as a health care
45 service plan under the Knox-Keene Act.

- 1 • **Kaiser Foundation Hospitals (KFH):** KFH is a California nonprofit
2 public benefit corporation that owns and operates community hospitals
3 and outpatient facilities.
4
- 5 • **The Permanente Medical Group, Inc. (TPMG):** TPMG is a
6 professional corporation of physicians in KPNC that provides and
7 arranges for professional medical services.
8

9 Associate Social Workers (ASW) working for TPMG believe it is unfair that they
10 have limits on their required supervision for gaining experience hours toward
11 Licensed Clinical Social Worker (LCSW) licensure that other ASWs working
12 under the Kaiser nonprofit corporations do not have.
13

14 Under current the proposal, the following would apply to supervisors and
15 associates of Kaiser’s professional corporation:
16

- 17 • They would not be able to arrange for contracted supervisors to supervise
18 their associates.
- 19 • A supervisor would be required to see clients at the same site as their
20 associate but would no longer be required to be employed full time at the
21 site.
- 22 • A supervisor would be limited to six supervisees per supervisor.
23

24 **Potential Solution 1: Modify Proposed Government Regulatory Agency** 25 **Exemption** 26

27 Proposed amendment narrowing the allowance to facilities licensed by only
28 certain government entities:
29

30 *“A facility licensed by the California Department of Public Health or the*
31 *Department of Health Care Services shall not be considered a private*
32 *practice setting.”*
33

34 If the amendment were accepted, a facility that would normally qualify as a
35 private practice or a professional corporation would instead be considered a
36 non-exempt setting, if it is currently licensed by CDPH or DHCS. As a non-
37 exempt setting, it would be subject to the following requirements:

- 38 • Supervisors are limited to six supervisees per supervisor.
- 39 • Supervision must be in-person.
- 40 • It would not be subject to the requirement for private practices that
41 supervisors must provide services to clients at the same site as their
42 associates.
- 43 • Applicants for registration utilizing the 90-day rule could work at the facility
44 while awaiting registration issuance.
- 45 • Trainees could work at the facility under the supervision of their school.

1 **Potential Solution 2: Partially Modify Language Requiring Supervisors in**
2 **Private Practice/Professional Corporations to See Clients at Same Site as**
3 **Their Associates**
4

5 This solution proposes to delete the provision stating that an “entity that is
6 licensed or certified by a government regulatory agency to provide health care
7 services shall not be considered a private practice setting.” Instead, the Board
8 could focus on the provision in the bill proposal governing supervision in a
9 private practice/professional corporation.

10
11 The COVID-19 state of emergency has caused therapy to shift from in-person
12 to telehealth. It is unknown if this will continue after the emergency has
13 passed. Therefore, the locations from which trainees and associates provide
14 services and receive supervision will be examined by the Board’s Telehealth
15 Committee.

16
17 Overall, changes related to allowances for supervision via telehealth are
18 possible for the future but need to be vetted by the Board further. In the
19 meantime, staff suggests that the language be amended to require the
20 following of a supervisor in a private practice/professional corporation:

21 *(1) Is employed by or contracted by the associate’s employer, or is an*
22 *owner of the private practice or professional corporation, and*
23

24 *(2) Provides psychotherapeutic professional services to clients at the same*
25 *site as the associate for the associate’s employer.*
26
27

28 **Potential Solution 3: Health And Safety Code §128735 Model**
29

30 A solution proposed by Kaiser, suggested that a review of Health and Safety
31 Code (HSC) §128735(e)(2) might provide a model solution for the concerns it
32 has raised. This section pertains to data reporting required of health facilities.
33 Subsection (e) states the following reporting is required:
34

35 *(e) (1) A statement reporting the information required in subdivisions (a), (b),*
36 *(c), and (d) for each separately licensed health facility operated, conducted,*
37 *or maintained by the reporting organization.*

38 *(2) Notwithstanding paragraph (1), a health facility that receives a*
39 *preponderance of its revenue from associated comprehensive group*
40 *practice prepayment health care service plans and that is operated as a unit*
41 *of a coordinated group of health facilities under common management may*
42 *report the information required pursuant to subdivisions (a) and (d) for the*
43 *group and not for each separately licensed health facility.*
44

1 Essentially, for reporting purposes, if a health facility is part of a group practice
2 run as part of a commonly managed unit, it may report as part of the group and
3 not as a separate facility.
4

5 Disposti: Concerned about option 3, which is the option that would fit Kaiser's
6 settings. Concerned about other remote settings that have a different way of
7 serving people, that don't reflect an enterprise like Kaiser. Concerned about
8 whether all the variants of option 3 have been considered. Favors options 1
9 and 2.
10

11 Strack: Prefers option 2.
12

13 Denise Tugade, government advocate representing SEIU United Health Care
14 Workers: United Health Care Workers and LCSW employees at Kaiser
15 recommend option 3. It's common for LCSWs and ASWs to work back and
16 forth between buildings on the Kaiser campus, so it's difficult to say where they
17 are primarily located. ASWs are completing hours that are not counted. They
18 are employees of Kaiser but of the three different entities. TPMG, although a
19 corporation, has extensive oversight and is regulated in a different manner.
20 The Health and Safety Code (HSC) proposed captures a handful of unique
21 entities: Kaiser Northern California, Kaiser Southern California, and Cedar
22 Sinai.
23

24 Sodergren: Prefers option 2. Wants to ensure that the supervisor is
25 supervising appropriately, and that Board staff have the ability to determine if
26 the supervisor works for the same company/corporation as the supervisee
27 and/or if they have a contract. This information can be easily obtained by staff,
28 instead of relying on other regulatory language from other government
29 agencies. Asked Ms. Tugade if option 2 would work.
30

31 Tugade: Option 2 would fit their needs but is concerned that it would be too
32 broad.
33

34 Josie Baker: Concerned about language regarding the outside contractor
35 having to work for Kaiser and practice psychotherapeutic services with Kaiser
36 (not just providing supervision) is problematic. She advocates for the video
37 conference option.
38

39 Disposti: Concerned about overlap with work of the Telehealth Committee
40 regarding telehealth.
41

42 Strack: Suggested tailoring the language of option 2 and 3, taking the definition
43 from the HSC but make it part of BBS regulations. Suggested that Kaiser and
44 the United Health Care Workers work with Ms. Helms.

1 Wong: Suggested that Ms. Helms continue the conversation, research the
2 HSC code, and examine the potential consequences if that language is
3 included.
4

5 Helms: Recommended using the definition in the HSC without directly referring
6 to the HSC.
7

8 Tugade: Mentioned that the proposed amendment to option 2 brings it back to
9 the same issue of having 3 entities within Kaiser.
10

11 Further discussion took place regarding the site requirement and potential
12 amendments.
13

14 Wong: Kaiser should also consider changing their practice. The Board must
15 protect the associate and consumers. BBS should not change for the
16 associate's employer or strike the site requirement from the law.
17

18 Brown: Agreed with Ms. Wong. The Board cannot legislate for specific
19 entities. Healthcare is evolving and will continue to evolve. The Board needs
20 to focus on its job.
21

22 Strack: Recognizes the issues and agrees that clarification is needed.
23 However, the Committee is not going to develop/amend language at this
24 meeting. Suggested to direct Ms. Helms to continue working with stakeholders
25 and bring a proposal to the March Board meeting.
26

27 Language: Option 2

28 The Committee agreed to strike "entity that is licensed or certified by a
29 government regulatory agency to provide health care services shall not be
30 considered a private practice setting."
31

32 Committee members and staff agree that option 2 is the best option. The
33 Committee directed staff to continue working on amending language for
34 4980.43.4(b)(2) and corresponding sections of the practice act.
35

36 **MOTION:** Pursue option 2 and strike "entity that is licensed or certified by a
37 government regulatory agency to provide health care services shall not be
38 considered a private practice setting" in 4980.06(a)(4) and in corresponding
39 sections; and pursue options to amend 4980.43.4(b)(2) and its corresponding
40 sections in LCSW and LPCC laws.
41

42 Wong moved; Brown seconded. Vote: 4 yea, 0 nay. Motion carried.
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Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

IV. Discussion and possible recommendation regarding inclusion of “prognosis” versus “treatment planning” content in required coursework: Business and Professions Code Sections 4980.36, 4980.37, 4980.81, 4999.32, and 4999.33.

The omnibus 2019 bill, SB 786, amended BPC sections that required education and practicum for LMFT and LPCC licensure, required coursework in assessment, diagnosis, and prognosis. The Board proposed an amendment replacing the term “prognosis” with the term “treatment planning,” because it believed treatment planning is a more accurate representation of the course of psychotherapy.

However, stakeholders have alerted Board staff that based on recent discussions, other mental health professions may be interpreting the Board’s law change as meaning LMFTs and LPCCs are not permitted to perform prognosis. Staff does not believe this was Board’s intent when it pursued the law change.

Dr. Ben Caldwell: Recommended adding “prognosis” along with “treatment planning.”

Recommendation

Amend BPC sections 4980.36, 4980.37, 4980.81, 4999.32, and 4999.33 to add the term “prognosis” back where it was previously deleted, which is to be included along with the term “treatment planning.”

MOTION: Direct staff to make the recommended amendments and bring to the Board for consideration as a legislative proposal.

Disposti moved; Strack seconded. Vote: 4 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

1 **V. Discussion and possible recommendation regarding bill proposal from**
2 **the California Association of Marriage and Family Therapists (CAMFT) to**
3 **modernize and clarify the scope of practice of marriage and family**
4 **therapists (Amends Business and Professions Code Section 4980.02)**
5

6 CAMFT is pursuing a bill proposal this year to modernize and clarify the scope
7 of practice for licensed marriage and family therapists (LMFTs). CAMFT used
8 the education and experience requirements for LMFT licensure in current
9 statute to determine duties included as part of the new scope of practice. The
10 proposed language is as follows:

11
12 For the purposes of this chapter, the practice of marriage and family therapy
13 shall mean the application of psychotherapeutic and family systems
14 theories, principles, and methods in the delivery of services to that service
15 performed with individuals, couples, or groups in order to assess, evaluate,
16 and treat relational issues, emotional disorders, behavioral problems,
17 mental illness, alcohol and substance use, and to modify intrapersonal and
18 interpersonal behaviors. ~~wherein interpersonal relationships are examined~~
19 ~~for the purpose of achieving more adequate, satisfying, and productive~~
20 ~~marriage and family adjustments. This practice includes relationship and~~
21 ~~premarriage counseling.~~

22
23 Marriage and family therapy practice may include, but is not limited to:

24 a. Assessment, evaluation and prognosis;

25 b. Treatment planning and evaluation;

26 c. Individual, relationship, family, or group therapeutic interventions;

27 d. Relational Therapy

28 e. Psychotherapy;

29 f. Client Education;

30 g. Case Management;

31 h. Consultation;

32 i. Supervision; and

33 i. ~~The application of marriage and family therapy principles and methods~~
34 ~~through includes, but is not limited to, the use of applied~~
35 ~~psychotherapeutic techniques, to enable individuals to mature and grow~~
36 ~~within marriage and the family, the provision of explanations and~~
37 ~~interpretations of the psychosexual and psychosocial aspects of~~
38 ~~relationships, and the use, application, and integration of the coursework~~
39 ~~and training required by Sections 4980.36, 4980.37, and 4980.41, as~~
40 ~~applicable.~~

41
42 Nothing in this section shall be construed to expand or constrict the scope of
43 practice of a person licensed pursuant to the chapter.
44

45 **MOTION:** Recommend to the Board to support CAMFT's proposal.
46

1 Disposti moved; Brown seconded. Vote: 4 yea, 0 nay. Motion carried.

2
3 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Deborah Brown	x				
Max Disposti	x				
Wendy Strack	x				
Christina Wong	x				

4
5 **VI. Update on Status of Board-Sponsored Legislation**

6
7 Board staff is currently pursuing the following legislative proposals:

8
9 **1. Practice Setting Definitions (No Bill Number Assigned at This Time)**

10 This bill proposal seeks to eliminate the confusion about where pre-
11 licensees may work by providing specific definitions of private practice,
12 professional corporation, and non-exempt settings. The Board approved
13 this proposal at its November 2020 meeting.

14
15 **2. Omnibus Proposal (Senate Business, Professions, and Economic**
16 **Development Committee) (No Bill Number Assigned at This Time)**

17 This bill proposal makes minor, technical, and non-substantive amendments
18 to add clarity and consistency to current licensing law. The Board approved
19 this proposal at its November 2020 meeting.

20
21 **VII. Update on Board Rulemaking Proposals**

22
23 **Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)**

24 Status: Approved by OAL. Effective date: December 14, 2020

25
26 **Enforcement Process**

27 Status: On Hold

28
29 This regulation package was placed on hold due to the passage of AB 2138
30 and remains on hold pending passage of the AB 2138 regulations.

31
32 **Supervision-Related Requirements**

33 Status: Submitted to OAL for final approval.

34
35 **Continuing Education and Additional Training Requirements**

36 Status: DCA Initial Review Process

37 **Examination Waiting Periods, Professional Corporations, Accrediting Agencies**
38 **and Equivalent Degrees**

1 Status: Preparation for Initial Review Process

2

3 **VIII. Suggestions for Future Agenda Items**

4

5 None

6

7 **IX. Adjournment**

8

9 The Committee adjourned at 11:15 a.m.