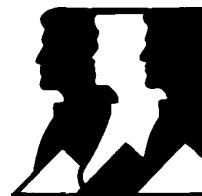


# Board of Behavioral Sciences

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The Board of Behavioral Sciences (BBS) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Authorized by Business and Professions Code section 4980 *et seq.*, BBS licenses marriage and family therapists (MFTs), licensed clinical social workers (LCSWs), and licensed educational psychologists (LEPs).

MFTs assist individuals, couples, or groups in examining interpersonal relationships for achieving more adequate, satisfying, and productive marriage and family adjustments. Such counseling includes, but is not limited to, the use of applied psychotherapeutic techniques to enable clients to mature and grow within marriage and family, and the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships. LCSWs engage in clinical social work, defined as a service in which a special knowledge of social resources, human capabilities, and the role that unconscious motivation plays in determining behavior is directed at helping people to achieve more satisfying and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with clients; providing information and referral services; providing or arranging for the provision of social services; and interpreting the psychosocial aspects in the situations of individuals, families, or groups. LEPs work in private practice as well as public education. They provide educational evaluation, diagnosis, and test interpretation limited to assessment of academic ability, learning patterns, achievement, motivation, and personality factors directly related to academic learning problems. They also provide counseling services for children or adults for amelioration of academic learning problems, and educational consultation, research, and direct educational services.

The Board administers written and oral tests to licensure applicants, adopts regulations regarding education and experience requirements for each category of licensees, investigates complaints against its licensees, and takes disciplinary action as appropriate. The eleven-member Board consists of six public members, two MFTs, two LCSWs, and one LEP. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

On December 9, 1999, Governor Davis appointed Dr. Virginia Laurence to BBS as an LCSW member. She is a professor emerita at California State University at Chico, where she taught social welfare for twelve years. She is currently the volunteer coordinator at Alta Bates Medical Center in Berkeley.

By November 2000, the Board—functioning with only five of its statutorily authorized eleven members—lacked a quorum and could not conduct business. There were four

public member vacancies, one LEP vacancy, and one LCSW vacancy. Two of these positions became vacant on June 1, 2000 upon the expiration of the terms of public member Lorie Rice and LEP Judy Brislain. The Board also lost a longtime member in October 2000, when Marsena Buck—former Board chair and LCSW member since 1994—passed away. The Governor was responsible for filling the LEP slot, the LCSW position, and three of the public member vacancies. The fourth public member vacancy was the responsibility of the Assembly Speaker.

On December 7, 2000, Governor Davis announced the appointment of three new members to BBS. Dr. Mark A. Burdick, program manager of special education at the Sequoia Union High School District, was appointed to fill the LEP position. Governor Davis also appointed Donald R. Rowe and Jane F. Nathanson to fill public member positions. Rowe is the Director of the Health and Human Services Department for Solano County; Nathanson is a clinical therapist and counselor for the California Graduate Institute Counseling Center. However, the appointments of Rowe and Nathanson were subsequently withdrawn after it was determined that, as licensees of the Board, they were not qualified to be appointed as public members.

In February 2001, Assembly Speaker Robert Hertzberg appointed Roberto Quiroz to fill a public member vacancy. Quiroz has held executive management positions in the field of mental health for more than 25 years. Most recently, he was CEO of the Mental Health Corporation of Denver from 1992–2000.

On June 1, 2001, the terms of two board members—MFT Selma Fields and Christina Chen, a public member appointed by the Governor—expire. Thus, barring new appointments, by June 2001 the Board will have only five members and will be unable to muster a quorum. All six vacancies must be filled by Governor Davis.

## MAJOR PROJECTS

### Psychotherapy Over the Internet

At its August 2000 meeting, BBS discussed the growing practice of the provision of psychotherapy and other counseling services over the Internet. The Board recognized that the Internet has become a major influence in today's society and that some organizations and individuals have begun to use the Internet as a tool to provide therapy to the public. The Board expressed concern over the legal and ethical consequences of this development and began a discussion to determine if and how it should monitor such activity.

Board members reviewed materials that raised several issues relating to therapy on the Internet. First, it appears fairly clear that individuals who provide therapy or counseling to

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persons in California are required to be licensed in California. Such licensure affords the licensing board jurisdiction over the licensee and permits the consumer to pursue remedies against a licensee who has committed unprofessional conduct. Therapy that occurs across state lines may leave both the licensing board and the patient without recourse to an administrative disciplinary process if a problem occurs. Second, because important nonverbal observations may be unavailable over the Internet, the therapist may miss clues that could reveal a patient's mood or signs of physical abuse. Third, because Internet therapy is currently unregulated, patients cannot be assured that their sessions or personal information will remain confidential. The Board expressed concern about its ability to protect or warn consumers of the dangers of participating in such therapy, especially considering the fact that persons or entities offering Internet therapies may not be licensed therapists at all.

Proponents of Internet therapy stated that this type of counseling can be helpful for clients with issues such as agoraphobia, those who are disabled, those who live in rural or small communities, those who are ashamed to go to a therapist's office, and those with cultural issues who may not have a therapist in their community who can speak their language or who is familiar with their culture. Several representatives of Internet therapy businesses noted that some Internet therapy is provided via videoconferencing, such that nonverbal clues are not missed and no written words are sent over the Internet (obviating many confidentiality concerns). Other Internet sites engage in therapy via a live chat room setting whose information is deleted on a daily basis so nothing is saved online; the therapist is responsible for maintaining records on the client's session. Proponents also discussed security measures that have been implemented to prevent computer hackers from obtaining confidential information that may be communicated via email.

Meeting attendee David Fox, MFT, questioned how Internet therapists can handle crisis situations. He also expressed concern that Internet therapy will jeopardize the high reputation that California MFTs enjoy if lawsuits eventually occur from this unregulated type of therapy. He recommended that the Board post an advisory notice to current MFTs who may be engaged in or contemplating Internet therapy to provide some guidelines and to warn of hazards.

At BBS' November 2000 meeting, Executive Officer Sherry Mehl reported that she had attended the national conference of the American Association of Marriage and Family Therapists Regulatory Boards earlier in the month and had an opportunity to discuss this issue with representatives of boards from other states. She discovered that California is much farther ahead in its awareness of this topic than other

states. She explained that there seems to be much confusion and misinformation regarding the best ways to regulate Internet therapists and to educate the public regarding therapy provided over the Internet. The Board reviewed a draft of an

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educational memo warning consumers of the dangers of this type of therapy and accepted public comment on the subject. A representative of mytherapynet.com, a company that currently provides therapy over the Internet, objected to the negative tone of the proposed memo and suggested that the memo include a

list of some benefits of this type of therapy. Board members pointed out that their duty is to protect consumers and not to promote the business of a particular company. BBS agreed to continue to gather data on the issue.

In January 2001, the Board approved the final draft of its memo aimed at consumers who are considering seeking therapy over the Internet. The memo recommends that consumers verify that the practitioner has a valid California license and be aware of the risks and benefits of therapy over the Internet, and reminds consumers to ask about the practitioner's process for payment of fees and confidentiality policy. BBS has posted this memo on its Web site.

### Distance Learning

At its February 2000 meeting, BBS' Licensing/Education Committee began a lengthy discussion of distance learning programs, which are being incorporated into traditional MFT and LCSW curricula.

At the Board's May 2000 meeting, Christine Hagan, Project Coordinator of Distance Education at California State University at Long Beach, presented an overview of the master's degree in social work (MSW) distance education program offered at CSULB. Hagan explained that CSULB set up the program to fill the need for public welfare workers in rural areas that are too geographically distant from universities offering MSW degrees. The technology used by CSULB to facilitate the program is interactive television because it takes place in real time and is more like face-to-face interaction than other technologies. The students meet in a classroom setting, view and participate in a classroom session taught by faculty from CSULB, and are mentored by a site coordinator who acts as an assistant instructor. Hagan stressed the importance of having the students meet in a group of peers and with a site coordinator, as self-awareness and relationship skills are crucial in this field.

DCA legal counsel LaVonne Powell expressed concern over the fact that school transcripts do not indicate whether particular courses or even entire degree programs are completed through conventional classroom coursework or distance learning programs. Thus, the Board is unable to track students in distance learning programs in order to analyze

how they perform on licensing examinations or in the field in subsequent years. This information could be valuable in determining whether distance learning programs are effective education tools.

At its November 2000 meeting, the Board's Licensing/Education/Legislation Committee reviewed the results of a survey that staff sent to all approved MFT schools requesting information regarding each school's use of distance learning programs. Sixty-nine of the 76 schools responded to the survey; most of the responses suggest that the vast majority of schools are not interested in offering distance learning programs as part of their curriculum. The Board agreed that, because distance learning is not currently prevalent as an educational tool, there is no need for further active consideration of the issue at this time. The Board stated it would continue to monitor whether use of distance learning expands in the future.

## BBS Addresses Repeat Examinee Issue

At its February and May 2000 meetings, BBS' Examination Committee explored the pass rates on its examinations for repeat examinees for the purpose of considering whether BBS should limit the number of times an individual may unsuccessfully take an exam without also being required to take remedial education and/or completing additional supervised experience.

Eighty-five percent of first-time examinees passed BBS' MFT written exam between July 1 and December 31, 1999. That statistic declined steadily for repeat takers: Only 55% of second-time takers passed, while 68% of third-time takers and 81% of fourth-time (or more) takers failed. The results were similar for LCSW examinees during the same period: 72% of first-time takers of BBS' written LCSW exam passed and 32% of second-time takers passed, while 93% of third-time takers and 100% of fourth-time (or more) takers failed. BBS noted a similar pattern in the pass rates for its MFT and LCSW oral examinations.

Board member Lorie Rice suggested that those who fail to pass the exam after three attempts should be required to take additional coursework or complete additional supervised experience. Her suggestion is consistent with current policy at other California licensing boards, including the Dental Board and the Pharmacy Board. However, it met with opposition from MFT David Fox, who stated that other California licensing boards—including the State Bar, the Accountancy Board, and the Medical Board—do not limit the number of times an individual may take an exam without additional work. Fox also suggested that problems in passing BBS' oral examinations may lie with the oral examiners and not the examinees. Geri Esposito of the California Society for Clinical Social Work stated that she believes the problem is because few associates/interns are actually working in a clinical set-

ting and receiving the appropriate experience necessary to pass an oral exam.

Other Committee members noted that recent legislative changes to Business and Professions Code section 4980.44(b) permit an MFT intern who has not completed the requirements for licensure (including exam passage) within six years after completion of the master's degree to simply obtain a new intern registration and continue to practice without a license in "exempt settings" (non-private practice) almost without limitation. Further, these individuals need not even renew their registration if they are not in private practice. If these individuals cannot pass the exam and are not required to take remedial coursework or complete additional supervised experience, they could pose a danger to the public. The Committee decided to request additional statistical information and input from professional associations and other organizations on this issue.

At the Examination Committee's May 2000 meeting, staff presented the Committee with statistics on the pass rates for the oral examination. A graph reflecting all the people who have taken the oral examination in the last ten years clearly showed that most people pass the examination within three attempts; after that, however, the pass rate drops dramatically. The charts showed that of the total candidates who pass the examination, approximately 75% of them pass within two administrations; most of the rest pass on the third try. After the fifth time, however, an applicant's chances of passing the examination are small.

MFT David Fox again expressed opposition to limiting the number of times one can participate in an examination and suggested the Board instead require a continuing education course in law and ethics to address this issue. He also questioned whether cultural differences or language difficulties may be a factor in cases of repeated failure.

Board member Marsena Buck asked the Committee to look at the apparent loopholes in section 4980.44(b)—the issuance of second and third registrations, and the fact that the Board does not require a person to register in order to take the examination. The Committee requested more information to explain why exam takers may continue to fail and whether limiting the number of exam administrations would be an effective way to improve consumer safety. The Committee expressed a desire to take a closer look at the oral exam itself to include consideration of whether: (1) the way the exam is administered promotes failure, (2) language difficulties may be a factor, (3) examinees fail a particular area of the exam more often, and (4) students are not getting the proper preparation in schools and supervision settings necessary to pass the exam. The Committee also requested information on the policies of other licensing boards concerning this issue.

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At BBS' August 2000 meeting, Dr. Norman Hertz of DCA's Office of Examination Resources gave a presentation about the current oral examination process. He stated that the pass/fail rate has been consistent over the years and that the examiners try to ensure that the exam tests for skills that are required in the field. Dr. Hertz explained that the examiners are licensees themselves and must be currently active in the field. He stated that every five years, an occupational analysis is conducted to reevaluate the exam and ensure it is job-related.

At BBS' November 2000 meeting, Executive Officer Sherry Mehl presented statistics to address the question of whether a problem exists with the current practice of allowing an applicant to continue the testing process without remedial interventions despite repeated failures. The statistics showed that, of the 112 applicants who had failed the MFT oral exam five or more times, 79 had provided answers that would have been directly harmful to the public if the actions had taken place in actual practice. The statistics also reflected that the exam category applicants most often fail is in the area of law and ethics. Mehl pointed out that, although most applicants can pass the exam, the small number of applicants who repeatedly fail can pose a danger to the public if not properly monitored. Several audience members representing the MFT licensee population again expressed concern over limiting the number of times an applicant may take the exam. Some questioned whether cultural or language barriers may play a role in repeat exam failures, especially the oral examination failures. Mehl stated that the examiners are trained to be aware of cultural issues and to score the applicant on content, rather than language used in the answers.

After extensive discussion, the consensus of the Board was against prohibiting applicants from continuing to participate in the examination process, but in favor of imposing some type of intervention such as additional coursework or supervision requirements for applicants who repeatedly fail the exam. The Board asked staff to survey schools to find out if they would be willing to provide relevant coursework if the Board were to mandate it.

At BBS' January 2001 meeting, Ms. Mehl reported the results of this survey. All of the ten schools surveyed were willing to offer the type of coursework needed without requiring the applicant to matriculate into a degree program. Some Board members again raised the issue of exempt settings and the fact that existing laws and regulations allow applicants who repeatedly fail the exam to continue working in these settings although they may pose a danger to the public. The Board asked staff to draft regulatory language that would require additional coursework and supervision for candidates who fail the exam a certain number of times and to present the draft at the next meeting.

At its April 2001 meeting, however, the Board decided that no action is necessary and voted to table the item. Board members explained that, due to the small number of repeat failures and the difficulty in determining the variables caus-

ing the failures, they did not want to impose a regulation that might not be effective in addressing the problem. The Board instead turned its focus to the topic of exempt settings and the fact that many people are allowed to practice without a license in these settings. Sherry Mehl pointed out that the Board does not have jurisdiction over these settings and therefore cannot take action against them or gather data to decide whether they pose a threat to the public. The Board directed staff to investigate how other boards address the issue of exempt settings and whether legislation may be required to address this issue.

### ACSW Supervision Ratio Requirements

During its August 2000 meeting, the Board's Licensing/Education/Legislation Committee addressed the fact that the ratio of supervision hours to the practice of psychotherapy (client contact) for associate clinical social workers (ACSWs) (LCSW applicants who have registered with the Board and are completing their supervised professional experience requirements), as set forth in Business and Professions Code section 4996.21, has been a source of much confusion to supervisors and interns alike.

Effective January 1, 1999, SB 1983 (Greene) (Chapter 589, Statutes of 1998) added section 4996.21, which attempts to clarify the experience requirements for LCSWs. The law requires one hour of direct supervisor contact for each week of experience, including one hour of supervisor contact for every ten hours of client contact. [16:1 CRLR 20-21] The intent of the law was to require additional supervision when the intern is performing functions such as psychotherapy or counseling where, if unsupervised, there is an increased potential for client harm. However, confusion has resulted in determining when and how many additional supervision hours are required.

In June 2000, the Board attempted to clarify the requirement in a letter to all ACSWs. The letter noted that, of the 3,200-hour supervised experience requirement, ACSWs are required to gain a minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling under the supervision of an LCSW. The remaining 1,200 hours may be earned in client-centered advocacy, consultation, evaluation, and research. The law requires an ACSW to have one hour of direct supervisor contact for each week of experience claimed, including one hour of direct supervisor contact for every ten hours of client contact (the so-called "10:1 ratio"). However, according to the letter, "nothing in the law...states that the associate must meet the 10:1 ratio for all of the 2,000 hours of experience gained in accordance with B&P Code Section 4996.21(a)(1). The associate needs to meet the additional 10:1 supervision requirement when performing client contact in each setting where experience is gained."

Despite the Board's letter, confusion persisted, and the Committee decided to attempt to draft legislative amendments to clarify the supervision requirement. At its November 2000

meeting, the Committee engaged in extensive discussion and entertained much public comment relating to all of the areas of confusion and possible options for clarification. The Committee asked interested members of the audience to submit written suggestions for language to be incorporated into a proposed amendment to section 4996.21.

After unsuccessful attempts to clarify the language of section 4996.21, staff presented to the Committee at its January 2001 meeting a draft of proposed new section 4996.23, which incorporated public comments from the November 2000 meeting and which would clarify the supervision requirements for ACSWs effective January 1, 2002. Both the Committee and the full Board approved the draft language of new section 4996.23, which has now been amended into SB 724 (Business and Professions Committee) (see 2001 LEGISLATION below).

### BBS Rulemaking

The following is a description of several rulemaking proceedings undertaken by BBS over the past several months:

◆ **Law and Ethics CE Requirement.** On February 23, 2001, BBS published notice of its intent to amend section 1887.3, Title 16 of the CCR, to require MFTs and LCSWs renewing their licenses after January 1, 2004 to complete a six-hour continuing education (CE) course in law and ethics every renewal cycle, and to specify that the course will count toward the 36-hour CE requirement during each two-year renewal cycle. Following a public hearing on April 20, 2001, the Board modified the proposed language to clarify that a total of six hours of law and ethics courses (as opposed to a single six-hour course) must be taken during every renewal cycle. At this writing, BBS is accepting written comments on the modified version of section 1887.3 until May 10, 2001.

◆ **Human Sexuality Training.** On December 29, 2000, BBS published notice of its intent to amend section 1807, Title 16 of the CCR, which addresses the prelicensure requirement for human sexuality training for MFTs and LCSWs. Under section 1807, one way an applicant can satisfy this requirement is by completing a CE course "approved by a professional association." Since section 1807 was adopted, the Board has taken over the approval process for CE providers; the proposed amendment would clarify that such a CE course in human sexuality must be approved by the Board. The amendments would also correct an inaccurate reference to the Education Code. BBS held no public hearing on these proposed regulatory changes, but accepted written comments until February 12, 2001. At this writing, the proposed amendments are awaiting DCA approval, after which they will be forwarded to the Office of Administrative Law (OAL).

◆ **Board Reduces Licensing Fees.** On February 11, 2000, BBS published notice of its intent to amend sections 1816, 1816.6, and 1816.7, Title 16 of the CCR, which establish the Board's current renewal, inactive, and delinquent fees, respectively. To reduce its reserve fund balance, BBS proposed to reduce all three of these fees during the period of January

1, 2001 through December 31, 2002. The changes to section 1816 temporarily reduce the biennial license renewal fee for all BBS licensees to \$25 (from \$130 for MFTs, \$100 for LCSWs, and \$80 for LEPs). The amendments to section 1816.6 temporarily reduce the fee for issuance of an inactive MFT, LCSW, or LEP license to \$12.50, and the changes to section 1816.7 temporarily decrease the delinquent license fee for MFTs, LCSWs, and LEPs to \$25.

The Board is required to decrease these fees in order to comply with Business and Professions Code section 4994.1, which was added by SB 26 (Alquist) (Chapter 839, Statutes of 1995). SB 26 increased BBS' licensing fees to enable it to cope with the legislature's transfer of money from its reserve fund. [14:2&3 CRLR 42-43] However, SB 26 also added section 4994.1, which provides that should the legislature return those funds, BBS must decrease fees accordingly. After a lawsuit and a settlement, the legislature returned a portion of those funds in 1997, and is expected to return the rest in 2000-01. This infusion of money has increased the Board's reserve fund to more than 21 months' worth of operating expenses—an excessively high level. Thus, to reduce its reserve fund level and comply with section 4994.1, the Board proposed to reduce the three fees described above from January 1, 2001 through December 31, 2002.

The Board scheduled no public hearing on these proposed fee changes, but accepted written comments until March 27, 2000. OAL approved the proposed changes on July 25, 2000; they became effective on January 1, 2001.

◆ **Exam Application Regulation.** On December 24, 1999, OAL approved BBS' amendments to section 1805, Title 16 of the CCR, concerning applications to take its written or oral examinations. Previously, section 1805 required applicants seeking to take a licensing exam to apply to the Board on a form prescribed by the Board, and to submit that application with all required supporting documents no later than sixty (60) days before the next scheduled exam. BBS amended section 1805 to state that the Board may issue final filing dates for all examinations not to exceed ninety (90) days prior to any examination. Under the amendments, an applicant who wishes to take an exam must submit a complete application to the Board by the final filing date established by the Board for that exam; otherwise, the applicant is not eligible to take the exam. Further, the application will be considered abandoned if the applicant fails to sit for an examination within one year after being notified of eligibility (pursuant to section 1806(c), Title 16 of the CCR). [17:1 CRLR 1] These changes became effective on January 23, 2000.

### 2000 LEGISLATION

**SB 1554 (Committee on Business and Professions)**, as amended August 22, 2000, makes a number of changes to BBS' enabling act. SB 1554 prohibits the use of the letters "MFT" or "MFCC" in connection with or following the name of an unlicensed individual. The bill eliminates provisions of law requiring BBS to retain all written examinations and

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records of oral examinations for MFT applicants for at least one year, and instead permits BBS to destroy written and oral examination materials two years following the date of the examination. This bill requires MFTs who are licensed in another state and applying for a California license, beginning January 1, 2003, to complete a minimum of a two-semester or three quarter-unit survey courses in psychological testing and psychopharmacology, and allows this coursework (as well as the currently-required coursework in spousal abuse assessment, detection and intervention) to be acquired out of state.

SB 1554 also requires MFTs, LEPs, and LCSWs, in order to renew a license, to notify BBS if they have been convicted of a misdemeanor or felony, and if any disciplinary action has been taken against them by any regulatory or licensing board in any state since their last renewal. SB 1554 ex-

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pands the definition of unprofessional conduct for LEPs to include gross negligence or incompetence in the performance of educational psychology. This bill also specifies that LCSW licenses expire no more than two years after the issue date, with the expiration date of the original license set by BBS, and conforms the requirements for out-of-state clinical social worker license applicants to in-state requirements. The bill also makes other technical, conforming changes. Governor Davis signed SB 1554 on September 28, 2000 (Chapter 836, Statutes of 2000).

**SB 1889 (Figueroa)**, as amended August 23, 2000, clarifies Business and Professions Code section 27, which currently requires BBS and other DCA agencies to post certain information on the Internet regarding their licensees. SB 1889 requires BBS to allow its licensees who use their home address as their official "address of record" to provide a post office box or other alternate address which will be posted on the Internet. The bill also specifies that it does not preclude an agency from also requiring a licensee who has provided an alternative mailing address as his/her address of record to also provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet. This bill was signed by the Governor on September 29, 2000 (Chapter 927, Statutes of 2000).

**AB 2374 (Lempert)**, as amended May 11, 2000, amends Evidence Code section 1157 to exempt the proceedings and records of both MFT and LCSW peer review committees from discovery in civil actions. Governor Davis signed this bill on July 19, 2000 (Chapter 136, Statutes of 2000).

**AB 2524 (Washington)**. The Bronzan-McCorquodale Act, which generally regulates the provision of community mental health services for the mentally ill in every county, authorizes the establishment of regional, secure facilities designed for the commitment and ongoing treatment of seriously emotionally disturbed minors who have been adjudged

wards of the juvenile court. Among other things, the act sets forth staffing requirements for the opening of one of these regional facilities, and requires that the staff include a psychiatrist or psychologist. As amended May 1, 2000, this bill revises the staffing requirements for a regional facility by adding a licensed MFT on an as-needed basis. Governor Davis signed AB 2524 on July 19, 2000 (Chapter 140, Statutes of 2000).

**AB 2161 (Vincent)**. Family Code section 6924 authorizes a minor who is twelve years of age or older to consent

to mental health treatment or counseling services on an outpatient basis, or to residential shelter services, under certain circumstances, where those services are provided by any one of a list of specified professionals, including MFTs. As amended August 23, 2000, AB 2161 autho-

rizes a registered MFT intern, while working under the supervision of certain licensed professionals, to also provide those services.

Health and Safety Code section 123115 authorizes a health care provider who determines that there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient to deny the patient's request, subject to designated conditions. One condition is that the health care provider must permit inspection by, or provide copies of the mental health records to, designated health care providers. AB 2161 revises the list of designated health care providers to add registered MFT interns. It also requires any registered MFT intern inspecting records to work under the supervision of certain licensed professionals. AB 2161 was signed by the Governor on September 17, 2000 (Chapter 519, Statutes of 2000).

The following bills died in committee in 2000: **SB 125 (Haynes)**, which would have prohibited BBS from using any type of oral examination as a condition of licensure as a clinical social worker or MFT [16:1 CRLR 18]; **SB 137 (Knight)**, which would have required applicants for licensure or renewal of a license as an MFT or LCSW to submit to substance abuse testing administered by the Board; and **AB 1312 (Machado)**, which would have clarified that nothing in the California Public Records Act shall be construed to exempt from disclosure any BBS report or analysis that forms any part of its decision to adopt, amend, or repeal an administrative regulation.

## 2001 LEGISLATION

**SB 349 (Committee on Business and Professions)**, as amended March 26, 2001, is a DCA omnibus bill containing clean-up provisions relating to numerous DCA agencies. With respect to BBS, this bill would: (1) clarify the educational requirements that must be certified by, and taken within, an educational institution preparing applicants for MFT licen-

sure; (2) specify that training or coursework in child abuse assessment and reporting required for MFT applicants must be taken in compliance with any and all relevant laws and regulations; and (3) repeal the requirement that an MFT intern notify BBS of the commencement of employment and the termination of employment as an intern. [S. Appr]

**SB 724 (Committee on Business and Professions)**, as introduced February 23, 2001, is another DCA omnibus bill that would make a number of changes to BBS' enabling act, including the following: (1) revise the educational requirements for MFT licensure applicants to add an acceptable degree title of counseling with an emphasis in marriage and family therapy, and to eliminate a master's or doctoral degree in counseling with an emphasis in clinical social work from qualifying toward licensure; (2) require the degree program required for MFT licensure to be a single, integrated program that is designed to train MFTs, and broaden the Board's authority to approve qualifying degree programs; (3) require registered MFT interns and ACSWs, when renewing their registrations, to notify BBS if they have been convicted of a crime since their last renewal; (4) prohibit the renewal of an MFT intern registration if the application is made more than six years after the registration was initially issued; (5) require BBS to accept a passing score on the written examination for MFTs, LCSWs, and LEPs for a period of seven years from the date on which the examination occurred; (6) clarify the current prohibition against LCSWs having sexual relations with patients by specifying that such conduct is also prohibited with former clients within two years following the termination of therapy; (7) clarify and broaden BBS' authority to deny a license to an applicant who is required to register as a sex offender; (8) clearly identify the educational requirements for LCSW licensure to include completion of ten hours of training or coursework in human sexuality and a minimum of seven hours of training or coursework in child abuse assessment and reporting; (9) delete the requirement that a supervisor of an ACSW submit evidence of satisfactory completion of supervised experience gained by the ACSW; and (10) provide that the supervisor of an ACSW in a private practice setting must also regularly conduct business in that setting.

Additionally, in response to much confusion in the social work community, SB 724 would clarify the supervised professional experience requirement for LCSW licensure after January 1, 2002 (see MAJOR PROJECTS). New section 4996.23 of the Business and Professions Code would continue to require a total of 3,200 hours of post-master's degree supervised professional experience. Of that 3,200 hours, a minimum of 2,000 hours must be in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling. Of those 2,000 hours, a minimum of 750 hours must consist of face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services. Additionally, the new provision would specify that a minimum of two years of the required experi-

ence must be acquired within the six years immediately preceding the date on which the application for licensure was filed. Of the 3,200 hours of experience required, 2,200 hours must be acquired under the supervision of a LCSW; the remaining 1,000 hours may be acquired under the supervision of "a licensed mental health professional who is acceptable to the board."

The new section continues to require supervised experience to include at least one hour of direct supervisor contact for each week of experience claimed by the registered ACSW. However, the bill would change existing law by providing that a registrant must receive "an average of at least one hour of direct supervisor contact for every ten hours of face-to-face psychotherapy the registrant performs in each setting in which experience is acquired." Under the proposed revision, no more than five hours of supervision, whether individual or group, may be credited during any single week. Finally, the bill would specify that, of the 3,200 total hours, 1,600 hours must consist of individual supervision, and the remaining hours may consist of group supervision. [S. Appr]

**SB 537 (Vasconcellos)**, as amended April 3, 2001, would create within DCA a new California Board of Alcohol and Drug Abuse Counselors (BADAC) and would provide for the registration and licensure by that Board of persons who render, for compensation, alcohol and other drug dependency counseling services. The Board would consist of nine members: eight licensees and one "consumer of alcohol or drug abuse counseling services prior to his or her appointment." The bill would create three categories of licensure: (1) Licensed Addiction Counselor I, (2) Licensed Addiction Counselor II, and (3) Licensed Addiction Practitioner. The bill would also make it a misdemeanor for an unlicensed person to represent him/herself as licensed by BADAC to perform alcohol or drug counseling functions.

The California Association of Alcoholism and Drug Abuse Counselors is sponsoring this bill, and argues that regulation is needed in this area because there are no existing standards for people who perform drug/alcohol counseling. Because of the California electorate's approval of Proposition 36 in 2000, the proponents expect that there will be an increased demand for competent addiction counselors and programs. They also argue that the risk posed by incompetent drug/alcohol counselors, if unmonitored, would be great because of \$150 million in new funding each year authorized for drug treatment programs.

The California Association of Marriage and Family Therapists, the California Society for Clinical Social Work, and the California Psychological Association all oppose the bill. The opponents believe the bill does not adequately establish the scope of practice for drug/alcohol counselors, and point to the potential for overlap with the jurisdiction of other boards (such as BBS). They also note that the proposed composition of this board, with only one public member, is contrary to the preference of the legislature to expand public membership on state licensing boards.

## HEALTH CARE REGULATORY AGENCIES

During its April 2001 meeting, BBS discussed the bill and questioned whether the legislature might choose to incorporate the regulation of addiction counselors within its jurisdiction rather than creating an entirely new board. If this were to happen, the Board would have to make many changes and may have to expand its membership. The Board decided to monitor this legislation closely. [S. B&P]

**AB 213 (Nation).** Existing law mandates the confidentiality of all information obtained in the course of providing services, under specified sections of law governing the mentally ill and the developmentally disabled, to either voluntary or involuntary recipients of mental health services. However, information and records may be disclosed in certain specified cases, including when the patient, with the approval of the physician, psychologist, or LCSW who is in charge of the patient, designates persons to whom information or records may be released. As amended March 28, 2001, AB 213 would add MFTs to the list of professionals authorized to approve such a release of information. [S. H&HS]

**AB 269 (Correa).** Existing law provides that professional licensing boards within DCA (including BBS) may appoint an executive officer to assist the board with its various duties. As amended April 5, 2001, this bill would provide that a three-member panel, rather than the Board, would have the power to appoint the executive officer. The three members of this panel would include a representative of the Board, the DCA Director, and the Governor's appointments secretary. In response to a recent audit by the Bureau of State Audits (see agency report on BSA for more information), AB 269 would also create a "Division of Enforcement Oversight" within DCA to enable the Department to monitor the consumer complaint and discipline systems of its boards. At its April 2001 meeting, the Board decided to oppose this bill, in the belief that it should retain the power to appoint an executive officer of its choice. [A. B&P]

## LITIGATION

In *Franklin v. Terr*, 201 F.3d 1098 (Dec. 9, 1999), the U.S. Ninth Circuit Court of Appeals held that a plaintiff who was convicted of murder using "repressed memory" evidence, but whose conviction was later overturned, failed to state a claim under 42 U.S.C. section 1983 against a therapist who allegedly conspired with others to testify falsely that the therapist had not hypnotized the plaintiff's daughter during her therapy.

In 1990, George Franklin was convicted of murdering Susan Nason twenty years earlier. His conviction was based on the testimony of his daughter, Eileen Franklin-Lipsker, a childhood friend of Nason. Franklin-Lipsker based her accusation against her father on a memory that she claimed was previously repressed but recently recovered during psycho-

therapy. In 1995, a federal district court overturned Franklin's murder conviction and the district attorney declined to retry him. Franklin then sued several defendants on various conspiracy theories under 42 U.S.C. section 1983, including Kirk Barrett (Franklin-Lipsker's therapist) and Lenore Terr (a psychiatrist who testified as an expert witness for the prosecution in Franklin's murder trial).

To state a claim under section 1983, the plaintiff must allege that he was deprived of a federal or constitutional right and that the defendant acted under color of state authority. The court noted that an allegation that a private person conspired with a state official would satisfy the requirement that the defendant act under color of state authority. Here, however, the defendant therapist was not a state actor, nor were any of his alleged co-conspirators. Therefore, the Ninth Circuit affirmed the district court's dismissal of the section 1983 claim against Barrett.

The Ninth Circuit also affirmed the dismissal of Franklin's section 1983 claim against Terr. According to the plaintiff's allegation, Terr conspired to present her own and another witness's perjured testimony at trial. The court noted that witnesses have absolute immunity from liability for civil damages under section 1983 for giving perjured testimony at trial, citing *Briscoe v. LaHue*, 460 U.S. 325 (1983). The appellate court held that allowing a plaintiff to avoid the hold-

ing in *Briscoe* by alleging that the witness also engaged in a conspiracy to present perjured testimony would undermine the purposes served by granting absolute immunity to witnesses. Absolute immunity from civil liability is

based on the policy of protecting the judicial process by ensuring that witnesses can perform their function without fear of harassment or intimidation. The appellate court stated that "because Terr's [the psychiatrist-defendant] alleged conspiratorial behavior is inextricably tied to her testimony, we find that she is immune from damages."

In *People v. Pedro M.*, 81 Cal. App. 4th 550 (June 12, 2000), petition for rehearing denied July 5, 2000, review denied September 27, 2000, the Second District Court of Appeal held that the psychotherapist-patient privilege does not preclude a therapist from testifying about a juvenile's progress in a court-ordered treatment plan. The appellant, a juvenile, was originally placed in the Rancho San Antonio sexual offender program after being declared a ward of the juvenile court upon his admission that he had committed a forcible lewd act upon a child under 14, as well as second degree commercial burglary. At that time, the juvenile court required as a condition of his probation that he "cooperate in a plan for psychiatric, psychological testing or treatment."

Eighteen months later, Pedro was removed from Rancho San Antonio due to his refusal to comply with his treatment plan. At a subsequent hearing, the juvenile court found that Pedro's noncompliance was a violation of the terms of his

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## HEALTH CARE REGULATORY AGENCIES

probation and committed him to the California Youth Authority. The appellant argued that the testimony of his Rancho San Antonio therapist at this second hearing was erroneously admitted after appellant invoked the psychotherapist-patient privilege (Evidence Code sections 1012 and 1014).

The Second District determined that the juvenile court's ability to evaluate appellant's compliance with his terms of probation would be severely diminished if the therapist were precluded from providing the court with feedback on appellant's progress in the court-ordered psychological treatment program. The court noted that Evidence Code section 1012 by its own terms permits the disclosure of confidential communications between patient and psychotherapist to "those to whom disclosure is reasonably necessary for...the accomplishment of the purpose for which the psychotherapist is consulted...." The court held that "those to whom disclosure is reasonably necessary" "would include the juvenile court, where the patient is a delinquent minor who has been properly directed to participate and cooperate in a sex offender treatment program in conjunction with a disposition order placing the minor on probation." The appellate court found that the juvenile court had properly limited the scope of the therapist's testimony so that details of the appellant's therapy sessions were not revealed, including any specific statements made by appellant, any advice given by the therapist, or any diagnosis made by the therapist. Thus the court held that under these circumstances "the psychotherapist-patient privilege did not preclude [the therapist] from testifying at the adjudication of the supplemental petition concerning appellant's participation and progress in the court-ordered treatment plan."

### RECENT MEETINGS

At its February 4, 2000 meeting, BBS elected MFT Selma Fields as Board Chair and LCSW Marsena Buck as Vice-Chair.

At BBS' May and November 2000 meetings, only five members were present. A quorum was not established and no official action could be taken.

At its August 2000 meeting, the Board reviewed its enforcement statistics over the prior four fiscal years (from 1996-97 through 1999-2000). The statistics indicate that BBS enforcement activity has declined in most categories. Although the number of complaints received increased from 540 in 1996-97 to 620 in 1999-2000, the number of investigations opened declined from 78 in 1996-97 to 63 in 1999-2000; similarly, the number of investigated cases transferred to the Attorney General's Office for the filing of an accusation declined from 42 in 1996-97 to 35 in 1999-2000. Although the number of accusations filed actually increased (from 28 in 1996-97 to 37 in 1999-2000), BBS took a total of 41 disciplinary actions in 1999-2000, as compared with 57 in 1996-97.

At its January 2001 meeting, the Board reelected Selma Fields as Board Chair and selected MFT Karen Pines as Vice-Chair. At the meeting, BBS also announced that in December

2000, the Department of Finance audited the Board and issued a generally positive preliminary report. Executive Officer Sherry Mehl reported that, at the end of January 2001, staff would begin to randomly audit licensees to investigate their compliance with the Board's CE requirements. The auditing process will last for a six-month period.

Also in January 2001, the Board's Consumer Services/Consumer Protection Committee and the full Board adopted several proposed changes to BBS' disciplinary guidelines. These guidelines are intended to assist the deputies attorney general who prosecute BBS cases, the administrative law judges who preside over BBS disciplinary hearings, and the Board itself as to the preferred range of sanctions for any given violation of the Board's enabling acts and regulations, to ensure that similarly situated licensees are treated similarly. Many of the changes were minor; however, the Board approved an entirely new table of contents; added a recommended penalty for the violation of a new requirement that BBS licensees keep patient records consistent with sound clinical judgment [17:1 CRLR 2, 4]; added six new standard conditions of probation; moved cost recovery from an optional condition to a standard condition of probation; and added two new optional conditions of probation. As regulatory agency disciplinary guidelines are now required to be codified in regulation under the Administrative Procedure Act, the Board is expected to shortly amend section 1888, Title 16 of the CCR, to reference the revised version of its disciplinary guidelines.

At its April 20, 2001 meeting, the Board revised its public disclosure policy, under which it previously disclosed on its Web site felony convictions against its licensees reported to the Board on or after July 1, 1995. BBS' disclosure policy somewhat mirrors the public disclosure policy of the Medical Board, adopted by that agency in 1993 and later codified in statute. However, state law requires the Medical Board to disclose felony convictions, whereas no law requires BBS to disclose them. The Board agreed with legal counsel LaVonne Powell's recommendation that the agency no longer disclose felony convictions unless it takes disciplinary action against a licensee based on the conviction (in which case both the disciplinary action and the conviction will be disclosed).

Also in April 2001, the Board reviewed the preliminary results of the CE audits that had begun the prior month and discussed the appropriate way to handle licensees who are delinquent in their CE requirements. Some proposed options included a fine, discipline, or a warning letter with a deadline to complete the required courses. The Board agreed to investigate appropriate options as more data become available regarding noncompliance with CE requirements.

### FUTURE MEETINGS

**2001:** July 26-27 in Los Angeles; November 8-9 in Riverside.

**2002:** January 24-25 in San Diego; April 25-26 in Sacramento; July 25-26 in Los Angeles; November 14-15 in the Ontario area.