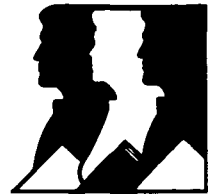


Board of Behavioral Sciences

Executive Officer: Sherry Mehl ♦ (916) 445-4933 and (916) 322-1700 ♦ Internet: www.bbs.ca.gov/



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 4990 *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 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 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).

At this writing, the Board is functioning with five vacancies—one MFT, one LCSW, and three public members; all five vacancies must be filled by Governor Davis. Additionally, the terms of the Board's two legislative appointees—both of whom are public members—expire on June 1, 1999; thereafter, they may serve for a grace period not to exceed one year (or until they are reappointed or a successor is appointed).

MAJOR PROJECTS

CE Course Instructor Qualifications

On April 2, BBS published notice of its intent to amend section 1887.10, Title 16 of the CCR, which sets forth the required qualifications of instructors who teach continuing education (CE) courses to MFTs and LCSWs. The amendment would provide that any instructor whose healing arts license is restricted pursuant to a disciplinary action in California or in any other state or territory must notify all approved CE providers of that discipline before instruction begins or immediately upon notice of the decision, whichever occurs first.

At this writing, BBS does not intend to hold a public hearing on this proposed amendment, but is accepting written comments until May 17.

Update on Other Board Rulemaking

The following is an update on recent BBS rulemaking proceedings described in detail in Volume 16, No. 1 (Winter 1999) of the *California Regulatory Law Reporter*:

♦ **Associate Clinical Social Worker Supervisor Requirements.** Effective January 1, 1999, SB 1983 (Greene) (Chapter 589, Statutes of 1998) revised 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. In December 1998, 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. Following a 45-day public comment period ending on January 25, 1999, BBS forwarded the rulemaking file on the proposed section to the Office of Administrative Law (OAL) in late March.

Among other things, section 1870 requires an ACSW supervisor to be licensed as an LCSW, MFT, psychologist, or physician certified in psychiatry; and to 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 an LCSW. Effective January 1, 2001, supervisors who are licensed by BBS must have a minimum of 15 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. The supervisor must also 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 within 30 days of the commencement of any supervision (see below). The supervisor must complete an assessment of the supervisee's strengths and limitations at least once a year, 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, OAL is expected to issue its decision on section 1870 in mid-May. The Board has requested that the new section take effect on the same day it is approved.

♦ **Development of a Supervisory Plan.** In December 1998, BBS submitted and OAL approved emergency section 1870.1, Title 16 of the CCR, which—effective January 1, 1999—requires all ACSWs and their supervisors to develop and submit to the Board a supervisory plan that describes the goals and objectives of supervision. [16:1 CRLR 19]

Also in late December, BBS published notice of its intent to permanently adopt section 1870.1, and accepted written comments until February 1, 1999. Following the comment period, the Board circulated two modified versions of the proposed regulation, and submitted the second modified version to OAL on April 6. Under that version, on and after January 1, 1999, all ACSWs and LCSWs or licensed mental health professionals acceptable to the Board (as defined in section 1874, Title 16 of the CCR) who assume responsibility for providing supervision must develop a supervisory plan that describes the goals and objectives of supervision, and must complete and sign under penalty of perjury a new "supervisory plan" form (No. 1800 37A-521, as revised 02-99). The supervisory plan must be completed by each supervisor providing supervision; the original signed plan must be submitted by the ACSW to the Board within 30 days of commencing supervision.

At this writing, OAL is expected to issue its decision on section 1870.1 in mid-May.

♦ **Supervision Training Requirements for MFT Supervisors.** On January 21, OAL approved BBS' amendments to section 1833.1, Title 16 of the CCR, its regulation containing requirements for supervisors of MFT trainees or interns. [16:1 CRLR 19] 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. Supervisors who are licensed by the Board and commence supervision on and after January 1, 2000, but have not met the six-hour training requirement must complete the required training or coursework within sixty days of the commencement of supervision. These amendments became effective on February 20.

♦ **Amendments to Fee Regulations.** On January 8, OAL approved BBS' amendments to sections 1816.2–1816.7, Title 16 of the CCR. These amendments codify in regulation all of the Board's various licensing and registration, renewal, exam, exam appeal and rescoring, and other fees; lower some fees; and establish license fees for the new inactive status license authorized by SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998). [16:1 CRLR 19]

BBS Plans Workshop on Proposed Recordkeeping Requirements

For the past several months, BBS has been discussing the absence of any legal requirement compelling its licensees to keep records relating to services provided to clients. At its

August 1998 meeting, BBS' Committee on Legislation/Managed Care approved draft legislation 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. However, public comment at that meeting indicated general opposition to such a requirement, as the terms "adequate" and "accurate" may be impossible to define—thus rendering such a requirement unenforceable. [16:1 CRLR 20]

At its February meeting, BBS members again discussed the recordkeeping issue. Several members urged the Board to approach this issue cautiously, as written records kept by BBS licensees may be demanded by managed care organizations and other third-party payors or might be subject to other intrusions, thus compromising client confidentiality. Other participants agreed, noting that any law on this issue initiated by BBS may conflict with existing recordkeeping requirements imposed by government and private payors. In order to air all sides of this debate, BBS scheduled a two-hour workshop on the issue for June 4.

DCA Website Displays Information on BBS Licensees

SB 492 (Rosenthal) (Chapter 661, Statutes of 1997) requires eleven occupational licensing boards within DCA—including BBS—to post licensing and disciplinary information on their licensees on the Internet. Under Business and

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Professions Code section 27, the information to be provided must include "information on suspensions and revocations issued by a board and other related enforcement action taken by a board relative to persons, businesses, or facilities subject to licensure or regulation by a board." The statute also says: "The information shall not include personal information including home address (unless used as a business address), home telephone number, date of birth, or social security number." Beginning in April, the information is being disclosed through DCA's website at <www.dca.ca.gov>.

At its February 5 meeting, BBS expressed concern about the fact that the addresses of record of its licensees would be disclosed through the DCA website. Executive Officer Sherry Mehl reminded the Board that licensees have been warned that their "address of record"—which may be a business address or post office box—is public information, and that Board staff routinely advises licensees to use business or other addresses as their addresses of record if they do not want their home addresses disclosed. Some Board members suggested that BBS seek legislation to block the disclosure of its licensees' addresses; Board staff promised to conduct research into the issue and report at the Board's June meeting.

LEGISLATION

AB 352 (Migden), as introduced February 11, would include BBS within Business and Professions Code section 800, and require it to maintain a "central file" with information on its licensees. The "central file" would contain an individual historical record for each licensee with respect to criminal convictions, malpractice judgments or settlements requiring the licensee or his/her insurer to pay any amount of damages in excess of \$3,000, any consumer complaints (except those which are found to be without merit), and any disciplinary information reported to BBS by MFT peer review bodies. The contents of a licensee's central file which are not public records under any other provision of law would be kept confidential, except that a licensee (or his/her counsel or representative) would have the right to inspect and copy his/her complete file except for records that may disclose the identity of an information source. AB 352 is sponsored by the California Association of Marriage and Family Therapists (CAMFT). [*S. B&P*]

AB 1677 (Committee on Consumer Protection, Governmental Efficiency and Economic Development), as introduced March 16, would amend Business and Professions Code section 4996.21 to clarify the requirements for mental health professionals who supervise the experience of LCSW applicants. This bill would mandate that the required professional experience gained under the supervision of a licensed mental health professional be provided by a person acceptable to the Board. [*A. Appr*]

SB 125 (Haynes), as amended March 17, is a reintroduction of 1998's SB 288 (Haynes) and would implement a 1998 recommendation of the Joint Legislative Sunset Review Committee. The bill would prohibit BBS from utilizing any

type of oral examination as a condition of licensure as a clinical social worker or MFT, except as specified, and delete the prescribed fees for the oral examination. [*16:1 CRLR 18*] The bill would also require the Board to issue a license to any applicant who was qualified to take and passed the written examination prior to the effective date of this bill (January 1, 2000), but who did not pass the oral examination, provided the applicant has not been guilty of an act constituting unprofessional conduct. At its February 5 meeting, BBS noted that it has previously opposed elimination of its oral examination. [*S. B&P*]

SB 137 (Knight), as introduced January 4, would enact the Marriage, Family, and Child Counselor and Clinical Social Worker Substance Abuse Testing Act of 1999 to require applicants for licensure or renewal of a license as an MFT or LCSW to submit to substance abuse testing administered by the Board prior to the issuance or renewal of the license. The bill would authorize the Board to increase fees paid by applicants by an amount equal to the actual cost incurred by the Board for administering the test. This bill, which is opposed by BBS, failed passage in the Senate Business and Professions Committee on April 12, but reconsideration was granted. [*S. B&P*]

SB 809 (O'Connell), as introduced February 25, would establish a statute of limitations on accusations filed by the Board against MFTs and LCSWs. Sponsored by CAMFT, the bill would require the Board to file an accusation against an MFT or LCSW within three years from the date the Board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years of the date the alleged act or omission that is the basis for disciplinary action occurred, whichever is first. These requirements would not apply if the accusation alleges the procurement of a license by fraud or misrepresentation. [*S. Floor*]

AB 253 (Thomson), as amended April 6, would expand the required curricula for MFT licensure applicants. Under existing law, all applicants for licensure as an MFT who are pursuing a master's or doctoral degree are required to complete certain coursework as part of their graduate studies, with specified exceptions. This bill would require an applicant pursuing a qualifying master's or doctor's degree, after January 1, 2001, to complete coursework in psychological testing and psychopharmacology. The bill also provides that these provisions would in no way expand or restrict the scope of licensure of a MFT. [*A. Floor*]

AB 486 (Wayne), as amended April 5, would alter Board rulemaking under the Administrative Procedure Act (APA) by establishing procedures whereby BBS could adopt a non-binding "advisory interpretation" of a statute, regulation, agency order, court decision, or other provision of law that it enforces or administers or that governs its procedures in accordance with specified public comment, notice, and hearing requirements. Under this bill, any interested person could request in writing that OAL review the advisory interpretation pursuant to specified procedures, and obtain a judicial

declaration as to the validity of an advisory interpretation that OAL has reviewed or declined to review by bringing an action for declaratory relief in superior court.

This bill would also exempt from the APA's procedural rulemaking requirements the adoption, amendment, or repeal of a regulation that BBS determines is noncontroversial, and would establish a specific "consent regulation" procedure that would be applicable to such a regulatory action. This consent regulatory procedure would not be authorized if an adverse comment is received by BBS in response to the proposed regulatory action. [A. Floor]

AB 794 (Corbett), as amended April 27, would clarify the requirements for Board licensees whose clients' records are subpoenaed in civil litigation. Among other things, the bill would prohibit a licensee from restricting the hours for copying records during normal business hours or requiring that specific appointments be made to copy records; provide an exemption for organizations with ten or fewer employees, which may limit the hours for inspection or copying to any continuous four-hour period on each business day; provide that a client waives the right to object to the release of personal or employment records when his/her attorney signs a written authorization, on the client's behalf, providing for the release of the records; and provide that deposition officers are not liable for the release of a consumer's personal or employment records if such officers do not receive proper notice of the consumer's motion to quash a subpoena duces tecum, as required by law. [A. Floor]

AB 1312 (Machado), as introduced February 26, would clarify 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. [A. GO]

SB 433 (Johnson), as amended April 20, would require court-connected and private child custody evaluators to complete a described domestic violence training program and comply with other requirements. It would also require the Judicial Council to formulate a statewide rule of court by January 1, 2002, that establishes education, training, and licensure requirements for court-connected and private child custody evaluators and requires child custody evaluators to declare under penalty of perjury that they are currently licensed and meet all other requirements of the rule. Finally, the bill would require, on and after January 1, 2005, that each child custody evaluator be a licensed physician who devotes a substantial portion of his/her time to the practice of psychiatry, a psychologist, an MFT, or an LCSW, or to be proposed by or stipulated to by the parties and consented to by the court.

According to the author, many child custody evaluators are not licensed professionals. This anomaly, the author and proponents of the bill state, has wreaked havoc in the lives

of many families who have used private child custody evaluators who have never trained in the field, who are not held accountable for incompetent handling of a case, or who are not disciplined for unprofessional conduct. This bill, it is hoped, would rein in all the unlicensed and inexperienced private child custody evaluators by prescribing and mandating their training and, in time, requiring them to have a professional license related to the issues prevalent in child custody cases. [S. Appr]

LITIGATION

In *Trear v. Sills*, 69 Cal. App. 4th 1341 (Feb. 16, 1999), a case of first impression, the Fourth District Court of Appeal held that the professional duty of a therapist does not extend beyond an adult patient to the patient's parent.

James Trear brought an action for professional negligence against his stepdaughter's therapist, Judith Sills. Trear claimed that Sills implanted the false idea in his stepdaughter's head

that he had sexually abused her. Trear's stepdaughter, Kathleen Searles, was adopted in 1957 when she was twelve years old. Searles sued Trear in 1992, claiming he had sexually abused her during her childhood years, but

that she had had no memory of it until 1991. Sills diagnosed Searles as suffering from "body and cell memories" of childhood sexual abuse from age six months, and encouraged Searles to file suit against her stepfather. In April 1994, Trear sued Sills for professional negligence, alleging that had she exercised reasonable care she would have foreseen the harm to him resulting from the diagnosis, and she should be liable for that harm.

Documenting the controversy which swirls around the so-called "recovered memory syndrome," and distinguishing this matter from cases in which a patient sues his/her own therapist or in which the therapist voluntarily assumes some duty toward the parent of a patient, the Fourth District held that "absent agreement, a psychotherapist has no duty to the parent of an adult patient regarding allegedly false recovered memories of childhood sexual abuse." The court also noted that imposing a duty toward a patient's parent would required the therapist to "serve two masters"—"it would subject the therapist to inherently conflicting incentives, to the detriment of the patient....A duty to a potential abuser affords the therapist no 'leeway' in deciding whether the patient really was abused: It would put the therapist in the position of a jury called upon to make a determination according to well-established and predetermined rules of evidence, rather than as a 'helping' professional—except that, unlike judges and juries, the therapist would face personal liability if the determination were wrong. Either way."

The court also determined that Sills was not liable under several other theories advanced by Trear, including intentional infliction of emotional distress, barratry, abuse of process or

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conspiracy to commit abuse of process, and malicious prosecution.

Trear has filed a petition for review in the California Supreme Court.

RECENT MEETINGS

With five vacancies and one member absent due to illness, the Board did not achieve a quorum at its February 5 meeting, thus precluding it from taking action on any agenda items. Instead, the Board met as a committee, and made

recommendations which will be considered by the Board when it achieves a quorum. BBS deferred its officer elections to its June 4 meeting.

FUTURE MEETINGS

- June 4, 1999 in Sacramento.
- July 28-29, 1999 in San Diego.
- October 28-29, 1999 in Riverside.

Department of Corporations

Acting Commissioner: William Kenefick ♦ (916) 445-7205 ♦ (213) 576-7500 ♦

Toll-Free Complaint Line—Health Plan Division: (800) 400-0815 ♦ Internet: www.corp.ca.gov



The Department of Corporations (DOC) is part of the cabinet-level Business, Transportation and Housing Agency (BTH), and is empowered under section 25600 of the California Corporations Code. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Division 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. Perhaps the most important is the Knox-Keene Health Care Service Plan Act of 1975, Health and Safety Code section 1340 *et seq.*, which is intended to promote the delivery of health and medical care to Californians who enroll in or subscribe to services provided by a health care service plan or specialized health care service plan. A "health care service plan" (health plan), more commonly known as a "health maintenance organization" or "HMO," is defined broadly as any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

The Department's Health Plan Division (HPD) is responsible for administering the Knox-Keene Act. The Division's staff of attorneys, financial examiners, health plan analysts, physicians and other health care professionals, consumer services representatives, and support staff assist the Corporations Commissioner in licensing and regulating more than 100 health plans in California. Licensed health plans include HMOs and other full-service health plans, as well as the following categories of specialized health plans: prepaid dental, vision, mental health, chiropractic, and pharmacy. HMOs and other full-service health plans provide health care services to approximately 23 million California enrollees. Specialized health plans arrange for specialized health services for nearly 35 million California enrollees. Total enrollment in all health plans exceeded 58 million as of May 1999.

DOC's Health Plan Enforcement Division, created on October 1, 1998, is responsible for enforcing the Knox-Keene Act. With offices in Sacramento and Los Angeles, it investigates alleged violations of the Act and DOC's regulations implementing the Act, and is authorized to take administrative and civil actions, as well as to refer criminal matters for prosecution, to ensure compliance with the statutory and regulatory requirements.

With regard to HMO regulation, the legislature has expressly instructed the Corporations Commissioner to assure the continued role of the professional as the determiner of the patient's health needs; assure that subscribers and enrollees are educated and informed of the benefits and services available in order to make a rational consumer choice in the marketplace; prosecute malefactors who make fraudulent solicitations or who use misrepresentations or other deceptive methods or practices; help to assure the best possible health care for the public at the lowest possible cost by transferring the financial risk of health care from patients to providers; promote effective representation of the interests of subscribers and enrollees; assure the financial stability of subscribers and enrollees by means of proper regulatory procedures; and assure that subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of health care.

The Department also administers the Corporate Securities Law of 1968 and numerous statutes regulating business entities, including finance lenders, mortgage lenders, franchise investments, and escrow agents. Coverage of these DOC activities is found below, under "Business Regulatory Agencies."

MAJOR PROJECTS

State Auditor Renews Call for Removal of Managed Care Regulation from DOC and BTH

In April, California State Auditor Kurt Sjoberg and the Bureau of State Audits (BSA) released a report entitled