

MEETING MINUTES
Board of Mental Health Practice
May 4, 2018

These minutes were approved by
the Board on July 13, 2018.

1. ROLL CALL

The meeting of the Board of Mental Health Practice was called to order by the Chair, Susan Feyen, at 9:04 a.m. in Lower Level Room B, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Open Meetings Law.

Members Present:	Dale Battleson Chante Chambers Susan Feyen L. Janeen Gill Thomas Maxson Terrance Moore Sarita Ruma	Member Member Chair Member Member Vice-Chair Secretary
Members Absent:	Cassandra Dittmer William Gaughan Tamara Kenning	Member Member Member
Others Present:	Kris Chiles Nancy Herdman Lisa Anderson Jeff Newman	Program Manager, Licensure Unit Health Licensing Coordinator, Licensure Unit Assistant Attorney General Investigator

A quorum was present and the meeting convened.

2. ADOPTION OF AGENDA

MOTION: Ruma moved, seconded by Battleson, to adopt the agenda. A voice vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Absent: Dittmer, Gaughan, Kenning (3). Abstain: None (0). Motion carried.

3. APPROVAL OF MINUTES (3-23-18)

MOTION: Ruma moved, seconded by Battleson, to approve the minutes of 3-23-18. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Absent: Dittmer, Gaughan, Kenning (3). Abstain: None (0). Motion carried.

4. INVESTIGATIVE REPORTS & OTHER CONFIDENTIAL INFORMATION – CLOSED SESSION

MOTION: Ruma moved, seconded by Battleson, to enter into closed session at 9:07 a.m. to hear discussions of an investigative/confidential nature, and for the prevention of needless injury to the reputation of the individuals. Feyen repeated the motion purpose. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Absent: Dittmer, Gaughan, Kenning (3). Motion carried.

9:16 a.m. - Gill departed meeting (conflict)
9:40 a.m. - Gill entered meeting
10:09 a.m. - Maxson departed meeting (conflict)
10:14 a.m. - Maxson entered meeting
10:24 a.m. - Battleson departed meeting (conflict)
10:26 a.m. - Break
10:42 a.m. - Meeting resumed
Battleson entered meeting
Newman departed meeting
10:59 a.m. - Battleson departed meeting (conflict)
Anderson departed meeting
11:01 a.m. - Teresa Hampton, Department attorney, entered meeting
11:14 a.m. - Battleson entered meeting

MOTION: Battleson moved, seconded by Chambers, to enter into open session at 11:21 a.m. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma, (7). Voting nay: None (0). Absent: Dittmer, Gaughan, Kenning (3). Motion carried.

11:21 a.m. - Anderson entered meeting
2 public persons entered meeting

5. REVIEW, RECOMMENDATIONS, AND REPORT OUT

- Applications, Mail Ballot Summary Report and Reinstatements

Nora Treat – MSW Reinstatement

MOTION: Ruma moved, seconded by Chambers, to recommend reinstatement of the certificate. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Abstain: None (0). Absent: Dittmer, Gaughan, Kenning (3). Motion carried.

Rachel Shum McAlpin whose LIMHP, LMHP, CPC and Supervised MFT credentials are currently suspended submitted a letter asking that her credentials be placed on inactive status.

Rachel Shum McAlpin - LIMHP, LMHP, CPC and Supervised MFT Reinstatement from Discipline (Suspension)

MOTION: Gill moved, seconded by Moore, to deny reinstatement from discipline to inactive status based on not enough new sufficient information to warrant a change in status. A roll call vote was taken. Voting aye: Chambers, Feyen, Gill, Maxson, Moore, Ruma (6). Voting nay: None (0). Abstain: Battleson (1). Absent: Dittmer, Gaughan, Kenning (3). Motion carried.

Heather Jackson – LIMHP, LMHP and CPC Reinstatement from Discipline (Modification of Probation Terms and Conditions)

The Board re-discussed Heather Jackson's request to have the supervision lifted.

MOTION: Moore moved, seconded by Maxson, to reaffirm the denial of 4-5-18. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Abstain: None (0). Absent: Gaughan, Kenning, Ruma (3). Motion carried.

6. REGULATIONS: REVIEW, DISCUSSION, AND SUGGESTED CHANGES TO 172 NAC 94

Feyen reminded the members she has been meeting with representatives from the Board of Psychology to develop a similar definition for major mental disorder for both boards. She provided the Board with the current definition of major mental disorder and a draft developed with input from Battleson and Maxson. Comments regarding the draft: 1) Maxson had concerns about number 5 under symptoms as he did not know what it meant. 2) Moore suggested that anxiety or anxiety disorders also be in the last paragraph or take out the whole paragraph as there was no diagnostic category that could not be a major mental disorder. Moore will provide Feyen with a re-write of the last paragraph. 3) Hampton suggested maybe the first paragraph was enough and the symptoms were just another definition.

Feyen read the Federal definition of serious mental disorder and will provide that to the Board members. After Feyen receives the additional information from Moore, she will then meet again with the representatives from the Board of Psychology to discuss a definition both boards can agree on.

As far as the referral section of the regulations, Feyen reported that a work group had not been able to meet yet but that Dr. Williams still planned to move forward with a work group.

Chiles provided an overview of the new regulation process and that Department legal staff will now be drafting regulations.

12:04 p.m. - 1 public person entered the meeting
12:07 p.m. - Break
12:19 p.m. - Meeting resumed
2 public persons departed meeting
4 public persons entered meeting

7. MEDICAID REIMBURSING APPLIED BEHAVIORAL ANALYSTS – FUNCTIONAL ASSESSMENTS

Chiles reported she had sent the Director's report of the Applied Behavioral Analysts Credential Review (407 process) and other related documents to the Board. She read the Credential Review process information and review criteria from the DHHS website <http://dhhs.ne.gov/licensure/pages/credentialing-review.aspx>.

The Credentialing Review (407) Program was created to review proposals for changes in scope of practice or for new credentialing on the part of representatives of Nebraska health professions. Proposals are known as "applications" and the persons or groups who submit proposals for review are referred to as "applicants" or "applicant groups". Proposals are evaluated against public health related criteria to determine whether proposals would benefit the public health and welfare by the bodies that conduct the review.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

1. The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health
2. The review of the State Board of Health
3. The review of the Director of the Division of Public Health

Maxson commented the Board of Health recommendation was clear and then there was a statute that contradicts it. Hampton responded the statute relates to payment and not scope of practice.

Feyen stated the concern was that Applied Behavioral Analysts (ABAs) were practicing out of scope because they were practicing without a mental health practice license. She commented that she had met with the Director of the ABA program at the Med Center and he had provided information on their educational program. She said they discussed that ABA does spill over into mental health practice. She said they also discussed that ABAs would come forward with a plan. Feyen also reported there was a draft Medicaid document (403 NAC) where they took out ABAs as eligible to do functional assessments.

Feyen asked if any of the public members in attendance would like to speak. Johanna Taylor of the Nebraska Association for Behavior Analysis said they were concerned. The Association sent out a survey that 77 individuals completed and 52 of them were not Mental Health Practitioners or otherwise licensed. In terms of how many clients would be affected, it was estimated an average of 1000 across Nebraska. Taylor commented some coursework did cross over but the majority did not. She stated that if ABAs had to be LMHPs, they would have to do a lot of supervision hours. She also commented that ABAs look more at the environment.

Terry Newton, an ABA, said her organization employs ABAs and a LIMHP but they do not cross over when doing each service. She stated the scope was very different. She commented that if an ABA needed to be a LMHP, they would never use the LMHP.

Another public person stated she could have been a LMHP with a course but decided not to do that because the scope of practice was different.

Feyen commented that behavioral assessment is in the mental health practice scope of practice. A public person commented that mental health practitioners and psychologists look at behavior as an indication of diagnosis but ABAs look at how environment affects their behavior. She stated their perspectives are different. Gill commented that she considers environment when assessing a client.

Feyen commented that the Board was complaint driven and does not pursue individuals without a complaint.

Chiles commented she would like to collect the Board's input and share with the Department who will reviewing this issue. Feyen commented she believed functional assessment was within mental health practice. Moore stated he thought ABAs should be licensed. Battleson stated ABAs should be licensed. Ruma commented she wanted what was in the best interest of the public.

8. UPDATES AND REPORTS

a. 2018 Legislative Update

The following bills related to mental health passed:

LB 1034 –

MHP: Revises the definition of an approved MHP educational program to a program of education and training accredited by:

- (a) The Commission on Accreditation for Marriage and Family Therapy Education;
- (b) The Council for Accreditation of Counseling and Related Educational Programs;
- (c) The Council on Rehabilitation Education;
- (d) The Council on Social Work Education; or
- (e) The American Psychology Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology.

It also states "A person shall be qualified to be a licensed mental health practitioner if he or she: (1) Has received a master's or doctorate degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board."

LIMHP: Removed the time period that hours must have been earned (removes the not less than 2 nor more than 5 years)

MHP/LMHP: Creates a 2nd reciprocity option as follows: has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination.

PLMHP: Removed the requirement to register a supervisor as part of the application.

This bill becomes effective 7-19-18.

LB 299 – Adds a committee of the Legislature that will review regulations. Allows an individual to petition a board to review their convictions prior to making an application for a license. LB 299 is effective 7-1-19.

b. AASCB / AMFTRB / ASWB / Citizen Advocacy Center / Justice Behavioral Health Committee

AASCB – There was no report.

AMFTRB – Battleson reported he participated in an item writing workshop.

MOTION: Ruma moved, seconded by Feyen, to approve funding for Battleson to attend the AMFTRB meeting in September. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gill, Maxson, Moore, Ruma (7). Voting nay: None (0). Abstain: None (0). Absent: Dittmer, Gaughan, Kenning (3). Motion carried.

ASWB – Feyen reported she is going to the meeting in two weeks.

Citizen Advocacy Center – There was no report. The Board determined this organization will be removed from future agenda items.

Justice Behavioral Health Committee – Maxson reported the Committee meets in June.

c. DISCIPLINARY/NON-DISCIPLINARY REPORT/LICENSURE STATISTICS/ADMINISTRATIVE PENALTY FEES ASSESSED

Chiles circulated the disciplinary/non-disciplinary report.

Chiles reported the following examination results since March 1, 2018:

- NBCC NCE – 7 pass, 3 fail
- NBCC NCMHCE DM – 1 pass
- NBCC NCMHCE IG – 1 pass
- ASWB – 9 pass, 5 fail

Chiles distributed the following statistics:

- LIMHP – 1731
- LMHP – 2702
- CPC – 989
- MFT – 97
- MSW – 939
- CMSW – 33
- PLMHP – 988
- PL MSW – 263
- CSW - 626

Chiles distributed copies of the investigations review document and the investigations case resolution document

11. ADJOURNMENT

Feyen adjourned the meeting of the Board of Mental Health Practice at 1:44 p.m.

Respectfully Submitted,

Sarita Ruma, Secretary
Board of Mental Health Practice

Summarized by: Nancy Herdman, Health Licensing Coordinator, Licensure Unit