Hand Carry
Agenda Item

We're here for You!

May 10, 2011

RECEIVED
MAY 13 2011
BOARD OF PSYCHOLOGY

Linda Kassis
Board of Psychology
2005 Evergreen Street, Suite 1400
Sacramento, CA 95815

CAMFT is dedicated to the advancement and understanding of the profession of marriage and family therapy as both an art and a science, to maintaining high standards of professional ethics and qualifications, and to expanding the recognition and utilization of the profession.

RE: Unprofessional Conduct Proposed Regulations
Article 8, Division 13.1, *Proposed* §§ 1397.2 and 1380.4
Position of Opposed Unless Amended

Dear Ms. Kassis:

On behalf of the 30,000 members of the California Association of Marriage and Family Therapists ("CAMFT"), we wish to convey our position of opposition unless amended to the current proposed regulations. While we agree with the implementation of standards which would help to define "unprofessional conduct" generally, we have some specific concerns about proposed regulation §§ 1397.2 and 1380.4 detailed below:

<u>§ 1397.2</u>

- Subsection (b): We have concerns with this provision for two reasons. First, often clients are involved in conjoint therapy and/or the therapy is of a minor. In these situations, obtaining consent from all parties in the conjoint therapy or obtaining consent from the legal guardian of the minor could take well beyond 15 days. To punish the clinician for circumstances outside of their control is unreasonable. Assuming situations such as this would be considered "good cause," possibly including such examples under the definition of "good cause" would make the language less open to interpretation.

- Subsection (b): Is it necessary to make an accusation of "unprofessional conduct" when records are not received in a timely fashion, or would it be more just to adhere to the already existing policy for physicians and surgeons of "cite and fine" as codified in Business & Professions Code § 2225?

- Subsection (c): What exactly is meant by "failure to cooperate and participate"? This is very subjective and ambiguous and could result in an "unprofessional conduct" accusation for a seemingly benign act, or leaves open draconian interpretations by the Board. Perhaps more specific and clear language might be mimicked from the existing language which applies to physicians and surgeons: B&P § 2234(h) which states: "...willful noncompliance" includes, but is not limited to, repeated failure, in the absence of good cause, to attend an interview scheduled by mutual agreement of the certificate holder and the Board.

California Association of Marriage and Family Therapists

7901 Raytheon Road
San Diego, CA 92111
P: (858) 292-2638
F: (858) 292-2666
www.camft.org

- Subsection (d): This proposed regulation defines unprofessional conduct as the failure to report to the Board within 30 days "the bringing of an indictment or information charging a felony against the licensee or registrant," and "the arrest of the licensee or registrant." Mandating licensees or registrants to make such disclosures to the Board, especially in cases where no conviction has occurred, deprives licensees or registrants of their Constitutional rights against self-incrimination and other due process rights.

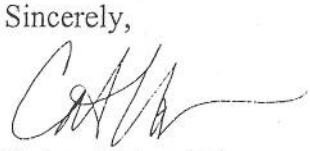
§ 1380.4

- This section delegates to the Executive Officer of the Board all functions necessary to dispatch of business of the Board in connection with investigative and administrative proceedings under the jurisdiction of the Board, including the authority to order an examination pursuant to § 820 or § 1381, or to approve a settlement agreement for the revocation, surrender, or interim suspension of a license or registration. This creates a blurring of duties and responsibilities of the Executive Officer and the Board which ultimately deprives those subject to investigative and administrative proceedings of their due process rights. This regulation essentially establishes a dual role for the Executive Officer and presents a conflict of interest. Allowing the Executive Officer to make the call on what settlement terms and conditions can be offered to a licensee in a given case, and then allowing that same Executive Officer to approve the settlement, deprives the licensee of the due process right to have the settlement reviewed by the full Board.

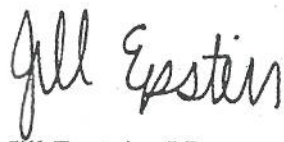
- The Board is delegating and conferring upon the Executive Officer for the Board all functions necessary to dispatch business of the Board in connection with investigative and administrative proceedings. Again, does this mean that the Executive Officer who authorizes terms and conditions of settlements will also be adopting Stipulated Settlements and Disciplinary Orders without a Board vote? Furthermore, does this mean that following an Administrative Hearing in which the Administrative Law Judge issues a proposed decision, the Executive Officer has the power to adopt or non-adopt such a decision? In the case of a non-adoption, is the Executive Officer vested with the power to issue a new decision on behalf of the Board? By including the language "all functions necessary," and "in connection with investigative and administrative proceedings," proposed regulation § 1380.4 seems to suggest the answer to these questions would be "yes."

We thank you for your consideration of our concerns. Please contact us if we can provide you with any additional information.

Sincerely,



Cathy Atkins, J.D.
Deputy Executive Director



Jill Epstein, J.D.
Executive Director