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August 20, 2010

VIA OVERNITE EXPRESS

Robert Kahane, J.D.
Executive Officer
California Board of Psychology
2005 Evergreen Street, Suite 1400
Sacramento, CA 95815-3894

Re: Petition for Amendment of Regulations Pursuant to
CA Govt. Code § 11340.6

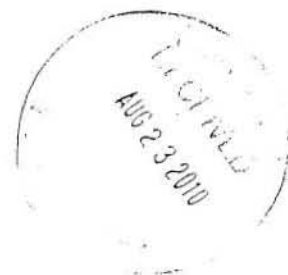
*Seeking Amendment to 16 C.C.R. § 1387(a)(9) to Allow Licensed Clinical
Social Workers and Licensed Marriage and Family Therapists to Accrue
Hours Towards a Psychologist's License*

Dear Mr. Kahane:

Pursuant to Government Code Section 11340.6, the undersigned, on behalf of Ricky Tovim, Psy. D., L.C.S.W., who wishes to obtain licensure as a psychologist, and others similarly situated, hereby petitions the Board of Psychology ("Board") to amend its regulations to allow persons who are licensed as Clinical Social Workers (LCSWs) or Marriage and Family Therapists (LMFTs) to accrue the two years of supervised professional experience required by Bus. & Prof. Code Section 2913 in order to sit for the psychology licensing examination, by performing psychological services under their current license.

(a) The substance or nature of the regulation, amendment, or repeal requested.

Current regulations, at 16 C.C.R. § 1387(a)(2), allow for persons to accrue hours of "supervised professional experience" ("SPE") postdoctorally, only if they are in a formal postdoctoral training program, are a "registered psychologist" (having certain specific other licensure, inapplicable to LCSWs and LMFTs), are an employee of certain exempt organizations or are working as a "psychological assistant." Section 1387(a) 9 provides: "SPE gained while



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the trainee is functioning in [sic] under another mental health license shall not be credited toward meeting the requirements for the psychologist's license." This means that an LCSW, or LMFT., however experienced, may not accrue hours towards a psychology license while performing psychological services under his or her current license, even though he or she is licensed to perform most of the same services that a psychologist performs and even though the work performed under these other licenses may be excellent preparation for licensure as a psychologist. Such a person might have to give up an established career to work in a government or nonprofit agency as a psychological assistant in order to obtain psychology licensure. For persons who are dependent on the income from their practices, this makes it almost impossible to accrue the hours necessary to sit for the psychology exam. This is not fair and serves no identifiable rational purpose, except to effectively exclude certain persons from being able to achieve licensure as a psychologist, despite having the requisite educational requirements.

Therefore, we are seeking an amendment to 16 C.C.R. § 1387 to eliminate the provision in Section (a)(9) that prohibits the crediting of SPE gained under a LCSW, or LMFT, license and whatever other amendments may be necessary to allow LCSWs, or LMFTs to accrue the hours necessary to sit for the psychology exam under their current licenses.

(b) The reason for the request.

Dr. Tovim's situation is a case in point. He graduated with a Master's in Social Work from the University of Southern California in 1987 and has been licensed as a clinical social worker since 1990. After working in an inpatient psychiatric setting for several years, he worked in an outpatient setting at San Fernando Valley Community Mental Health Services for approximately 10 years. In this position, he had extensive experience doing both group and individual psychotherapy with a chronically mentally ill population. In 2003, he joined a busy private practice owned by two psychiatrists, MCLA Psychiatric Medical Group ("MCLA") in Glendale, and has been working ever since performing individual psychotherapy and couples' counseling. He is certified in Cognitive Behavioral Therapy, which is the theoretical orientation that he principally uses with his patients. From 2004 to 2006, he attended Ryokan College in Los Angeles, a professional school of psychology, graduating with a Psy. D. degree in October 2006. He currently works 4 days a week at MCLA, seeing approximately 24 patients per week. From all this experience, he has honed his skills considerably and has become a capable and very experienced psychotherapist.

Although Dr. Tovim can perform his practice with his LCSW license, he would like to follow up on his Psy. D. degree by obtaining licensure as a psychologist, so that he could increase his fees, perform testing and possibly do court work. Further, he believes that the process of preparing for and taking the examination would further hone his skills. However, under the current regulations, it is practically impossible. There are psychologists and psychiatrists in his practice who would be willing to supervise him. But, the insurance

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companies that provide most of the reimbursement for the practice's patients will only reimburse for Dr. Tovim's services if provided under his LCSW license. If he gave up his license and worked only as a psychological assistant under the license of one of MCLA's psychologist, the insurance companies will not reimburse. Thus, the only way for him to get a position as a psychological assistant to accrue the required hours would be to give up his current, successful practice and try to get employment in a government or nonprofit agency in a lower position, and undoubtedly at lower compensation. Not only does Dr. Tovim rely on his current income level, but the extensive experience he obtains performing psychotherapy 24 hours or more per week is the best possible training to serve as the required SPE, quite likely better than the experience he might get in a nonprofit agency.

In addition to Dr. Tovim, there are undoubtedly others who are in a similar position, both LCSWs and LMFTs. There does not appear to be any rational reason why rules allowing LCSWs and LMFTs to accrue hours towards licensure under their current licenses would in any way diminish the requirements or lessen the standards for psychology licensure.

In fact, Dr. Tovim spoke to two different longtime employees of the Board (Lavinia F. Snyder, Licensing/Registration Program Coordinator and Jeffrey Thomas, Assistant Executive Officer), neither of whom were able to articulate any reason behind the current prohibition on accruing hours under these other licenses and who suggested that he petition the Board for a regulation change. Further, I have submitted Public Records Act requests to see if the regulatory history for this policy provided any insight into its purpose or the reasons why the policy was promulgated. No records in the possession of the Board shed any light on this. It appears that the policy was in place many years ago when psychology licensure was under the authority of the Board of Medical Quality Assurance. The policy was already in regulatory form prior to the creation of the Board. Thus, it does not appear that the Board of Psychology has ever even considered the merits of or necessity for this policy.

(c) Reference to the authority of the state agency to take the action requested.

Under Bus. & Prof. Code §2914(c), each applicant for licensure as a psychologist must engage for at least two years in SPE under the direction of a licensed psychologist, or under suitable alternative supervision, the specific requirements for which shall be defined by the Board in its regulations. Thus, the Board has extensive discretion in establishing the requirements for accrual of SPE. While Bus. & Prof. Code § 2913 sets forth the requirements for "psychological assistants," the Code does not provide that only psychological assistants may accrue SPE. The Board clearly has authority under the governing statutes to establish rules and regulations that are not inconsistent with the statutory requirements and that flesh out the rules for accrual of SPE. An amended regulation allowing for persons licensed as clinical social workers or marriage and family therapists to accrue SPE under their licenses (with proper supervision by a licensed psychologist and/or psychiatrist, of course) would be perfectly consistent with the statutory requirements.

HOOPER, LUNDY & BOOKMAN, P.C.
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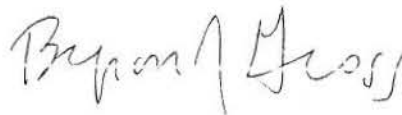
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Pursuant to Government Code § 11340.7, the Board is required to act on this petition within 30 days of receipt, either by denying the petition, with reasons provided in writing to the undersigned and provided to the Office of Administrative Law for publication in the California Regulatory Notice Register, or by scheduling the matter for public hearing in accordance with the requirements of Article 5, commencing with Section 11346, of the Government Code.

I thank you in advance for your consideration of this petition. If there are any questions, I can be reached as follows:

Byron J. Gross, Esq.
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Phone: 310-551-8125
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Very truly yours,



Byron J. Gross



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February 15, 2011

Via e-mail

Robert Kahane, J.D.
Executive Officer
California Board of Psychology
2005 Evergreen Street, Suite 1400
Sacramento, CA 95815-3894

Re: Petition Seeking Amendment to 16 C.C.R. Section 1387(b)(9) to Allow Clinical Social Workers
and Licensed Marriage and Family Therapists to Accrue Hours Towards a Psychologist License

Before the Credentials Committee, February 18, 2011

Dear Mr. Kahane:

On August 20, 2010, I submitted a Petition for Amendment of Regulations, pursuant to California Government Code Sec. 11340.6, seeking an amendment to 16 C.C.R. Sec. 1387(b)(9) which prohibits an applicant for licensure by the Board of Psychology ("Board") from accruing hours of Supervised Professional Experience (SPE) while functioning under another mental health license.¹ While the issue was before the Credentials Committee ("Committee") at the Board's meeting in December 2010, and I was permitted to speak to the Committee, the issue was not formally considered as the Committee was advised that proper notice to the public had not been given. It is my understanding that the issue has now been put on the Committee's agenda for February 18, 2011 (although it is not clear to me that the notice required by Govt. Code Sec. 11340.6 has been given). Unfortunately, I am not able to attend this meeting, as I have a prior family commitment out of state, so I am submitting these additional written comments.

As discussed in the Petition, this rule has been on the books for a very long time, before even the creation of the Board, and no one was able to provide any basis or justification for the policy. I submit that, unless the Board can articulate a clear reason why psychotherapists working under other licenses should be prevented from accruing the hours necessary to become licensed psychologists, the petition must be granted.

During the discussion with the Committee in December, it was not clear to me that anyone could articulate a rationale for the policy. However, at least one committee member raised the issue of who would be "responsible" if there was some problem with the work done by the applicant for licensure

¹ The petition incorrectly referenced this regulation as 16 C.C.R. 1387(a)(9).

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while working under another license. I do not believe that this is a concern that would prevent a change in policy. If, for example, an LCSW was working under his or her license while accruing hours for the psychology license, the California Board of Behavioral Sciences ("BBS") would continue to govern issues regarding the applicant's license. The BBS could investigate and impose discipline if there were concerns; the applicant would not be unregulated. Further, the applicant, working under his or her own license, would be subject to any malpractice claims by individual patients.

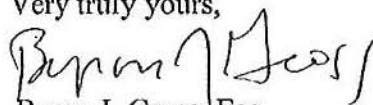
The important consideration for psychology licensure purposes would be the fact that the applicant is supervised in his or her work by a licensed psychologist, following all of the complex rules established for that process. The Board requires certain training for the supervisor, requires the supervisor to spend a certain amount of time providing supervision, and requires the supervisor to certify that the required supervision was given. Obviously, the Board relies on the good faith of the supervisor that he or she is following the requirements and being truthful in the certification. The Board will have to rely on the good faith of the supervisor regardless of whether the applicant is working under another license or not.

The policy at issue here serves as a barrier to LCSWs and MFTs to advance their careers and receive higher reimbursement for their services, without rational justification. If someone with a Master's Degree and LCSW or MFT licensure obtains an advanced degree in psychology, they will likely only be able to fulfill the requirements for psychology licensure if they are early in their careers and do not have successful, established practices. Someone in that position could more easily work as a psychological assistant under the current policies. It is counter-intuitive that this policy acts as a barrier to more experienced practitioners, who, although they have many more years experience as psychotherapists, will be forced to make the Hobson's choice of giving up their practices to take a huge step backward or give up the opportunity to be licensed as a psychologist despite having achieved doctorate level training in psychology.

One possibility would be that the Board could require a certain level of experience for the applicant before allowing them to accrue SPE under another license. Although MFTs and LCSWs must accrue substantial supervised hours in order to obtain those licenses, the Board might require additional experience before allowing the person to register with the Board to accrue hours. For example, the Board might require an applicant to have an MFT or LCSW, plus 5 years post-licensure experience in the field of psychotherapy. This would assure that only persons with sufficient experience would be permitted to accrue SPE without having to work directly under a psychologist's license.

Thank you for your consideration of this petition and my comments. Again, I request that the petition be granted unless the Board can come up with a clearly-articulated reason why the policy at issue is necessary.

Very truly yours,


Byron J. Gross, Esq.

*Letterhead is for identification purposes only.



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February 15, 2011

Emil Rodolfa, Ph.D.
Chair, Credentials Committee
California Board of Psychology

Re: Petition to amend CCR 1387(a)(9) to allow SPE psychology training credit for services provided as LCSW/MFT

Dear Dr. Rodolfa:

For the reasons stated below, the California Psychological Association **opposes** the petition before the Board of Psychology that would change psychology training rules in order to allow credit towards psychologist licensure for Supervised Professional Experience accumulated under a LCSW or MFT license.

CCR Section 1387(a)(9) Required and Necessary To Assert and Clarify Unambiguous Regulatory Oversight Authority By Appropriate Licensing Agency

The regulation in question is required and necessary to clearly implement the Legislature's intent to have the independent Board of Psychology regulate and oversee the credentialing of psychologist training. Licensed activities by LCSWs and MFTs are mandated by the State Legislature to be overseen by a completely separate agency that oversees the independent Board of Behavioral Sciences. Accordingly, for persons who wish to become an applicant for licensure as a psychologist, the existing regulation 1387(a)(9) regulating psychology training clearly and unambiguously requires that SPE training towards psychology licensure is solely regulated by the BOP. For services provided under a license issued by the BBS, the BBS has been granted sole responsibility and jurisdiction by the State Legislature. **Services provided under a license issued by the BBS are not, and cannot, be regulated by the Board of Psychology.**

California Legislature Has Determined Which Professions and Occupations Are Distinct with its Statutory Creation of Independently Functioning Licensing Agencies

The Petitioner in this request obfuscates the differences and distinctions clearly recognized among the licensed professions and clearly recognized by the California State Legislature. The Legislature's distinction between social work and psychology is consistent with the very different history and traditions of the two professions and their very distinct theoretical and scientific foundations and societal roles. Universities clearly distinguish the differences between the two disciplines by organizing separate academic departments for psychology and social work. Under the undifferentiated definitions suggested by the Petitioner, the nature of the academic work of those pursuing a

university degree in social work would be sufficient to argue that those students should also be granted a degree in psychology.

California Legislature and Marketplace Distinguishes Between Psychological Services and Social Work Services

The Petitioner, in his argument, has chosen to ignore the legal scope of practice for each profession which we have quoted below. Petitioner argues that LCSWs are "performing psychological services under his or her current license." Consistent with the distinctions the Legislature has drawn between social work and psychology, the law specifically disallows LCSWs to claim they are providing "psychological services." Petitioner does a disservice to the argument he makes by ignoring the protections of law provided to the consumer so that the training and expertise of LCSWs and Psychologists can be distinguished.

Even a casual reading of the statutory scope of practice differences cited below between Psychologists and Clinical Social Workers makes clear how differently each profession is defined by the State Legislature. To highlight only one difference, nowhere in the LCSW scope of practice is the term "mental disorder" mentioned. Only the psychologist scope of practice is explicit that the licensee can diagnose and treat mental and emotional disorders. Further evidence that the Legislature does not regard social work training as necessarily providing the background for diagnosing mental disorder is the failure of the Legislature to approve a bill in 2004 which would have included "diagnosis" as a service in LCSW's scope of practice. [SB 1853 (Perata)]

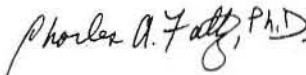
The Petitioner himself makes the case that the marketplace also distinguishes between the training and expertise of LCSWs and psychologists by compensating psychologists at a higher rate. Indeed, that fact is cited as a primary reason that the Petitioner wishes to acquire a psychology license.

In summary, it is our position that the Board of Psychology does not have the authority to override the Legislature's intent in establishing legally distinct and regulated licensed professions. The protection of the consumer requires that the regulatory oversight of the Board of Psychology be unambiguous and clear in its oversight of the training and credentialing of persons who wish to become applicants for a psychology license. **We urge the Board of Psychology to reject this petition.**

Sincerely,



Jo Linder-Crow, PhD
Executive Director



Charles Faltz, PhD
Director, Professional Affairs

cc: Robert Kahane, Executive Officer, BOP

California Psychology Licensing Act: Business and Professions Code

2903. No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

As used in this chapter, "fee" means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.

2908. Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California.....from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrist," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

California Clinical Social Work License Scope of Practice: Business and Professions Code

4996.9. The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.