

**MINUTES OF THE MEETING OF THE
BOARD OF PSYCHOLOGY**
July 19, 2019

These minutes were
approved by the Board
on 9/20/2019

1. ROLL CALL and CALL MEETING TO ORDER

The meeting of the Board of Psychology was called to order by the Chair, Stephanie Bruhn, at 10:05 a.m. in Lower Level Conference Room B, State Office Building, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Open Meetings Law. The following members answered the roll call:

MEMBERS PRESENT

Karen Billingsley - Member
Stephanie Bruhn, PhD - Chair
Mary Fran Flood, PhD - Secretary
Mark Lukin, PhD - Member
Connie Petersen, PhD - Member
Stacy Waldron, PhD – Vice-Chair

MEMBERS ABSENT

Jennifer Dreibelbis – Member (entered meeting at 10:20 a.m.)

OTHERS PRESENT

Kris Chiles, Licensure Unit
Matt Gelvin, Licensure Unit
Anna Harrison, Licensure Unit
Mindy Lester, Assistant Attorney General
Jeromy Warner, Board of Health Member

A quorum was present and the meeting convened.

2. ADOPTION OF AGENDA

MOTION: Flood moved, seconded by Waldron, to adopt the agenda. A voice vote was taken. Voting aye: Billingsley, Bruhn, Flood, Lukin, Petersen, Waldron (6). Voting nay: None (0). Absent: Dreibelbis, (1). Motion carried.

3. APPROVAL OF MINUTES (5-17-19)

Approval of minutes were deferred to the Board's next meeting.

4. HEALTH CARE PROFESSIONALS DISCIPLINARY ACTIONS 2012 TO 2017

(presented by Matt Gelvin, Juan Ramirez and Anna Harrison)

Gelvin and Harrison (Ramirez was not available to attend the meeting) provided an overview of health care professional's disciplinary actions from 2012 and 2017. Notes of interest were:

- 1339 Health Care Professionals currently being monitored based on disciplinary action (56 MHP related)
- 41.7% of the 1339 are on probation, 15.1% suspended
- 240 professionals disciplined for 3 or more years (11 MHP related); most common violation substance use disorder (41.6%)
- 145 professionals disciplined for 5 or more years (3 MHP related)
- Average of 290 days (approximately 10 months) to first lapse (2012 to 2017 all professions)

Slides relating to the presentation are available upon request.

10:20 a.m. Dreibelbis, Member, entered the meeting
10:25 a.m. Larry Wiehn, Investigations Unit, entered the meeting
10:26 a.m. Carla Cue, Investigations Unit, entered the meeting
10:43 a.m. Gelvin and Harrison departed the meeting

5. INVESTIGATIVE REPORTS AND CONFIDENTIAL INFORMATION RELATING TO APPLICATIONS – CLOSED SESSION

MOTION: Flood moved, seconded by Waldron, to enter into closed session at 10:44 a.m. to hear discussions of an investigative/confidential nature, and for the prevention of needless injury to the reputation of the individuals. Bruhn repeated the motion purpose. A roll call vote was taken. Voting aye: Billingsley, Bruhn, Dreibelbis, Flood, Lukin, Petersen, Waldron (7). Voting nay: None (0). Motion carried.

10:47 a.m. Harrison entered the meeting
11:08 a.m. Meeting Break
11:28 a.m. Meeting resumed

MOTION: Flood moved, seconded by Billingsley, to enter into open session at 11:28 a.m. A roll call vote was taken. A roll call vote was taken. Voting aye: Billingsley, Bruhn, Dreibelbis, Flood, Lukin, Petersen, Waldron (7). Voting nay: None (0). Motion carried.

11:28 a.m. 3 members of the public entered the meeting
11:28 a.m. Darrell Klein, Deputy Director, Public Health; and Teresa Hampton, Attorney with Legal Services, entered the meeting

6. REVIEW AND RECOMMENDATIONS – OPEN SESSION

a. Applications, Education and Reinstatement Review and Recommendations

There were no applications for review.

7. REGULATION REVIEW AND DISCUSSION (172 NAC 155, 156, and 157)

172 NAC 156 and 157

Klein opened conversation by stating that we govern our work, including regulations, with the consent of the Governor. When there are philosophical differences, such as the language relating to the unprofessional conduct regulations (156 and 157), the Department's task is to work towards compromise in order to move the regulations forward. The Department is asking the Board to move forward the revised regulations as drafted (copy available upon request).

The draft includes adoption of the American Psychological Association (APA) Code of Ethics, with the exception of 3 specific citations, and the draft includes 2 new sections: discrimination and referral.

Discrimination Section: The discrimination classifications in the draft, are those set out by Federal law. There was discussion relating to the difference between marital status and familial status and whether the discrimination classifications needed to be stated in regulations given they are already in a statute. Hampton indicated the classifications are a combination of several Federal laws, therefore, not duplication of statute, but rather an affirmation that Nebraska regulations agree with policy. The Federal laws do not include sexual orientation and gender identity, which are both identified in the current APA Code of Ethics, and sexual orientation is included in current regulations (172 NAC 156 dated 1992).

Members expressed concern that failure to refer could be a standard of care issue. Flood advocated for adopting the APA Code of Conduct as a whole; the Board has spent 11+ years trying to move forward the regulations.

Additional Discussion Points:

- Members were asked if they can live with the draft when it goes against their National Code.
- The unprofessional conduct language is a tool for discipline, and as such, we must consider different positions, including freedom of religion.
- Even if specific words are not included, there are other statutes and regulations that may apply to a specific situation.
- The current regulations (even though outdated) are better than what the Department is proposing.
- The definition of 'sex' is in flux and there are very strong opinions on all sides.
- APA Code is what defines us (psychologists).
- There are constitutional issues relating to statute versus regulation.
- Regulations set minimum standards.
- If the regulations do not include sexual orientation and gender identity; this is NOT the message the Board wants to send to the public and licensees.
- The purpose of regulations are to protect the public.
- If LB 499 or 627 passes next year, then statute trumps regulation.

Members identified the following language found in the APA Code of Ethics that addresses if there is a conflict between the Code and Statutes:

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

Daniel Ullman, Psychologist and Prior Member of the Board, stated that the take away is the current protection for sexual orientation is being eliminated by not adopting ALL sections of the APA Code of Conduct.

Referral Section: Members stated they could support the referral language as drafted.

12:50 p.m. Klein and Ullman departed meeting
12:50 p.m. Meeting Break
1:01 p.m. Meeting resumed

172 NAC 155

The Board reviewed the following sections, questions from the Department, and recommended changes as listed below:

1. 002.03 Consultation: No monetary liability and no cause of action will arise against a qualified consultant. Department Question: DHHS cannot provide liability protection. Board recommended removing this sentence.
2. 002.05 Institution of Higher Education: This is repeat of 38-3106 therefore removed from the draft regulations.
3. 002.15 Supervision: Board recommended the following:
Provisional Psychology License and Psychological Assistant and Psychologist Associate: 1) remove the requirement for the supervisor to co-sign all documentation; 2) change requirement for supervisor to meet at least 1 continuous hour per week to meet at least twice for a minimum

- of 4 total hours per month; 3) add supervisor is responsible for documenting supervision meeting.
4. 010 Test Administration: Remove the listing of examples of excluded tests; the language of this section clearly states that 'an individual who is trained by and is under the supervision of a licensed psychologist may administer and score test which require NO independent professional judgment and NO interpretation of results.

Next Steps in the Regulation Process: The Next steps following the public hearing are:

1. Board's review of hearing comments (purpose is to recommend changes or no changes to the regulations based on the hearing comments)
2. Board of Health review
3. Director of Public Health review
4. Attorney General review
5. Governor review
6. File with Secretary of State
7. 5 days following filing with the Secretary of State, the regulations are effective

Note: If during any of the above reviews, the reviewer does not approve, the process may need to start over.

MOTION: Lukin moved, seconded by Dreibelbis, to advance 172 NAC 156 as drafted. A roll call vote was taken. Voting aye: None (0). Voting nay: Billingsley, Bruhn, Dreibelbis, Flood, Lukin, Petersen, Waldron (7). Motion failed.

1:25 p.m. Waldron and Billingsley departed meeting
1:33 p.m. Billingsley entered meeting

MOTION: Flood moved, seconded by Billingsley, to advance draft regulations 172 NAC 155, with suggested revisions, for public hearing approval. A roll call vote was taken. A roll call vote was taken. Voting aye: Billingsley, Bruhn, Dreibelbis, Flood, Lukin, Petersen (6). Voting nay: None (0). Absent: Waldron (1). Motion carried.

2:06 p.m. Hampton departed the meeting

8. NEW BUSINESS

a. Association Correspondence

- Association of State Provincial Psychology Boards (ASPPB) <http://www.asppb.org>
- American Psychological Association (APA) <http://www.apa.org>
- Nebraska Psychological Association (NPA) <http://www.nebpsych.org>

Psychology Interjurisdictional Compact (PSYPACT) meeting scheduled for July 22-23, 2019; Chiles attending.

Background on PSYPACT: Created to facilitate telehealth and temporary in-person, face-to-face practice of psychology across jurisdictional boundaries. Licensed psychologists will be able to apply for and use ASPPB certificates, which includes the E.Passport to practice telepsychology and the Interjurisdictional Practice Certificate (IPC) to conduct temporary in-person, face-to-face practice in PSYPACT states. Seven states have enacted PSYPACT legislation; the committee now must create the rules and regulations to implement PSYPACT.

ASPPB has a portfolio of services designed to facilitate psychology licensing professional mobility, including the Psychology Licensure Universal System (PLUS). The PLUS is an online system designed to allow individuals to apply for licensure in any participating state, province, or territory of the US or Canada. When applicants submit a license application through PLUS, all of the information provided is primary source verified.

NPA's Fall Conference scheduled for October 18, 2019; Ethics and Risk Management in Complex clinical Conundrums, presenter Danial Taube, JD, PhD

9. UPDATES/REPORTS

a. 2019 Legislative Bills

LB 112 – The bill waiving initial licensing fees for low income, military families, and young workers was signed by the Governor on March 21, 2019, and will be effective January 1, 2020.

LB 167 – Prohibits advertising or providing conversion therapy to anyone under 18 years of age. The bill hearing was February 19, 2019; the bill did not advance.

LB 499 – Proposes to adopt the APA code of ethics. The bill hearing was March 27, 2019; the bill did not advance.

LB 627 – Bill relates to discrimination and labor laws. The bill was placed on general file February 19, 2019; the bill did not advance.

b. Justice Behavioral Health Committee

Lukin reported the following meetings:

- Conference scheduled for October 28-30, 2019
- Corrections is hosting a presentation; Reed Malloy is the presenter
- Great Plains Chapter is hosting a meeting October 8-9, 2019

c. Licensure and Examination Statistics, Administrative Penalties, Disciplinary and Non-Disciplinary Action Reports.

Examination Results 1.1.2019 to current date

EPPP Examination: 15 pass, 11 fail
Jurisprudence Examination: 12 pass, 0 fail

Statistics:

| | |
|--------------------------------------|-----|
| 30 Days Temporary Practice: | 5 |
| Provisionally Licensed Psychologist: | 39 |
| Psychological Assistant: | 108 |
| Psychologist: | 532 |
| Psychologist Associate: | 4 |
| Special Psychologist: | 6 |

Warner, Board of Health Member, asked for input relating to filling future board member vacancies. Members suggest perhaps consider a newly licensed psychologist.

10. ADJOURNMENT

There being no further business, Bruhn (Chair), declared the meeting adjourned at 2:24 p.m.

Respectfully submitted,

Mary Fran Flood, PhD, Secretary
Board of Psychology

Summarized by: Kris Chiles, Program Manager, Licensure Unit