

Date of Hearing: March 28, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 93 Medina – As Amended March 21, 2017

SUBJECT: Healing arts: marriage and family therapists: clinical social workers: professional clinical counselors: required experience and supervision.

SUMMARY: Revises and recasts supervised experience requirements for applicants as a Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), and a Licensed Professional Clinical Counselor (LPCC), as specified; updates the requirements for supervisors of trainees, associates, and applicants; updates the requirements for trainees, associates, and applicants who are under supervision, as specified, and makes other technical and conforming changes.

EXISTING LAW:

- 1) Establishes the Board of Behavioral Sciences (BBS), under the Department of Consumer Affairs (DCA), to license and regulate Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), Licensed Professional Clinical Counselors (LPCCs), Associate Clinical Social Workers (ACSWs), Marriage and Family Therapist Interns (MFT Interns), and Professional Clinical Counselor Interns (PCC Interns). (Business and Professions Code (BPC) Sections 4990 *et seq.*)
- 2) Defines an "intern" to mean "an unlicensed person who has earned his or her master's degree or doctoral degree qualifying him or her for licensure as an LMFT and is registered with the BBS." (BPC) Section 4980.03(b))
- 3) Defines an "applicant" to mean "an unlicensed person who has completed a master's or doctoral degree program, as specified, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure and is no longer registered with the BBS as an intern and is currently in the examination process." (BPC Section 4980.03(d))
- 4) Defines a "supervisor" as an individual who meets all of the following requirements: (BPC Section 4980.03(g))
 - a) Has been licensed by a state regulatory agency for at least two years as a LMFT, LCSW, LEP, LPCC, licensed psychologist, or licensed physician certified in psychiatry;
 - b) Has not provided therapeutic services to the trainee or intern;
 - c) Has a current and valid license that is not under probation or suspension; and,
 - d) Complies with the supervision requirements.

- 5) Requires applicants for licensure as an LMFT to complete experience related to the practice of marriage and family therapy under a supervisor who meets specified qualifications. (BPC Section 4980.43(a)).
- 6) Requires all applicants, trainees, and registrants for licensure as an LMFT, be at all times under the supervision of a supervisor who is responsible for ensuring that the counseling performed is consistent with the training and experience of the person being supervised, and who is responsible to the BBS for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. (BPC Section 4980.43(c))
- 7) States that a licensed professional in private practice may supervise or employ at any one time, no more than a total of three individuals registered as a marriage and family therapist intern, clinical social worker intern, or associate clinical social worker in that private practice. (BPC Section 4980.45(a))
- 8) Establishes the qualifications for licensure as an LCSW. (BPC Section 4996.2)
- 9) Requires an individual seeking credit for experience toward licensure to register with the BBS as an ACSW prior to obtaining experience. (BPC Section 4996.18)
- 10) Requires an applicant for licensure as an LCSW to complete 3,200 hours of post-master's degree supervised experience related to the practice of clinical social work, as specified. (BPC Section 4996.23)
- 11) Specifies that "supervision" for purposes of LCSW licensure means responsibility for, and control of, the quality of clinical social work services, and that consultation or peer discussion is not considered to be supervision." (BPC Section 4996.23(c))
- 12) Prohibits a LSCW corporation from employing, at any one time, more than a total of three individuals registered as either a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker for each employee or shareholder; prohibits a LCSW corporation from employing, at any one time, more than a total of 15 individuals registered as either a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker; and prohibits any supervisor from supervising, at any one time, more than a total of three registered individuals. (BPC Section 4996.24(b)(c))
- 13) Defines an LPCC "intern" as an unlicensed person, who meets specified criteria, and is registered with the BBS. (BPC Section 4999.12(f))
- 14) Defines an LPCC "approved supervisor" as an individual who meets the following requirements: (BPC Section 4999.12 (h))
 - a) Has documented two years of clinical experience, as a LPCC, LMFT, licensed psychologist, LCSW, or a licensed physician and surgeon certified in psychiatry;
 - b) Has received professional training in supervision;
 - c) Has not provided therapeutic services to the clinical counselor trainee or intern; and,
 - d) Has a current and valid license that is not under suspension or probation.

- 15) Defines "supervision" to include the following:
- a) Ensuring that the extent, kind and quality of counseling performed is consistent with the education, training, and experience of the person being supervised;
 - b) Reviewing client or patient records; monitoring and evaluating assessment, diagnosis, and treatment decisions of the clinical counselor trainee;
 - c) Monitoring and evaluating the ability of the inter or clinical counselor trainee to provide services to the particular clientele at the site or sites where he or she will be practicing;
 - d) Ensuring compliance with laws and regulations governing the practice of licensed professional clinical counseling; and,
 - e) That amount of direct observation, or review of audio or videotapes of counseling or therapy, as deemed appropriate by the supervisor.
- 16) Specifies the settings in which a LPCC intern may be credited with supervised experience. (BPC Section 4999.44)
- 17) Prohibits a LPCC in private practice from employing or supervising, at any time, more than a total of three individuals registered as either a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker for each employee or shareholder; prohibits a LPCC corporation from employing, at any one time, more than a total of 15 individuals registered as either a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker; and prohibits any supervisor from supervising, at any one time, more than a total of three registered individuals. (BPC Section 4999.455)
- 18) Requires each applicant for licensure as a LPCC to obtain a passing score on a BBS-administered California Law and Ethics examination. (BPC Section 4999.55)
- 19) Establishes specified educational requirements for out-of-state applicants who do not hold a current license outside of California and for applicants who do hold a license outside of California. (BPC Sections 4999.62 and 4999.63)
- 20) Specifies that permitting a clinical counselor trainee or intern, under one's supervision or control, to perform or permit the trainee or intern to hold him or herself out as competent to perform professional services beyond the trainee's or intern's level of training or expertise is unprofessional conduct. (BPC Section 4999.60(t))

THIS BILL:

For LMFTs:

- 1) Replaces the word "intern" with "associate".
- 2) Clarifies that an "associate" is an individual registered with the BBS or whose degree was awarded and the BBS received the application within 90 days.

- 3) Revises the definition of "applicant for licensure" to mean an individual who has completed the required education and required hours of supervision.
- 4) Clarifies that a supervisor must be licensed in this state or another state for two out of the last five years.
- 5) Specifies the requirements of a LPCC supervisor.
- 6) Revises and recasts the requirements for supervision.
- 7) Defines "supervision" to mean responsibility for, and control of, the quality of services being provided by the supervisee and consultation of peer discussion is not considered supervision and does not qualify as supervised experience.
- 8) Adds the following components of supervision:
 - a) Monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions and providing regulator feedback;
 - b) Monitoring and evaluation the supervisee's ability to provide services at the sites where he or she will be practicing and to the particular clientele being served;
 - c) Monitoring for and addressing clinical dynamics, including, but not limited to, countertransference-, intrapsychic-, interpersonal, or trauma-related issues that may affect the supervisory or the practitioner-patient relationship;
 - d) Ensuring the supervisee's compliance with laws and regulations governing the practice of marriage and family therapy;
 - e) Reviewing the progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor; and,
 - f) With the client's written consent, providing direct observation or review of audio or video recording of the supervisee's counseling or therapy, as deemed appropriate by the supervisor.
- 9) Clarifies the meaning of "one hour of direct supervisor contact" by revising the following definitions:
 - a) Individual supervision, which means one hour of face-to-face contact between one supervisor and one supervisee.
 - b) Triadic supervision, which means one hour of face-to-face contact between one supervisor and two supervisees.
 - c) Group supervision, which means two hours of face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour.

- 10) States that once the required experience hours have been accumulated, associates and applicants for licensure must receive a minimum of one hour of direct supervisor contact per week for each setting in which direct clinical counseling is performed.
- 11) Deletes the \$500 cap on reimbursement of expenses for individuals obtaining supervised experience hours in specified settings.
- 12) Clarifies that any experience gained under the supervision of a spouse, relative, or domestic partner cannot be credited toward the required hours of supervised experience, and prohibits an applicant from gaining supervised experience from an individual with whom he or she had a personal, professional, or business relationship, as specified.
- 13) Permits the BBS to audit an applicant for licensure to ensure compliance with expense reimbursement reporting requirements, as specified.
- 14) States that a trainee, associate, or applicant for licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to improve recruitment and retention in underserved regions or settings shall be considered an employee and not an independent contractor.
- 15) Authorizes the BBS to audit the above trainee, associate, or applicant for licensure to ensure compliance with specified payment requirements.
- 16) Permits the BBS to audit the records of any supervisor to verify the completion of the supervisor qualifications, and requires the supervisor to maintain record of completions of supervisor qualifications for a period of seven years after termination of supervision and make those records available to the BBS.
- 17) Clarifies that a marriage and family corporation may retain at any one time, no more than a total of three employees, volunteers, or a combination of employees or volunteers.

For LCSWs:

- 1) Revises unprofessional conduct standards for LCSWs, adding the following for consistency across license types:
 - a) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience.
 - b) Permitting an applicant for licensure, trainee, or registrant under one's supervision or control to perform, or permitting the supervisee to hold himself or herself out as competent to perform, professional services beyond the supervisee's level of education, training, or experience.
 - c) Violating of any law or regulation governing the gaining or supervision of experience required by the practice act.

- 2) Revises and recasts the requirements for applicants and registrants under supervision, as specified.
- 3) Replaces the requirement for an LCSW applicant to obtain 3,200 hours of post-master's degree requirements with 3,000 hours.
- 4) Clarifies that a registrant for licensure as an LCSW is required to take and pass two specified examinations and that a licensee who passed a prior examination may be required to take the missing examination.
- 5) Requires all applicants, in addition to registrants, to inform clients the he or she is unlicensed and under supervision.
- 6) Clarifies that a supervisor must be licensed, as specified, in this state or another state for two out of the last five years.
- 7) Adds the following components of supervision:
 - a) Monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions and providing regulator feedback;
 - b) Monitoring and evaluation the supervisee's ability to provide services at the sites where he or she will be practicing and to the particular clientele being served;
 - c) Monitoring for and addressing clinical dynamics, including, but not limited to, countertransference-, intrapsychic-, interpersonal, or trauma-related issues that may affect the supervisory or the practitioner-patient relationship;
 - d) Ensuring the supervisee's compliance with laws and regulations governing the practice of clinical social work;
 - e) Reviewing the progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor; and,
 - f) With the client's written consent, providing direct observation or review of audio or video recording of the supervisee's counseling or therapy, as deemed appropriate by the supervisor.
- 8) Permits the BBS to audit the records of any supervisor to verify the completion of the supervisor qualifications, and requires the supervisor to maintain record of completions of supervisor qualifications for a period of seven years after termination of supervision and make those records available to the BBS.
- 9) Clarifies the meaning of "one hour of direct supervisor contact", as specified.
- 10) States that a trainee, associate, or applicant for licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to improve recruitment and retention in underserved regions or settings may be audited by the BBS to ensure compliance with

specified payment requirements.

- 11) Clarifies that a licensed clinical social worker corporation may retain at any one time, no more than a total of three employees, volunteers, or a combination of employees or volunteers.

States that alternative supervision arrangements may be made during a supervisor's vacation or sick leave, as specified.

For LPCCs:

- 1) Replaces "applicant" with "applicant for licensure" and revises the definition.
- 2) Clarifies that an individual is registered with the BBS if the application was received by the BBS within 90 days of his or her degree aware date.
- 3) Adds the following components to supervision:
 - a) Monitoring for and addressing clinical dynamics, including, but not limited to, countertransference-, intrapsychic-, interpersonal, or trauma-related issues that may affect the supervisory or the practitioner-patient relationship;
 - b) Reviewing the supervisee's progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor; and,
 - c) With the client's written consent, providing direct observation or review of video recordings, instead of videotapes, as specified.
- 4) Defines "clinical setting" to mean any setting that meets both of the following requirements:
 - a) Lawfully and regularly provides mental health counseling or psychotherapy; and,
 - b) Provides oversight to ensure that the associate's work at the setting meets the supervision and experience requirements, as specified in statute, regulations and within the scope of practice of the profession.
- 5) Defines "Community mental health setting" to mean a clinical setting that meets all of the following requirements:
 - a) Lawfully and regularly provides mental health counseling or psychotherapy;
 - b) Clients routinely receive psychopharmacological interventions in conjunction with psychotherapy, counseling, or other psycho-social interventions;
 - c) Clients receive coordinated care that includes the collaboration of mental health providers, and is not a private practice.
- 6) Replaces the term "internship hours" with "supervised experience".

- 7) States that once the required experience hours have been accumulated, associates and applicants for licensure must receive a minimum of one hour direct supervisor contact per week for each setting in which direct clinical counseling is performed.
- 8) Clarifies that a professional clinical counselor corporation may retain at any one time, no more than a total of three employees, volunteers, or a combination of employees or volunteers.
- 9) Permits the BBS to audit the records of any supervisor to verify the completion of the supervisor qualifications, and requires the supervisor to maintain record of completions of supervisor qualifications for a period of seven years after termination of supervision and make those records available to the BBS.
- 10) Deletes the \$500 cap on reimbursement of expenses for individuals obtaining supervised experience hours in specified settings.
- 11) Replaces the word "intern" with "associate".
- 12) Makes numerous other technical, conforming, and clarifying amendments.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the BBS. According to the author, "[this bill] will strengthen supervisor qualifications and responsibilities for marriage and family therapists, clinical social workers, and professional clinical counselors. It will also strengthen the provisions for supervisee monitoring and evaluation. Ultimately, this will improve the licensing process to ensure that patients can access qualified mental health professionals and obtain the services they need."

Background. *Board of Behavioral Sciences.* The BBS licenses and regulates LCSWs, LMFTs, LEPs, and LPCCs. Additionally, the BBS registers ACSWs, MFT Interns, and PCC Interns. Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in certain areas. LMFTs are employed in mental health agencies, counseling centers, and private practice. They utilize counseling or therapeutic techniques to assist individuals, couples, families, and groups with a focus on marriage, family, and relationship issues. LCSWs are employed in health facilities, private practice, and state and county mental health agencies. LCSWs utilize counseling and psychotherapeutic techniques to assist individuals, couples, families, and groups, and LPCCs apply counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. LPCCs work in a variety of settings including hospitals, private practice, and community-based mental health organizations.

Under current law, the pathway to licensure for LMFTs, LCSWs and LPCCs is complex and includes both a qualifying degree and acquired hours of supervision. Specifically, in order to qualify for licensure, applicants for all three license types must obtain at a minimum, a master's degree, and two years of supervised work experience consisting of at least 3,000 hours. Within

the 3,000 hour requirement for supervised experience, there are limitations on the types of hours that can be counted towards the supervision requirement and specified requirements for licensees who are supervisors.

The different types of supervised experience requirements consist of an array of required minimum and maximum types of experience in different categories, and have become more and more complex. In addition, in order to verify that an applicant has met the supervised hour requirement for each category, the verification process is both resource and time consuming for the BBS licensing evaluators. This bill may help to streamline this process by making conforming changes to the supervision process across all three licensing categories.

BPC Sections 4980.45, 4996.24, and 4999.455 specify that a licensed professional (LMFT, LCSW, or LPCC) in private practice cannot supervise or employ, at any one time, more than a total of three individuals registered with the BBS as a MFT intern, PCC intern, or an ACSW. Title 16 CCR Sections 1821, 1833.1, and 1870 specify supervisors' responsibility. In order to be qualified as a LMFT, LCSW, or LPCC supervisor, the licensed professional is required to be licensed for two-years in good standing with the BBS, meet specified education requirements, and have sufficient experience, training, and education in the area of clinical supervision to competently supervise associates or interns. In addition, current regulations require both trainees and supervisors to have some level of responsibility in ensuring the record of supervised hours are signed and verified accurately and submitted to the BBS as required under specified sections of the BPC.

This bill revises and recasts numerous provisions related to supervision requirements for LMFTS, LCSWs, and LPCCs, and makes conforming changes. In addition, this bill makes other substantive changes to the requirements for obtaining supervision and for supervising applicants, interns, and associates. Under current law, a supervisor is required to have been licensed in California for at least two-years. This bill will clarify that a supervisor must be actively licensed in California or another state for two of the past five years.

This bill revises the definition of a supervisor across licensing categories to more thoroughly describe the role of a supervisor. Specifically, this bill clarifies that "supervision" means responsibility for, and control of, the quality of services being provided by the supervisee and specifies that peer review does not constitute supervised experience. In addition, this bill requires supervisors to review progress notes and other patient records deemed appropriate by the supervisor.

Current law specifies that if an individual obtaining supervised hours of experience in a setting other than private practice receives a maximum \$500 reimbursement of actual expenses they must be considered an employee and not an independent contractor. The BBS noted that its Supervision Committee recommended removing the cap from law to ensure that an appropriate reimbursement is collected. In addition, this bill proposes to allow a trainee, associate or applicant for licensure to be able to receive a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession. This bill authorizes the BBS to audit the reimbursement to ensure compliance with payment requirements. Under current law, it is not specified if supervisor contact is required after accumulating the requisite hours for supervision; this bill will require associates and applicants to receive at, a minimum, one-hour of direct supervisor contact.

During the BBS's last sunset review in 2016, the Committees raised an issue related to the supervision requirements for potential licensees. Concerns were raised at that time that it was difficult for the BBS to ensure that supervisors were following the law. The changes proposed by this bill may help address some of those concerns by clarifying and establishing consistent requirements across the licensing programs.

The BBS's Supervision Committee met approximately 11 times since April of 2014 and focused on issues concerning the experience required for licensure, which resulted in SB 620 (Block), Chapter 262 Statutes of 2015, and raised additional issues related to the supervision requirements for applicants for licensure. The proposed changes in this bill also reflect recommendations made by the BBS's Supervision Committee that were subsequently approved by the full board. This bill also makes other conforming changes to reflect previous legislation which changed the titles and definition of "intern" and "applicant," updates references in statute, and makes numerous other technical and clarifying amendments.

Current Related Legislation. AB 456 (Thurmond) of the current legislative sessions authorizes postgraduate hours of experience to be credited toward licensure for registrations as associate clinical social worker, as long as the person applies for registration within 90 days of the granting of the qualifying master's degree or doctoral degree and is granted registration by the board.
Status: This bill is pending in the Assembly Committee on Business and Professions.

Prior Related Legislation. SB 620 (Block), Chapter 262, Statutes of 2015, revises the supervised experience hour requirements for LMFTs and LPCCs, and also revises experience hour requirements for LCSWs, as specified.

SB 33 (Correa), Chapter 26, Statutes of 2009, updated the educational curriculum requirements for marriage and family therapists to require persons who begin graduate study after August 1, 2012, to meet increased total unit requirements and practicum hours for face-to-face counseling. Additionally, it added new elements to the curriculum, including public mental health practices, revised the requirements for applicants licensed or educated outside of California, and repeals the current educational requirements on January 1, 2019.

AB 234 (Eng), Chapter 586, Statutes of 2007, revised the LMFT licensing law pertaining to the number of hours of experience required for licensure.

ARGUMENTS IN SUPPORT:

The BBS writes in support, "This bill proposes amendments that will strengthen the quality of supervised experience gained by applicants who are seeking [BBS]-licensure a [LMFT, LCSW], or a [LPCC]...The law governing gaining of supervised experience is complex and has evolved over time. Numerous concerns have been raised about the quality and oversight of supervision, the responsibilities of supervisors, and the consistency of supervision requirements across the [BBS's] licensed professions."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Board of Behavioral Sciences (sponsor)

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Elissa Silva / B. & P. / 916-319-3301