

**BACKGROUND PAPER FOR THE  
BOARD OF BEHAVIORAL SCIENCES  
(Oversight Hearing, March 19, 2012, Senate Committee on  
Business, Professions and Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS  
FOR THE BOARD OF BEHAVIORAL SCIENCES**

**BRIEF OVERVIEW OF THE  
BOARD OF BEHAVIORAL SCIENCES**

**History and Function of the Board**

The Board of Behavioral Sciences (BBS) is one of the regulatory entities within the Department of Consumers Affairs (DCA). The BBS licenses and regulates Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Educational Psychologists (LEP), and Licensed Professional Clinical Counselors (LPCC). Additionally, the Board registers Associate Social Workers (ASW), Marriage and Family Therapist Interns (MFT Interns), Professional Clinical Counselor Interns (PCC Interns), and Continuing Education Providers.

The BBS's mission is to protect Californians by promoting consumer awareness, advocating for improved mental health services, and setting, communicating, and enforcing standards. In order to accomplish its mission, the BBS develops and administers licensure examinations, investigates consumer complaints and criminal convictions, responds to emerging changes and trends in the mental health profession legislatively or through regulations, and creates publications for consumers, students, and licensees.

The BBS's statutes and regulations require a license before an individual may engage in the practice of Licensed Clinical Social Work, Licensed Marriage and Family Therapy, Licensed Educational Psychology, and Licensed Professional Clinical Counseling. These statutes and regulations set forth the requirements for registration and licensure and provide the BBS the authority to discipline a registrant or licensee.

Legislation signed on July 18, 1945, by Governor Earl Warren created the Board of Social Work Examiners under the Department of Professional and Vocational Standards (renamed the Department of Consumer Affairs in 1970). California became the first state to register social workers. The first board members were comprised of seven members: two "lay persons" and four social workers. All the members were appointed by the Governor.

During the first 16 months of its existence, this board registered 4,098 social workers. The intent of certification was to identify competent professionals who were working for higher standards and services to the public.

A 1962 California State Assembly investigation regarding the fraudulent practice of marriage counseling contributed to the 1963 creation of the Marriage, Family, and Child Counselor Act. Under this Act, the Board of Social Work Examiners received the responsibility of licensing and regulating Marriage, Family, and Child Counselors. Soon after the addition of Marriage, Family, and Child Counselors, the Board of Social Work Examiners was renamed the Social Worker and Marriage Counselor Qualifications Board.

After 1969, anyone who wanted to practice clinical social work was required to hold a license. The addition of Licensed Educational Psychologists in 1970 to this board's regulatory responsibilities inspired a new name, the Board of Behavioral Sciences Examiners. In 1997, the Board of Behavioral Sciences Examiners was officially changed to its present name, the Board of Behavioral Sciences.

Effective January 1, 2010, a fourth mental health profession, Licensed Professional Clinical Counselor, was added to the Board's jurisdiction. Today, the BBS is responsible for the regulatory oversight of nearly 77,000 licensees. Current law provides for thirteen board members; six licensees and seven public members. Eleven members are appointed by the Governor, one public member is appointed by the Speaker of the Assembly, and one public member is appointed by the Senate Rules Committee. In 2010, a public was added to the BBS and in 2012, a LPCC member was added to the BBS increasing the board composition to thirteen members, however, it is still a public majority board.

The BBS currently has three committees; the Policy and Advocacy Committee, the Licensing and Examination Committee, and the Compliance and Enforcement Committee.

The Policy and Advocacy Committee is comprised of three board members. The work of the Committee is focused on proposed legislation, legislative changes, proposed regulations, and regulatory changes that respond to emerging trends or concerns in the mental health profession that may affect the BBS's licensees and registrants.

The Licensing and Examination Committee consists of three board members. This Committee discusses issues and concerns related to the BBS's statutory requirements for applicants to enter the examination cycle, requirements for licensure, as well as the examination process. The Committee also reviews the BBS's licensing and examination statistical data.

The Compliance and Enforcement Committee has three board members. This Committee reviews all statistical data related to the enforcement process. The Committee discusses topics related to consumer protection and enforcement process improvements.

The current committee structure provides multiple opportunities for consumers, licensees, registrants, professional organizations, and educational institutions to actively participate and comment about topics before the BBS. All committee recommendations are presented to the BBS for consideration.

<b>Board Members</b>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>
<p><b>Dr. Christine Wietlisbach, public member</b>  Dr. Wietlisbach is a practicing occupational therapist at Eisenhower Medical Center, and a faculty member at Loma Linda University. She possesses a Doctor of Occupational Therapy degree with a dual emphasis in Hand Therapy and Administration/Practice Management. She also has a master's degree in Public Administration. Dr. Wietlisbach is past-president of the Occupational Therapy Association of California, and recently completed two terms as a Governor-Appointee to the California Board of Occupational Therapy.</p>	2/4/10	6/1/15	Senate Rules Committee
<p><b>Christina Wong, Licensed Clinical Social Worker</b>  Ms. Wong has been employed by Glenn County Health Services where she currently serves as Health Services Program Coordinator. She was formerly the Senior Mental Health Counselor for the Children's System of Care Program. Ms. Wong is also a Mental Health Clinician for Butte County Probation Department's Minor Adjustment Program, providing family counseling to the incarcerated minors in juvenile hall and upon release in the community since 2008. Ms. Wong is the Field Instructor for California State University, Chico, School of Social Work and previously served as the Dean of Student Affairs for Hong Kong Shue Yan College from 1993-1997.</p>	5/18/11	6/1/13	Governor
<p><b>Karen Pines, Licensed Marriage and Family Therapist</b>  Ms. Pines previously served as a member of the BBS from July 24, 1999 to July 31, 2006. She served three terms as the BBS's Chair and one term as the BBS's Vice Chair. Ms. Pines has also served as public member for the Physical Therapy Board and is an adjunct professor at Pepperdine University, Graduate School of Education and Psychology. She earned her Bachelor of Science in Journalism from Ohio University, with a minor in Education, and her Master of Education and Psychology from California State University, Northridge. Ms. Pines is certified as an Alcohol and Drug Abuse Counselor and Critical Incident Debriefing Specialist.</p>	4/5/11	6/1/13	Governor
<p><b>Samara Ashley, public member</b>  Ms. Ashley has served as director of government affairs for the Port of Long Beach since 2007. From 2004-2007, Ms. Ashley was an account executive for Cerrell Associates, district field representative for Senator Betty Karnette from 2002 to 2004 and social service director and case manager for California Care Center from 1999 to 2002. She is a member of the Harbor Association of Industry and Commerce, Women's Transportation Seminar and American Association of Port Authorities.</p>	1/21/10	6/1/13	Governor
<p><b>Patricia Lock-Dawson, public member</b>  She has served the city of Riverside as planning commissioner since 2007 and director of the Santa Ana River Trail and Parkway Partnership for Riverside County Supervisor John Tavaglione since 2005. Additionally, Ms. Lock-Dawson has been principal of PLD Consulting since 2003. Previously, she worked for Riverside County's Executive Office as environmental programs advisor from 2000 to 2006. Ms. Lock-Dawson was an ecologist, ecosystem planner and a wildlife biologist for the U.S. Department of Interior's Bureau of Land Management and U.S. Geological Survey from 1994 to 2001 and state wetlands coordinator for the Utah Division of Wildlife Resources from 1992 to 1994. She is a member of the Riverside Land Conservancy Board of Governors, Raincross Group, and President of the Inland Empire Chapter of CA Women Lead.</p>	1/13/10	6/1/13	Governor
<p><b>Dr. Harry Douglas III, public member</b>  Dr. Douglas has over 35 years of experience in the health and higher education fields. Dr. Douglas served in multiple administrative positions at Charles R. Drew University of Medicine and Science from 1983-2004,</p>	5/14/09	6/1/15	Assembly Speaker

including Interim President, Executive Vice President, and Vice President for Academic Affairs. Dr. Douglas' professional interests have focused on creating healthcare systems that are responsive to minorities and other underserved populations, and he has organized model curricula around health promotion/disease prevention with a focus on disadvantaged populations. He also serves as a consultant on health and education policy issues for numerous public and private organizations.			
<b>Sarita Kohli, Licensed Marriage and Family Therapist</b> Ms. Kohli has been working in community mental health for over twelve years. Currently, she serves as Director of Mental Health Programs at Asian Americans for Community Involvement (AACI) in San Jose, overseeing outpatient Mental Health programs and the Center for Survivors of Torture. Ms. Kohli is in the Addressing Health Disparities Leadership Program of the National Council of Community Behavioral Health, a national leadership program for developing leaders from ethnically diverse communities. Previously, Ms. Kohli was on the Board of West Valley Community Services, a community services organization providing basic needs, family support and housing services. She serves on the Santa Clara County Social Services Advisory Commission and has been on the Executive Committee for the National Consortium of Torture Treatment Programs.	6/11/11	6/1/14	Governor
<b>Renee Lonner, Licensed Clinical Social Worker</b> From 1992-2008, she served as the clinical director and chief clinical officer for Robert T. Dorris & Associates, a management consultation firm. Ms. Lonner has maintained a private practice specializing in individual, marital and family psychotherapy since 1976. From 1999-2001, she served as President of the California Society for Clinical Social Work. Ms. Lonner is a member of the American Board of Examiners in Clinical Social Work and the National Association of Social Workers.	1/17/07	6/1/14	Governor
<b>Dr. Julia "Judy" Johnson, Licensed Education Psychologist</b> Dr. Johnson, of Brea, has been in Private Practice for over 20 years assisting parents, community agencies, Universities, and school districts with educational planning. She is currently on faculty at the University of Redlands as a professor in the MA in Education/School Counseling Program. She has been a licensed educational psychologist with the Whittier Union High School District, serving as educational coordinator for counseling programs and supervisor for counseling interns at Pioneer High School, since 2004. Previously, Dr. Johnson was a part time professor in educational psychology and special education at California State Polytechnic University, San Luis Obispo. She is a member of the California Association of School Psychologists (CASP), the National Association of School Psychologists (NASP) and the American Board of School Neuropsychology and completed a Doctorate in Leadership for Educational Justice at the University of Redlands in 2011.	8/24/05	6/1/12	Governor
<b>Vacant Position - LPCC (to be appointed after 1/1/12)</b>			Governor
<b>Vacant Positions - 3 Public Members</b>			Governor

(For more detailed information regarding the responsibilities, operation, and functions of the Board please refer to the BBS 2011 Sunset Review Report)

## **PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

The BBS was last reviewed by the former Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee) seven years ago (2004-2005). During the previous Sunset Review, the

Joint Committee raised four issues regarding the BBS. The following are actions which the BBS took since the last Sunset Review to address these issues. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under “Current Sunset Review Issues.”

In November 2011, the BBS submitted its required Sunset Review Report to the Committee. In this report, the BBS described actions that have been taken since the BBS’s prior review to address the recommendations of the JLSRC. The following are some of the more important programmatic and operational changes and enhancements which the BBS has taken and other important policy decisions or regulatory changes it has adopted, as well as some highlighted accomplishments:

- **Continued regulation of the profession by the BBS.** The recommendation was to continue regulation by the BBS.
- **Whether the Board should allow licensees to fulfill all 36 hours of Continuing Education (CE) through only self-study.** The Joint Committee pointed out that licensees may obtain all 36 hours of CE by visiting internet sites, accessed remotely from their home or other location, and that the licensee need only certify to the BBS that they have done this, without any further proof, and the BBS does not audit the licensee certifications. The Joint Committee raised two potential problems:  
(1) A greater potential for licensees to abuse this method of fulfilling CE; (2) In a profession so heavily dependent on human interaction, is it entirely appropriate that licensees be permitted to fulfill all of their CE requirements while alone?

The BBS conducted a random survey of licensees who renewed their licenses between October 1, 2004, and April 1, 2005, and found that of the 554 responses, only two percent (2%) completed the entire required CE through online courses. The BBS concluded that the survey indicated that the Board’s licensees favor traditional, classroom style courses, but that online courses remain a useful alternative. According to BBS, the Board is currently in the process of reviewing its continuing education program.

- **Restitution – Whether the Board should have the authority to order restitution to consumers who have been seriously harmed by licensees.** The Joint Committee raised the issue of whether the Board’s authority should include the ability to request restitution in appropriate cases or in cases where there is reason to believe restitution would be substantial, or when such an award would serve the interest of justice in a particular case.

BBS stated that it did not have specific legislative authority to require restitution for consumers, however it may consider seeking restitution when negotiating a stipulated agreement. Historically, BBS indicates that it has placed more importance on consumer safety and protection, and on imposing discipline that either helps correct the problem through probation monitoring and remedial education, supervised practice, etc., or in cases involving the most serious misconduct, removes the individual from the profession by revoking the license or registration held.

According to BBS, the intangible nature of the services provided by Board licensees and registrants, makes it difficult if not impossible to determine the monetary value of those services. The BBS recognizes there are other avenues, such as civil or malpractice actions,

available to consumers who seek financial compensation from licensees who have provided services that are inappropriate or harmful.

- **Whether the public would benefit by being able to learn from the Board’s website of non-licensees who have been convicted of the unlicensed practice of psychology.** The Joint Committee recommended the BBS should work with the DCA to determine an appropriate and efficient way to post information about non-licensees who engage in unlicensed practice.

According to BBS, the current online license verification feature was programmed by the DCA’s Office of Information Services, and extracts public data from the BBS’s licensing records and enforcement actions from its enforcement tracking system, allowing the information to be accessed on the BBS website. The BBS states the program requires a license or registration number to be present, and does not have the ability to extract unlicensed records from the enforcement tracking system.

According to BBS, since 2004, the DCA and the Board have initiated educational campaigns urging consumers to verify a practitioner’s license prior to engaging in services. These efforts focus on the requirement of licensure for the service offered. The BBS believes the addition of information to the BBS’s website about individuals not licensed with the BBS would cause confusion.

- **Reorganization.** Since the last Sunset Review in 2004, the BBS restructured its organization to meet its operational needs more efficiently. Following an evaluation of the BBS’s operational needs and desire to improve efficiency, the BBS added a manager position in 2005 to provide oversight of the daily activities of all the BBS’s programs. This allowed the EO and AEO to primarily focus on policy decisions, changes in mental health affecting the BBS’s licensees and registrants, and implementing the direction of the board members.

A steady growth in licensees and registrants and the addition of the Licensed Professional Clinical Counselor program in 2011, resulted in a 38% increase in total staffing since 2005. Three separate units were created grouping similar or related activities together. The Licensing and Examination, Enforcement, and Administration units each are under the direction and supervision of a Staff Services Manager.

The composition of the BBS’s staffing since 2004 is noted in the chart below.

	2005	2006	2007	2008	2009	2010	2011
<b>Total Authorized Staff Positions</b>	32	31	33	35	39	38	44
Total Staff	29	28	30	30	34	33	39
Managers	1	1	1	3	3	3	3
AEO	1	1	1	1	1	1	1
EO	1	1	1	1	1	1	1

- **Relocation.** In 2005 the BBS relocated from R Street in Sacramento to its current location at North Market Boulevard.

- **Change in Leadership.** Prior to 2010, the BBS consisted of eleven board members. The addition of the LPCC program increased the composition of the Board to twelve members in 2010 (by adding a public member), and to its current makeup of thirteen members by adding a LPCC to the Board. Since November 2004, the BBS has had two Executive Officers. The previous incumbent served from November 2004 to November 2009. The current Executive Officer, Kim Madsen, was appointed in January 2010.
- **Strategic Plan.** The BBS revised its Strategic Plan in 2007, adopting its current mission statement to protect Californians by promoting consumer awareness, advocating for improved mental health services, and setting, communicating, and enforcing standards. The Strategic Plan was updated in 2009 to further define the BBS's goals with the inclusion of performance measures. In 2010, the Strategic Plan was revised to reflect the core functions of the BBS with the primary goal to become a model state agency and enhance consumer protection.
- **Legislation Sponsored by or Affecting the BBS.** A number of legislative changes relevant to the BBS's duties have been enacted since the last Sunset Review in 2004. Some of the significant changes are listed below. For a comprehensive list of legislation affecting the BBS, see the *2011 Sunset Review Report*.

SB 231 (Figueroa, Chapter 674, Statutes of 2005) required a LEP, MFT Intern, or ASW or their counsel to report to the BBS within 30 days any judgment, settlement, or arbitration award over \$3,000, resulting from a claim or action for damages for death or personal injury, when the LEP or registrant does not possess professional liability insurance for that claim. Similarly, the bill also required an LMFT, LCSW, or their counsel to report to the BBS within 30 days such judgment, settlement, or awards over \$10,000.

SB 33 (Correa, Chapter 26, Statutes of 2009), sponsored by the BBS, updated and recast the MFT educational curriculum requirements to require persons who begin graduate study after August 1, 2012, to meet increased total unit requirements, increased practicum hours for face-to-face counseling, integrated specified elements, including public mental health practices, throughout the curriculum, repealed current marriage and family therapist educational requirements on January 1, 2019, revised requirements for applicants licensed or educated outside of California, and made other conforming changes.

SB 788 (Wyland, Chapter 619, Statutes of 2009) established licensure and regulation for Licensed Professional Clinical Counselors, a new category of licensed mental health professionals. The bill established licensing requirements for LPCCs that are substantially equivalent to licensing standards for LMFTs and LCSWs, which are comparable professions that the BBS also regulates. This bill was sponsored by the California Coalition for Counselor Licensure.

SB 1172 (McLeod, Chapter 517, Statutes of 2010) required the BBS to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation.

AB 2699 (Bass, Chapter 270, Statutes of 2010) allowed a health care practitioner licensed in another state to provide health care in California by meeting specified conditions and if the

services provided meet the following conditions:

- Care is in association with health fair which has a sponsoring entity that registers with the healing arts board, pays a registration fee, and provides specified information to the county health department where the health care services will be provided.
- Care is on a short-term, voluntary basis.
- Care is to uninsured or underinsured persons.
- Care is without charge to the recipient or to a third party on behalf of the recipient.

SB 274 (Wyland, Chapter 148, Statutes of 2011), an urgency measure which became effective immediately, extend the grandparenting period for those seeking licensure as a LPCC, as the original grandparenting period expired before the Board was able to accept applications. The bill also clarified various provisions regarding the LPCC practice.

SB 704 (Negrete McLeod, Chapter 387, Statutes of 2011) restructured the examination process for licensure as an LMFT, LPCC, and LCSW. The bill required applicants for licensure to pass two new exams; a California law and ethics examination and a clinical examination. The new exams replaced the prior standard written and clinical vignette exams.

- **Regulations Adopted by the BBS.** A number of regulatory changes have been adopted by BBS since the last Sunset Review in 2004. Some of the significant regulatory changes are listed below. For a comprehensive list of regulatory changes, see the *2011 Sunset Review Report*.

Citations and Fines: Effective September 2006, the regulations increased the maximum fine from \$2,500 to \$5,000 for specified violations under the Board's citation and fine program for LMFTs, LCSWs, LEPs, and Board registrants.

Delegation of Authority: These April 2007 regulatory changes delegated certain functions by the BBS to the executive officer. Specifically, the regulations allowed the executive officer to sign orders to compel a psychiatric evaluation of a BBS licensee or registrant as part of an investigation of a complaint.

Fingerprint Submission: In June 2009, regulatory changes required all licensees who had not previously submitted fingerprints to the Department of Justice (DOJ) to complete a state and federal level criminal offender record information search through the DOJ before renewal of their licenses. This regulation further allowed the BBS to take disciplinary action and assess a fine not to exceed \$5,000 for failing to submit fingerprints.

Disciplinary Guidelines Revision: Effective July 2009, the BBS updated its Disciplinary Guidelines. Disciplinary Guidelines are utilized in a disciplinary action against a licensee under the Administrative Procedures Act.

- **Pending Regulations.** In its Report, the BBS identified a number of proposed regulations that are currently being considered by the Board. Some of the more significant pending regulatory changes are listed below. A comprehensive list of pending regulations may be found in the *2011 Sunset Review Report*.

*SB 1111 Enforcement Regulations:* This proposal is part of an effort by the DCA to allow healing arts boards to individually seek regulations to implement the provisions found in SB 1111 (Negrete McLeod, 2010) and SB 544 (Price, 2012) as part of the DCA's Consumer Protection Enforcement Initiative that do not require statutory authority. These regulations propose delegation of certain functions to the executive officer, require actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort. This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking was submitted to OAL for initial notice in 2011.

*Examination Restructure:* The regulation makes changes needed due to the restructuring of the Board's examination process for LMFTs, LCSWs, and LPCCs by SB 704 (identified above). The regulatory proposal also makes changes to be consistent with SB 274 (Chapter 148, Statutes of 2011), which deleted the annual license renewal requirement for LPCCs who obtained a license through the grandparenting process. This proposal was considered at the November 9, 2011 Board meeting.

*SB 1441 Enforcement Regulations:* This regulatory proposal is a result of SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), which required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the Executive Officers of the DCA's healing arts boards, was tasked with formulating uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees. The goal of this process was to create consistent and uniform standards that healing arts boards would adopt through regulation, providing consumers more consistent protection from substance abusing licensees. This proposal was considered at the November 9, 2011 Board meeting.

*Enforcement Regulations:* This proposal makes changes to the Disciplinary Guidelines, including technical changes due to statutory amendments, and procedural changes to the standard and optional terms and conditions of probation. This proposal was considered at the November 9, 2011 Board meeting.

*Exemptions for Sponsored Free Health Care Events:* As a result of AB 2699 (Bass, Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation. DCA has drafted a model regulation package for each of its healing arts boards to use as a standardized framework and is currently in the process of making revisions to this framework. Staff brought this proposal to the Board for consideration at the meeting tentatively scheduled for February 2012.

## **CURRENT SUNSET REVIEW ISSUES**

The following are unresolved issues pertaining to the BBS, or those which were not previously addressed by the BBS, and other areas of concern for the BBS to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other

interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of the Committee staff.

## **STRATEGIC PLAN**

### **ISSUE # 1: What is the status of the strategic plan?**

**Background:** The Board's 2007 Strategic Plan was updated in 2009. This revision further defined the Board's goals with the inclusion of performance measures. In 2010, the Strategic Plan was revised to reflect the core functions of the Board with the primary goal to become a model state agency and enhance consumer protection.

Considering the Strategic Plan has not been updated since 2010, a review of the Strategic Plan and an update may be warranted. The BBS should review if there have been any impediments to pursuing the goals set forth in the Strategic Plan, ascertain if the goals are currently relevant and make adjustments to the plan in order to guarantee that the goals are achievable.

**Staff Recommendation:** *The BBS should advise the Committee of the current status of their Strategic Plan and whether there should be an update of the Strategic Plan.*

## **PENDING REGULATIONS**

### **ISSUE # 2: What is the status of pending regulations?**

**Background:** The BBS has reviewed and implemented a number of rulemaking changes since the previous sunset review. The five regulatory packages noted above were "pending" at the time the Sunset Report was submitted with the notation that one regulation was submitted to OAL for initial notice by the end of 2011, three would be reviewed at the November 2011 Board meeting, and another would be reviewed at the February 2012 meeting.

Among these proposals, the regulatory changes to implement SB 1441 (scheduled for review by BBS in November 2011) and AB 2699 (scheduled for review by BBS in February 2012) have been identified as critical items for the BBS to update the Committee about.

Senate Bill 1441 Enforcement Regulations adopts specific standards for use in dealing with substance abusing licensees. The goal is to create consistent and uniform standards, providing consumers more consistent protection from substance abusing licensees.

Exemptions for Sponsored Free Health Care Events. As a result of AB 2699 (Bass, Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation.

**Staff Recommendation:** *The BBS should inform the Committee of the current status of their implementation of the law. Specifically, what actions has the BBS taken to implement the 5 “pending” regulations including the regulations which would implement SB 1441 and AB 2699?*

## **LICENSING**

### **ISSUE # 3: New license category.**

**Background:** Effective January 1, 2010, a fourth mental health profession, Licensed Professional Clinical Counselor, was added to the Board’s jurisdiction. Today, the Board is responsible for the regulatory oversight of nearly 77,000 licensees. Current law provides for twelve board members; five licensees and seven public members. Ten members are appointed by the Governor, one public member is appointed by the Speaker of the Assembly, and one public member is appointed by the Senate Rules Committee. In 2012, a LPCC member appointed by the Governor will be added, increasing the board composition to thirteen members.

Considering that the LPCC is the newest license category, the Committee desires to know if the Board has fully implemented this new licensing category. What is the current status of training programs for LPCC candidates? What is the current status of newly licensed Professional Clinical Counselors? Have there been any challenges in this process? Is any legislation needed to assist the Board in overseeing the training and/or licensing process for LPCCs?

**Staff Recommendation:** *The BBS should provide an update to the Committee on the current status of the LPCC category including information about training programs, licensed LPCCs and any challenges to implementing this new license category. The BBS should also indicate if any legislation needs to be proposed in order to help the BBS more effectively oversee this facet of the profession and serve the professional interests of licensees.*

### **ISSUE # 4: What is the current status of the NBCC process?**

**Background:** In 2011, the Board voted to use the National Clinical Mental Health Counseling Examination (NCMHCE) in order to license LPCCs in California. The examination is developed and administered by the National Board for Certified Counselors (NBCC) which is located in North Carolina.

The Board conducted an assessment of the NCMHCE. The purpose of the assessment was to ensure the examination met professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* and the Department of Consumer Affairs *Examination Validation Policy*. The Board’s assessment determined the examination meets the prevailing standards for validation and use of the examination for licensure in California.

Considering that the adoption of the NBCC for licensing LPCCs is a new procedure, the Committee desires to know how this change has or will affect prospective licensees. Has the BBS fully adopted use of the NBCC with its prospective licensees? What is the current status of this process? Have there been any challenges in switching to the NBCC Examination?

**Staff Recommendation:** *The BBS should provide an update to the Committee on the current status of the use of the NBCC licensing examination for LPCCs.*

**ISSUE # 5: Should the BBS use a national data bank to check the background of applicants for licensure?**

**Background:** BBS reviews all licensure applications for previous criminal convictions and/or disciplinary actions against a professional license. Applicants are required to declare, under penalty of perjury, whether they have ever been convicted of, pled guilty to or pled nolo contendere to, any misdemeanor or felony. Applicants must also declare, under penalty of perjury, whether they have been denied a professional license or had license privileges suspended, revoked, or disciplined, or if they have ever voluntarily surrendered a professional license in California or other state.

If an applicant reports such an act, the Board requires the applicant to provide a written explanation, documents relating to the conviction or disciplinary action, and rehabilitative efforts or changes made to prevent future occurrences.

The Board uses a variety of methods to determine the accuracy of an applicant's declarations. For criminal conviction history, California law authorizes the BBS to conduct criminal record background checks to help determine the eligibility of a person applying for a license or registration. The BBS requires all applicants to submit fingerprints through the Department of Justice (DOJ), who then provides the BBS's authorized personnel with access to information contained in the DOJ's criminal offender record information database (CORI). The BBS requires both a DOJ and Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure or registration. If an applicant has a criminal history, the DOJ will notify the BBS of results in approximately 14 to 30 days.

To determine if an applicant has had prior disciplinary history, the BBS can verify out-of-state licensure status through other state regulatory boards and by conducting a query through the Healthcare Integrity and Protection Data Bank. For verification of in-state licensure status, the BBS can check for prior disciplinary actions through the Commission on Teacher Credentialing and the Consumer Affairs System (CAS).

Though the process for checking the background of an applicant who has been trained or practiced within the state of California seems to be thorough, the Committee is concerned about the steps taken to fully check the background of an applicant who has previously practiced outside of the state. For example, in the most recent Sunset Report, BBS indicated that they do not currently utilize a national data bank to retrieve information about prospective licensees.

The Committee is concerned with the protection of the public and the effective operation of the profession. As such, it is imperative that steps be taken to thoroughly examine a potential licensee's professional background and criminal history.

**Staff Recommendation:** *The BBS should provide rationale to explain why they do not utilize a national data bank to check the background of applicants for licensure.*

## **ISSUE # 6: Why is the BBS not meeting its performance targets?**

**Background:** While in FY 2008/2009 the licensing and cashiering staff was able to meet the performance standards, the combination of the existing vacancies and increase in workload have significantly increased the BBS's processing times.

At the present time, the BBS is not meeting these performance targets due to vacancies over the last year in both the licensing and the cashiering units. Many of the duties within the licensing and cashiering units are assigned to one or two staff members to process the workload. Any vacancies in these areas have an immediate and adverse effect on processing times. Moreover, the overall application volumes have increased 13% in the last three years. In order to maintain a continual workload in both the licensing and cashiering units, the BBS staff in other units have been cross-trained to assist in the preparation of all applications received by the Board. This allows the remaining staff in the licensing and cashiering units to process applications more expediently.

The Committee understands that vacancies in the licensing and cashier unit have impacted the processing time for licenses. However, it would be helpful to provide data reflecting what the current licensing timeframes are. What is the plan to rectify this issue?

**Staff Recommendation:** *The BBS should provide updated data reflecting the current timeframe for issuing licenses and outline a plan to meet the performance targets outlined by the BBS.*

## **CONTINUING EDUCATION**

### **ISSUE # 7: Does the BBS have adequate authority to oversee the course content of continuing education providers?**

**Background:** The BBS requires each licensee to complete 36 hours of continuing education (CE) every two years, in or relevant to, the licensee's field of practice in order to renew the license. CE courses must be obtained from either:

- An accredited or state-approved school;
- A professional association, licensed health facility, governmental entity, educational institution, individual, or other organization approved by the BBS.

CE course content must be applicable to the practice of the particular profession, must be related to direct or indirect patient care and must incorporate one or more of the following elements related to the licensed discipline:

- Elements fundamental to the understanding and practice of the profession.
- Elements in which significant recent developments have occurred.
- Elements of other disciplines that enhance the understanding or the practice of the discipline of the licensee.

BBS regulations outline the requirements for CE Provider (Provider) approval by the Board. In order to be approved by the Board, a Provider must meet the Board's course content and instructor qualification. Provider approval must be renewed every two years. A Provider must apply for renewal by submitting the appropriate form and paying the required \$200 fee. A Provider with an expired

approval is prohibited from presenting courses for credit to BBS licensees, and licensees are unable to use CE courses from a Provider whose approval has expired in order to meet the CE requirement. Provider approvals that are not renewed within one year after expiration may not be renewed and will be cancelled. Cancelled providers will need to apply for a new provider number by submitting the Continuing Education (CE) Provider Application and application fee. For FY 2010/2011, the BBS indicates there were 2,528 approved providers and 185 delinquent approvals.

Current law outlines broad course content requirements for CE courses, and requires the Provider to ensure that course content and instructor qualifications criteria are met. The BBS may revoke or deny a provider application for good cause, including: a criminal conviction, failure to comply with the licensing law, or making a misrepresentation of fact in information submitted to the BBS.

Though the BBS does not have explicit authority to review course content, the Board may audit provider records to ensure compliance with the CE requirements, including the requirement that a Provider ensure that the course content and instructors teaching courses meet the specified criteria. The law gives the Board authority to revoke or deny a Provider based on not ensuring quality of content, however, it does not allow the Board to approve or deny specific courses offered by a Provider. Language expressly permitting the review of course content and instructor qualification relates only to an initial Provider approval application. This review of coursework content and instructor qualification does not extend to renewal or maintenance of a Provider's approval.

A recent case illustrates need for the BBS to review its process for approving CE Providers, and make appropriate changes to its procedures, or recommend legislative changes to its CE requirements. In July of 2011, the BBS began receiving complaints from the public regarding the BBS approved CE Provider, the National Association of Research and Therapy of Homosexuality (NARTH). The BBS received hundreds of emails from individuals protesting the approval of an organization that offers "reparative" or "conversion" therapy for individuals that have unwanted homosexual tendencies. NARTH was approved by the Board as a CE Provider in 1998. As of November 1, 2010 NARTH had not renewed its Provider Approval and is currently unable to provide CE courses to the BBS licensees for credit. Since that time NARTH's approval remained expired for more than one year and can no longer be renewed, and has been cancelled by the BBS. In order to become a CE Provider, NARTH would have to apply for a new Provider authorization from the BBS.

One of the primary factors in this issue is that NARTH has advocated the use of "reparative" or "conversion" therapy. Conversion therapy (also called reparative therapy or reorientation therapy) is a type of sexual orientation change effort that attempts to change the sexual orientation of a person from homosexual or bisexual to heterosexual. The American Psychological Association defines conversion therapy as "therapy aimed at changing sexual orientation." The American Psychiatric Association states that conversion therapy is a type of psychiatric treatment "based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation." Both the American Psychiatric Association and the American Psychological Association have rejected the concept of conversion therapy for therapists.

However, the approval of an organization advocating conversion therapy, such as NARTH, by the BBS drew the attention of the public and a number of legislators. Since that time, BBS staff has met with legislative staff to discuss the provider approval process and deficiencies in the process. Concern has been expressed over the approval of NARTH and the provider approval process.

The BBS states in its November Sunset Report that at its October 13, 2011, Policy and Advocacy Committee (BBS-PAC) meeting, committee members discussed needed changes to the regulations that set forth requirements for Providers. Additionally, BBS-PAC members discussed the possible need to transition to a continuing competency model for licensure renewal. The BBS-PAC recommended that the BBS create a Continuing Education sub-committee to conduct meetings with stakeholders, professional associations, and experts in continuing competence programs to determine the best possible solutions in moving forward with a restructure of the continuing education program.

***Staff Recommendation:*** *Even though the BBS has assured that NARTH has been removed from the list of approved CE Providers, and would have to apply for a new initial approval in order to become a CE Provider, the BBS should assure that it has sufficient authority to review the course content of both initial and renewal provider applications, and to deny the approval or renewal of those applicants who offer courses which teach inappropriate methods or practices. The BBS should report to the Committee its current assessment of changes that may need to be made to the requirements for CE Providers, and advise the Committee on any legislative changes that should be made. The BBS should further work with the stakeholders in the profession and in the Legislature to make the appropriate procedural, regulatory or legislative changes to its CE program.*

## STAFFING

### **ISSUE # 8: Why is the staff turnover rate so high?**

**Background:** Historically, the BBS has had very little staff turnover. Currently, the BBS has authorization for 43.3 staff positions and 3.3 blanket positions. The Governor’s Hiring Freeze (Executive Order B-3-11) and the past Executive Orders for the Furlough Programs were adversely impacted the Board’s recruitment efforts and operations. The BBS currently has eight vacancies and has initiated recruitment efforts to fill the following positions: 1 Staff Services Manager I, 1 Special Investigator, 1 Associate Governmental Program Analyst, and 5 Office Technicians. Recruitment efforts were not successful under the recent hiring freeze constraints. The majority of the vacancies are in the BBS’s licensing and cashiering unit. The time of the year when the BBS sees an increase in the application volume has recently passed. Consequently, as a result of the ongoing vacancies, the BBS’s processing times increased.

The BBS was legislatively mandated to license and regulate a new mental health profession, Licensed Professional Clinical Counselor, established by Senate Bill 788 (Chapter 619, Statutes of 2009), starting January 1, 2010. The Board staff faced challenges implementing this new licensing program with the existing vacancies and significant delays in filling positions specifically created for the LPCC licensing program.

The Committee understands the impact that the recent hiring freeze has had on the BBS. However, it would be helpful to explain to the Committee why so many vacancies exist. Has a survey of departing staff been conducted to ascertain why they left? What are the efforts to fix the problems that led to the vacancies? What are the plans to hire new staff and what are the impediments to accomplishing this task?

Vacancy Rate				
FY 2008/09	FY 2009/10	FY 2010/2011	FY 2011/12	Average
2	0	2	11	3.75

**Staff Recommendation:** *The BBS should report the current status of vacancies and newly hired staff to the Committee. The BBS should review the nature of the remaining vacancies and report to the Committee its plan to fill the vacancies.*

**ISSUE # 9: What accounts for the decline in consumer satisfaction?**

**Background:** The BBS began using a customer satisfaction survey in April 2008. However, the overall satisfaction rating with the services provided by Board staff has declined over the last three fiscal years. The BBS attributes this to existing vacancies in the licensing and cashiering unit. The BBS also states that it is continuing its efforts to improve communication to ensure important and relevant information is provided timely and efficiently.

It would be helpful to explain why there are vacancies in the licensing and cashiering unit. What are the efforts to hire new staff and what are the impediments to accomplishing this task? What changes does the BBS plan to implement in order to improve customer satisfaction- particularly as it relates to the customer's interactions with staff members and their interface with the Website.

General Customer Satisfaction Survey Fiscal Year (FY) 07/08* - 10/11					
During the past 12 months, how often have you contacted the BBS?	Answer Options	Response Count			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
	6 or more times	10	78	112	74
	1 - 5 times	93	610	647	489
	Total Respondents	106	820	735	601
Please rate the following:	Answer Options	Rating Average (1=Unacceptable, 5=Excellent)			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
	BBS Staff Courtesy	4.1	4.1	3.9	3.8
	BBS Staff Accessibility	3.4	3.5	3.2	2.7
	Overall Satisfaction	3.6	3.6	3.4	3.0
Did you receive the service/assistance you needed as a result of your contact?	Yes	Response Percent			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
		68%	70%	65%	54%
Do you find the BBS' Web site useful?	Yes	Response Percent			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
		85%	83%	80%	72%
Do you receive the BBS' newsletter?	Yes	Response Percent			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
		47%	33%	26%	26%
Do you find the newsletter helpful and informative?	Yes	Response Percent			
		FY 07/08	FY 08/09	FY 09/10	FY 10/11
		72%	68%	58%	52%

**Staff Recommendation:** *The BBS should review the nature of the vacancies in the licensing and cashiering unit and report to the Committee its efforts to hire staff. The BBS should outline the plan to improve customer satisfaction with staff and with the Website in the interim. The BBS*

*should also provide suggestions about how the Committee might assist the BBS in operating at its full capacity thereby providing good customer service.*

## **ENFORCEMENT**

### **ISSUE # 10: How has the BBS addressed the increase in enforcement workload since its last review?**

**Background:** Per the Sunset Review report, the BBS's enforcement workload has increased 210% since the 2004 Sunset Review. The enforcement data for FY 2010/2011 reflects the highest number of consumer complaints and conviction/arrest reports ever received by the Board, with a total of 1,981 cases. By comparison, in its 2004 Sunset Review, the BBS reported receiving 943 total cases.

The rise in consumer complaints can be attributed to the ability of consumers to file a complaint online through the BBS's Website, the increased number of licensees and registrants, and consumer education. The increase in conviction/arrest reports are related to a new regulation, 16 CCR Section 1815, which requires all licensees and registrants to submit fingerprints; effective June 19, 2009. Over 34,000 licensees were identified by the BBS as needing to comply with this requirement and were notified by the BBS of this new requirement.

The increasing enforcement workload requires the BBS to assess its resources and review its processes. Through the BCP process, additional staffing resources were requested and received. One significant change to the BBS's process is the addition of two non-sworn Investigative Analysts.

These analysts perform a majority of the BBS's field investigative work that was previously referred to the DCA, Division of Investigation (DOI). On April 1, 2010, a report submitted to the legislature related to the work of non-sworn Investigative Analysts noted significant improvements in investigation timelines.

The BBS completed a comprehensive review of its enforcement program in 2010. The review included all procedural steps from receipt of the complaint to closure. Many duplicative and obsolete processes were identified and eliminated.

Considering the very high increases in consumer complaints and the increased workload, it is important to advise the Committee about the results of the 2010 review of the enforcement program and plans for improved enforcement of the profession.

**Staff Recommendation:** *The BBS should detail the steps involved in reviewing the enforcement program and advise the Committee of the "duplicative and obsolete" processes that were eliminated. Have the changes made as a result of the enforcement program review resulted in any positive outcomes e.g. decreased work load and/or decreased consumer complaints? Also, what is the BBS's plan for continuing to handle the increased workload?*

## **BUDGET**

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### **ISSUE # 11: Why is the BBS under-spending?**

**Background:** The BBS ended FY 2010/2011 with a reserve balance of \$448,700, which equates to 6.9 months in reserve. The Board estimates FY 2011/2012 reserve balance to be approximately \$120,900, equaling 1.7 months in reserve. The drastic decrease is a direct result of the \$3.3 million loan to the General Fund in FY 2011/2012, revenue lost as a result of implementing a retired license status (Assembly Bill 2191, Chapter 548, Statutes of 2010), and the Departmental BreEZe Budget Change Proposal.

In FY 2010/2011, the BBS reverted \$1,063,586, due to spending \$6,927,523 of its \$7,991,109 budget.

Considering the staffing vacancies, and the impact on existing staff and on customer satisfaction, it is important that the BBS inform the Committee about the reasons that the BBS is not spending all funds it is authorized to spend.

**Staff Recommendation:** *The BBS should provide the Committee with an explanation of why the Board is not spending all funds under its authority.*

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### **ISSUE # 12: Loans to the General Fund.**

**Background:** Since FY2002/2003 the BBS has made a total of three loans to the General Fund; \$6 million in FY2002/2003, \$3 million in FY2008/2009, and \$3.3 million in FY2011/2012. To date, the BBS has not received any repayment. The total loan balance remains at \$12.3 million.

**Staff Recommendation:** *The Committee requests that the BBS provide an update about the status of the loans and when the funds are projected to be returned. Has the BBS received any report from the Department of Finance regarding the repayment of the loans?*

## **USE OF TECHNOLOGY**

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### **ISSUE # 13: Webcasting meetings.**

**Background:** In 2010 two BBS committee meetings were available via webcast.

The Committee is concerned about the BBS's lack of use of technology in order to make the content of the BBS meetings more available to the public. Webcasting is an important tool that can allow for remote members of the public and/or those who are disabled to stay apprised of the activities of the Board as well as trends in the professions.

**Staff Recommendation:** *The BBS should utilize webcasting at future Board meetings in order to allow the public the best access to meeting content and to stay apprised of the activities of the BBS and trends in the professions.*

#### **ISSUE # 14: What is the status of BReZE implementation?**

**Background:** BreEZe is an important opportunity to improve BBS operations to include electronic payments and expedite processing. The Board staff have actively participated with the BreEZe project.

The Board's Staff Information Systems Analyst is designated as a Subject Matter Expert for the project. Other Board staff members with extensive knowledge regarding the licensing, examination, cashiering and enforcement processes participated in workgroups providing their expertise regarding the BBS's business processes. Additionally, several Board staff members were assigned to participate in the workgroups to standardize forms, reports, and correspondences.

The BBS is scheduled to begin using BreEZe in the Summer of 2012. It would be helpful to update the Committee about the Board's current work to implement the BreEZe project.

**Staff Recommendation:** *The BBS should update the Committee about the current status of their implementation of BreEZe. What have the challenges of implementing the system been? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the BBS was told the project would cost?*

#### **Continued Regulation of the Profession by the Current Members of the BBS**

**ISSUE #15:** **Should the current BBS continue to license and regulate Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Educational Psychologists (LEP) and Licensed Professional Clinical Counselors (LPCC)? Should the registration of Associate Social Workers (ASW), Marriage and Family Therapist Interns (MFT Interns), Professional Clinical Counselor Interns (PCC Interns) and Continuing Education Providers continue to be regulated by the current Board?**

**Background:** The health and safety of consumers is protected by well-regulated professions. The BBS is charged with protecting the consumer from unprofessional and unsafe licensees. It appears as if the BBS has been an effective and for the most part an efficient regulatory body for the professions that fall under its purview. Therefore, the BBS should be granted a four-year extension of its sunset date.

**Recommendation:** *Recommend that the LCSW, LMFT, LEP and LPCC professions and registration of ASW, MFT Interns, PCC Interns and Continuing Education Providers continue to be regulated by the current the BBS in order to protect the interests of consumers and be reviewed once again in four years.*