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November 27, 2012

Board of Behavioral Sciences
1625 North Market Boulevard
Suite S-200
Sacramento, CA 95834
(Sent by e-mail to Kim Madsen)

Re: Proposed Revisions to Family Code Section 3111 and 3025.5

Dear BBS Board:

I am writing this letter as a concerned marriage and family therapist who is also a custody evaluator in private practice, a past member of the BBS board and former Chair, and currently an expert for the BBS reviewing complaints against MFTs and LCSWs concerning custody evaluations. Please see my curriculum vitae for further background.

I believe that the changes being proposed to Family Code Sections 3111 and 3025.5 are essential for the board to meet its responsibility for reviewing complaints against licensees of the BBS and determining whether a licensed individual has violated either ethics or the law to the extent of an extreme departure from the standards of practice and/or has committed gross negligence. These are specific tasks given to the BBS in order to protect citizens of the state of California.

When I receive a case, I review all of the documents submitted to me which include the complaint and the therapist-evaluator's response. I then review the various laws of the state, Business and Professions Code, Rules of Court that may apply in the particular situation, and also the various ethics codes and guidelines which may apply to custody evaluations. Using these laws, codes, and guidelines, I then determine whether there was an extreme departure from the standard of practice and/or gross negligence while reviewing each allegation. I then formalize my findings in a report and send it to the BBS. In my experience over the past several years, there were some allegations that did not have merit and others that were very serious.

A few examples of what I have found to be serious departures from the standard of practice and/or gross negligence are:

1. An evaluator who misreported what more than five professionals had said in interviews concerning one of the parents. The degree and consistency of the misstatements were to such a degree that I opined that there was extreme bias.

2. An evaluator did not give a clear description of the procedures she was going to use in her evaluation and listed her fees with a cap of 40 hours. She then billed the parent for 114 hours without having sent any information about the changes in her procedures or the reasons for almost tripling the hours.
3. An evaluator, in the course of the evaluation, established himself as the monitor for the father's visits, thus creating a dual relationship with the parent. The father felt that he had no recourse because the evaluator was going to heavily influence the Court's decision about how much time he would eventually spend with his children. This was a clear conflict of interest in the context of a dual relationship that had a strong potential of affecting both the evaluator's conclusions and father's behavior in the course of the evaluation. I further concluded that in fact it did affect the evaluator's attitude towards father. In addition, while the evaluator did not charge the full hourly evaluation fee for the monitoring, he charged a fee that was more than double what the father would have paid had he gone to a professional monitor. In the end, the evaluator billed 35 hours for parental supervision. This was clearly an extreme departure from the standards of practice.

In order to make a full determination when allegations about a custody evaluator arise, it is important that the BBS have access to the custody evaluation. This is not only to possibly pursue the issues raised by the allegations, but also to allow the evaluator to defend him- or herself by submitting the evaluation. Currently, under Family Code Sections 3111 and 3025.5, the report is the property of the Court and cannot be released to the BBS without the Court's permission. Such limitations make it impossible at times to evaluate a citizen's allegations against a licensed therapist. For a parent or the evaluator to submit the evaluation without the Court's permission places that parent or evaluator in peril of Court sanctions. The changes being recommended by the BBS to Family Codes Sections 3111 and 3025.5 will allow the BBS to have a full review of the allegations.

I have spoken to many groups about these issues, and often a complaint arises that such a review is not the task of the BBS but only of the Courts. I strongly disagree. During the course of a trial, a parent may argue about the limitations of an evaluation and even the possibility that there was bias or misbehavior on the part of the evaluator. However, when this occurs, it goes to the weight the Court may give the report or a particular recommendation. It is not the role of the Family Court to independently review other allegations the parent may have about the report. Even though each county court is supposed to have in place a process for reviewing complaints, it is not done with the thoroughness or professional concerns that the BBS has nor do they have the same capacity as the BBS to do so. Furthermore, it is my understanding that the only recourse the Court has would be to stop using that particular therapist within that jurisdiction.

In conclusion, I am firmly convinced that it is an important role of the BBS to review allegations against licensees who serve as custody evaluators and to determine the seriousness and possible consequences of each allegation. In order to be able to complete this task and best protect the consumer and the licensee, it is essential that the BBS have access to the custody report. The changes being proposed will help this continue to be a fair process.

I apologize to the BBS that I cannot attend personally to give this testimony. However, I had back surgery on November 1, 2012, and while I am back to work part time, I do not have the physical ability to get to your meeting at this time. Please feel free to contact me with any questions.

Sincerely,

Ian Russ, Ph.D.
Marriage and Family Therapist