

Legislative Update

by Mary Riemersma, Executive Director

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By the time you are reading this issue of *The Therapist*, the legislative session will have ended, and bills that have progressed through the legislature will have made their way to the Governor. The Governor will have until October 14, 2007 to sign or veto bills that have made it to the Governor's desk. Bills that are signed by the Governor will take effect January 1, 2008.

Many bills were declared dead in Committee and some will become two-year bills that will continue through 2008.

If you are interested in more information on any bill or wish to see a copy of a bill, go to www.leginfo.ca.gov and you can open any current piece of legislation.

CAMFT Sponsored Legislation

Patients Dangerous to Self or Others AB 1178 (Hernandez)

We believe that this legislation has been needed for some time to clarify in the appropriate section of law that it is permissible for a psychotherapist to disclose information where the patient is in such mental or emotional condition as to be dangerous to him or herself, or to the person or property of another, and that disclosure is necessary to prevent the threatened danger. The bill, as proposed, was intended to amend Section 56.10(c) of the Civil Code by adding a subparagraph that parrots Section 1024 in the Evidence Code.

We believe such an amendment is needed because the Confidentiality of Medical Information Act (CMIA), in Section 56.10(c), lists the exceptions to confidentiality where the patient's written authorization is not needed to release/divulge confidential information, yet it does not include a dangerous patient exception. Although the exception appears in Evidence Code Section 1024 as part of the privilege statutes and has generally been interpreted by some courts to provide permission to break confidentiality, we believe it is important to draw the distinction between confidentiality and privilege. It remains possible that a case will be brought against a therapist that claims that a disclosure made pursuant to Section 1024 of the Evidence Code is not supported by the controlling law—the Confidentiality of Medical Information Act.

Section 5328(r) of the Welfare and Institutions Code provides a similar exception to confidentiality for the dangerous patient—but the W and I Code section only applies to certain providers, e.g., those who work in state and other psychiatric facilities. This section of law is part of the Lanterman-Petris-Short Act (LPS) that generally applies to involuntarily committed patients. The LPS provision permits disclosure of information only when the patient presents “a serious danger of violence to a reasonably foreseeable victim or victims.” In addition, it provides that the information should be disclosed only to the extent that the psychotherapist determines it is needed for the protection of the threatened person or persons.

In an effort to satisfy the opposition and to accommodate a variety of differing concerns and interests, we agreed to significantly amend the bill. Ultimately, the following exception was added to the Confidentiality of Medical Information Act: “The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.” Not included here is the threat to the property, which is included in Section 1024 of the Evidence Code. Also, threat to self is more clearly stated in Section 1024, but is arguably covered by this new exception in the CMIA. This bill has passed out of the legislature and is now on the Governor's desk and we trust that it will be signed into law.

**A Variety of Amendments to the Licensing Law
AB 234 (Eng)**

We believe that this bill corrects a number of inaccurate references in the marriage and family therapist licensing law, which causes great confusion for those who are trying to comply with the law, clarifies areas of the law that have become unclear to the ordinary reader, as well as makes a number of worthwhile, substantive amendments.

The bill proposes to amend Section 4980.43(a) of the Business and Professions Code by adding a subparagraph to read as follows:

“(12) Not more than 125 hours of experience providing psychotherapy services via telemedicine. Any such telemedicine services shall be rendered in accordance with the provisions of Section 2290.5 of the Business and Professions Code.”

There is nothing in existing law or regulation that directly limits the number of hours an applicant can lawfully gain toward licensure by doing supervised online therapy (telemedicine). On the other hand, there is nothing in existing law that specifically recognizes that such hours would be appropriate, in any amount. Adding this subdivision to existing law will clarify that such hours are both acceptable and that they are limited. It will help to avoid future problems for the Board and for applicants. Online therapy is here to stay, it serves legitimate purposes, and its use is likely to grow. This bill is but a small step in recognizing that reality.

This bill is proposed to amend Section 4980.43(a)(4)(B) to clarify the intent:

“Not more than 250 hours of workshops, training sessions, seminars or conferences professional enrichment activities. Workshops, training sessions, seminars, and conferences are professional enrichment activities.”

This section is currently confusing for some readers in that it is not clear that professional enrichment activities include workshops, training sessions, seminars, and conferences.

This bill is proposed to amend Section 4980.43(a)(4)(C) to clarify the intent:

“Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy. Personal psychotherapy hours are professional enrichment activities.”

This section is currently confusing for some readers in that it is not clear that professional enrichment activities includes one receiving personal psychotherapy.

The bill proposes to amend Section 4980.43(a)(7) to clarify the intent:

“Not more than 1000 hours of experience for direct supervisor contact and professional enrichment activities.”

Again, this change is to add clarity to what is intended as professional enrichment activities. The bill proposes to amend Section 4980.43(a)(9) to clarify the intent:

“Not more than 250 hours of post-degree experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.”

There is currently some confusion about the fact that hours of experience for administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes can only be gained post-degree.

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This bill proposes to amend Section 4980.03(g)(1) to clarify the intent:

“Supervisor,’ as used in this chapter, means an individual who meets all of the following requirements:

(1) Has been licensed or certified by a state regulatory agency for at least two years as a marriage and family therapist, licensed clinical social worker, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.”

This proposed change clarifies intent. The bill proposes to amend Section 4980.43(i) to clarify the longstanding intent of law:

“Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employers and supervisors, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers’ businesses and shall not lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of their employers.”

This change is needed to clarify the longstanding intent of law, now being misunderstood, that it is inappropriate for interns to pay rent or for the other costs of running a business when employed in a private practice.

The bill proposes to amend Section 4980.90(b) to clarify that this section of law is inapplicable to persons who are gaining their education while residents of California:

“Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following. . .”

There are also a number of technical changes of a non-substantive nature that correct references made to incorrect sections of law or to delete sections of law that are no longer operative. And, late in the Session, the BBS requested to amend the bill with provisions that were approved by the Board and are applicable to licensed educational psychologists.

This bill is now on the Governor’s desk awaiting his signature. We anticipate that the Governor will sign the bill.

Amendments to the Child Abuse and Neglect Reporting Act AB 673 (Hayashi)

This bill proposes to amend Section 1166(g) of the Penal Code by adding a second sentence, so that the entire section reads as follows: “Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 1165.9. For the purposes of this section, “any other person” includes a mandated reporter who is acting in his or her private capacity and not within the scope of his or her employment or within his or her professional capacity.”

This amendment to the Child Abuse and Neglect Reporting Act is intended to clarify that “mandated reporters” who report in their “private” capacities, as opposed to their professional capacities, or within the scope of their employment, are permitted to report suspected child abuse. By making it clear, it will allow these reporters to report anonymously (as is the case for “any other person”) under Penal Code Section 1167(g) and will assure that they are entitled to immunity from civil or criminal liability under Section 1172 of the Code for making authorized reports of child abuse.

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The bill proposes to amend Section 1165.6 of the Penal Code by adding the words “or death” after “physical injury” so that the sentence reads as follows:

“As used in this article, the term “child abuse or neglect” includes physical injury or death inflicted by other than accidental means on a child ...”

The Child Abuse and Neglect Reporting Act does not contain enough specificity with respect to the fact that death of a child is a reportable event under the reporting law if it results from other than accidental means and meets the other requirements for reporting. The current definition of child abuse in the section we seek to amend uses the phrase “physical injury,” which is generally interpreted to mean such things as bruises, abrasions, scalding, burns, or other “injuries.” It is important to make clear that death of a child, as opposed to a mere injury, is also reportable. This bill is also on the Governor’s desk awaiting his signature. We, as with the prior bills, anticipate that the bill will be signed into law.

Non-Custodial Parent AB 164 (Smyth)

This bill proposed to amend Section 3025 of the Family Code to add clarity to this often misinterpreted section of law as to what is meant when it says “records shall not be denied to a parent because that parent is not the child’s custodial parent.” This section is subject to considerable misinterpretation in that some believe (we believe correctly so) that records should not be denied to a parent who holds legal custody, unless there are other conditions that exist that would warrant the non-disclosure, but that records would be appropriately denied to a parent who does not hold legal custody. In other words, if the parent has no legal custody to make decisions on the child’s behalf, that parent should not be entitled to access to his/her child’s records. Some believe (some school districts, family law attorneys, and others) that the intent of this section is that access to records should not be denied to a parent who holds neither physical nor legal custody.

This Section of law is often cited and fought over in bitterly contested custody disputes. We believe that it is important that the law be clearly stated and understood so that written demands or requests by parents for copies of the medical, educational, or mental health records of minors can be appropriately responded to (and denied) by practitioners. Complaints to licensing boards are frequently made in such matters by non-custodial parents and greater clarity would help to reduce or to more effectively resolve such complaints.

While our intent was to make clear what is often a misunderstood and misinterpreted section of law, we ran into considerable opposition from family law attorneys with the State Bar of California (FLEXCOMM), the National Organization for Women (NOW), and certain individuals and “father’s rights” groups who claim parents have unknowingly or knowingly given up their custodial rights, or who have had those rights taken away. We tried to negotiate with these groups to develop clear language that can be easily understood as to the intent of this section of law, however, we could not surmount the objections nor could we accept the demands of the opposition. Thus, we were faced with a no-win situation and decided to abandon the bill.

Other Bills

Child Abuse: Endangerment and Controlled Substances AB 116 (Aghazarian)

This bill would have provided that any parent, guardian, or caregiver of a minor child who knowingly and unlawfully consumes, smokes, inhales, ingests, or otherwise uses cocaine, cocaine base, LSD, heroin, methamphetamine (Ecstasy) in the presence of a minor child under his or her care, is guilty of a crime. If this bill had been successful, it would have required mandated child abuse reporters to make such reports. The bill, however, is now dead.

**Settlement Agreement Prohibition for Healing Arts Practitioners
AB 249 (Eng)**

This bill would impose a prohibition on healing arts practitioners from being able to reach settlement agreements and would make such practitioners subject to disciplinary actions. This prohibition is already imposed upon physicians. CAMFT is watching this bill to see what it becomes. This bill was placed on the inactive file in the Senate.

**Medi-Cal: Early Periodic Screening, Diagnosis, and Treatment (EPSDT)
AB 308 (Galgiani)**

This bill initially expressed the intent of the Legislature to impose the California Prompt Payment Act on payments for mental health services provided by a county. It has been amended to require the State Department of Mental Health to provide for the prompt reimbursement to counties of Medi-Cal claims for the provision of services under the Early Periodic Screening, Diagnosis, and Treatment Program. CAMFT is in support of the concept, but will watch the bill to see the direction it takes. The bill is now in the Senate Health Committee, having moved from the Assembly, and may become a two-year bill.

**Treatment of Chronic Disease by Telemedicine
AB 329 (Nakanishi)**

This bill initially expressed the intent of the Legislature to enact legislation enabling the Medical Board of California to bring together all interested parties to discuss delivering health care to those with chronic diseases using telemedicine. It has been amended to require the Medical Board to establish a pilot program to expand the practice of telemedicine and would authorize the board to implement the program by convening a working group to discuss the means of delivering health care to those with chronic diseases using health information technologies. The Board would be required to make recommendations regarding its findings to the Legislature on or before January 1, 2009. CAMFT is in support of the concept. This bill is currently before the Governor.

**Mental Health Care Services
AB 423 (Beall)**

This bill would provide for parity for any mental health diagnosis that is defined as a mental disorder in DSM IV. We have taken a position of support on this bill. The bill is now in Senate Appropriations.

**Began as HIPAA, Now Medical Records
AB 436 (Salas)**

This bill began as a spot bill. It initially prohibited an entity subject to HIPAA from disclosing a patient's medical information without first receiving that patient's written authorization. This bill, as now written, permits the disclosure, without authorization, of medical information for data processing or other administrative services. Such persons would be prohibited from further disclosing this information. The bill also would require a licensed provider who is subject to this law (MFTs are not such providers) to notify patients if they plan to cease operation or they plan to store records offsite. In such a case, these patients would be entitled to request a copy of their records. Existing law requires these licensed providers (again, not MFTs) to preserve patients' records for a minimum of seven years following their discharge. CAMFT is watching this bill to see if it might be amended in a manner that might have an impact on MFTs. At this time this bill has made no progress and appears to be dead.

**Suicide Prevention
AB 509 (Hayashi)**

This bill would require the Department of Mental Health to establish by January 1, 2009, the Office of Suicide Prevention. This bill would also require the office to post on their website information relating to suicide in California. CAMFT is in support of this legislation. AB 509 is now in Senate Appropriations.

**Began as Personal Information Security Breaches and is now Contracts
AB 512 (Lieber)**

This bill initially addressed Personal Information Security Breaches and now addresses issues with Contracts. CAMFT no longer has an interest in this bill.

Physicians and Right to Records of Patients

AB 555 (Nakanishi)

This bill would express the Legislature's intent to require the Medical Board to work with interested parties to develop an electronic system that would allow any physician and surgeon in California to access the medical records he or she needs about the patient in order to treat the patient. CAMFT is watching this bill, but it has had no activity thus far this year.

Child Custody Evaluations

AB 612 (Ruskin)

This bill initially proposed to change the term Child Custody Evaluator to Child Custody Investigator. It would also have permitted a court, as part of a child custody investigation, to grant a motion compelling a mental or psychological examination where the parent's current mental or psychological state might impair his or her ability to parent. CAMFT did not support the changing of Evaluator to Investigator and sought to have the bill amended, which has occurred. CAMFT also had concerns about a limitation placed in the bill that would preclude the use of nonscientific labels and diagnoses that are not consistent with diagnostic or medical standards generally accepted by the medical, psychiatric, and psychological communities. In other words, the evaluator would have been prohibited from including in an evaluation that the one parent has alienated the child from the other parent. Our belief is that terms other than DSM diagnoses must be permitted to be used to describe behaviors that impact the child. This concern has been addressed in the bill, which now permits the evaluator to communicate such findings consistent with ethical and professional standards. The bill is now on its way to the Governor.

Victim's Compensation

AB 717 (Fuller)

This bill, among other things, would increase the limit on compensation for certain outpatient mental health counseling from \$3,000 to \$5,000. CAMFT is supportive of this effort. This bill is now in Senate Appropriations.

MediCal Managed Care

AB 855 (Hayashi)

This bill would require that on and after July 1, 2008, every MediCal managed care contract entered into by the State Department of Health Care Services shall include alcohol and drug treatment. The bill would also require the Department, on or before October 1, 2008, to enter into contracts with managed care organizations for each county, for claims administration and to ensure that MediCal fee-for-service enrollees are eligible for alcohol and drug treatment services. CAMFT will likely be in support of this measure. To date, this bill has made no progress and is presumed dead.

Disabled Persons

AB 910 (Karnette)

This bill would, among other things, require that a health care service plan and a health insurer not terminate coverage of a dependent child upon the child attaining the limiting age, if the child is and continues to be incapable of self-sustaining employment by reason of mental disability. It would also not relieve the parents of any other obligation they may have to support their child who is incapacitated, unable to earn a living, and is without sufficient means. The bill would require a support order to direct the parent providing health insurance coverage for a supported child to seek continuation coverage for the child upon his or her attaining the limiting age if the child is incapable of self-sustaining employment. Such coverage would have to be provided for the duration of the child's lifetime. CAMFT is watching this bill at this time. This bill is in Senate Appropriations.

Denial of Licensure

AB 1025 (Bass)

This bill would, among other things, provide that a person may not be denied licensure or have his or her license suspended or revoked based solely on a criminal conviction if the person has been rehabilitated. The bill also provides that a person may not be denied licensure or have his or her license suspended or revoked solely based on a criminal conviction that has been dismissed, unless the Board provides substantial evidence justifying the denial, suspension, or revocation. It would also require the licensing

board to provide a copy of the criminal history record relied upon in making a determination to suspend or revoke a license to the ex-licensee. The bill would require the Department to prepare annual reports to the Legislature documenting the Board's denial, suspension, or revocation of licenses based on the bill's provision. CAMFT is watching this bill that is now in Senate Appropriations.

Disclosure of Personal Medical Information

AB 1298 (Jones)

This bill would, among other things, apply the Confidentiality of Medical Information Act to any business organized for the purpose of maintaining medical or health insurance information. Medical information means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional. This bill is now on its way to the Governor.

Child Abuse Confidentiality and Access to Records

AB 1299 (Fuller)

This bill would authorize members of children's multidisciplinary teams, persons, or agencies engaged in the prevention, identification, and treatment of child abuse to inspect juvenile case files. It would also recognize as confidential written reports prepared by the team, and would provide that the team's discussions, writings, and written reports would be exempt from discovery, and inadmissible in any criminal, civil, or juvenile court proceeding. CAMFT is watching this bill, but at this time, there has been no movement and the bill appears to be dead.

HIPAA

AB 1302 (Horton)

This bill would extend, until July 1, 2010, the Office of HIPAA Implementation in the State of California, which would otherwise be repealed on January 1, 2008. CAMFT is watching this bill that is now in Senate Appropriations.

Problem and Pathological Gambling: Training/Substance Abuse Programs

AB 1336 (Bass)

Currently, the Office of Problem and Pathological Gambling exists within the State Department of Alcohol and Drug Programs. This bill would require the office to develop a grant and outreach program to provide problem gambling training reimbursement grants to substance abuse prevention and treatment agencies. The bill would require the office to contract with a nonprofit entity or entities to provide to problem gambling programs to substance abuse services' programs or their employees over a three-year period beginning on July 1, 2008. CAMFT is watching this bill that is now in Assembly Appropriations Suspend.

Regulation of Alcohol and Drug Abuse Counselors

AB 1367 (DeSaulnier)

The California Association of Alcohol and Drug Abuse Counselors (CAADAC) is pursuing legislation to regulate alcohol and drug abuse counselors who work in independent practice. This profession would, as proposed, be regulated by the Board of Behavioral Sciences. They claim licensure will weed out abusive counselors by having a mechanism to take disciplinary action, and provide for a limited scope of practice, thereby providing controls for those who work beyond their scope of practice. CAMFT's position is, "oppose unless substantially amended." We have had a number of meetings with the sponsor and author of the bill and they are attempting to address our concerns. In fact, they are attempting to be exceedingly accommodating, so much so that some of their efforts to "fix" the bill may create unintended consequences that could be more problematic than earlier versions of the bill. The bill has been made a two-year bill in an attempt to work on some of the issues and address our concerns and the concerns of other opposition.

CAMFT has concerns including, but not limited to:

First and foremost, alcohol and drug problems rarely occur alone or in a vacuum. Typically, alcohol and drug problems are experienced as part of co-occurring problems where it is not only beneficial, but necessary, to concurrently treat the co-occurring mental health issues along with the substance use. Therefore, for the client to be adequately and successfully helped, the mental health aspects of the

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problem need to be treated along with the alcohol and/or drug problems. Yet, alcohol and drug counselors, if this legislation is successful, would not have the requisite education, training, or experience to treat beyond the substance abuse problems. Further, if such treatment was provided by the alcohol and drug counselor, the alcohol and drug counselor would be working outside of his/her scope of practice. Alcohol and drug problems are treated, along with any co-occurring disorders, by physicians, psychiatrists, psychologists, marriage and family therapists, nurses, and clinical social workers.

There has been no clear demonstrated need shown for licensing of alcohol and drug counselors in California. Counselors have been performing services in California in a variety of settings, such as state licensed alcohol and drug programs, without any demonstrated need for the state to regulate the individuals who provide these services. The State Department of Alcohol and Drug Programs has implemented regulations to address the criteria that those who work in these programs must achieve.

However, if there is determined to be such a need, that need should be demonstrated by the Legislature through the “sunrise” legislative process. The Legislature has not yet produced such a recommendation. If there is a demonstrated need that is shown based upon the “sunrise” process, the legislature should then evaluate whether licensing, certification, or registration is the appropriate mechanism to regulate and likewise evaluate whether such oversight should be provided by a board, commission, department, or bureau.

As currently proposed, the Board of Behavioral Sciences (BBS) would be the regulatory body charged with the development of and implementation of a regulatory process for alcohol and drug counselors. The BBS is already significantly challenged in that it regulates about 67,000 persons/entities. There is also the potential that it may regulate professional counselors, should professional counselor legislation be successful. We are concerned that one board cannot effectively implement new law, create regulations, and effectively regulate so many existing as well as new licentiates and registrants. We believe it would be better for the alcohol and drug profession to be regulated by another board or bureau.

Additionally, it is our belief that increasing the size of the Board by two alcohol and drug abuse counselors, and then possibly increasing it by two professional counselors, should professional counselor legislation be successful, and then increasing it by an equal number of public members to maintain a balance of public to professional members, would create a board whose size is unwieldy and cause it to have diminished efficiency and effectiveness.

In this regard, the sponsors have expressed a willingness to have only one alcohol and drug counselor on the Board.

Two letters of recommendation are required and these are generally meaningless requirements for a licensing law—most anyone can get glowing letters of recommendation. On the contrary, if a negative letter was submitted, such a letter would be difficult, if not impossible, to use as grounds for denial of a license. Letters of recommendation do not provide for public protection, which is the primary purpose of a licensing law.

Originally, one of the duties the regulatory body was to have completed was the development of a code of ethics. Codes of ethics are typically developed by professional organizations. Consistent with other regulatory laws, the regulatory body should develop standards identifying “unprofessional conduct.” These standards should include a prohibition against not only working outside of one’s scope of practice, but also working outside of one’s scope of competence. The bill has been amended to address unprofessional conduct much the same as currently exists in other licensing laws.

As proposed, the bill provides that one or more convictions shall not trigger an automatic denial of a license. This provision could become a nightmare for a regulatory body to administer. Further, the bill provides for an appeal process when a license is denied and provides no procedures for that process.

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It is unclear what the purpose of the registration process is as provided in the proposed legislation. What would the registration permit the registrant to do? Could anyone register? What would be the limitations on that registrant? Is it intended that registrants would then be grandparented in some way as licentiates?

A requirement for a bachelor's degree in alcoholism and drug abuse counseling or (in) a human services field is not applicable until on or after January 1, 2013. It is our belief that if the profession is to be regulated, a baccalaureate degree should be a requirement very soon after implementing legislation takes effect, e.g., January 1, 2010. This educational requirement should also be applicable to persons who are interns aspiring to be regulated as alcohol and drug abuse counselors. The sponsors did agree to reduce the timeframe from 2015 to 2013, but have been reluctant to move the date up as they believe that it would be impossible to compel such a requirement so quickly. In addition, we have suggested that they place curriculum content in their required bachelor's level requirements to assure adequate preparation in alcohol and drug treatment.

Persons who provide alcohol and drug services must be limited to providing the services that are deemed to be within their scope of practice and scope of competence. The counseling services they provide must be expressly limited to alcohol and drug counseling. If there is to be a licensing law, it must be written in a way to prohibit the alcohol and drug counselor from providing any other counseling services, such as marriage and family counseling, bereavement or grief counseling, etc.

In an effort to assure us and others that prospective licensed alcohol and drug counselors are not working beyond their scopes of license and competence, they have created an elaborate scheme providing for referral and oversight for the services they are to provide. While their attempt is laudable, this scheme is fraught with a multitude of problems. In a situation where a licensed alcohol and drug counselor is providing services in private practice, he or she would be required to establish a professional relationship with one or more "referral agents," who are licensed health care professionals and who have experience in alcohol and drug treatment. Alcohol and drug counselors would be required to refer all clients for an initial assessment to the referral agent within 30 days of intake to assess any co-occurring needs or disorders. Left unanswered, of course, is what happens if the client refuses or just fails to go to the referring agent. The legislation also provides that the referring agent may perform other quality assurance measures including such things as a quarterly review of the case files of the alcohol and drug counselor or observation of counseling techniques used by the alcohol and drug counselor. This oversight raises issues regarding accountability and liability, as well as cost. Would the referring agent be responsible then for the acts of the alcohol and drug counselor? Who would pay the costs for this oversight?

We have expressed a willingness to work further with the author and the sponsor to amend the bill to assure that persons who become alcohol and drug counselors, regulated in some manner in the state of California, have the requisite competencies to work safely with the public and they have expressed a willingness to attempt to accommodate our many requests. This bill is a work in progress that is now a two-year bill.

Juveniles: Joint Assessment of Status and Confidential Information AB 1405 (Maze)

This bill would authorize a juvenile court joint assessment team, comprised of representatives of mental health, child welfare, probation, and other necessary agencies, to exchange and share specified information relating to the minor that might otherwise be confidential under state law or regulation. The bill would require that information be maintained in a manner that ensures its confidentiality, and would prohibit further disclosure of the information. The bill would require a member of a juvenile court joint assessment team who receives this information to maintain the privacy of the minor and the confidentiality of the information. The bill would make this information inadmissible against the minor at a civil or criminal hearing or proceeding. CAMFT is watching this bill that is now in the Senate.

Alcohol and Drug Abuse Pilot Program AB 1461 (Krekorian)

This bill initially proposed that a pilot program be implemented in hospitals, which provided that either physicians and surgeons who specialize in the treatment of addiction or state-licensed substance abuse

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counselors, or both, shall assist emergency room physicians and surgeons in identifying patients for toxicological screening and providing early intervention.

It was our position that since the various mental health disciplines that are regulated in the state of California regularly provide substance abuse treatment and are licensed professionals, they should be specifically named and recognized as persons who may provide the identified services. As proposed, state-licensed substance abuse counselors were specifically named, in addition to physicians, however, there currently is no existing state license in California for substance abuse or alcohol and drug abuse counselors.

We requested that the bill be amended to provide: "In this model, either physicians and surgeons or state-licensed psychotherapists, as defined in Section 1010 of the Evidence Code, who are competent in the treatment of addictions, or both, shall assist emergency room physicians and surgeons in identifying patients for toxicological screening and providing early intervention." This amendment was accepted and placed in the bill.

As currently drafted, commencing July 1, 2008, the Department of Alcohol and Drug Programs shall initiate and conduct a two-year pilot project to demonstrate the efficacy and cost effectiveness of an early methamphetamine intervention model in identifying and diverting methamphetamine addicts into treatment before they enter the criminal justice system.

CAMFT's position on the bill has changed from "oppose" to "watch," and the bill is now in Senate Appropriations.

Licensing of Professional Counselors AB 1486 (Calderon with co-author Senator Steinberg)

The Professional Counselor licensing bill has gained considerable support but is dead for the remainder of 2007. The only entities in total opposition are the American Association for Marriage and Family Therapy, California Division and the Citizens Commission on Human Rights (Scientologists). The California Psychological Association, several local associations of Psychologists, and several individuals have a position of oppose unless amended. Over 200 individuals, all of the organizations that make up the California Coalition for Counselor Licensure (about 15 organizations including dance therapy, rehabilitation therapy, art therapy and others), the Board of Behavioral Sciences, and the California Psychiatric Association have expressed support. The Society for Clinical Social Work and NASW, CA Division are neutral. CAMFT was initially opposed to the proposed legislation, but has removed its opposition in exchange for a number of amendments to make the bill a cleaner, tighter bill, as well as better accommodate marriage and family therapists who wish to be grandparented. Clinical Social Workers have also come to agreement on a grandparenting provision for their profession. Only one state—California—does not regulate LPCs. A Nevada licensing law was achieved this year.

One of the reasons the proponents believe the bill is needed is the oft-cited belief that there is a shortage of mental health professionals in California. While we have not been persuaded that there is a true shortage of mental health professionals, the state, the counties, and agencies believe that this is true. It is hard to refute these assertions when this widely held belief arises in every forum about human resources and mental health for the state of California.

Early after the bills' introduction, it was our view that this new profession should be more clearly defined as to what activities are being regulated and what professionals are being regulated. Since what is being sought is the right to diagnose and treat mental disorders, including serious mental disorders, to do psychological testing, to practice psychotherapy in private practice, to be reimbursed by insurance companies and other third party payers, and to be covered by the psychotherapist-patient privilege, we pushed for legislation that would adequately provide for appropriate preparation in all of these areas, as well as identify a profession that would be unique in comparison to the existing mental health disciplines. While we believed the initial versions of the bill fell short in addressing these important concerns, more recent versions of the bill and the expression of the intent of the legislation has added clarity to what and who are being regulated and has given more definition to the profession.

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Counselors will be able to do much of what psychologists, marriage and family therapists, and clinical social workers do. They will diagnose and treat mental disorders and need the requisite skills to do so. The education, training, and experience in their proposed law has been bolstered to provide reasonable assurances that they will be adequately prepared to do the work that their scope of practice permits.

The scope of license section of the proposed legislation is still somewhat vague, even though it has improved and may be further refined. The fact that they are limited to working within their scope of competence has become more explicit.

The grandparenting provisions have been tightened. Grandparenting of clinical social workers has been included, and the grandparenting of MFTs has been liberalized to some degree. Grandparenting of MFTs provides for a six-month period of time to submit an application for LPC licensure, with all required documentation to be submitted within twelve months of the BBS' evaluation of that application. MFTs would have to meet the coursework requirements, which include the following:

- A master's or doctoral degree in counseling, or a closely related degree.
- If the degree does not include all of the graduate coursework in all required nine subject areas, the MFT would be required to provide documentation that the requisite coursework has been completed post-degree.
- Required courses include: counseling and psychotherapeutic theories and techniques; human growth and development; career development; group counseling; multicultural counseling; diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior; research and evaluation; professional orientation, ethics and law in counseling; and practicum.

The proposed profession contemplates using examinations developed at the national level, rather than by California's Office of Examination Resources. The other professions the BBS regulates have examinations that adhere to the rigors established by the State of California and the examinations are developed in accordance with the occupational analyses as to how the professions are practiced in this State. If a national examination is to be used, an occupational analysis must be completed defining what the practice of the profession will actually be in the state of California and then determining if that examination meets that criteria. The BBS has committed to engage in such an analysis.

The bill failed passage in the Senate Business and Professions and Economic Development Committee, but has been given reconsideration. Reconsideration will occur next year as this Committee has not met since the bill was last heard. Thus, the bill is now a twoyear bill.

Bureau on Private Postsecondary and Vocational Education (BPPVE) AB 1525 (Cook and Portantino)

This bill addresses issues resulting from the Governor's veto of the continuation of the BPPVE. The bill extends the approvals of private postsecondary institutions approved by the BPPVE from July 1, 2007 until July 1, 2008. This bill has been signed into law by the Governor.

Mental Incapacity: Deletion of Demeaning Terminology AB 1640 (La Malfa)

This bill deletes references in law that are demeaning and replaces them with "persons who are mentally incapacitated." Such terms as "idiot," "imbecility," and "lunatics" are referred to in existing law and will be replaced. This bill has been signed into law by the Governor.

Sharing of Health Information Regarding Children AB 1687 (Brownley)

This bill is attempting to address concerns about children who are in the "system." The sponsors of this bill are seeking to permit psychotherapists to disclose protected health information about children for the protection of the children or for the protection of others. The co-sponsors are the Interagency Council on Child Abuse and Neglect, the LA County District Attorney, and the LA County Sheriff. While the goal is laudable, their attempt to accomplish their goal is fraught with problems and thus we have opposed the

bill unless amended with the intent to work with the author and sponsors to address our concerns. Earlier amendments proposed adding to the Confidentiality of Medical Information Act (HIPAA) provisions and in addition, the proposal would have permitted disclosures of confidential information to law enforcement to identify or apprehend an individual when that person admits to participating in a violent crime, the individual may have caused serious physical harm to the victim, or it appears that the individual has escaped from a correctional institution or from lawful custody. We were appalled to see these potential exceptions to confidentiality. In all fairness, we understand that the author and sponsors of the bill were likewise appalled, as it was not what they intended.

According to the sponsors, their intent was to permit the disclosure of information about a child to a social worker or probation officer regarding, for example, the allergies a child has or the medications being taken by a child who has been placed in a communal living facility. The problem is that if such a disclosure has not been made, the child will not be getting his/her needed or appropriate medications or the child might be given something to eat that he/she may have an allergic reaction to. In another situation, the child might pose a danger to others if placed in a communal living environment and the psychotherapist should be permitted, for the safety of the other children, to inform the social worker or probation officer of the potential dangerousness of the child so placed.

The bill has since been amended several times and we continue to have concerns about the bill. While it provides for permissive, rather than mandatory disclosures, we continue to have concerns as to what is meant by such things as "provider's notes," and concerns about how the bill will be interpreted and implemented. We are, at this time, unsure how this bill will impact a youth who is 12 years of age or older who is eligible to be treated without parental consent.

The sponsors of the bill had earlier indicated a willingness to work with the opposition, mostly CAMFT and the California Psychiatric Association, to address concerns. To date, there has been no attempt by them to engage in such a meeting. We have once again asked for a meeting to answer questions, address concerns, and clarify issues that are confusing. We know the proponents are not so inclined, but we have requested that the bill become a two-year bill to address questions and concerns so that there is not a change in law that has unintended and possibly harmful and confusing consequences. This bill is now in Senate Appropriations.

Medi-Cal SB 260 (Steinberg)

This bill would provide that more than one encounter between a patient and the same health care profession on the same day and at a single location may each be separately reimbursed in specified circumstances. The bill would also provide that, under specified circumstances, visits with different health care professionals on the same day of service may be billed as separate visits. The bill would require the department to seek all necessary federal approvals in order to implement the bill, including all necessary amendments to the state Medi-Cal plan. This bill is now in Assembly Appropriations Suspend.

Department of Managed Health Care and Department of Insurance SB 389 (Yee)

This bill would require the Department of Managed Health Care and the Department of Insurance, on or before March 1, 2008, to implement an independent provider dispute resolution system, in consultation with representatives of health plans or insurers, providers, and consumer representatives. CAMFT is watching this bill that has thus far made no progress.

Domestic Violence and Privilege SB 407 (Romero)

This bill would expand privilege by naming domestic violence counselors as persons entitled to assert the privilege on behalf of clients. Domestic violence counselor means a person who is employed by a domestic violence victim service organization for the purpose of rendering advice or assistance to victims of domestic violence. We will be following this bill closely to see what direction it takes as it is beginning to look problematic. Currently this bill is in Senate Unfinished Business.

Legislative Update
Private Postsecondary Education
SB 823 (Perata)

This bill addresses the elimination of the Bureau on Private Postsecondary and Vocational Education and has been amended to include the provisions of the Private Postsecondary and Vocational Education Reform Act of 1989 as the California Private Postsecondary Education Act of 2007. According to the bill, the entity would have the same duties as the Bureau under the 1989 act. CAMFT will be watching this bill closely to see what develops. Currently, this bill is in Assembly Appropriations.

Single Payer Health Care Coverage
SB 840 (Kuehl and various Co-Authors from both the Senate and Assembly)

This bill is a re-introduction of last year's legislation that was vetoed by the Governor; it even has the same bill number. It would require the development of a California Universal Healthcare System to be administered by the California Universal Healthcare Agency under the control of a Universal Healthcare Commissioner appointed by the Governor and subject to confirmation by the Senate. It would make all California residents eligible for benefits under the California Universal Healthcare System. It would be a single-payer system. CAMFT, in the past, took no position on this bill, but did watch and have input into it to make it more palatable for therapists. This bill is currently in Assembly Appropriations. The belief is that if the bill makes it to the Governor, the Governor will veto the bill once again.

Mentally Ill Offenders
SB 851 (Steinberg and Romero)

This bill deals with mentally ill offenders and would, among other things, authorize superior courts to develop and implement mental health courts for offenders suffering from mental illness. CAMFT is watching this bill, which is currently in Assembly Appropriations.

Victims' Compensation
SB 883 (Calderon)

This bill, among other things, would increase the limitation of an award for outpatient mental health counseling from \$3,000 to \$5,000 in the Victims of Crime Program. At this time, CAMFT is supportive but is watching this bill that is now in Assembly Appropriations Suspend.

Termination of Regulatory Boards
SB 963 (Ridley-Thomas)

This bill would, among other things, when a regulatory board becomes deficient, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings within the department if required to promote or protect the interests of consumers. The bill would require the office to charge each board a fee to support its functions. A Consumer Advocate Fund would be created where these fees would be available for appropriation. We are uncertain, at this time, as to the full intent of this legislation, thus are watching it closely. The bill is currently in the Assembly Business and Professions Committee.

Prescription Privileges for Psychologists
SB 993 (Calderon)

This bill would have authorized the Board of Psychology to grant a prescription certificate or a conditional prescription certificate to a licensed psychologist. This bill is being "held by the Committee," which means, for all practical purposes, it is dead. It has been sent back to Rules to be referred to a committee for "study."

Child Abuse Central Index
SB 1022 (Steinberg)

This bill would require the department to remove information about a person listed in the Child Abuse Central Index as a suspect in a child abuse or neglect investigation due to an incident that occurred when the person was under 18 years of age, if the incident did not result in a delinquency adjudication or criminal conviction. He or she would need to make a notarized written request to the department to have

his or her name removed as a suspect with respect to that incident. CAMFT is watching this bill closely and has concerns about the bill. The bill is currently in Assembly Appropriations Suspense.

Federal Legislation

Medicare: The Children's Health and Medicare Protection Act of 2007 (HR 3162)

This bill, also known as CHAMP, is Federal legislation that would amend the Social Security Act to expand and improve access to care for children and seniors, and it also includes a provision (Section 607) adding Licensed Marriage and Family Therapists as reimbursable by Medicare.

This 465 page bill includes, in part, that the services of Marriage and Family Therapists will be reimbursable by Medicare for the diagnosis and treatment of mental illnesses, which the Marriage and Family Therapist is legally authorized to perform under state law. The MFT must agree to consult with a patient's attending or primary care physician when providing services for Medicare reimbursement. The rate of reimbursement would be the same as it is for Licensed Clinical Social Workers.

This bill has passed out of the House, even though it has become quite contentious and the President has threatened to veto the Bill. As this bill moves along, we will be letting you know what you can do to assure that Marriage and Family Therapists remain in the bill and to assure its passage. While there are other bills in Congress that are intended to provide for Medicare reimbursement for marriage and family therapists, HR 3162 is the Medicare bill that will be moving forward this year.

We are appreciative of Representatives Pete Stark from California and Ed Towns of New York who were instrumental in assuring that Marriage and Family Therapists were included in this important legislation. In fact, when CAMFT Board Members met with Congressman Stark in late March, he assured us that he would include MFTs and he lived up to that promise. Congressman Stark is important because he chairs the House Ways and Means Committee.

This measure in the House has a \$50 billion price tag and is to be financed largely by an excise tax on tobacco.

There is also a Senate version of this legislation, but it does not currently include the MFT provision. CAMFT Federal lobbyists (the Downey McGrath Group) are seeking to have the MFT provision in the House version of the bill amended into the Senate legislation. The Senate version has a \$35 billion price tag and is also to be financed largely by an excise tax on tobacco.

Medicare: Seniors Mental Health Access Improvement Act of 2007 S 921 (Craig Thomas—recently deceased and five co-sponsors)

This bill amends Medicare to provide for coverage under Medicare Part B (Supplementary Medical Insurance) for marriage and family therapist services and mental health counselor services generally, and particularly such services provided in rural health clinics and hospice programs. It excludes such services from the skilled nursing facility prospective payment system. It also authorizes marriage and family therapists to develop discharge plans for post-hospital services.

Medicare Seniors Mental Health Access Improvement Act of 2007 HR 820 (Towns and eight bipartisan co-sponsors)

This bill amends Medicare to provide for coverage under Medicare Part B (Supplementary Medical Insurance) for marriage and family therapist services and mental health counselor services generally, and particularly such services provided in rural health clinics and hospice programs. It excludes such services from the skilled nursing facility prospective payment system. It also authorizes marriage and family therapists to develop discharge plans for posthospital services.

Medicare: Seniors Mental Health Access Improvement Act of 2007 HR 1588 (Cubin and 16 bipartisan co sponsors)

Legislative Update

The bill amends Medicare to provide for coverage under Medicare Part B for marriage and family therapist services generally, and particularly those provided in rural health clinics and in hospice programs, and mental health counselor services under part B of the Medicaid program. It also amends Medicare Part C to exclude such services from the skilled nursing facility prospective payment system. It also authorizes marriage and family therapist to develop discharge plans for post-hospital services.

Medicare: Medicare Mental Health Modernization Act of 2007 HR 1663 (Stark and 45 co-sponsors who are mostly democrats)

This bill amends Medicare to provide for the elimination of the lifetime limit on inpatient mental health services; parity in treatment for outpatient mental health services; coverage of intensive residential services under Medicare Part A (Hospital Insurance) and of intensive outpatient services under Medicare Part B; exclusion of clinical social worker services from coverage under the Medicare skilled nursing facility prospective payment system; and most important for us, coverage of marriage and family therapists services and mental health counselor services under Medicare.

Medicare: Medicare Marriage and Family Therapist Services Improvement Act of 2007 HR 2644 (Jefferson with no co-sponsors)

This bill amends Medicare to provide for coverage of marriage and family therapist services under Medicare Part B and for coverage of marriage and family therapist services provided in rural health clinics and hospice programs. The bill also amends Medicare Part C to exclude such services from the skilled nursing facility prospective payment system. Finally, the bill authorizes marriage and family therapists to develop discharge plans for post hospital services.

Child Health Care Crisis Relief Act of 2007 HR 2073

Congress has found that a sizable portion of the nation's children are in need of mental health services and access to these services is inadequate. It is projected that the demand for child and adolescent mental health services is expected to increase by 100 percent by the year 2020. Congress has also found that there is a shortage of mental health professionals specifically trained to treat children and adolescents.

This bill would establish a program through the Health Resources and Services Administration, which would permit contracting on a competitive basis with mental health providers who agree to full-time employment for at least two years providing mental health services to children and adolescents. Persons eligible for these services would be individuals that have received specialized training or are already licensed or certified in one of several mental health professions, including marriage and family therapists. The Administration will give priority to those individuals who will be working with "high priority populations;" are familiar with evidenced-based methods; are culturally competent in child and adolescent mental health services; demonstrate financial need; and who will work in the public sector, particularly in community mental health programs. The bill also establishes a program to provide scholarships for students studying to become child and adolescent mental health providers— included are students enrolled in programs studying marriage and family therapy.

Veterans' Administration

While legislation to have MFTs recognized as employable within Veterans' Administration hospitals and facilities was signed into law, it will require further action by the VA to be operative. This legislation also included professional counselors. Our federal lobbyists and I, and subsequently our lobbyists, Board Members, and I met with representatives from within the VA to better understand the process and to hasten the development of implementing regulations. There was tremendous reluctance and a lack of awareness and understanding about the recently passed legislation. Further, there was a lack of understanding as to what MFTs do and their roles and responsibilities when working in VA facilities. We are continuing to push for implementation, are seeking the assistance of critical Congresspersons to carry our message, and are seeking other avenues to pressure the VA into action. We are confident that AAMFT and the American Counseling Association (representing professional counselors) are doing likewise.

Mary Riemersma, CAE, is CAMFT's Executive Director. She is available to answer member calls regarding business, legal, and ethical issues.