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To: Committee Members

Date: October 1, 2024

From: Steve Sodergren
Executive Officer

Subject: Discussion and Possible Recommendation Regarding Licensing Requirements for the “90-day Rule”

Background

Current law requires applicants to have an active associate registration with the Board to accumulate post-degree supervised hours, with certain exceptions. Applicants for Associate Marriage and Family Therapist (AMFT), Associate Clinical Social Worker (ACSW), or Associate Professional Clinical Counselor (APCC) registrations can count supervised hours gained before receiving their registration if they apply within 90 days of obtaining their degree and their workplace completes Live Scan fingerprinting before they begin accruing hours. However, applicants are prohibited from working in private practice or a professional corporation until their associate registration is issued by the Board. This is what is commonly known as the 90-day Rule. (Attachment A)

The 90-Day Rule has raised concerns due to gaps in regulatory oversight, as it allows new graduates to begin practicing and gaining clinical experience without a registration number, leaving them outside the Board's direct jurisdiction. Although the Board typically processes applications within 40 days, delays can occur due to deficiencies in an application, which applicants have up to one year to resolve. During this period, these individuals are practicing without an official registration number, limiting the Board's ability to monitor or regulate them. This lack of oversight poses a potential risk to consumer protection, as the Board has limited authority to address complaints or issues involving these practitioners before their registration is approved.

In 2013 the concern was discussed about applicants with criminal convictions falling under the 90-day rule. Applicants with a conviction have up to one year to submit their records for Board review, which can sometimes lead to delays in enforcement if the applicant takes advantage of this time. If a complaint is filed during this period, the Board has no authority to investigate since the individual is not yet registered. In response to these concerns, the Board sought a legislative change in 2011 and conducted a one-year review to track data on the issue. The review found no significant abuse of the 90-day rule, with most applicants submitting required information in a timely manner. Of the 179 applicants tracked, none waited the full year to submit their records, and 10 applications were denied, mostly for offenses like DUI and drug-related

charges. None of the denials that were appealed resulted in registrations with restrictions.

In 2018, the BBS engaged in negotiations surrounding AB 93 (Chapter 743, Statutes of 2018), which sought to address these concerns. Originally, the legislature wanted to eliminate the 90-day rule altogether due to the risks involved, but professional associations representing therapists and counselors pushed back, advocating to keep it. (Attachment B). As a compromise, the bill introduced the employer Live Scan requirement, a fingerprint-based background check, to add a layer of consumer protection while allowing the rule to stay in effect. Additionally, AB 456 (Chapter 158, Statutes of 2018) extended the 90-day rule to applicants for Licensed Clinical Social Worker (LCSW) registration, further institutionalizing the practice but with the added safeguards negotiated during the passage of AB 93.

The debate over the 90-Day Rule centers on balancing consumer protection, workforce development, and the needs of professionals in training. Stakeholders, particularly professional associations, have voiced concerns about eliminating the rule, as it enables new graduates to start accruing supervised hours immediately, helping to address the demand for mental health practitioners. In addition, many graduates would still be working in exempt settings, and there are no rules surrounding supervisors/supervision in those settings, nor for fingerprinting. This would result in reduced consumer protection in those settings. By following the rules for gaining hours of experience, they will have a qualified supervisor and will follow the rules for supervision. Although safeguards like Live Scan background checks have been implemented, concerns persist about the Board's limited ability to oversee and regulate practitioners during this period, raising potential risks to consumer safety.

One possible solution would be to completely remove the 90-day rule, ensuring that no individual can practice without a registration number, which would close the current gap in oversight. However, this could lead to delays of up to one year in the ability for graduates to count experience hours. Another solution would involve requiring students to register with the BBS while they are still in school. This registration would extend to the time immediately following graduation and until they receive their associate registration number. By registering trainees, the BBS would have oversight of individuals from their training period through their early professional experience, enhancing consumer protection. The Board previously required registration for trainees in the 1990s but discontinued the program several years later. The reasons for discontinuation are unknown but staff could attempt a search of old legislation files and report back.

Recommendation

Conduct an open discussion regarding the 90-day rule.

Attachments and References

Attachment A: Business and Profession Code "90-day Rule" language

Attachment B: 2018 "90-day Rule" Stakeholder Letters

ATTACHMENT A
Business and Profession Code “90-day Rule” language

LMFT

§ 4980.43. SUPERVISED EXPERIENCE: ASSOCIATES OR TRAINEES

- (a) Except as provided in subdivision (b), all applicants shall have an active associate registration with the board in order to gain postdegree hours of supervised experience.
- (b) (1) Postdegree hours of experience gained before the issuance of an associate registration shall be credited toward licensure if all of the following apply:
 - (A) The registration applicant applies for the associate registration and the board receives the application within 90 days of the granting of the qualifying master’s degree or doctoral degree.
 - (B) For applicants completing graduate study on or after January 1, 2020, the experience is obtained at a workplace that, prior to the registration applicant gaining supervised experience hours, requires completed Live Scan fingerprinting. The applicant shall provide the board with a copy of that completed State of California “Request for Live Scan Service” form with the application for licensure.
 - (C) The board subsequently grants the associate registration.
- (2) The applicant shall not be employed or volunteer in a private practice or a professional corporation until the applicant has been issued an associate registration by the board.

LCSW

§ 4996.23. SUPERVISED POST-MASTER'S EXPERIENCE

- (a) To qualify for licensure, each applicant shall complete 3,000 hours of post-master’s degree supervised experience related to the practice of clinical social work. Except as provided in subdivision (b), experience shall not be gained until the applicant is registered as an associate clinical social worker.
- (b) Postdegree hours of experience gained before the issuance of an associate registration shall be credited toward licensure if all of the following apply:
 - (1) The registration applicant applies for the associate registration and the board receives the application within 90 days of the granting of the qualifying master’s or doctoral degree.
 - (2) For applicants completing graduate study on or after January 1, 2020, the experience is obtained at a workplace that, prior to the registration applicant

gaining supervised experience hours, requires completed Live Scan fingerprinting. The applicant shall provide the board with a copy of that completed "State of California Request for Live Scan Service" form with the application for licensure.

(3) The board subsequently grants the associate registration.

(c) The applicant shall not be employed or volunteer in a private practice or a professional corporation until the applicant has been issued an associate registration by the board.

LPCC

§ 4999.46. SUPERVISED POST-MASTER'S EXPERIENCE

(a) Except as provided in subdivision (b), all applicants shall have an active associate registration with the board in order to gain postdegree hours of supervised experience.

(b) (1) Postdegree hours of experience gained before the issuance of an associate registration shall be credited toward licensure if all of the following apply:

(A) The registration applicant applies for the associate registration and the board receives the application within 90 days of the granting of the qualifying master's degree or doctoral degree.

(B) For applicants completing graduate study on or after January 1, 2020, the experience is obtained at a workplace that, prior to the registration applicant gaining supervised experience hours, requires completed Live Scan fingerprinting. The applicant shall provide the board with a copy of that completed State of California "Request for Live Scan Service" form with their application for licensure.

(C) The board subsequently grants the associate registration.

(2) The applicant shall not be employed or volunteer in a private practice or a professional corporation until they have been issued an associate registration by the board.

ATTACHMENT B
2018 "90-day Rule" Stakeholder Letters



**CONNECT
ENRICH
ACHIEVE**

California Association of Marriage and Family Therapists
7901 Raytheon Road, San Diego, CA 92111-1606
Phone: (858) 292-2638 | Fax: (858) 292-2666 | www.camft.org

January 29, 2018

Christina Wong, LCSW
Policy and Advocacy Committee, Chair
Board of Behavioral Sciences
1625 N Market Blvd S-200
Sacramento, CA 95834

RE: AB 93 and the 90 Day Rule

Dear Chair Wong and Committee Members:

On behalf of the California Association of Marriage and Family Therapists (CAMFT), we ask that the Board of Behavioral Sciences' (BBS) Policy and Advocacy Committee (P&A Committee) reverse their October 2017 decision to remove section 4980.43(h) of the Business and Professions Code from California law, and instead accept the viable alternative that has been put forth by CAMFT and supported by the Senate Business, Professions and Economic Development (Senate BPED) Committee's Chair, Jerry Hill into AB 93 (2017).

Section 4980.43(h) allows aspiring marriage and family therapists (and now professional clinical counselors) to count the clinical hours they've gained from the time of graduation until the time their registration is approved by the BBS ("the 90 day rule"). This law has been in place since the 1980s and to date, there is no known instance of harm to a client by an unsafe therapist as a result of this section.

In spring 2017, the Senate BPED Committee Chair raised concerns that the hours gained after graduation, and prior to registration, were not mandated at a live-scanned facility. Although the concern was not raised due to a specific incident, the Senate BPED Committee indicated that AB 93-2017 (which embodied the BBS's amendments to supervision) would not move forward unless section 4980.43(h) was either removed or a viable alternative was agreed upon.

Accordingly, over the last six months, CAMFT has solicited support and technical assistance from numerous stakeholders, including the BBS and Senate BPED Committee, among others. We have worked closely with the Senate BPED Committee Chair and Consultant to ensure that the language we agreed upon was supported. The following agreed upon language, allows providers to continue seeing their patients while at the same time alleviating the Senate BPED Committee's concerns about live-scan:

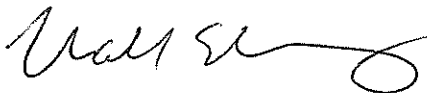
§4980.43 (h) Postdegree (*pre-registration*) hours of experience shall be credited toward licensure ~~so long as if all of the following apply:~~ 1. The *registration* applicant applies for the *associate* registration within 90 days of the granting of the qualifying master's or doctoral degree; 2. *the experience is obtained at a workplace that, prior to the registration applicant gaining direct service/client experience, requires completed Live Scan fingerprinting;* and, 3. the board subsequently grants the *associate* registration and ~~is thereafter granted the intern registration by the board.~~

This above language has now been vetted by numerous stakeholders including schools, agencies, and provider advocacy groups. While most stakeholders would prefer §4980.43 (h) to remain untouched, they concur that mandating live-scanned hours during the graduation to registration timeframe is preferable to losing the ability to gain hours in its entirety. To now remove the 90 day rule, given there is a viable alternative, actually decreases consumer protection—it disrupts continuity of care, increases patient abandonment, and amplifies pre-licensure exploitation for no reasonable or sensible purpose.

While some pre-licensurees may lose their ability to gain hours during the timeframe in question, the alternative above, allows the majority to continue to gain hours and in a manner consistent with consumer protection. As mentioned above, the proposed amendments have been vetted by numerous stakeholders and is supported by the Senate BPED Committee Chair and Consultant.

We thank you for reviewing our request and look forward to discussing it further during the February P&A Committee meeting.

Sincerely,



Nabil El-Ghoroury, Ph.D.
Executive Director



Cathy Atkins, J.D.
Deputy Executive Director

Cc: Kim Madsen, Executive Officer
Rosanne Helms, Legislative Analyst
Political Solutions



**AMERICAN ASSOCIATION
FOR MARRIAGE AND FAMILY THERAPY
CALIFORNIA DIVISION**

January 25, 2018

Kim Madsen, Executive Officer
Christina Wong, Chair
Rosanne Helms, Policy Analyst
Board of Behavioral Sciences
1625 N Market Blvd, #S-200
Sacramento CA 95834

Re: AB 93 (Medina) – Proposed amendments

Dear Ms. Madsen, Ms. Wong, Ms. Helms, and members of the Policy and Advocacy Committee,

The American Association for Marriage and Family Therapy, California Division (AAMFT-CA) has not yet taken a formal position on Assembly Bill 93, which would update the standards for supervision for marriage and family therapists. We are alarmed by amendments proposed at the November 2017 Policy and Advocacy Committee meeting, which we believe would harm client care without achieving any public protection purpose.

The proposed amendments would remove the ability for recent graduates to gain hours of experience toward licensure as they await registration by the board. The so-called “90-day rule” presently holds that so long as an individual applies for Associate registration within 90 days of their degree posting date, and is subsequently granted that registration, then hours of experience they gained between graduation and registration may be counted toward licensure *if* they meet all other requirements for supervised experience.

This has been law for almost 40 years, and to the best of our knowledge and research, has not led to a single instance of harm to a client by an unsafe practitioner.

Removing the 90-day rule, however, would have immediate harmful effects. In practice, the *best* outcome possible would be that therapists in exempt settings continue seeing their clients and simply cannot count hours between graduation and registration, delaying their licensure by 3 to 4 months – again, with no demonstrable public protection gain. More likely is that graduates will stop seeing clients between graduation and licensure – either of their own accord because the hours cannot count toward licensure, or as a restriction imposed by their employer – harming continuity of care. Neither of these outcomes is acceptable when no demonstrable public protection aim is to be achieved.

(continued)



AMERICAN ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY CALIFORNIA DIVISION

A viable and reasonable alternative has been suggested that not only is approved by the Senate Business and Professions Committee, but can protect many post-graduates' hours and instill even greater consumer protection than removing the 90-day rule altogether. There is no consumer protection reason *not* to go with this alternative.

You have met and discussed this on numerous occasions with CAMFT. We are in full agreement that the BBS Policy & Advocacy Committee should reverse its vote and instead recommend to the full Board the adoption of the following language:

§4980.43 (h) Postdegree (*pre-registration*) hours of experience shall be credited toward licensure ~~so long as if all of the following apply:~~ 1. The *registration* applicant applies for the *associate* registration within 90 days of the granting of the qualifying master's or doctoral degree; 2. *the experience is obtained at a workplace that, prior to the registration applicant gaining direct service/client experience, requires completed Live Scan fingerprinting;* and, 3. the board subsequently grants the *associate* registration and ~~is thereafter granted the intern registration by the board.~~

The American Association for Marriage and Family Therapy is the national professional association for the field of marriage and family therapy. We represent the professional interests of more than 50,000 marriage and family therapists throughout the United States, Canada and abroad. Our association facilitates research, theory development and education. We develop standards for graduate education and training, clinical supervision, professional ethics and the clinical practice of marriage and family therapy.

If you would like to discuss the bill further, please do not hesitate to call. It would be a pleasure to speak with you.

Sincerely,

Olivia Loewy

Olivia Loewy, Ph.D.
Executive Director
AAMFT-CA Division



**Orange County
California Association of Marriage and Family Therapists**

January 24, 2018

To: BBS Policy and Advocacy Committee

RE: AB 93 and 90 Day Rule

Dear Chair Wong and Committee Members:

On behalf of the 885 members of the Orange County Chapter of the California Association of Marriage and Family Therapists, we are writing to express extreme concern about the Board of Behavioral Sciences Policy and Advocacy Committee's October 2017 vote to remove post-graduate MFT's ability to gain hours as they await registration (otherwise known as the 90 day rule).

Business & Professions Code section 4980.43(h), which allows post-graduate MFTs to gain hours while they await registration, has been part of the MFT, and now LPCC, road to licensure for decades. To date, little to no evidence has been brought forward by the DCA showing any consumer harm allocated from post-graduate's ability to gain hours. To remove post-graduate's ability to gain these hours for no reasonable purpose will result in numerous unintended consequences including a decline in continuity of care, client abandonment and further pre-licensure exploitation. In order to hold positions and provide continuity of care, it is likely that many pre-licensurees will continue seeing clients without hours or pay during the 90 day rule period. As cries for equality emanate from our nation, please consider the unintended perpetuation of prelicensure exploitation as a result of the 90 day rule.

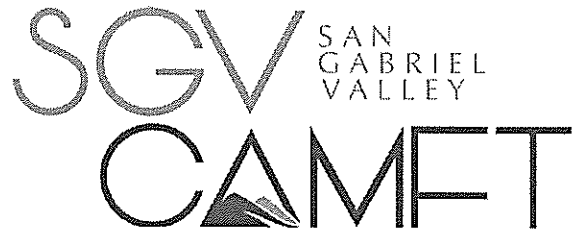
Accordingly, we ask that the Committee vote to reverse their recommendation to remove the 90 day rule, and 2) work with stakeholders to come to a reasonable and viable alternative. We are aware that CAMFT has forwarded numerous alternatives, and ask that the BBS engage in dialogue to mutually determine a way to protect the ability of most, if not all, post-graduates ability to continue gaining their hours as they await registration.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Carla Rather".

Carla Rather, LMFT
OC CAMFT President



1/24/18

To: BBS Policy and Advocacy Committee

RE: AB 93 and 90 Day Rule

Dear Chair Wong and Committee Members:

On behalf of the San Gabriel Valley Chapter of CAMFT, I am writing to express extreme concern about the Board of Behavioral Sciences Policy and Advocacy Committee's October 2017 vote to remove post-graduate MFT's ability to gain hours as they await registration (otherwise known as the 90 day rule).

Business & Professions Code section 4980.43(h), which allows post-graduate MFTs to gain hours while they await registration, has been part of the MFT, and now LPCC, road to licensure for decades. To date, little to no evidence has been brought forward by the BBS or DCA showing any consumer harm allocated from post-graduate's ability to gain hours. To remove post-graduate's ability to gain these hours for no reasonable purpose will result in numerous unintended consequences including a decline in continuity of care, client abandonment and further pre-licensure exploitation.

Accordingly, I ask that the Committee vote to 1) reverse their recommendation to remove the 90 day rule, and 2) work with stakeholders to come to a reasonable and viable alternative. We are aware that CAMFT has forwarded numerous alternatives, and ask that the BBS engage in dialogue to mutually determine a way to protect the ability of most, if not all, post-graduates' ability to continue gaining their hours as they await registration.

Thank you for your attention to this matter.

Sincerely,

Natasha Morisawa, LMFT

Board President, San Gabriel Valley Chapter CAMFT

SGVCAMFTPresident@gmail.com

The MFT Consortium of Orange County

January 20, 2018

To: BBS Policy and Advocacy Committee
RE: AB 93 and 90 Day Rule

Dear Chair Wong and Committee Members:

On behalf of the MFT Consortium of Orange County we are writing to express extreme concern about the Board of Behavioral Sciences Policy and Advocacy Committee's October 2017 vote to remove post-graduate MFT's ability to gain hours as they await registration (otherwise known as the 90 day rule).

Business & Professions Code section 4980.43(h), which allows post-graduate MFTs to gain hours while they await registration, has been part of the MFT, and now LPCC, road to licensure for decades. To date, little to no evidence has been brought forward by the BBS or DCA showing any consumer harm allocated from post-graduate's ability to gain hours. To remove post-graduate's ability to gain these hours for no reasonable purpose will result in numerous unintended consequences including a decline in continuity of care, client abandonment and further pre-licensure exploitation.

Accordingly, we ask that the Committee vote to reverse their recommendation to remove the 90 day rule, and 2) work with stakeholders to come to a reasonable and viable alternative. We are aware that CAMFT has forwarded numerous alternatives, and ask that the BBS engage in dialogue to mutually determine a way to protect the ability of most, if not all, post-graduates ability to continue gaining their hours as they await registration.

Thank you for your attention to this matter.

Sincerely,

Kathleen Wenger, M.A. LMFT, LPCC Co-chair
Manager, M.A. Professional Development and Clinical Training
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