

# Legislative Report

by Mary Riemersma, Executive Director

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The legislative session is winding down for 2010 and legislators are now on summer recess. Following are the bills that CAMFT has pursued in 2010 as well as some of the many other measures we have supported, opposed, or at least watched to see what they become.

## CAMFT Sponsored Bills

### **Professional Society Peer Review Committees**

#### **AB 1730 (Emmerson)**

The CAMFT Ethics Committee is a professional society peer review committee. These committees are addressed in Section 43.7(b) of the Civil Code. Marriage and family therapists were omitted from the listing of professions afforded immunity from liability even though this section of law covered marriage and family therapy professional societies. It is important for our Ethics Committee to be assured that specified immunity from liability is applicable to them and the actions they take. This bill changes law to assure that there is no ambiguity with respect to this protection for those who volunteer to perform this important function that helps to protect the public and assure that members adhere to the CAMFT Code of Ethics. This bill has been signed by the Governor and will take effect on January 1, 2011.

### **Exception to Confidentiality**

#### **AB 2028 (Hernandez)**

This bill would amend the Confidentiality of Medical Information Act (Section 56.10 of the Civil Code) by expressly permitting mandated reporters of child abuse to respond to follow-up inquiries from child abuse investigators. Amended into the bill were reporters of elder and dependent adults. It would also provide an exception, with regard to such disclosures, from the onerous provisions of 56.104 of the Civil Code. This section of law provides that a requester of such information must submit to the patient and provider of the information a written request containing specifically detailed information. This legislation will help mandated reporters of child abuse to feel more comfortable in disclosing information to those who are responsible for investigating reports of child abuse and neglect. This bill has passed to the floor of the Senate.

### **Reporting of Serious Emotional Damage of a Child**

#### **AB 2339 (Smyth)**

This bill amends the Child Abuse and Neglect Reporting Act (CANRA). Several years ago, emotional abuse of a child (a permissive and non-mandatory report) was removed from the Child Abuse and Neglect Reporting Act. To clarify and correct this intentional omission, Section 11166.05 of CANRA was added, which provides that “Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering

serious emotional damage or is at substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.” A report made pursuant to this section is not considered to be a child abuse report and it is a permissive report. However, if such a report is made, or if a mandated reporter answers questions of a person investigating such a report, since it is no longer technically recognized as a child abuse report, the reporter may be considered to not have immunity from liability when cooperating with the investigator. This bill corrected this omission. Further, the bill clarified that sharing such information is permissible and thus mandated reporters would not be subject to disciplinary action for so doing. This bill has been signed into law by the Governor and takes effect on January 1, 2011.

## **Health Plans**

### **SB 1169 (Lowenthal)**

This bill is a combined effort with the California Coalition for Mental Health. CCMH is a coalition of the mental health professional and consumer advocacy organizations. This bill would require health plans and insurers to assign tracking numbers to claims or provider requests for authorization, upon receipt of the requests, which are to be given to both the provider and enrollee. All communications regarding the claims are to reference the tracking numbers. Given that prior authorizations are regularly lost, forgotten, refuted, or ignored and claims suffer a similar fate, this legislation is intended to help to correct this regularly occurring situation. If UPS and the postal service can track the delivery of shipments and mail through a tracking number, certainly health plans and insurers can improve their service by following a similar practice. The bill would also provide that if a claim or portion thereof is contested because the plan has not received all information necessary to determine payer liability, the plan shall provide acknowledgement of receipt within three working days by electronic means, which shall include the tracking number; and the plan shall have 30 working days (or 45 working days if an HMO) after receipt of all of the information necessary to determine payer liability to complete reconsideration of the claim. Existing law, in this regard, provides for interest to accrue and be payable at a rate of 15 percent per year beginning with the first calendar day after the 30 or 45 working day period.

Additionally, the parity statute would be amended to provide that “Any form of treatment limitation or other action by a plan that may limit the receipt of benefits required by this section shall be applied under the same terms and conditions that apply to other benefits under the plan contract. These treatment limitations or actions include. . .maximum lifetime benefits, copayments, and individual and family deductibles.” This bill has passed both house, but has been heatedly opposed by the health plan and insurance industry, as well as the Department of Managed Health Care. The reasons for the opposition are the false arguments that the legislation is unnecessary due to the passage of the Parity Act and Health Care Reform, alleged cost, the claim that the plans already assign a tracking number, etc. The DMHC claims that there is nothing that we can do to rectify their concerns. With the opposition, the bill is sure to be vetoed by the Governor.

## **Other Bills**

### **Unpaid Taxes Effect on Licensees**

#### **ABX8 8 (Committee on Budget)**

This bill, among other provisions, would result in license suspension if the individual licensee fails to pay taxes. CAMFT has joined with a coalition to oppose this bill.

### **Disclosures of Information by Health Care Practitioners**

#### **AB 583 (Hayashi)**

This bill would, among other things, require health care practitioners to display the type of licenses they hold, as well as the highest level of academic degree in at least 18 point type. CAMFT does not see the purpose of this bill and has opposed the legislation. The bill was dormant since last year and is now re-surfacing.

### **Child Custody and Visitation**

#### **AB 612 (Beall)**

This bill, as introduced, would have prohibited a court from considering a nonscientific theory in making a determination regarding child custody or visitation with a child. It would also have prohibited a court from considering or receiving into evidence a report, assessment, evaluation, or investigation if it included a nonscientific theory. CAMFT's position on the bill was "oppose unless amended." The bill was later amended in a way that we no longer opposed, providing that a child's expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The amendment prohibited a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child's expression of significant hostility toward the parent. But, this amendment was merely a maneuver to get it out of a committee. As soon as the bill progressed, the offensive language was restored. The bill now provides that the rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a custody proceeding. The bill would also provide that unproven, nonscientific theories, including, but not limited to, alienation theories are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The bill would prohibit a court from relying upon an unproven, unscientific theory and from accepting into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding. The bill would require the Judicial Council to provide training consistent with these provisions. This bill is a two-year bill and there has been no action on this bill this year.

### **Medi-Cal Reimbursement for Same-Day Visits**

#### **AB 1445 (Chesbro)**

This bill, sponsored by the California Primary Care Association, would provide that a MediCal patient could seek treatment on the same day from more than one health care provider and the providers' services would be reimbursed. CAMFT is in support of this legislation. This bill is a two-year bill that has made no headway this year.

**MediCal: Alcohol and Drug Screening and Brief Intervention Services  
AB 1599 (Beall)**

This bill would establish the MediCal Alcohol and Drug Screening and Brief intervention Services Program, which would be administered in consultation with the State Department of Alcohol and Drug Programs. Its purpose would be to increase the state's ability to make alcohol and drug screening and brief intervention services available to MediCal beneficiaries who are pregnant or of childbearing age. This bill would provide that participating in the program would be voluntary for MediCal beneficiaries. The results of any screening under the program would be confidential. CAMFT is watching this bill at this time that appears to be dead for this year.

**Parity for Mental Health Care Services  
AB 1600 (Beall)**

This bill would expand mental health care coverage for certain health care service plans and health insurance issued, amended, or renewed on or after January 1, 2011, to include mental disorders defined in the DSM IV. There has been similar legislation in the two prior years that has been vetoed by the Governor. This legislation goes hand in hand with the Federal Parity law and expands on the existing California parity law that only covers severe mental and emotional disorders of adults and children. CAMFT is in support of this legislation that has passed out of Senate Appropriations.

**Out of State Insurance Carriers  
AB 1904 (Villines)**

This bill would allow an insurance carrier from out of state to offer, sell, or renew a health care service plan or a health insurance policy in California without holding a license in the state of California. This bill, if successful, would be problematic for MFTs seeking reimbursement from such plans. Due to legislation that CAMFT sponsored in the 80s, out of state insurance companies are required by law to reimburse MFTs. Because they are required, if doing business in California, to abide by California law, which means that they must be licensed to do business in California. We are opposed to this bill that has already failed passage. There is a companion bill in the Senate as well, however.

**Clinical Social Worker Examinations  
AB 2167 (Nava)**

This bill would, on and after January 1, 2014, under certain conditions, require the Board of Behavioral Sciences to issue a license to each applicant who successfully passes the Social Work National Exam. In other words, if this legislation passes, aspiring clinical social workers would no longer take state-developed examinations, and they would instead take the examination that is used throughout the rest of the country. This change would allow LCSW licentiates in California to compete for federal loan reimbursements, which they are not currently eligible for because of the state specific examinations. CAMFT is watching this bill that is now in Senate Appropriations.

## **Retired License for Licensees of the BBS**

### **AB 2191 (Emmerson)**

This bill would permit persons who are licensed by the BBS to acquire a “retired” license if they choose to. Such a person would not be permitted to engage in any activity for which a license is required. The retired license fee would be nominal at only \$40 for the remainder of one’s life. It would be permissible to restore the license to active status, if eligible, by paying the required fees, completing the required mandatory continuing education, and taking the required examinations if more than five years have passed since electing the retired status. If fewer than five years have passed, examinations would not be required. CAMFT is watching this legislation. We do have concerns about licensees electing the retired status who may at a later time return to practice. If there is such a possibility of returning to practice, we would encourage the licentiate to elect to have an inactive license during the period of inaction because examinations would not be required upon re-activation. This bill is now in Senate Appropriations.

## **Repeal of Antiquated Law Regarding Research on Homosexuality**

### **AB 2199 (Lowenthal)**

CAMFT has taken a position of support on this legislation that would repeal an antiquated section of law that provided for research regarding the causes and cures of homosexuality. The bill has been amended to require the department to plan, conduct, and cause to be conducted scientific research into the prevention of sex crimes against children and into methods of identifying those who commit sexual offenses. The bill is now in the Senate Appropriations.

## **Child Abuse and Neglect Reporting Act**

### **AB 2380 (Lowenthal)**

This bill adds further clarification in the Child Abuse and Neglect Reporting Act with regard to the meaning of “reasonable suspicion.” Existing law says that “. . . ‘reasonable suspicion’ means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect.” The bill has been amended to specify that reasonable suspicion does not require certainty. CAMFT is watching this bill that is now on the Governor’s desk.

## **Continuing Education and other Requirements with regard to Elder and Dependent Adult Abuse and Older Adults**

### **AB 2435 (Lowenthal)**

CAMFT’s position on this bill began as “oppose unless amended.” The bill originally appeared to be intended to affect the professions of marriage and family therapists, clinical social workers, and psychologists, but at the time it was introduced it appeared to be solely directed at marriage and family therapists. The other disciplines were later amended into the bill.

As introduced, the bill had numerous objectionable provisions including it proposed that elder and dependent adult abuse be added to the seven hour requirement for continuing education in child abuse assessment and reporting, it also proposed changing the name of

one (and only one) of the degrees that could qualify for licensure as a marriage and family therapist, and it proposed that the 500 required hours of experience for marriage and family therapists in working with couples, families, and children be expanded to include older adults.

The bill was significantly amended and now encourages, amongst other things, experience to be gained by all of the disciplines in working with elders and dependent adults. It specifically says: “It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.” It mandates that coursework address elders and dependent adults, which already is generally included in law and ethics courses and human development courses that cover the lifespan. It specifically says: “On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.” We are no longer in opposition to this bill that is now on the Senate floor.

### **Judicial and Quasi-Judicial Immunity**

#### **AB 2475 (Beall)**

This bill, which was amended into a “gut and amend” bill, would remove the judicial and quasi-judicial immunities that currently exist for mediators, conciliators, evaluators, therapists, guardians ad litem, etc. These immunities would not apply to exonerate any third party who is engaged in mediation, conciliation, evaluation, or similar dispute resolution under any statute or contract relating to an action or proceeding under the Family Code. The bill has recently been amended to apply only to private persons appointed by the courts for their expertise, including mediators, guardians ad litem, therapists, receivers, and bankruptcy trustees, and to persons involved in alternative methods of dispute resolution who function apart from the courts pursuant to private agreements, including mediators, conciliators, evaluators, and marriage and family therapists. CAMFT is opposed for obvious reasons. It appears that this bill will not move forward this year.

### **Unpaid Taxes Effect on Licensees**

#### **SBX8 8 (Committee on Budget)**

This bill, among other provisions, would result in license suspension if the individual licensee fails to pay taxes. CAMFT has joined with a coalition to oppose this bill. This bill has moved from the floor of the Assembly but appears to not be moving forward this year.

### **Health Care Coverage and Benefits**

#### **SB 316 (Alquist)**

This bill would have required full service health care service plans and health insurers to expend on health care benefits no less than 85 percent of the fees/premiums collected for policies issued, amended, or renewed on or after January 1, 2011. CAMFT is in support of this legislation. This bill is a two-year bill that has not been heard this year.

## **Regulatory Boards**

### **SB 1111 (Negrette McLeod)**

This was a lengthy and multi-faceted bill that had numerous objectionable provisions. We were generally opposed to the bill and worked individually and collectively with the other disciplines to modify the objectionable provisions. The purpose of the bill, generally speaking, was to “clean up” enforcement throughout the many Boards, Bureaus, and Committees under the umbrella of the Department of Consumer Affairs. The Department and Administration, rightfully so, were concerned about the excessive amount of time it takes to investigate and prosecute disciplinary actions. These actions, on average, are taking three years to bring to fruition. Of course, both consumers and licensees have an interest in swift resolution of complaints and disciplinary actions. This bill was seeking to improve efficiency and accountability specifically within the healing arts boards.

The bill would have given additional authority to the executive officer of the licensing board in many cases. For example, the executive officer would, in some situations, be given the authority to have adopted a proposed default decision or to have adopted a proposed settlement agreement, without such action going to the board. The bill would have allowed the executive officer of a board, where the licensee had failed to comply with a request to inspect or copy records, to petition the director to issue a temporary order that the licensee cease all practice and activities that require a license.

The bill seemed to confuse confidentiality and privilege. The bill seemed to say that the provisions of privileged communications (should be confidentiality when speaking of communications between licensees and their clients) should not apply to investigations or proceedings conducted by a healing arts board. The board and its agents are expected to maintain confidentiality, but they would have had the authority to examine records in the licensee’s office under certain circumstances.

The bill provided that a licensee would have been required to cooperate with the licensing board and would have imposed severe financial penalties for those deemed to be uncooperative. Fortunately, with tremendous support and opposition, the bill died in its first committee.

## **Requirement for Healing Arts Practitioners to Wear Name Tags**

### **SB 1132 (Negrete McLeod)**

This is a “spot bill” surrounding legislation that has passed in prior years. Existing law requires healing arts practitioners to wear name tags while working that disclose names and license status in at least 18-point type. This requirement is not applicable to health care practitioners working in a practice or an office where a license is prominently displayed. Existing law further provides that if a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic reasons. CAMFT is watching this legislation that could become more expansive requiring

practitioners to wear name tags. This bill had not moved at the time this article was written.

### **Restrictions on Advertising and Designations of Licensees**

#### **SB 1150 (Negrete McLeod)**

At this time this bill is not applicable to MFTs, but we are nevertheless watching the bill very closely to see what it will become. The bill, among other things, would require a number of professionals, when advertising, to list the abbreviations for the licenses held immediately after their names. Among other things, the bill would require psychologists to include the designation “Ph.D.” immediately after their names. Of course, the bill is incorrect with regard to psychologists because the supposed required designation is a degree and not a license. The purpose of this legislation may be directed, to some degree, at the potential misleading use of “Dr.” preceding the name of a professional, since such a representation is limited to use by physicians. The bill is now in Assembly Appropriations.

### **Behavioral Analysts Regulation**

#### **SB 1282 (Steinberg)**

This bill began as an attempt to use a private non-profit organization as a quasi-regulatory body to regulate Applied Behavior Analysts. Due to substantial opposition from CAMFT and others, the bill was substantially modified to limit Behavior Analysts to those who hold current certifications from a private non-profit organization. As a result of further opposition from CAMFT and others, it was substantially amended once again. Now the bill provides that the intent of the Legislature is to enact legislation to provide clarification on the duties imposed upon health care service plans and health insurers to inform consumers about the coverage provided for the diagnosis and treatment of autism and pervasive developmental disorders under the existing mental health parity law.

### **Alcohol and Drug Counselor Regulatory Legislation**

#### **SB 686 (DeSaulnier)**

This bill was recently put into a “gut and amend.” Over the past two years, the Department of Alcohol and Drug Programs had a proposed bill and a consortium of various alcohol and drug associations and schools created another proposal—which became SB 686. It is our belief that this proposal that has been developed by the consortium of entities is likely the most viable and has engendered the most support. To date, each version of the bill continues to have drafting inconsistencies, comprehension concerns, and numerous objectionable provisions. Some of our concerns follow:

The Advisory Board is comprised of a majority of alcohol and drug counselors (professional members) and a minority of public members. Most licensing boards are now comprised of a majority of public members in an effort to assure greater public protection. We believe that a majority of public members does lead to better public protection.

We have requested that more hours of education in law and ethics be required of those either licensed or in pursuit of licensure. This request has been partially, but not fully, addressed.

One section appeared to limit who may do alcohol and drug counseling to only those who are licensed as such. As a result of our and others repeated requests to exempt licensed mental health professionals, a change has been made but it is confusing as to meaning and intent.

Their unprofessional conduct section, patterned after current law for MFTs and CSWs, takes liberties that do not seem to be in the public's best interests with regard to criminal convictions. In fact, the bill began with permitting a licensee or registrant to have been convicted of up to five serious felonies within a five year period. While this number has been reduced to three serious felonies, it is our belief that, under these circumstances, public protection is compromised.

As currently drafted, persons licensed in other states as alcohol and drug counselors will qualify for licensure in California without any assurance that their education and experience is substantially equivalent to the requirements in California.

The license and registration fees as currently proposed are so low that they will not provide adequate resources to cover the costs of enforcement, which is, of course, necessary to assure public protection.

The proposal provides for a tiered regulatory system, whereby licenses will only be issued to those who hold masters degrees. Only licensees will be able to practice independently and they will also be able to provide supervision. Certified alcohol and other drug counselors will be able to practice when hired in a program licensed or certified by the Department of Alcohol and Drug Programs. Registered interns are persons who are unlicensed and working under supervision.

The CAMFT position is "oppose unless amended" until additional changes are made to accommodate our remaining concerns.