Discussion and Recommendation Regarding Technical
Amendments to the Business & Professions Code

Definition of Professional Corporations (BPC §§ 4987.5, 4998, and 4999.123). BPC §§ 4987.5, 4998, and 4999.123 specify that licensed marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselor corporations are authorized to render professional services so long as its shareholders, officers, directors, and employees who are specified license holders are in compliance with the Mascone-Knox Professional Corporation Act and other relevant statutes and regulations. BBS staff recommends striking the list of professions in these sections of the BPC as they are already listed in the Corporations Code. As the Corporations Code is occasionally amended, an ongoing list in the BPC is duplicative and may be out-of-date.

The Committee recommends the proposed language striking the list of professions be sent to the Board for its full consideration.

Renumber BPC § 4980.43.3. BPC § 4980.43.3 contains a numbering error in subdivision (c). The two criteria listed as (1) and (2) should instead be labeled as subdivisions (A) and (B).

The Committee recommends the proposed re-numbering be sent to the Board for its full consideration.

Amend the Definition of “One Hour of Direct Supervisor Contact” (BPC §§ 4980.43.2, 4996.23.1, 4999.46.2). BPC §§ 4980.43.2, 4996.23.1, 4999.46.2 define “one hour of direct supervisor contact” as a specified amount of face-to-face contact between one supervisor and their supervisees.

The Committee discussed how the intent of the term “direct supervisor contact” is to require the supervisor and supervisee(s) meet in person for the supervision session. This is implied by subdivisions 4980.43.2(d), 4996.23.1(f), 4999.46.2(d), which state that notwithstanding the definitions of “one hour of direct supervisor contact,” an associate working in an exempt setting may obtain their required weekly direct supervisor contact via videoconferencing. The Committee seeks clarification that direct supervisor contact means “face-to-face” supervision.

The Committee recommends the proposed amendment to the definition of “one hour direct supervisor contact” be sent to the Board for its full consideration.

Amend Notice to Clients About Filing a Complaint (BPC §§ 4980.01, 4996.14, 4999.22). The recently-enacted AB 630 amended the law to require unlicensed and unregistered therapists working in exempt settings to provide their clients with information about where to file a complaint about the therapist. The Senate Committee on Business, Professions, and Economic Development suggested additional language be included in the notice to provide consumers with the Board’s contact information so a license verification check could be performed:

The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered psychotherapists. If you have a complaint and are unsure if your therapist is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance.

After hearing comments from stakeholders, the Committee recommends to modify the recommended language to include “counselors” rather than psychotherapists to be consistent with the language used in AB 630. The Committee further discussed that the public would benefit from the inclusion of the Board’s website as an additional means of verifying a license. The Committee recommends the proposed language with the inclusion of the Board’s website be sent to the Board for its full consideration.

Amend Petitions for Reinstatement or Modification of Penalty (BPC § 4990.30). The Board’s legal counsel recommended clarifying provisions
Regarding the procedure for petitioning to termination probation early or to modify a penalty to address ambiguities in BPC § 4990.30.

- Subdivision (b) currently specifies timeframes after which a petition can be filed by the Board. Until recently, the Board assumed the time during which probation is tolled counts toward the specified timeframes. In a recent case, an administrative law judge challenged the operating assumption. Staff wishes to clarify the timeframes exclude any periods of probation tolling.

- Subdivision (c) states that a petition may be heard either by the Board, or that the Board can assign the petition to an administrative law judge. Subdivision (d), however, implies the petitioner may request either the Board or an administrative law judge hear the case, which is not the intent.

The Committee recommends the clarification that subdivision (b) be amended to exclude periods of probation tolling from the required timeframes before a petition can be filed. The Committee further recommends subsection (d) be amended to clarify that a petitioner can only request a hearing location if the Board is hearing the case.

Amend Acceptable LCSW Continuing Education Providers (BPC § 4996.22). Under current law, social workers can only obtain continuing education from an accredited school if the school is accredited by the Commission on Accreditation of the Council of Social Work and Education. Continuing education may not be obtained from a school accredited by the U.S. Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

The Committee agrees with staff’s belief that this prohibition is unintentional. The Committee recommends that BPC § 4996.22 be amended to permit social workers to obtain continuing education from a school accredited by USDE or BPPE just as LMFTs and LPCCs can.

Delete Duplicative Definition of Supervision (BPC § 4999.46.1). BPC §§ 4999.12 and 4999.46.1 both define “supervision.” BPC § 4999.12 defines terms for purposes of the LPCC statute and the definition most appropriately belongs there. The additional reference in BPC § 4999.46.1 is duplicative.

The Committee recommends deletion of the duplicative definition of “supervision” in BPC § 4999.46.1.

Amend Fines for Licensing Act Violations (BPC §§ 4983, 4989.66, 4996.12, & 4999.86). LMFT and LPCC law both have provisions establishing a misdemeanor charge and fine of $2,500 and/or six months in county jail for violating the respective licensing acts. LCSW law, on the other hand, establishes a fine of $1,000 and states that violation of the chapter is a misdemeanor but does not specify punishment of jail time or a fine.

The Committee discussed that the referenced fines are likely court fines rather than Board-issued fines since the BBS does not have the authority to jail licensees. The Committee further discussed that the amounts currently in law appear to be arbitrary, particularly as the offenses to which they pertain are criminal in nature and the BBS is not involved in any criminal proceeding.

The Committee recommends the Board pursue potential revisions as a legislative proposal to permit additional input from the Assembly Business and Professions Committee.

Motion: After consideration of all topics contained in the technical changes proposal, the Committee moved to send the Staff’s proposed language and changes to BPC §§ 4987.5, 4998, and 4999.123; 4980.43.3; 4980.43.2, 4996.23.1, 4999.46.2; 4980.01, 4996.14, 4999.22; 4990.30; 4996.22; 4999.46.1; 4983, 4989.66, 4996.12, & 4999.86 to the BBS Board for consideration.

Discussion and Possible Recommendation Regarding Amendments Needed Due to the Passage of AB 2138 and AB 2396.

Amend Qualifications for Licensure or Registration (BPC §§ 4980.40, 4989.20, 4999.42, & 4999.51). The Committee recommends striking “acts” as those are detailed in Section 480. Effective January 1, 2021, this section will be reorganized into three tiers depending on the severity of the crime. The higher the tier, the longer the required registration as a sex offender.

The Committee discussed how Section 480 overrides the other provisions of the BPC pertaining to grounds to denial. For this reason the Committee recommended striking “acts” as those are detailed in Section 480.

Amend Reference to Penal Code § 290 (BPC §§ 4980.40, 4989.24, 4996.2, 499942, & 4999.51). Penal Code § 290 specifies various types of crimes for which registration as a sex offender is required. Effective January 1, 2021, this section will be reorganized into three tiers depending on the severity of the crime. The higher the tier, the longer the required registration as a sex offender.

The Committee discussed how the Board may consider applications from convicted sex offenders in the future. The Committee currently anticipates that only the top two highest tiers of offense will be grounds for denial of license, regardless of when the conviction took place. This would permit an applicant who falls into the “Tier One” category to have their application considered after January 1, 2021. Staff will develop a FAQ to present to the Board to provide further guidance to applicants with a criminal background.

The Committee recommends amending BPC §§ 4980.40, 4989.24, 4996.2, 499942, & 4999.51 to specify that denials due to Penal Code § 290 registration be in accordance with conditions for denial specified in § 480.
Amend Unprofessional Conduct Provisions (BPC §§ 4982, 4989.54, 4999.23, & 4999.90). BPC §§ 4982, 4989.54, 4999.23, & 4999.90 define conviction. The definition of conviction was amended by AB 2138 in BPC § 7.5 for the purpose of denying a license pursuant to § 480. These sections also currently contain language permitting suspension, revocation, or denial of a license regardless of whether a conviction has been dismissed pursuant to Penal Code § 1203.4.

The Committee discussed how the language in BPC § 7.5 is not anticipated to change whereas the language elsewhere in the Code is subject to change. To permit long-term clarity, the Committee recommends amending BPC §§ 4982, 4989.54, 4999.23, & 4999.90 to reference the definition of conviction in BPC § 7.5. The Committee further recommends amending these sections of the BPC regarding suspensions, revocations, or denials of a license or registration to be in accordance with Division 1.5 of the BPC.

Amend References to Statutes Governing License Denials, Suspensions, or Revocations (BPC § 4999.80). BPC § 4999.80 references laws governing license denials, suspensions, or revocations. BPC § 490 governs license suspensions and revocations and is not included in the referenced sections.

The Committee discussed how this exclusion is unique to the license type. The Committee recommends BPC § 4999.80 be amended to include BPC § 490 in the list of referenced sections that pertain to license denials, suspensions, or revocations.

Motion: The Committee noted that the regulations pertaining to criminal convictions will be discussed at the upcoming November BBS Board Meeting. The Committee moved to for all proposed amendments due to passage of AB 2138 and AB 2396 be referred to the full Board for its consideration.

Discussion of Custody of Client Records Due to Licensee Death or Incapacitation.

Staff presented a proposal that the Board consider whether it is appropriate to address what should happen to client records if the therapist dies or becomes incapacitated.

The Committee noted that some professional associations include the issue of client records in their codes of ethics, particularly citing the American Psychological Association. The Committee expressed concerns as to the enforceability of such a requirement as this primarily is only an issue if the therapist is deceased and therefore beyond the jurisdiction of the Board. The Board reviewed examples of how four other states regulate the issue and expressed concern as to placing an undue burden on surviving family members as required by Florida.

CAMFT expressed support for ongoing discussion of this important issue. CAMFT noted that the CAMFT code of ethics currently encourages therapists to be mindful of their obligations to provide uninterrupted care and includes the consideration of whether a professional will is appropriate for continuity of care. CAMFT also agreed with the Committee’s concern as to placing a burden on surviving family members. NASW noted that the issue of continuity of care is most prevalent in the private practice setting rather than the agency setting and believes this issue is better addressed in informed consent recommendations rather than as a statutory requirement. CALPCC raised the issue of difficulty accessing electronic health records if a password has not been made available and encouraged discussion of ethical planning.

Motion: The Committee did not take action at this time. The issue will be studied further, particularly as it relates to whether this is most appropriately a legal or ethical concern.

Discussion on Proposed Regulatory Changes to Examination Waiting Periods, Professional Corporations, Accrediting Agencies, and Equivalent Degrees.

Examination Waiting Periods (Cal. CCR § 1805.05). The Committee discussed how the waiting period for the LEP written examination is currently unspecified. The Board-developed examination for LEP’s attracts a smaller volume of applicants so only two versions of this examination are made available each year. A waiting period of 180 days would permit an applicant to re-take the examination for each newly available test.

The Committee further discussed a proposal to specify that examination waiting periods are a minimum. CAMFT expressed concern that such a specification could potentially open the door for longer waiting periods in the future if it is not clarified that the minimum applies only in the context of an Act of God.

The Committee recommends the full Board consider whether specifying a 180 day waiting period to re-take the LEP examination is appropriate. The Committee further recommends the proposal regarding waiting periods be sent to the full Board for its consideration with the requirement that staff research why the minimum is sought and under what circumstances it would be applied.

Professional Corporations (Cal. CCR §§ 1850.6 & 1850.7). The Committee discussed whether to add LPCCs to the sections pertaining to ownership and transfer of shares, as well as the section on naming a professional corporation to be consistent with the LMFT and LCSW professions.

The Committee recommends the addition of LPCCs to CCR §§ 1850.6 & 1850.7 be considered by the full Board.

Accrediting Agencies and Equivalent Degrees (Cal. CCR §§ 1832 & 1854). Staff recommends deleting the section pertaining to equivalent accrediting agencies for MFT applicants. The Committee discussed how this section is no longer necessary as it is fully addressed in statute (BPC §§ 4980.36, 4980.37, 4980.78, & 4980.79).

The Committee discussed how CCR § 1832 (MFT applicants) is no longer necessary as it is fully addressed in statute (BPC §§ 4980.36, 4980.37, 4980.78, & 4980.79). The Committee also discussed how
CCR § 1854 is unique to the LEP license and how clarification of which accrediting agencies are acceptable will bring it into consistency with the other license types.

The Committee recommends the proposal be submitted to the full Board for consideration as a regulatory proposal.

**Motion:** The Committee moved to send the proposed regulatory modifications to the BBS Board for its consideration with the understanding that staff would research why the minimum examination period was included as part of the proposal ahead of the November meeting.

**Status of Legislation.**
Staff updated the Committee on the status of Board-sponsored legislation (SB 679, Licensing; AB 630, Required Notice; and SB 786, Healing Arts Omnibus Bill). All Board-sponsored legislation has been signed into law by Governor Newsom. Several Board-supported pieces of legislation (AB 8, Pupil Health; AB 613, Regulatory Fees; AB 769, Federally Qualified Health Centers and Rural Health Clinics; AB 1145, Child Abuse; and SB 660) are two year bills.

AB 1651 has been signed into law to permit LEPs to supervise AMFTs, ACSWs, and APCCs. The Committee expressed how pleased it was that stakeholders came together to support AB 1651 and hopes that this legislation will be a model for the rest of the country. At the time of the meeting, SB 163 (Health Care Coverage) and SB 601 (State Agencies) were on the Governor’s desk awaiting a decision. SB 163 has since been vetoed and SB 601 was signed into law.

Staff also updated the Committee regarding Board-monitored legislation. AB 554 (Inactive License Fees) is a two-year bill. AB 1540 (Music Therapy) was signed into law. At the time of the meeting SB 10 (Mental Health Services) and SB 425 (Health Care Practitioners) were on the Governor’s desk awaiting a decision. SB 10 has since been vetoed and SB 425 was signed into law.

**Status of Rulemaking Proposals.**
Staff updated the Committee on the status of the BBS Board’s rulemaking proposals. Rulemaking pertaining to Substantial Relationship & Rehabilitation Criteria (AB 2138) were noticed to the public on August 8, 2019 and a hearing took place on September 30, 2019. Comments will be brought to the November 2019 BBS Board meeting for consideration.

Regulations regarding the Enforcement Process are currently on hold due to the passage of AB 2138. These regulatory changes addressing penalties, guidelines, and clarifying language will remain on hold pending passage of the AB 2138 regulations.

Regulations regarding Examination Rescoring; Application Abandonment; and APCC Subsequent Registration Fee have been submitted to OAL for final approval. However, language changes were identified and these changes will be brought to the BBS Board for consideration at the November 2019 meeting.

Finally, regulations regarding Supervision are under initial review and are expected to go to the BBS Board for consideration at its November 2019 meeting. These proposed regulations would in part revise supervisor qualifications, require supervisors to submit self-assessment data to the Board, and make supervision requirements consistent across the three licensed professions. 

**Kristin Roscoe, JD, is a staff attorney at CAMFT. Kristin is available to answer member calls regarding legal, ethical, and licensure issues.**

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**CONTINUING EDUCATION REQUIREMENTS**

**LMFT COURSE REQUIRED FOR FIRST RENEWAL ONLY:**
HIV/AIDS (7 hours) This course requirement is waived if taken in degree program.

**LMFT COURSE REQUIRED FOR EVERY RENEWAL:**
Law and Ethics (6 hours)

**OVERALL HOURS:** LMFTs are required to complete the MINIMUM of 18 hours of Continuing Education (CE) for their first renewal. All subsequent renewals have a requirement of 36 hours.

**DUAL LICENSEES:** If you are dually licensed, you may apply CE hours to both licenses if the course meets all CE requirements and the subject matter relates to both scopes of practice.

**COURSES TAUGHT:** You may claim credit for teaching a course. You will receive the same amount of hours as a course attendee would receive. However, you can only claim credit for teaching a course one time during a single renewal period.

1 Semester Unit = 15 CE hours  
1 Quarter Unit = 10 CE hours

**SUPERVISORS:** Supervisors may apply their supervisor course training hours to their CE requirement as long as the training has been taken from an acceptable CE provider.