

POLICY AND ADVOCACY COMMITTEE MINUTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A recorded webcast of this meeting is available at:
<https://www.youtube.com/watch?v=3fCC00uGUvw>

DATE January 13, 2023

TIME 1:00 p.m.

ATTENDEES

Members Present: Max Disposti, Chair, Public Member
Abigail Ortega, LCSW Member
John Sovec, LMFT Member
Wendy Strack, Public Member

Members Absent: John Sovec at 2:20 p.m.

Staff Present: Steve Sodergren, Executive Officer
Marlon McManus, Assistant Executive Officer
Rosanne Helms, Legislative Manager
Christy Berger, Regulatory Analyst
Gena Beaver, Enforcement Manager
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel
Kristy Schieldge, Legal Counsel

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

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

2
3 Max Disposti, Chair of the Policy and Advocacy Committee (Committee) called
4 the meeting to order at 1:02 p.m. Roll was called, and a quorum was
5 established.

6
7 **II. Introductions**

8
9 Committee members, Board staff and some public attendees introduced
10 themselves.

11
12 **III. Consent Calendar: Discussion and Possible Approval of October 14,**
13 **2022 Committee Meeting Minutes**

14
15 This item was tabled.

16
17 **IV. Discussion and Possible Recommendation Regarding Amendments to**
18 **the Board’s Temporary Practice Allowance Bill Proposal (Add Business**
19 **and Professions Code (BPC) §§4980.011, 4996.16.1, 4999.23, Amend BPC**
20 **§§4980, 4980.30, 4991.2, and add Article 1 Under Chapter 14)**

21
22 This bill was introduced as AB 232.

23
24 At its November 2022 meeting, the Board of Behavioral Sciences (Board)
25 approved statutory language and directed staff to pursue legislation to allow a
26 30-day temporary practice allowance to qualifying therapists licensed in
27 another state whose client is visiting California or is in the process of moving
28 here.

29
30 **Suggested Amendments from Legislative Counsel**

31 The Legislative Counsel recommended some additional changes to the
32 proposed language. These changes are:

- 33
34 1. Technical Changes to the Board-Approved Language (Proposed BPC
35 §§4980.11, 4996.16.1, 4999.23). This was presented as Attachment B in
36 the meeting materials.
37
38 2, Additional Recommended Amendments to Related Code Sections (BPC
39 §§4980, 4980.30, 4991.2, and add Article 1 Under Chapter 14). This was
40 presented as Attachment C in the meeting materials.

41
42 Details of these amendments were presented.

43
44 Motion: Direct staff to make any discussed changes and any non-substantive
45 changes to the language in Attachments B and C and recommend that the
46 Board approve the language in Attachments B and C for use in the temporary

1 practice allowance legislative proposal that the Board is currently pursuing; and
2 add Article I General Provisions at the beginning sections of BPC §4991.

3
4 Disposti moved; Strack seconded.

5
6 Public Comment

7 Cathy Atkins, California Association of Marriage and Family Therapists
8 (CAMFT): Thanked the Committee for addressing this issue.

9
10 Roll call vote: Motion carried: yea - 4, nay - 0
11

Member	Vote
Max Disposti	Yes
Abigail Ortega	Yes
John Sovec	Yes
Wendy Strack	Yes

12
13 **V. Discussion and Possible Recommendation Regarding the Definition of a**
14 **Supervisee BPC §§4980.43.2, 4980.43.4, 4996.23.1, 4996.23.3, 4999.46.2,**
15 **4999.46.4)**
16

17 The Board’s practice acts reference the term “supervisee” but do not define it.
18 In the context in which it is used in the practice acts, the term is intended to
19 mean an individual required by the Board to be under supervision.

20
21 There are two instances where the intended definition of “supervisee” may not
22 apply, and the intended definition becomes unclear:

23
24 **1. Definition of Direct Supervisor Contact (BPC §§4980.43.2(b),**
25 **4996.23.1(b), 4999.46.2(b))**
26

27 These subsections define individual supervision, triadic supervision, and
28 group supervision for purposes of “direct supervisor contact.” The definition
29 for each includes one supervisor and a specified number of supervisees.

30
31 Group supervision is defined as consisting of one supervisor and no more
32 than eight “supervisees”. However, the law does not address whether
33 individuals receiving supervision, who are not required by the Board to be
34 under supervision, count as members of the group toward the 8
35 “supervisee” limit.

36
37 Possible Solutions

- 38
39 • Suggestion #1: Add a paragraph to this subdivision of law that states
“For purposes of this subdivision, “supervisee” refers to any participant

1 in supervision of clinical mental health services, as described in section
2 4980.43.1, with a supervisor.” OR

- 3
4 • Suggestion #2: Instead of defining individual, triadic, and group
5 supervision as consisting of one supervisor and a specified number of
6 supervisees, define them as one supervisor and a specified number of
7 individuals or participants.

8 9 Public Comment

10 Ben Caldwell: Suggested group supervision limited to no more than 8
11 participants but include a caveat that other licensed mental health professionals
12 would not count against that number.

13
14 Atkins, CAMFT: Expressed concern regarding pre-licensees receiving quality
15 supervision in a group that is made up of mostly folks not pursuing licensure.

16 17 Discussion

18 Ortega: Wants to limit the size of the group; eight is still too many.

19
20 Disposti: The problem lies within how the numbers are composed. Prefers
21 Option 2.

22
23 Sovec: Explained the difference between treatment team and supervision. If
24 group discussions are focused on the “treatment team,” then the supervision
25 experience is going to be watered down. Option 1 gets closer to the purpose of
26 what supervision is for both trainees and associates. Option 2 leaves a lot of
27 flexibility for the group to turn into a treatment team.

28
29 Disposti: Suggested taking this to the Board for further discussion.

30
31 After further discussion, staff was directed to reach out to stakeholders and
32 associations for feedback and suggestions regarding the definition of direct
33 supervision contact.

34 35 36 **2. Limitation on Number of Supervisees per Supervisor (BPC** 37 **§§4980.43.4(c), 4996.23.3(c), 4999.46(c))**

38
39 Staff was directed to reach out to stakeholders and associations for feedback
40 and suggestions regarding limitation on the number of supervisees per
41 supervisor.
42

1 **VI. Discussion and Possible Recommendation Regarding Legal Name**
2 **Changes and Website Posting (BPC §27)**
3

4 When a licensee changes their name, the previous name will appear on the
5 BreEZe online license verification system (BreEZe). In instances where a
6 licensee legally changes their name to conform to their gender identity, the
7 licensee may prefer that their previous name, or “deadname”, not be listed
8 publicly on BreEZe.
9

10 The law does not specifically require that a licensee’s previous name be
11 disclosed publicly online; however, would be subjected to disclosure if
12 requested due to the public nature of the information (i.e., subject to a Public
13 Records Act request).
14

15 To avoid litigation on unintended consequences or discrimination claims, staff
16 recommends that legislation be introduced to create uniformity and clarity
17 across Department of Consumer Affairs’ (DCA) boards on how to address
18 deadnames.
19

20 Discussion

21 Disposti: Explained the difficulties in balancing consumer protection and the
22 individual’s right to privacy and safety in regard to their gender identity.
23 Suggested focusing on the license number as a means of identification instead
24 of the name.
25

26 Strack: Asked if the solution would be to process complaints under the license
27 number, not the individual’s name.
28

29 Sodergren: Responded that the issue would be the Public Records Act (PRA)
30 request.
31

32 Further discussion ensued. Public comment was received from stakeholders
33 thanking the Board for discussing this matter.
34

35 Kristy Schieldge: Stated that it would be very difficult to pass regulation dealing
36 with this issue because: 1) BPC section 27, and 2) the state of California
37 enacted the Sunshine Law, which states that it is a constitutional right for
38 people of the state of California to have access to public records. Suggested
39 focusing on a legislative proposal that balances the two policies of privacy and
40 safety and the constitutional right of public access.
41

42 Public Comment

43 Trisha Wallis: Explained how the practice of publicly listing deadnames is
44 impacting the lives of her colleagues.
45

1 Rebecca Gonzales, National Association of Social Workers, California Chapter
2 (NASW-CA): Feels this could be a public safety issue for certain domestic
3 violence victims.
4

5 Discussion

6 Disposti: Wants to advocate to DCA to dig deeper into this.
7

8 Schieldge: There are many things to consider, not just California's
9 requirements for posting and providing information. 1) We are responding to
10 BPC section 27 legal mandates which is viewed as an informal PRA request
11 when a person performs a license search on the database and accesses that
12 information, to make it readily accessible to the public under that section of the
13 law. 2) We are required to report to the National Practitioner Database, which
14 is federal law.
15

16 No action taken.
17

18 **VII. Discussion and Possible Recommendation Regarding Clarifications to**
19 **Licensed Educational Psychologist Requirements: Experience Equivalent**
20 **to Three (3) Years Full-Time Experience as Credentialed School**
21 **Psychologist (Title 16, California Code of Regulations (CCR) Section**
22 **1856)**
23

24 The purpose of this item is to consider a regulatory proposal that would
25 strengthen and clarify the experience requirements for Licensed Educational
26 Psychologist (LEP) applicants.
27

28 Christy Berger presented the identified issues and proposed regulatory
29 changes.
30

31 Discussion: Definition of Supervisor

32 Ortega: Likes the definition.
33

34 Public Comments: None
35

36 Schieldge: Legal has not reviewed this yet, but legal may need to make
37 changes to this before going to the full board.
38

39 Staff is awaiting feedback from the California Association of School
40 Psychologists. Staff will continue to work on this and will bring it back to the
41 Committee.
42

1 **VIII. Discussion and Possible Recommendation Regarding Changes to**
2 **Enforcement Regulations: Unprofessional Conduct, Amount of Fines,**
3 **Uniform Standards Related to Substance Abuse and Disciplinary**
4 **Guidelines (Title 16, CCR Sections 1823, 1845, 1858, 1881, 1886.40 and**
5 **1888 and Uniform Standards Related to Substance Abuse and**
6 **Disciplinary Guidelines (Rev. December 2020))**
7

8 The proposed revisions to the “Uniform Standards Related to Substance Abuse
9 and Disciplinary Guidelines” was presented to the Committee in July 2022 and
10 October 2022. The latest changes are still undergoing legal review.
11

12 **II. PENALTY GUIDELINES**
13

14 **Add to Penalty Guidelines: Engaging in Sexual Orientation Change**
15 **Efforts with a Patient Under Age 18**

16 Previously, staff had included the same minimum and maximum penalties
17 used for the unprofessional conduct violation of “*Intentionally / Recklessly*
18 *Causing Physical or Emotional Harm to Client.*” However, at its October
19 2022 meeting, the Committee directed staff to change the penalties to
20 instead require outright revocation or denial of license due to the severity of
21 impacts that this violation has on these vulnerable clients.
22

23 **Penalty Guidelines: Improper Supervision**

24 At the July 2022 and October 2022 meetings, the Committee discussed the
25 penalties for this section and determined that suspension of license and
26 supervised practice should be moved to the maximum penalty column.
27 When a licensee is on probation they are already not allowed to supervise,
28 and in some cases the licensee may be a good clinician but not a good
29 supervisor, and thus may be no risk to their own clients.
30

31 **III. MODEL DISCIPLINARY ORDERS**
32

33 **Clinical Diagnostic Evaluation**

34 The latest amendments would:

- 35
- 36 • Prohibit the evaluator from having a current or prior financial, personal,
business, professional or therapeutic relationship with the Respondent.
 - 37 • Specify that an extension for the Board’s receipt of the evaluation must
38 be for good cause, as defined.
- 39

40 **Discussion**

41 Schieldge: More work needs to be done on this, and staff will bring it back
42 to the Committee for review.
43

1 **Psychological/Psychiatric Evaluation**

2 The latest amendments would:

- 3 • Require the evaluator to simply have experience performing
4 psychological or psychiatric evaluations, as opposed to knowledge,
5 training and experience “in the area involved in the violation.”
6

7 **Psychotherapy**

8 The latest amendments would:

- 9 • Allow a registrant to provide psychotherapy.
10 • Strike the requirement that the therapist has knowledge, training and
11 experience “in the area involved in the violation.”
12 • Prohibit the therapist from having a current or prior financial, personal,
13 business, professional or therapeutic relationship with the Respondent.
14 • Strike the requirement that the therapist not be the Respondent’s
15 supervisor, as a professional relationship between the Respondent and
16 therapist would be prohibited as provided in item #2 in the same section.
17 • Require the psychotherapy be provided on an individual rather than
18 group basis.
19

20 **Supervised Practice**

21 The latest amendments would:

- 22 • Strike the requirement that the supervisor have knowledge, training, and
23 experience “in the area involved in the violation.”
24 • Prohibit the supervisor from having a current or prior financial, personal,
25 business, professional or therapeutic relationship with the Respondent.
26 • Specify how Respondent must proceed should their supervisor no longer
27 be available, including:
28 a. Require Respondent to submit for approval the name and
29 qualifications of a new supervisor within 15 working days.
30 b. Clarify that if Respondent does not secure a new Board-approved
31 supervisor within 30 days, Respondent shall not practice until a new
32 supervisor is approved. This allows an abundant amount of time for
33 the Board to vet and approve a new supervisor.
34

35 Public Comments: None
36

1 **Take and Pass Licensure Examination(s)**

2 This penalty was originally proposed to be stricken. However, DCA Legal
3 strongly recommended that it remain. Minor changes to the existing text are
4 proposed for clarity.

5
6 **New: Attend Recovery Support Program**

7 The latest amendments would:

- 8 • Specify that Respondent must begin attending meetings within 30 days
9 of the effective date of the Decision.
- 10 • Clarify that it may be a recovery support program, or a facilitated group
11 led by a mental health professional trained in alcohol and drug use
12 treatment.
- 13 • Specify acceptable proof of attendance.
- 14 • Clarify that Respondent must continue attending the group for the
15 duration of probation unless notified by the Board otherwise.

16
17 **New: Relapse Prevention Plan**

18 Completion of a relapse prevention plan had originally been proposed as a
19 new optional term of probation. However, it is now proposed to be stricken
20 completely.

21
22 This term was originally proposed because sometimes the Respondent
23 does not meet the criteria to enter a rehabilitation program, and this would
24 be a potential alternative. After the October 2022 meeting, staff consulted
25 with DCA Legal, and it was clarified that if a rehabilitation program is
26 included as a penalty and the Respondent does not meet the criteria of the
27 program, the Board can reduce the penalty.

28
29 Furthermore, when a Respondent petitions for reinstatement to a full and
30 unrestricted license, per the Uniform Standards a licensee must
31 demonstrate that they have a relapse prevention plan.

32
33 **Standard Terms and Conditions of Probation**

34
35 **Failure to Practice/Tolling**

36 Defines “good cause” for failure to practice for two years (normally
37 considered a violation of probation) as including, but not limited to, a
38 personal or family illness or disability.

39
40 Schieldge: Recommended deleting this proposal. Explained that the intent
41 of tolling is to not have probationers continue to retain their license if they
42 are not competent to practice. They are given 2 years to toll because the
43 idea of probation is to allow people to demonstrate that they can still meet

1 minimum standards for competency. If there is a problem with illness or
2 other issues affecting their ability to practice, then the question is, should
3 they still be in practice, which should be determined by the board. The
4 probationer would come before the Board in a petition to revoke probation
5 or to modify their probation and demonstrate why they should keep their
6 license. Tolling does not have any kind of good cause exception. Allowing
7 this proposal will create a situation where people could be on probation for a
8 long period of time, or they will run their probation out. Either one of those
9 options are not good from the public protection perspective.

10
11 Ms. Schieldge recommended tabling this this specific item until staff and
12 legal can further discuss it.

13 **Reinstatement/Reduction of Penalty Hearings**

14
15 Add pertinent language from statute (BPC section 4990.30) as listed in
16 items H and I and replace language about the petitioner’s “attitude” with
17 language that instead pertains to the petitioner’s cooperation with the
18 Board’s investigation, other law enforcement or regulatory agencies, and/or
19 the injured parties.

20 Public Comment

21
22
23 Caldwell: Expressed that the language regarding recovery support program
24 seemed strange. From a perspective of evidence-based treatment, attending a
25 recovery support program does not seem to be as effective as other forms of
26 substance abuse treatment. Expressed that he would like the Board to take a
27 holistic and data-driven look at the disciplinary process because “the majority of
28 people who are put on probation” do not complete it.

29
30 Staff will continue to work on this. No action taken.

31 **IX. Update on Board-Sponsored Legislation**

32
33 Temporary Practice Allowance Bill Proposal was introduced as AB 222.

34
35 Omnibus Bill Proposal (No Bill Number Assigned at This Time)

36
37 This proposal was submitted to the Senate Business, Professions and
38 Economic Development Committee.

39 **X. Update on Board Rulemaking Proposals**

40
41 Continuing Education and Additional Training Requirements

42
43 Status: Approved by the Office of Administrative Law (OAL) and takes effect
44 July 1, 2023.

1 Examination Waiting Periods, Professional Corporations, Accrediting Agencies
2 and Equivalent Degrees

3 Status: Approved by the OAL and takes effect April 1, 2023.
4

5 **XI. Suggestions for Future Agenda Items**

6
7 None
8

9 **XII. Public Comment for Items not on the Agenda**

10
11 None
12

13 **XIII. Adjournment**

14
15 The Committee adjourned at 4:31 p.m.