Discussion and Possible Recommendations Regarding Practice Setting Definitions

1. Definition of Exempt Settings (BPC §4980.01(c))

BPC §4980.01(c) specifies that certain settings are exempt settings if the employee or volunteer working there is *supervised solely by the entity where he or she is working*. BBS Staff recommends the Committee discuss striking this provision because in many cases, exempt settings do not have the internal resources to provide supervision, and other portions of the law permit 3rd party supervision if a written supervision agreement outlining each parties’ responsibilities is in place. CAMFT raised concerns that although the BBS is using this section to define exempt settings for work settings, the section is also referring to exempt entities who can hire non-licensed or nonregistered individuals to provide counseling services. CAMFT is concerned that striking the language could result in unintentional consequences where such entities and individuals may misinterpret that supervision and/or oversight by the entity is not required.

**Committee’s Recommendation:** The Committee recommended for BBS staff to include language pertaining to oversight and direction of these individuals by the listed entity.

2. Definitions of “Private Practice” and “Professional Corporation” (BPC §4980.06(a))

*For-profits licensed/certified by a governmental agency*

The Committee discussed the definitions of “Private Practice” and “Professional Corporation” (BPC §4980.06(a)). CAMFT raised concerns with the exclusion of entities that are for-profit or privately owned but are licensed/certified by a governmental agency (such as the Department of Public Health). CAMFT inquired about the rationale behind excluding these entities as lawful work settings for trainees and post-graduate applicants simply because they are owned by a mental health professional, but allowing such settings if owned by other individuals or professionals, such as physicians. These settings are governed by regulations and are under jurisdiction of a regulatory agency which would allow for oversight and consumer protection.

**Committee’s Recommendation:** The Committee recommended such settings should be permissible lawful work settings for trainees and postgraduate applicants and BBS staff will include language in the Private Practice/Professional Corporation definition exempting such settings as a private practice.
Private practices owned by other healing arts licensees

The proposed definition defines a private practice as being owned by a licensed mental health professional, either independently or jointly with one or more other licensed mental health professionals. Under this proposed language, private practices/corporations owned by other healing arts licensees, such as physicians, would not be considered a “private practice setting.” (Healing arts licensees are listed in Division 2 of the Business and Professions Code, and include professionals such as nurses, physical therapists, acupuncturists, and pharmacists.) The Committee discussed whether ownership of these practices should only be limited to mental health professionals, or should the definition be expanded to include any practice owned by a healing arts licensee.

Committee’s Recommendation: Given the same concerns arise for trainees and post-graduate applicants working in any private practice setting regardless of ownership, the Committee recommended to include other healing arts licensees.

Definition of “licensed mental health professional”

CAMFT raised a question as to the proposed definition of a “licensed mental health professional” in §4980.06(B), which included registered associates. BBS staff recognized it as an error and will remove the reference to associates.

3. Allowable Settings for Trainees and 90-Day Rule Applicants (BPC §4980.06(b), 4980.43(b), 4980.43.3(b),(d))

The proposal clarifies that trainees and applicants seeking a registration number under the 90-day rule are permitted to work in non-exempt settings, as long as the setting is not a private practice or a professional corporation. The Committee discussed that whether it is appropriate to prohibit trainees and post-graduate applicants from working in a private practice or professional corporation setting. CAMFT and other stakeholders raised concerns regarding the potential lack of oversight and support that trainees, who have relatively low clinical experience and education, would receive in private practice settings. Unless there are further requirements of supervisors and other clinicians to be on site at the same time trainees are treating clients in a private practice setting, concerns were raised about the level of support and supervision/consultation available to trainees in a private practice setting relative to a clinic or facility setting.

Committee’s Recommendation: The Committee recommended to keep the prohibition of trainees and post-graduate applicants working in private practices/professional corporations until registered.

4. Supervision Limitations in Private Practice and Professional Corporation BPC §4980.43.4)

The proposed language places some limits on supervision in private practice and professional corporations:
In a private practice, the supervisor must be employed by and practice at the same site as the associate (or own the private practice);

In a professional corporation, the supervisor must be employed by the corporation for at least 20 hours per week;

The supervisor must be actively engaged in performing professional services at the same site as the supervisee; and

Supervisors in a private practice or professional corporation are limited to four individual or triadic supervisees at a time.

**Employed for at least 20 hours a week**

The Committee heard concerns from stakeholders regarding limiting the 20 hours per week since there are many qualified, seasoned supervisors who may not be able to meet that hour requirement. CAMFT expressed it would be helpful to clarify the current definition of “full-time”, but also understood the concern of excluding seasoned, qualified supervisors who can work less than 20 hours a week.

**Committee’s Recommendation:** The Committee recommended to remove the 20-hour requirement so long as the supervisor is actively engaged in performing professional services at the same site as the employer/associate.

**Employed or “contracted” supervisors in private practice/professional corporations**

CAMFT raised questions as to the “employed” definition under §4980.43.4(b) and whether the Committee has concerns with “contracted supervisors” who are performing services on-site. If the supervisor is engaged in performing professional services at the same site as the private practice or corporation, would the Committee still have the same concerns?

**Committee’s Recommendation:** The Committee recommended to allow for supervisors in private practices/professional corporations to be either employed or contracted so long as the supervisor is actively engaged in performing professional services at the same site as the employer/associate.

**Supervisors supervising at several sites**

The Committee discussed since supervisors have to be actively engaged in performing professional services at the same site as the associate, the Committee was not concerned that a professional corporation have a supervisor supervising at several sites.

**Number of supervisees in a private practice/professional corporation**

The Committee discussed the proposal of changing the number of supervisees per supervisor in a private practice or professional corporation from 3 to 4.
Committee’s Recommendation: After hearing feedback from stakeholders regarding the ability to provide triadic supervision, the Committee recommended to increase the limit of 3 to 6 individual supervisees in a private practice setting.

5. **Reimbursement for Expenses (BPC §4980.43(g))**

Current law allows a person who works in any setting except a private practice to receive reimbursement for expenses actually incurred. (This means that the Board will not consider them an independent contractor (which is prohibited) if they present a 1099 form, as long as they can prove the 1099 is for expense reimbursement.) The Committee discussed whether this exception should be allowed for associates working in a private practice as well. CAMFT shared that expenses are typically paid directly to the employee and not reflected on a 1099 if associates are employees.

Committee’s Recommendation: The Committee recommended to remove the limit if the requirement remains that applicants can prove the 1099 was for actual expenses incurred (receipts).

**Discussion and Possible Recommendations Regarding Subsequent Registration Numbers**

**Length of time per registration**

The Committee re-examined the six-year rule for associate registrations. Board staff reported that approximately 12.6% of AMFTs and 10.5% of ASWs were on a subsequent registration number, and that it was taking the average LMFT applicant and LCSW applicant 3.3 years and 3.7 years, respectively, to gain the required experience hours.

Committee’s Recommendation: The Committee recommended to extend the length of a registration from 6 years to 8 years.

**Private practice with a subsequent registration**

The Committee discussed whether to remove the limits on private practice settings for subsequent registrants.

Committee’s Recommendation: After hearing concerns from CAMFT and stakeholders, the Committee recommended to not remove the private practice limitation.

**Discussion of the subsequent registration**

The Committee discussed whether the Board should issue a subsequent registration number and concerns with a small percentage of individuals who are in the registration process for many years. The Committee reviewed licensing laws of other states pertaining to this issue. The Committee recommended proposing language to extend a registration from 6 years to 8 years for an applicant to gain hours of experience and then a hard stop, with allowance of a “special circumstances” request such as medical or military service, for an extension of an
additional 2 years. The Committee discussed different options for those who may need to take an extended leave. Board staff expressed the difficulties of implementation. Although CAMFT is concerned about consumer protection and the perpetual Registered Associate, CAMFT is also concerned about those applicants who have special circumstances and cannot complete hours under 8 and/or 10 years. Board staff will propose language and the issue will be further examined.

**Discussion of continuing education for registered associates**

The Committee discussed concerns regarding associates who are practicing but are not taking any continuing education. After hearing stakeholders’ comments, the Committee recommended requiring associates take 3 hours of law and ethics every renewal period and to remove the 12-hour law and ethics course currently required. The Committee recommended that after 4 years of registration, associates would then be required to take 18 hours of education (to include 3 hours of law and ethics) every renewal period. Board staff will propose language and the issue will be further examined.

**Discussion of number of years/attempts to take clinical exam**

The Committee also discussed whether to reduce the number of attempts (or number of years) for the clinical exam (currently the applicant must pass the clinical exam within 7 years from the date of licensure application). Board staff will research and the issue will be further examined.