

## Board of Behavioral Sciences

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**T**he 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, family and child counselors (MFCCs), licensed clinical social workers (LCSWs), and licensed educational psychologists (LEPs).

MFCCs assist individuals, couples, or groups in examining interpersonal relationships for the purpose of 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 the 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 part 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, to 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; 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 MFCCs, two LCSWs, and one LEP. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

### Major Projects

#### BBS Undergoes Sunset Review

During the fall of 1997, the necessity and performance of BBS were reviewed by the Joint Legislative Sunset Review Committee (JLSRC) and DCA under the "sunset review" process set forth in SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). Under the sunset process, the legislature inserts an expiration date into the enabling act of each DCA

regulatory board; prior to that date, the JLSRC must review the need for and performance of the board, and the legislature must pass a bill extending the life of the agency or it ceases to exist. [15:4 CRLR 32] As required under the statute, BBS submitted a lengthy report describing its mission, functions, and activities on October 1, and answered questions from JLSRC members at a hearing on November 19, 1997.

In February 1998, DCA issued its report and recommendations on BBS. Noting that consumers who utilize services of BBS licensees tend to be vulnerable, distressed, and/or dysfunctional, and that improperly trained counselors could cause mental or physical injury to clients, the Department recommended continuation of the Board and its licensing programs for MFCCs, LCSWs, and LEPs. DCA also recommended retention of the Board's oral examination, despite complaints from many licensure applicants (particularly LCSW candidates) about its low pass rate. In its April report, the JLSRC agreed that BBS should continue to regulate MFCCs, LCSWs, and LEPs, and also recommended that BBS be required to develop regulations requiring its licensees to identify themselves to consumers as state licensees. As to the oral examination, Committee staff noted that the oral exam is undergoing review and recommended that it be retained. However, the Committee refused to adopt that recommendation. Instead, the Committee approved a recommendation eliminating the current oral examination for LCSWs by January 1, 1999 and directing BBS to return within one year with a proposal to include the material on the oral exam within a degree program and under supervised conditions. Although SB 288 (Haynes) included a provision abolishing the LCSW oral examination, that bill failed passage in the Assembly Consumer Protection Committee in June 1998; the JLSRC's recommendation to eliminate the LCSW oral exam was not incorporated into any bill which was enacted in 1998.

SB 1983 (Greene) (Chapter 589, Statutes of 1998) and SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) implement several of the recommendations of DCA and the Sunset Review Committee (see LEGISLATION).

#### Associate Clinical Social Worker Supervision Requirements

Effective January 1, 1999, SB 1983 (Greene) revises the requirements for supervised professional experience which must be completed by candidates for the LCSW license, who must register with the board as associate clinical social workers (ACSWs) prior to obtaining supervision for which they seek credit (see LEGISLATION).

On December 11, BBS published notice of its intent to adopt new section 1870, Title 16 of the CCR, which sets

forth the requirements that supervisors must meet in order to supervise a registered ACSW under SB 1983. Among other things, the supervisor must be licensed as a LCSW, MFCC, psychologist, or physician certified in psychiatry; and must have practiced psychotherapy as part of his/her clinical experience for at least two years within the last five years immediately preceding supervision. The supervisor must have sufficient experience, training, and education in the area of supervision to competently supervise ACSWs; and must know and understand the laws and regulations pertaining both to supervision of ACSWs and the experience required for licensure as a LCSW. Effective January 1, 2001, supervisors who are licensed by BBS must have a minimum of fifteen contact hours in approved supervision training obtained from a state agency or approved continuing education provider.

Under section 1870, the supervisor must ensure that the extent, kind, and quality of clinical social work performed is consistent with the training and experience of the supervisee. The supervisor must review client/patient records, and monitor and evaluate assessment and treatment decisions of the supervisee; monitor and evaluate the ability of the supervisee to provide services at the sites where the supervisee will be practicing and to the particular clientele being served; and ensure compliance with all laws and regulations governing the practice of clinical social work. The supervisor and supervisee must develop a supervisory plan and submit it to BBS (see below). The supervisor must complete an assessment of the supervisee's strengths and limitations at least once a year and upon termination of supervision; and complete a termination of supervision report at the end of supervision and submit it to the Board within 30 days of termination of supervision.

At this writing, the Board does not plan to hold a public hearing on these proposed regulatory changes; the written comment period closes on January 25, 1999.

### **Development of a Supervisory Plan**

On December 15, BBS submitted emergency section 1870.1, Title 16 of the CCR, to the Office of Administrative Law (OAL). Effective January 1, 1999, section 1870.1 requires all ACSWs and qualified mental health professionals who assume responsibility for providing supervision to develop a supervisory plan that describes the goals and objectives of supervision; the parties to the plan must complete and sign under penalty of perjury a new "Supervisory Plan" form developed by BBS. The plan must be completed by each supervisor providing supervision and submitted to the Board with 30 days of commencing supervision.

OAL approved this emergency regulation on December 23; it became effective on January 1, 1999. The emergency regulation is valid for 120 days; within that time period, BBS must engage in the formal rulemaking process in order to permanently adopt the regulation.

### **Board Amends Requirements for MFCC Trainee and Intern Supervisors**

On September 11, BBS published notice of its intent to amend section 1833.1, Title 16 of the CCR, its regulation

containing requirements for supervisors of MFCC trainees or interns. The amendments specify that effective January 1, 2000, a supervisor who is licensed by the Board must complete a minimum of six hours of supervision training every two years. Supervision training received between January 1, 1997 and December 31, 1999 may apply toward this requirement; it may also apply toward satisfaction of BBS' current continuing education requirements.

BBS held a public hearing on these proposed amendments on October 29 in San Diego; during the hearing, the Board adopted several minor modifications to the proposed language. On November 13, the Board published notice of the modifications to the text made at the October 29 meeting. The Board received written comments on the proposed modifications until December 1 and, on December 18, filed the regulation package with OAL, where it is pending at this writing.

### **Board Amends Fee Regulations**

On September 11, BBS published notice of its intent to amend sections 1816.2–1816.7, Title 16 of the CCR. The purposes of these amendments are to codify all of the Board's various licensing and registration, renewal, exam, exam appeal and rescoring, and other fees in regulation; to lower some fees; and to establish license fees for the new inactive status license authorized by SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) (see LEGISLATION).

BBS held no public hearing on the proposed amendments, but accepted written comments until October 26. BBS submitted the rulemaking file on the amendments to OAL in early December; at this writing, OAL is expected to approve them during early January.

### **Board Amends Application Procedures Regulations**

On July 17, several changes to subsections 1806(a) and (b), Title 16 of the CCR, became effective. These subsections are intended to specify the circumstances under which an application for licensure is considered abandoned; however, they did not provide a clear understanding as to when abandonment has occurred. The new language clarifies that an application is deemed abandoned if it has not been completed by the applicant within one year of filing, and that an application is deemed "complete" when all documents and information required for application have been submitted to the Board. The amendment to subsection (b) clarifies that an applicant has also abandoned an application if he/she does not submit information that he/she has corrected the deficiencies specified in a deficiency letter within one year from the date of the letter; fails to sit for examination within one year after being notified of eligibility; or fails to pay the initial license fee within one year after notice from BBS of successful completion of examination requirements.

On June 26, BBS published notice of its intent to amend section 1805, Title 16 of the CCR, concerning applications to take the written or oral examination. The amendments would provide that an application to take the written or oral exam and all supporting documents must be submitted to the Board no later than sixty days prior to the next scheduled exam.

BBS held a public hearing on these proposed amendments on May 7, adopted the proposed language at its meeting on May 8, and filed them with OAL on June 16. However, Executive Officer Sherry Mehl believes that the amendments do not sufficiently clarify the Board's intent, and these amendments have been placed on hold.

## **Board Approves Regulation for Declaratory Decisions**

On July 11, new section 1800, Title 16 of the CCR, became effective. Government Code section 11465.10 *et seq.*, part of the state's Administrative Procedure Act, authorizes BBS to issue a declaratory decision, in effect an advisory opinion concerning assumed facts submitted by an interested party. Section 1800 clarifies that no BBS opinion or decision is a declaratory decision under Government Code section 11465 unless it is specifically termed a "declaratory decision."

## **Proposed Recordkeeping Requirement**

At its August 6-7 meeting, BBS discussed draft legislation imposing recordkeeping requirements relating to services to clients; specifically, board staff drafted amendments to the MFCC, LCSW, and LEP licensing acts stating that "failure to maintain adequate and accurate records relating to the provision of services to clients" would be unprofessional conduct and grounds for discipline.

At the August 6 meeting of the Board's Subcommittee on Legislation/Managed Care, Board President Lorie Rice stated that she had initiated the topic because she is confused as to why no BBS statute or regulation requires licensees to keep records relating to their clients. Executive Officer Sherry Mehl stated that staff had gathered information from other mental health boards and associations on their recordkeeping requirements. The Medical Board of California (MBC) is the only other board with such a requirement, and BBS' proposed language reflected MBC's language. Although several in attendance (including representatives from the California Association of Marriage and Family Therapists) expressed concern about the lack of definitions for the terms "adequate" and "accurate" in the proposal, staff stated that the broad language of the proposal could be effectively applied on a case-by-case basis, and the Subcommittee approved it on condition that the Board would promulgate regulations to further define those terms.

After further discussion at the full Board's August 7 meeting, the Board approved draft language stating that "failure to maintain records related to the provision of services to clients" is unprofessional conduct, and "the Board shall adopt regulations defining the standard of care regarding recordkeeping."

At its October 28-29 meeting, the Board continued its discussion of the recordkeeping proposal. Board members expressed concern that the requirement be very specifically defined, which will be hard to accomplish; further, some stated that the requirement will be difficult for licensees to meet. LCSW member Michael Johnson proposed

a workshop to educate BBS on recordkeeping issues. The Board agreed to hold a workshop in 1999.

## **BBS Adopts Disciplinary Policy**

At BBS' August 7 meeting, DCA legal counsel LaVonne Powell asked the Board to approve a policy that agreements in lieu of discipline (ALDs) are not acceptable. An ALD is a written settlement agreement between the Board and a respondent which provides that if all terms and conditions are met by the respondent, the accusation will be dismissed without prejudice. These types of arrangements are usually not accepted by BBS because they are not disciplinary in nature. The Board agreed that ALDs are not acceptable resolutions and adopted the policy (#E-98-02) at its October 29 meeting.

## **Board Maintains Website**

BBS has recently developed an Internet website which contains the Board's mission statement and history, profiles of Board members, and the Board's fee schedule and advertising guidelines. The website also includes information on the Board's upcoming meeting schedule, licensing statistics, disciplinary actions, enforcement statistics, and BBS' statutes and regulations.

## **Legislation**

**SB 1983 (Greene)**, as amended July 23, extends BBS' "sunset" date until July 1, 2005 (see MAJOR PROJECTS).

The bill also revises the supervised professional experience (SPE) requirement for LCSW candidates who register with BBS as associate clinical social workers after January 1, 1999. Specifically, the legislature added new section 4996.21 to the Business and Professions Code, which specifies the requirements for LCSW SPE after January 1, 1999. The new law requires LCSW candidates to complete at least 3,200 hours of post-master's degree supervised experience in providing clinical social work services as permitted by section 4996.9. The required experience must consist of the following: (1) a minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling; and (2) a maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research. Although the majority of the hours must be supervised by a LCSW, up to 1,000 of the SPE hours may be supervised by a licensed mental health professional other than a LCSW.

The supervision must include at least one hour of direct supervisor contact for each week of experience claimed and must include at least one hour of direct supervisor contact for every ten hours of client contact in each setting where experience is gained. Not less than one-half of the hours of required supervision shall be individual supervision; the remaining hours may be group supervision. For purposes of this provision, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group setting of not more than eight persons.

The new law requires the supervisor and supervisee to develop a supervisory plan that describes the goals and objectives of the supervision. These goals must include an ongoing assessment of the supervisee's strengths and limitations and the assurance of practice in accordance with applicable laws and regulations. The supervisee must submit the initial supervisory plan to BBS within 30 days of commencement of supervision. The supervisor must submit to BBS within 30 days of termination of supervision evidence of satisfactorily completed supervised experience by the supervisee.

Minor changes to Business and Professions Code section 4996.18 requires LCSW candidates who wish to be credited with experience toward the licensure requirement to register with BBS as an associate clinical social worker prior to obtaining that experience; and require BBS to report to the legislature on or before October 1, 1999 concerning its efforts to identify educational issues related to licensure.

SB 1983 was signed by the Governor on September 17 (Chapter 589, Statutes of 1998).

**SB 2238 (Committee on Business and Professions)**, as amended August 26, requires each BBS licensee to display his/her license in a conspicuous place in the licensee's primary place of practice; requires MFCC candidates, as a condition of licensure, to complete instruction in spousal or partner abuse assessment, detection, and intervention; authorizes all three categories of BBS licensees to apply to BBS to have his/her license placed on inactive status; authorizes BBS to suspend or revoke a license based upon the denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency; provides that revocation, suspension, or restriction by the Board of a license, certificate, or registration to practice as an educational psychologist, a clinical social worker, or a marriage, family and child counselor constitutes grounds for disciplinary action for unprofessional conduct against the licensee or registrant; and provides for the forfeiture of examination fees paid by applicants for licensure who fail to appear for examination. SB 2238 also requires BBS to submit to the DCA Director, on or before December 31, 1999, its method for ensuring periodic evaluation of every licensing examination that it administers. This bill was signed by the Governor on September 26 (Chapter 879, Statutes of 1998).

**AB 1449 (Brown)**, as amended April 13, revises—commencing July 1, 1999—the titles “licensed marriage, family and child counselor” and “marriage, family and child counselor” to “licensed marriage and family therapist” and “marriage and family therapist,” respectively. The bill specifies that nothing in it expands or constricts the scope of practice

of MFCCs. AB 1449 was signed by the Governor on July 3 (Chapter 108, Statutes of 1998).

**SB 1292 (Calderon)**, as amended July 8, 1997, would have provided that if an enrollee of a specialized health care plan which offers professional mental health services must involuntarily switch to another similar specialized mental health care plan, due to a requirement by the employer-sponsor of the coverage, during a course of treatment with a psychiatrist, psychologist, MFCC, or LCSW, the new specialized plan must allow the enrollee to continue treatment with the provider, subject to certain terms and conditions. Governor Wilson vetoed this bill on September 29, stating that it is unnecessary because a 1995 bill already requires health plans to establish policies to facilitate the continuity of care for new enrollees, which policies must give reasonable consideration to the potential clinical effect that a change of provider would have on the enrollee's treatment.

**AB 2721 (Miller)**, as amended August 10, revises section 130 of the Business and Professions Code to limit the term of office of any BBS member to four years expiring on June 1.

The bill also provides that any licensee of BBS who engages in, or aids and abets, prostitution in the workplace is guilty of unprofessional conduct and is subject to disciplinary action against his/her license; the bill also provides for the imposition of a civil penalty in such cases. AB 2721 was signed by the Governor on September 29 (Chapter 971, Statutes of 1998).

## Recent Meetings

At its October 29 meeting, the Board discussed a potential regulatory amendment concerning continuing education (CE) course instructors. Specifically, the Board discussed proposed amendments to section 1887.10, Title 16 of the CCR, to provide that any CE instructor whose healing arts license has been disciplined must notify all approved CE providers of that discipline. At an earlier meeting of the Board's Committee for Consumer Services/Protection, the Committee found that the language was too broad; members argued it is unfair to require disclosure of any past disciplinary action. The Committee amended the language to require CE instructors to disclose current discipline to providers, and the Board approved it for future publication.

## Future Meetings

- February 4–5, 1999 in Los Angeles.
- June 4, 1999 in Sacramento.
- July 28–29, 1999 in San Diego.
- October 28–29, 1999 in Ontario.