

Texas State Board of Examiners of Marriage and Family Therapists

BOARD MEETING BY VIDEOCONFERENCE

Friday, July 24, 2020, 8:30 a.m.
333 Guadalupe, Suite 2-450E
Austin, Texas 78701

Due to Governor Greg Abbott's March 13, 2020, proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020, suspension of certain provisions of the Texas Open Meetings Act, this Board meeting will be held by videoconference.

Members of the public will have access and a means to participate in this Board meeting with two-way communication by entering the URL address <https://zoom.us/j/98334651123> or by calling 346-248-7799 and entering the meeting ID 983 3465 1123. An electronic copy of the agenda will be available at https://dshs.texas.gov/mft/mft_meetings.shtm before the meeting.

FOR PUBLIC PARTICIPANTS: After the Board meeting convenes, staff will ask you identify yourself by name and state whether you would like to provide public comment. When the Board reaches the agenda item for public comment, staff will recognize you by name and give you an opportunity to speak. All public comments will be limited to three minutes. In the event Governor Greg Abbott's March 13, 2020, disaster declaration is not renewed or expires prior to July 24, 2020, then pursuant to Texas Government Code, §551.127, notice is hereby given that one or more board members may appear at the scheduled meeting via videoconference, but the presiding officer will be physically present at the above-noticed location. This location will be open to the public only in the event the March 13 disaster declaration is not renewed.

Please note that the Board may request input during the meeting from any interested parties or members of the public during its discussion of an agenda item.

If you are planning to attend this meeting and need auxiliary aids, services or materials in an alternate format, please contact the Board at least 5 working days before the meeting date. Phone: (512) 305-7700, FAX: (512) 305-7701, E-MAIL: Executive.Director@tsbep.texas.gov, TTY/RELAY TEXAS: 711 or 1-800-RELAY TX.

The Board may go into Executive Session to deliberate any item listed on this agenda if authorized under Texas Open Meetings Act, Government Code, Ch. 551.

The Board may discuss and take action concerning any matter on the agenda and in a different order from what it appears herein.

AGENDA

(Smothermon, Bateman, Francis, Husband-Thompson, Merchant, Miller, Scoma, Stoglin)

1. Call meeting to order.
2. Approval of minutes of the April 17, 2020, telephonic Board meeting.
3. Discussion and possible action to elect a Vice-Chair of the Texas State Board of Examiners of Marriage and Family Therapists pursuant to 22 Texas Administrative Code, §801.11, The Board.
4. Discussion and possible action to elect a professional member delegate to the Texas Behavioral Health Executive Council per 3 Texas Occupations Code, §507.051, if Chair Smothermon, who serves as the current delegate, is replaced on the board by new governor appointee per 3 Texas Occupations Code, §502.051.
5. Discussion and possible action to elect a board member delegate to the Texas Behavioral Health Executive Council Incubation Task Force per House Bill 1501 §4.006, 86th Texas Legislature, 2019 Regular Session, if Chair Smothermon, who serves as the current delegate is replaced on the board by new governor appointee per 3 Texas Occupations Code, §502.051.

6. Discussion and possible action regarding selection of three board members to serve on Disciplinary Review Panel to implement Texas Behavioral Health Executive Council rules in 22 Texas Administrative Code, §884.11(c), concerning Informal Conferences.
7. Discussion and possible action regarding the Board's complaint and enforcement functions:
 - A. Report from staff and discussion and possible action on status of open complaints.
 - B. Report from staff and discussion and possible action on compliance activities.
 - C. Report from staff and discussion and possible action on Complaint Review Team activities.
 - D. Discussion and possible action regarding complaint trends.
 - E. Update, discussion and possible action on complaints awaiting informal settlement conference, 1062-17-0057 DM and 1062-18-0007 DF, or State Office of Administrative Hearings (SOAH) hearings 1062-19-0006 ED, 1062-19-0032 LA, and 1062-19-0060 TN.
8. Discussion and possible action regarding application, licensure and supervision issues:
 - A. Discussion and possible action concerning pending applications for licensure or examination: Ariel Davis-Holloway, Katie Donihoo, Carter Ebbesen, and Matthew Hamrick.
 - B. Discussion and possible action regarding update to applications and forms.
 - C. Discussion and possible action concerning licensing matrices.
9. Discussion and possible action regarding jurisprudence exam:
 - A. Discussion and possible action concerning the quarterly summary from the Texas State Board of Examiners of Marriage and Family Therapists' Jurisprudence Exam vendor.
 - B. Discussion and possible action related to changes in the board's Jurisprudence Exam.
10. Discussion and possible action regarding regarding rules:
 - A. Discussion and possible action regarding recommendations to the Texas Behavioral Health Executive Council for rule change to 22 Texas Administrative Code, §801.44(c) regarding Relationships with Clients.
 - B. Discussion and possible action regarding recommendations to the Texas Behavioral Health Executive Council for rule change to 22 Texas Administrative Code, §801.143 regarding AAMFT supervisor candidate's eligibility for supervisor status.
 - C. Discussion and possible action regarding Title 22 of the Texas Administrative Code, new §801.206, concerning Licensing of Persons with Criminal Convictions, which was recommended by majority board vote on April 17, 2020 and rejected for publication of proposed rules by the Texas Behavioral Health Executive Council on June 16, 2020.
 - D. Discussion and possible action regarding Title 22 of the Texas Administrative Code, new §801.305 Schedule of Sanctions, which was recommended by majority board vote on April 17, 2020 and endorsed for publication of proposed rules by the Texas Behavioral Health Executive Council on June 16, 2020.
11. Discussion and possible final action on agreed orders, default orders, and final orders in enforcement cases: 1062-16-0047 JF and 1062-17-0016 RH.
12. Discussion and possible action regarding proposal to convene Fall 2020 board meetings at University of Mary Hardin-Baylor in Belton, Texas or send a delegate to the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB) 34th Annual Meeting of State Delegates to be held September 22 and 23, 2020 in Seattle, Washington.
13. Discussion and possible action concerning board's strategies for communication to stakeholders and stakeholder engagement.
14. Discussion and possible action regarding recommendations from Council on Licensure, Enforcement & Regulation (CLEAR).
15. Report from the Board Chair concerning current challenges and accomplishments; lawsuits; interaction with stakeholders, state officials, and staff; committee appointments and functions;

workload of board members; conferences; and general information regarding the routine functioning of the board.

16. Report from the Interim Executive Director concerning program operations; customer service accomplishments, inquiries, and challenges; current and/or historical licensee statistics; media, legislative, and stakeholder contacts and concerns; workload processing; special projects assigned to interim executive director; and general information regarding the routine functioning of the licensure program.
17. Management report from the Professional Licensing and Certification Unit Manager, concerning unit organization and staffing; program costs and revenue; current operational initiatives; customer service accomplishments and challenges; workload processing and statistical information; status of rulemaking within the unit; legislative and media contacts and tracking; and general information regarding routine unit functions.
18. Executive Council report from the Executive Director, concerning launch and operations of Texas Behavioral Health Executive Council.
19. Discussion and possible action regarding future priorities and activities of the board.
20. Public Comment.
21. Executive Session: Consultation with board attorney pursuant to Government Code §551.071 regarding pending or contemplated litigation and/or settlement offers.
22. Discussion and possible action regarding pending or contemplated litigation or settlement offers.
23. Announcements and comments not requiring committee action, such as statements regarding conferences and other recent or upcoming events.
24. Adjournment.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Action may be taken on any of the above items. The board reserves the right to go into executive session on any agenda item as authorized by Texas Government Code, Chapter 551. Agenda items may be taken in any order at the discretion of the Chair. An individual who wishes to speak on an issue that falls under the board's jurisdiction shall be heard during the Public Comment agenda item. The Chair may establish and announce limitations on speakers, including time limits and when speakers may address the board. The limitations, if any, may vary from meeting to meeting.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

CONTACT: Sarah Faszholz, Interim Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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Additional Information

Agenda Item 10A. Discussion and possible action regarding recommendations to the Texas Behavioral Health Executive Council for rule change to 22 Texas Administrative Code, §801.44(c) regarding Relationships with Clients.

§801.44 Relationships with Clients

(c) A licensee must obtain an appropriate consent for treatment before providing professional services. A licensee must make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian before providing services to a minor, such as in Texas Family Code, Chapter 32 (relating to Consent to Treatment of Child by Non-Parent or Child), a licensee must follow the protocol set forth in such federal or state statutes.

Agenda Item 10B. Discussion and possible action regarding recommendations to the Texas Behavioral Health Executive Council for rule change to 22 Texas Administrative Code, §801.143 regarding AAMFT supervisor candidate's eligibility for supervisor status.

§801.143 Supervisor Requirements

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

- (1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and
 - (A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or
 - (B) a 40-hour continuing education course in clinical supervision; or
- (2) designation as an approved supervisor [~~or supervisor candidate~~] by the American Association for Marriage and Family Therapy (AAMFT).

Agenda Item 10C. Discussion and possible action regarding Title 22 of the Texas Administrative Code, new §801.206, concerning Licensing of Persons with Criminal Convictions, which was recommended by majority board vote on April 17, 2020 and rejected for publication of proposed rules by the Texas Behavioral Health Executive Council on June 16, 2020.

Why does this rule need to be proposed?

Sec. 502.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(A) the qualifications necessary to obtain a license, including rules limiting an applicant's eligibility for a license based on the applicant's criminal history;

What statutes apply to rulemaking in this area?

Sec. 507.156. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The executive council shall adopt rules and guidelines as necessary to comply with Chapter 53.

Why does Chapter 53 control other provisions of the Occupations Code?¹

Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR CRIMINAL CONVICTIONS.

(b) Notwithstanding any law other than Subsection (a)² and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:

- (1) the license for which the applicant applied;

What guidance or requirements has the Texas Legislature provided when proposing such a rule?

Sec. 53.021. AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE.

(a) Subject to Section 53.0231, a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
- (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or
- (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

How should a Texas agency determine whether an offense directly relates to the duties or responsibilities of the licensed occupation?

Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider each of the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Has the Texas Legislature provided any other guidance or instruction for these statutes?

Sec. 53.003. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF SUBCHAPTER.

(a) It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has:

- (1) been convicted of an offense; and
- (2) discharged the sentence for the offense.

¹ H.B. 1342, effective September 1, 2019, amended or created Sections 53.003, 53.021, 53.0211, and 53.022.

² Subsection (a) does not apply.

(b) This chapter shall be liberally construed to carry out the intent of the legislature.

Has the Texas Governor provided any guidance or instruction on this subject matter?

Yes, an October 8, 2019, letter from Gov. Abbott stated the following:

“executive branch agencies should remove barriers to licenses for people with criminal records where appropriate, including by:

- Rather than relying on blanket exclusions for people with criminal records, publishing lists of specific criminal offenses that disqualify applicants from obtaining or maintaining an occupational license, or at least limiting the exclusion to only those offenses that directly relate to the duties and responsibilities of the occupation”

Taking all of this into consideration, what is recommended for the Board to propose?

801.206. Licensing of Persons with Criminal Convictions.

(a) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

- (1) knowingly or intentionally practicing marriage and family therapy without a license;
- (2) failing to report child abuse or neglect;
- (3) a criminal act involving deceptive business practices;
- (4) the offense of assault, sexual assault, or a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (5) the felony offense of fraud;
- (6) offenses listed in Article 42A.054 of the Code of Criminal Procedure, which by way of example includes Section 19.02 (Murder) and Section 20.04 (Aggravated Kidnapping) of the Penal Code;
- (7) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (8) any criminal violation of the Licensed Marriage and Family Therapists Act;
- (9) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (10) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;
- (11) any criminal violation of Sections 32.42 (Deceptive Business Practices), 32.43 (Commercial Bribery), 32.45 (Misapplication of Fiduciary Property), 32.46 (Securing Execution of Document by Deception), 32.50 (Deceptive Preparation and Marketing of Academic Product), 32.51 (Fraudulent Use or Possession of Identifying Information), 32.52 (Fraudulent, Substandard, or Fictitious Degree), or 32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;
- (12) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;
- (13) any offense involving the failure to report abuse;
- (14) any criminal violation of Section 38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;

- (15) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (16) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of marriage and family therapy;
- (17) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;
- (18) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;
- (19) any criminal violation of Section 21.08 (indecent exposure) of the Penal Code;
- (20) any criminal violation of Section 22.02 (aggravated assault) of the Penal Code;
- (21) any criminal violation of Section 25.04 (enticing a child) of the Penal Code;
- (22) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;
- (23) any criminal violation of Section 20.03 (kidnapping) of the Penal Code;
- (24) any criminal violation of Chapter 19 (criminal homicide) of the Penal Code;
- (25) any felony theft offense, as defined by Chapter 31 (theft) of the Penal Code;
- (26) any criminal violation of Section 22.04 (injury to a child elderly individual, or disable individual) of the Penal Code;
- (27) multiple drug or alcohol related convictions evidencing possible addiction;
- (28) any criminal violation of Chapter 71 (organized crime) of the Penal Code;
- (29) any criminal violation of Section 30.02 (burglary) of the Penal Code; and
- (30) any attempt, solicitation, or conspiracy to commit an offense listed herein.

Agenda Item 10D. Discussion and possible action regarding Title 22 of the Texas Administrative Code, new §801.305 Schedule of Sanctions, which was recommended by majority board vote on April 17, 2020 and endorsed for publication of proposed rules by the Texas Behavioral Health Executive Council on June 16, 2020.

§801.305 Schedule of Sanctions

The following standard sanctions shall apply to violations of Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure 22 TAC §801.305

Rule	Action
801.43(b) Report alleged violations or misrepresentation	<u>Level 5 Reprimand</u> <u>Warning Letter</u>
801.43(c) Identify license, status, or other restriction	<u>Level 5 Reprimand</u> <u>Warning Letter</u>
801.43(d) Make false statement	Level 5 Reprimand
801.43(g) Make reasonable effort to prevent other’s false statement	<u>Level 5 Reprimand</u> <u>Warning Letter</u>
801.44(a) Provide services only in the context of a professional relationship	Level 5 Reprimand
801.44(b) Fail to provide written information	Level 5 Reprimand
801.44(c) Fail to obtain appropriate consent or custody order	Level 5 Reprimand
801.44(d) Fail to provide written information regarding confidentiality	Level 5 Reprimand

801.44(e) Refer for pay	Level 3 <u>Suspension</u> Administrative Penalty
801.44(f) Exploit trust	Level 4 Probated Suspension
801.44(g) Act to meet personal needs	Level 4 Probated Suspension
801.44(h) Provide services to family, friends, educational or business associates, or others	Level 5 Reprimand
801.44(i) Maintain professional boundaries with clients and former clients	Level 5 Reprimand
801.44(k) Protect individual from harm resulting from group interaction	<u>Level 5 Reprimand</u> Warning Letter
801.44(l) Avoid non-therapeutic relationship with clients and former clients	<u>Level 5 Reprimand</u> Conditional Letter of Agreement
801.44(m) Bill only for services actually rendered or as agreed in writing	Level 5 Reprimand
801.44(n) End professional relationship when client is not benefitting	Level 4 Probated Suspension
801.44(n) Provide written referral and facilitate transfer to appropriate care	<u>Level 5 Reprimand</u> Conditional Letter of Agreement
801.44(o) Technology-assisted services, provide license number and council's contact information	<u>Level 5 Reprimand</u> Warning Letter
801.44(p) Provided services within competency and professional standards	Level 4 Probated Suspension
801.44(q) Base services on client assessment, evaluation, or diagnosis	Level 4 Probated Suspension
801.44(s) Promote or encourage illegal use of alcohol or drugs	Level 1 Revocation
801.44(t) Provide services to client served by another	Level 5 Reprimand
801.44(u) Aid or abet or fail to report unlicensed practice	Level 2/3 Suspension
801.44(v) Enter a non-professional relationship with a client's family member or any person who has a personal or professional relationship with a client	Level 5 Reprimand
801.44(w) Provide services while impaired	Level 2/3 Suspension
801.45(b) Sexual contact with a protected person	Level 1 Revocation
801.45(c) Provide services to a former sexual partner	Level 1 Revocation
801.45(d) Therapeutic deception or sexual exploitation	Level 1 Revocation
801.46(a) Inform clients about testing as part of treatment	<u>Level 5 Reprimand</u> Warning Letter
801.46(c) Administer and interpret test with appropriate training, experience	Level 4 Probated Suspension
801.47 Use alcohol or drugs, adversely affecting provision of services	Level 2/3 Suspension
801.48(b) Disclose communication, record, or identity of a client	Level 4 Probated Suspension
801.48(c) Comply with statutes or rules, concerning confidential information	Level 4 Probated Suspension
801.48(d) Report or release information as required by statute	Level 4 Probated Suspension
801.48(d)(4) Report sexual misconduct per TCPRC 81.006	Level 5 Reprimand
801.48(e) Keep accurate records	<u>Level 5 Reprimand</u> Conditional Letter of Agreement
801.48(g) Maintain confidentiality in how client records are stored or disposed	Level 4 Probated Suspension
801.48(h) Plan for custody of records	Level 5 Reprimand
801.50 Appropriate use of assumed name	<u>Level 5 Reprimand</u> Warning Letter
801.53(a) Advertise with false information	Level 5 Reprimand
801.53(d) Advertisement must state license title	<u>Level 5 Reprimand</u> Warning Letter
801.53(e) Ad with confusing membership or certification outside field of therapy	<u>Level 5 Reprimand</u> Warning Letter
801.53(f) Advertisement must state provisional license	<u>Level 5 Reprimand</u> Warning Letter
801.53(g) Reasonable steps to correct or minimize misuse of license certificate or misrepresentation of licensee's services	<u>Level 5 Reprimand</u> Warning Letter
801.55(e) Dual relationship: Provide MFT and parenting coordination services	Level 4 Probated Suspension

801.56(d) Dual relationship: Provide MFT and parenting facilitation services	Level 4 Probated Suspension
801.57(d) Dual relationship: Provide any service and custody evaluation	Level 4 Probated Suspension
801.57(e) Offer expert opinion related to child custody	Level 2/3 Suspension
801.57(f) Failure to inform client and proper informed consent	Level 5 Reprimand
801.57(g) Associate must not conduct child custody or adoption evaluations	Level 4 Probated Suspension
801.58(d) Required training for technology-assisted services	Level 5 Reprimand
801.58(h) Failure to inform client and proper informed consent	Level 5 Reprimand
801.58(i) Meet legal requirements of health information privacy and security	Level 4 Probated Suspension
801.143(b) Supervisor may not be employed by supervisee	Level 5 Reprimand
801.143(c) Supervisor may not be related to supervisee	Level 5 Reprimand
801.143(d) Supervisor must timely process and maintain Associate's file	<u>Level 5 Reprimand</u> Conditional Letter of Agreement
801.143(e) Supervisor must submit timely written notice when supervision ends	<u>Level 5 Reprimand</u> Warning Letter
801.143(f)(1) Supervisor must ensure Associate adheres to all laws and rules	<u>Level 5 Reprimand</u> Warning Letter
801.143(f)(2) Supervisor/Associate dual relationship	Level 5 Reprimand
801.143(f)(4) Supervisor must implement Associate's written remediation plan	Level 5 Reprimand
801.143(f)(5) Supervisor must timely submit accurate experience documents	Level 5 Reprimand
801.143(i) Supervisor fails to renew and continues to represent as a supervisor	Level 5 Reprimand
801.143(j) Supervisor with status other than "current, active" or after supervisor status is removed and continues to supervise	Level 4 Probated Suspension
801.143(k) Disciplined supervisor must inform all Associates of council action, refund fees, and assist Associates to find alternate supervision	Level 5 Reprimand
801.143(l) Supervise without being currently approved supervisor	Level 4 Probated Suspension

LMFT Board policy regarding the use of Warning Letters and Conditional Letters of Agreement

Under rule 22 Tex. Admin. Code §801.303 a complaint may be resolved by issuance of a warning letter or a conditional letter of agreement. The LMFT Board issues the following guidelines and recommendations to informal conferences, per 22 Tex. Admin. Code §884.11, consisting of either BHEC staff or disciplinary review panels consisting of Board Members and BHEC staff. If an informal conference finds a violation occurred and the recommended sanction is a Level 5 Reprimand, the LMFT Board encourages the informal conference members to consider all the mitigating factors so that in the interest of justice, equity, and public protection a Level 5 Reprimand sanction may be reduced to either a warning letter or conditional letter of agreement. For example, if the Respondent has no prior disciplinary history, the Respondent has taken corrective action and has alleviated any possible harm to the complainant, and the Respondent has already implemented measures to ensure any future harm of a similar nature does not occur again; then the LMFT Board recommends the informal conference members consider utilizing either a warning letter or a conditional letter of agreement to resolve the matter. The decision to recommend reducing a sanction to a warning letter or a conditional letter of agreement is best left to the informal conference members reviewing a case, therefore informal conference members are not required to reduce any sanction if they believe it is not warranted in a particular case.