

**PUBLIC NOTICE OF A MEETING FOR
NEVADA STATE BOARD OF PSYCHOLOGICAL EXAMINERS**

1. Call to Order/Roll Call to Determine the Presence of a Quorum.

Call to Order: The meeting of the Nevada State Board of Psychological Examiners was called to order by President Whitney Owens, PsyD, at 8:32 a.m. Due to COVID-19 and Governor Sisolak's Emergency Mandate to Stay at Home for Nevada, this meeting was conducted online via Zoom.

Roll Call: Board President Whitney Owens, PsyD, Secretary/Treasurer John Krogh, PhD, and Members Monique McCoy, LCSW, Soseh Esmaeili, PsyD, and Stephanie Woodard, PsyD, were present at roll call. Board Member Stephanie Holland, PsyD, was absent.

Also present were Harry B. Ward, Deputy Attorney General, Gary Lenkeit, PhD, Board Investigator, Sheila Young, PhD, Board Investigator, Neena Laxalt, Lobbyist, Lisa Scurry, Executive Director, and members of the public: Jaqueline Green, Jane Shatz, Carolina Meza Perez, Konjit Page, Chad Davis, Lewis Etkoff, and Thomas Kinsora.

2. Public Comment

There was no public comment provided, nor had any public comment had been received by the Board Office as of the start of the meeting.

3. (For Possible Action) Workshop to Solicit Comments on Proposed Regulations; and Possible Action to Forward any/all of the Proposed Regulations to a Hearing at a Future Meeting of the Nevada Board of Psychological Examiners in Accordance with NRS Chapter 233B

President Owens convened the workshop to solicit comments on the following proposed regulations at 8:38 a.m. Two comments were received by the Board office related to Item C below. (attached)

A. Requires those teaching or engaging in research to be licensed if providing supervision in a university setting. (Currently known as R131-15)

This draft regulation clarifies that a person who engages in the teaching of psychology or in psychological research that involves the delivery or supervision of direct psychological services to a person is required to obtain a license under the provisions of state law.

President Owens informed the Board that this regulation was previously reviewed by the Board and was submitted to the Legislative Counsel Bureau (LCB). As the adoption process was not completed, however, it was decided to start over with the workshop process to ensure the requirements for passage of a regulation are followed. Ms.

Scurry noted, to avoid future confusion, that when the document moves forward to a hearing it will be assigned a new "R" number by LCB.

There were no comments, questions, or recommendations on this regulation.

On motion by John Krogh, second by Monique McCoy, the Nevada State Board of Psychological Examiners forwarded the draft regulation (currently R131-15) to a Hearing as part of a future meeting of the Board in accordance with NRS 233B. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

B. Foreign Graduates (Currently known as R114-19)

This draft regulation would establish a process for an applicant who has completed a training program outside the United States that is not accredited by the American Psychological Association (APA) to ensure that the program is equivalent to a program accredited by the APA. It would require such an applicant to submit certain documentation to the Board of Psychological Examiners (Board) and to obtain an evaluation of their academic credentials from the National Register of Health Service Psychologists.

There were no comments, questions, or recommendations on this regulation.

On motion by John Krogh, second by Monique McCoy, the Nevada State Board of Psychological Examiners forwarded the draft regulation (R114-19) to a Hearing as part of a future meeting of the Board in accordance with NRS 233B. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

C. Supervision, payment of psychological assistant, Closure of a Practice (Currently R115-19)

This draft regulation:

- clarifies that a person is prohibited from engaging in the teaching of psychology or in psychological research unless the person holds a license to practice psychology, is actively registered as a psychological assistant, or obtains approval from the Board to engage in such teaching or research.
- Requires a psychologist to designate a custodian of health care records to maintain the patient records of the psychologist in the event of the psychologist's death or the discontinuation of his or her practice. A psychologist who intends to cease providing services to patients would be required to: (1) notify the Board in writing and specify the person or facility that will maintain the patient records of the psychologist; and (2) notify their patients in writing and provide an opportunity for patients to request and receive their records.
- Requires that at least 15 percent of the hours of postdoctoral experience consist of face-to-face client care.

- Provides that faculty hired at an accredited institution of higher education may fulfill the clinical services requirement through hours spent engaged in activities related to certain clinical research.
- Requires that, if a psychological assistant or psychological intern is not an employee of the supervisor, the psychological assistant or psychological intern be employed at the same agency or institution that employs the supervisor.
- Removes the requirement for the payment of a fixed wage and, instead, requires a psychological assistant or psychological intern to be paid a stipend on a fixed schedule over the course of his or her training.

President Owens explained that the “closure of practice” section was added to the regulation since its last review in 2019. The section requires a licensee to designate a custodian of health care records in the event of the psychologist’s death or the discontinuation of the practice. There were no comments, questions, or recommendations expressed related to this section.

The draft regulation also seeks to ensure proper treatment of students, including that they are paid on a regular basis rather than, for example, based on the number of patients seen.

Two written comments were submitted from the Internship Consortium (attached to these minutes) expressing concern with the regulation as written. President Owens summarized the comments by stating that the regulation requires a psychological intern or psychological assistant to be employed by the supervisor or the supervisor’s agency. In the case of the consortium, however, the intern or assistant would be employed by the consortium but the supervisors are employed by the state.

There was discussion about the current language and what revisions may need to be considered in order to allow for the consortium’s practices or if an exception can be made for a group like the consortium.

Dr. Woodard inquired about why the language was initially changed from the student/supervisor relationship being an affiliation to that of an employer/employee. She added that many APA-internships place individuals outside the home agency/organization for additional experience. Those affiliations may not be supported under this change.

President Owens explained that the intent of the change was to ensure the supervisor has access to the same information as the student (psychological intern or assistant) for the purposes of oversight. She added there were issues in the past with a psychological assistant coming before the Board due to a complaint or concern. If the supervisor was not employed by the same agency, they had no access to the records which led to confusion regarding roles and responsibilities.

There was further discussion regarding the desired goal of the regulation and whether the suggested changes achieve that goal. President Owens added that part of the intent is to protect the student by ensuring there is a work contract in place and that the supervisor has access to the information they need to provide appropriate supervision.

On motion by Monique McCoy, second by John Krogh, the Nevada State Board of Psychological Examiners forwarded the draft regulation (R131-15) for an additional Workshop, in accordance with NRS 233B, at the December 2020 meeting of the Board. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

D. Proposed Adoption of The ASPPB Code of Conduct (Changes to NAC 641.250)

Nevada Administrative Code (NAC) 641.250 adopts the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association. This regulation would also adopt the Association of State and Provincial Psychological Boards' (ASPPB) Code of Conduct.

On motion by Stephanie Woodard, second by John Krogh, the Nevada State Board of Psychological Examiners forwarded the draft regulation to a Hearing as part of a future meeting of the Board, in accordance with NRS 233B, to adopt the ASPPB Code of Conduct to NAC Chapter 641. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

E. Proposed Removal of the Word "Moral" from NAC Chapter 641 (Changes to NAC 641.025, 641.028, 641.208)

The Board discussed removing reference to the word "moral" and "moral character" from Nevada Administrative Code 641.025, 641.028, and 641.208.

On motion by Monique McCoy, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners forwarded the draft regulation to a Hearing as part of a future meeting of the Board, in accordance with NRS 233B, to remove reference to the word "moral" from NAC Chapter 641. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

President Owens asked if there was any public comment before closing the public workshop. There was none and the workshop was closed.

4. (For possible action) Discussion and Possible Approval of the Minutes of the Meeting of the Nevada State Board of Psychological Examiners from October 9, 2020.

There was no discussion nor recommended changes to the minutes.

On motion by Stephanie Woodard, second by John Krogh, the Nevada State Board of Psychological Examiners approved the minutes of the meeting of October 9, 2020. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

5. Financial Report

A. (For Possible Action) Discussion and Possible Action to Approve the Treasurer's Report for F/Y 2021 (July 1, 2020, Through June 30, 2021).

Secretary/Treasurer John Krogh provided the Board with an update on the finances. The renewal process has begun and revenue is being accrued. He added that some monies that have been received are not reflected on the financial report as there is a delay between monies received, being deposited to the bank, and then showing on the accounting program.

The external financial audit is in process and a final report will be presented at a future meeting.

Dr. Woodard inquired if any progress had been on the creation of a human resources or staffing policy. Director Scurry responded that an HR policy, as well as several other policies, is in the process of being drafted. The draft HR policy will return to the Board for preliminary review at a future meeting of the Board.

President Owen's commented that the renewals are being processed and that it takes time for them to be reviewed. She reminded licensees that their licenses are valid until December 31, 2020.

On motion by Stephanie Woodard, second by John Krogh, the Nevada State Board of Psychological Examiners approved the financial report to date for fiscal year 2021. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

B. (For Possible Action) Discussion and Possible Action to Provide Direction to the Board Office Regarding the Status of Recouping Outstanding Legal Fees Owed to the Board from Disciplinary and Unlicensed Practice Cases.

Lisa Scurry, Executive Director, stated that the outstanding legal fees owed to the Board over the past several years have been identified. Once the renewal process is completed, she expected to be able to begin working with the State Comptroller's Office on

6. (For Possible Action) Discussion and Possible Action to Provide Guidance on Matters Related to the Covid-19 Pandemic and Governor Sisolak's Directive 011. Discussion May Include Licensure Renewal, Continuing Education Credits, Temporary Licensure, Supervision Concerns, Obtaining Clinical Hours for Licensure, and the Use of Telepsychology and Interjurisdictional Practice.

President Owens stated few changes have occurred related to guidance on the pandemic. A survey was conducted by the Board Office regarding Directive 011 and how many of the temporary registrants were still actively using that access. Director

Scurry reported that of the approximately 230 registrants roughly half were still using the temporary registration. She added that several have called asking if they could begin using it again as individuals, particularly college students, are once again sheltering in Nevada.

There was some discussion about the use of masks in psychologist offices and guidance from the Governor's office about mask wearing in such places.

Harry Ward, Deputy Attorney General, suggested a reminder about masks and other guidance should be sent from the Board office in the form of an informal warning based on the Governor's Directive.

Dr. Woodard added that, due to the current surge, several hospitals are implementing crisis standards of care. She recommended the Board Office send a consolidated version of the previous guidance sent by the Board.

President Owens stated that psychologists are considered essential front line workers and should follow the guidelines with that understanding.

7. (For Possible Action) Discussion and Possible Action to Consider Potential Change(s) to the Current Licensure Process to Allow for Temporary Licensure.

There was no update or discussion on this item.

8. (For Possible Action) Discussion and Possible Action On Guidance Provided By ASPPB Related to COVID-19 and Potential Future Accommodations for Psychological Assistants and Psychological Interns

The Association of State and Provincial Psychological Boards (ASPPB) provided guidance related to potential future accommodations for psychological assistants and psychological interns due to repercussions from the pandemic. The guidance was presented to the Board for their review and information, particularly if concerns arise in the future.

9. Board Needs and Operations

A. (For Possible Action) Discussion and Possible Action Related to PsyPact, Including an Update from The PsyPact Commissioner

Dr. Gary Lenkeit, PsyPact Commissioner, provided an update to the Board. The annual commissioner meeting is upcoming. Issues he planned to discuss include how individual licensing Boards will know if a psychologist has registered with PsyPact; and how such registration should be articulated by the psychologist such as in signature lines.

There was some discussion about individuals who have a Nevada license, are physically located in a non-PsyPact state, and wish to use the Nevada license and PsyPact

registration to practice. For the purposes of PsyPact, the psychologist must be licensed in the state they are in physically.

B. Update and Report from the Nevada Psychological Association

There was no report from the Nevada Psychological Association

10. (For Possible Action) Discussion and Possible Action Related to Implementation of the EPPP Part-2

President Owens stated that the EPPP Part-2 was implemented as of November 1.

For clarification, Director Scurry asked the Board to confirm that only licensees that are new to the practice of psychology will be subject to the EPPP Part-2. She added that the original action taken by the Board from 2019 was confusing as to the Board's intent.

On motion by John Krogh, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners mandated that the EPPP Part-2 will be required for all new applicants who are not otherwise licensed as of November 1, 2020. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

11. (For Possible Action) Discussion and Possible Action on the Evaluation and Validation of the Online Version of the State Examination, Including a Report by Dr. Stephen Benning, Consultant / Psychometrician. Possible Action May be Taken to Adjust the Minimum Passing Score, Number of Questions in The Exam, and Length of Time Provided to Complete the Exam.

There was no update from Dr. Benning. Director Scurry explained that Dr. Benning is working with the previous testing company to obtain data needed to complete the validation of the exam. The item will return to a future meeting of the Board.

12. (For Possible Action) Discussion and Possible Action Related to the Nevada State Examination and Whether Any Category of Applicant for Licensure as a Psychologist Should be Granted a Waiver. Potential Categories to be Considered Include Psychologists Licensed In Another State/Territory With 20+ Years' Experience, Psychologists Licensed In Another State/Territory With 10+ Years' Experience, Psychologists Licensed In Another State/Territory With 5+ Years' Experience, Psychologists With Credentials From the National Register Of Health Service Psychologists, American Board Of Professional Psychology (ABPP), Or Qualification In Psychology (CPQ) From The Association Of State And Provincial Psychology Boards (ASPPB)

Director Scurry asked the Board for clarification as to who is required to take the State Examination. There has been a precedent allowing certain categories of applicant, such as applicants with 20+ years of experience, to be waived from the requirement.

Dr. Lenkeit stated his belief that the intent has been that all applicants must take the exam. Dr. Krogh agreed.

On motion by John Krogh, second by Soseh Esmaeili, the Nevada State Board of Psychological Examiners required that all applicants for licensure be required to take the Nevada State Examination. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

13. (For Possible Action) Review, Discussion, and Possible Action on Pending Consumer Complaints:

Harry Ward, Deputy Attorney General, Dr. Gary Lenkeit, Board Investigator, and Dr. Sheila Young, Board Investigator, provided updates on the complaints below.

Mr. Ward explained that there were no updates or changes from complaint items A through J. He added that as there are a few from 2019, he will likely be recommending moving to a hearing for those matters. That action will put the respondent and their attorney on notice of the intent to close out the matter.

There was some discussion about the reasons for the delays, the process for conducting hearings via online meetings, and the lack of response from respondents in certain matters.

Dr. Young stated that she is not receiving timely responses from respondents. President Owens inquired if a lack of response can lead to another complaint. Mr. Ward explained that a letter requesting a response would be sent from his office. If there is no response, a second complaint could be filed. If there is no response to that complaint, the Board could issue a finding.

A. Complaint #19-0514

B. Complaint #19-0626

C. Complaint #19-0709

D. Complaint #19-1106

E. Complaint #19-1223

Dr. Young inquired about a settlement in this matter between the business and the complainant. She asked if there is a mechanism to report the circumstances to the national database and whether the settlement agreement would be enough for such a report.

Mr. Ward referred to NRS 641.230 which allows the Board to revoke a license if the Board finds that the individual "(d) engaged in gross malpractice or negligence."

Mr. Ward recommended that the respondent's license renewal be flagged and he be notified before the license is renewed.

F. Complaint #20-0501

G. Complaint #20-0624

Dr. Young explained that the complainant in this matter is an extremely vulnerable adult. As he is not currently able to proceed, it was suggested that the matter be moved as a "note to file" and removed from future agenda. Should the complainant wish to re-open the matter in the future, he could contact the Board.

It was suggested that the respondent psychologist in this matter be noted by the Board office in the event any similar complaints are submitted.

H. Complaint #20-0728

I. Complaint #20-0818

J. Complaint #20-0819

14. (For Possible Action) Review and Possible Action on Applications for Licensure as a Psychologist or Registration as a Psychological Assistant, Intern or Trainee. The Board May Convene in Closed Session to Receive Information Regarding Applicants, Which May Involve Considering the Character, Alleged Misconduct, Professional Competence or Physical or Mental Health of The Applicant (NRS 241.030). All Deliberation and Action Will Occur in an Open Session.

President Owens presented the following names for licensure approval, contingent on satisfactory completion of the application process: Danielle Agnello, Cherly Ballou, Andrew Carr, Melissa Depa, Mesha Ellis, Angelica Flores-Arman, Marlene Garza, Raymond Nourmand, Nicole Steiner-Pappalardo, Alisa Turner-Augustyn, Lauren Wecker, Marilyn Wright.

On motion by John Krogh, second by Monique McCoy, the Nevada State Board of Psychological Examiners approved the licensure applications of the following individuals, contingent on satisfactory completion of the application process: Danielle Agnello, Cherly Ballou, Andrew Carr, Melissa Depa, Mesha Ellis, Angelica Flores-Arman, Marlene Garza, Raymond Nourmand, Nicole Steiner-Pappalardo, Alisa Turner-Augustyn, Lauren

Wecker, Marilyn Wright. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

15. (For Possible Action) Discussion and Possible Action to Approve a Change in License Status from Active to Inactive For Any / All Of The Following Individuals:

- A. ELHAM AMINIGO HAR, PSY.D.
- B. GERALD WEEKS, PH.D.

Following review of the applications, there was no further discussion of the applications.

On motion by John Krogh, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners approved the change in license status from active to inactive for Elham Aminigo har, Psy.D. and Gerald Weeks, Ph.D. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

16. (For Possible Action) Discussion and Possible Action To Reactivate The Registration Of Psychological Assistant Stephanie Bellusa

President Owens explained that Stephanie Bellusa has requested reactivation of her psychological assistant registration. After taking time off to study for the licensing exams, Dr. Bellusa has asked that her registration be re-instated so that she may complete the licensure process.

On motion by Soseh Esmaeili, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners approved the reactivation of an additional year of registration as a psychological assistant for Stephanie Bellusa. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

17. (For Possible Action) Discussion and Possible Action to Approve the Registration of Any / All of the Following Individuals. The Board May Convene in Closed Session to Receive Information Regarding Applicants, Which May Involve Considering the Character, Alleged Misconduct, Professional Competence or Physical or Mental Health of the Applicant (NRS 241.030). All Deliberation and Action Will Occur in An Open Session.

There was brief discussion about when background checks should go to the Board for review. A draft procedure will be developed for review by the Board that may include general guidelines such as length of time since the offense, whether or not the offense was a crime of violence, etc.

Harry Ward, Deputy Attorney General, stated that until an adopted policy or procedure is in place, all background checks that include a finding should be reviewed by the Board. In response to concerns about embarrassment to the applicant, he added that until or unless a record is expunged, it is a public record.

A. James Maltzahn, Psy.D., Psychological Assistant.

Dr. Maltzahn's background check indicated an arrest in 2003 for driving while intoxicated. The Board expressed no concerns with his registration.

On motion by John Krogh, second by Monique McCoy, the Nevada State Board of Psychological Examiners approved the registration of James Maltzahn, Psy.D., as a psychological assistant. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

B. Chad Davis, Psychological Intern.

Mr. Davis' background check indicated an arrest in 1999 for shoplifting. The Board expressed no concerns with his registration.

On motion by Stephanie Woodard, second by Monique McCoy, the Nevada State Board of Psychological Examiners approved the registration of Chad Davis, as a psychological intern. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

C. Jaqueline Green, Psychological Trainee.

Ms. Green's background check indicated an arrest in 2011 for battery. Those charges were dropped and letters of support from her supervisors were submitted to the Board. The Board expressed no concerns with her registration.

On motion by John Krogh, second by Monique McCoy, the Nevada State Board of Psychological Examiners approved the registration of Jaqueline Green as a psychological trainee. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

18. (For Possible Action) Discussion and Possible Action to Review and Approve the Request and Study Plan of Carolina Meza Perez to take the National Examination (Examination for Professional Practice in Psychology (EPPP)) in Accordance with NAC 641.120

Carolina Meza Perez submitted a request for approval to take the EPPP a fourth time. In accordance with Nevada Administrative Code, she submitted a study plan for review and approval.

Dr. Woodard inquired about the study plan and the absence of references to the amount of time that will be used to study and/or any identified strengths or weaknesses.

Ms. Meza Perez explained that she will be requesting testing accommodations related to ADHD, as that has been identified as a potential cause for the past inability to pass the exam.

As the request for accommodations was not presented with the study plan, that request will return at the next meeting of the Board for review and approval.

On motion by Monique McCoy, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners approved the study plan to take the EPPP a fourth time in accordance with NAC 641.120. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

19. (For Possible Action) Discussion and Possible Action to Approve the Psychologist Licensing Application of Jane Shatz, Ph.D., who Applied for Licensure as a 20+ Year Senior. The Board May Convene in Closed Session to Receive Information Regarding Applicants, which may Involve Considering the Character, Alleged Misconduct, Professional Competence or Physical or Mental Health of the Applicant (NRS 241.030). All Deliberation and Action will Occur in an Open Session.

This item returned to the Board after initial discussion during the October meeting of the Board. Dr. Jane Shatz has applied for licensure in Nevada but is currently inactive and on probation.

President Owens asked Dr. Shatz if there were any requirements from the 2017 Decision and Order from the California Board that had not been completed. Those requirements included a psychological evaluation, practice monitor, re-taking of the CPLE exam, various coursework including ethics, and recovery of investigation costs.

Dr. Shatz responded that she had not completed the 2-years of probation and is in the process of paying the cost recovery and probation costs. Additionally, she stated she had taken the CPLE exam and the required ethics course.

There was discussion about the terms of the probation in California, that those terms had not been met, and whether or not it was appropriate for the Nevada Board to grant licensure under those conditions.

Dr. Shatz stated that she had not completed the terms because she placed her license in California on inactive status.

President Owens stated her concern with setting the precedent of approving the licensure of someone who has not complied with a decision of another licensing board.

Member McCoy stated her agreement, adding that all of the parameters of the previous state board should be completed before the Nevada Board would approve licensure. The other Board members, Dr. Krogh, Dr. Woodard, and Dr. Esmaeili, added their agreement.

On motion by Monique McCoy, second by Stephanie Woodard, the Nevada State Board of Psychological Examiners denied the licensure application of Jane Shatz, Ph.D., but stated a future application could be reconsidered if the terms of probation in California are completed. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaeili, Stephanie Woodard) Motion Carries: 5-0

20. (For Possible Action) CORRESPONDENCE

A. (For Possible Action) Discussion and Possible Action on The Request of Lewis Etcoff, Ph.D., to Join the Nevada State Board of Psychological Examiners to an Amicus Brief to the Nevada Supreme Court Related to Third Party Observers During Neuropsychological and Forensic Psychological Evaluations

(This item was taken out of order.)

Dr. Lewis Etcoff and Dr. Thomas Kinsora were present to request that the Board consider joining to an Amicus Brief in a case going before the Nevada Supreme Court. The case is related to third party observers during neuropsychological and forensic psychological evaluations (NRS 52.380).

Dr. Etcoff described the concerns with having an observer present, and potentially audio taping, such testing. One such risk is that having an observer in the room could invalidate the testing. Additionally, audio taping could change the outcome of future tests. The defense in the matter has suggested the Board and the Nevada Psychological Association join in an amicus brief to prevent third party observations of testing.

Harry Ward, Deputy Attorney General, suggested the Board send a letter in support of disallowing third party observers rather than joining to an amicus brief.

Dr. Etcoff explained that he has attempted to compromise with attorneys by offering to record the testing himself and creating a summary of the interview for the plaintiff's attorney versus actually providing a recording or having an observer.

Dr. Lenkeit expressed his opinion that the issue is the ethics of a psychologist allowing a third party observer or to allow a recording of the testing. As this is a potential ethical violation against the psychologist, he suggested that be the issue the Board pursue.

Dr. Woodard agreed and stated that the ASPPB Code of Conduct is very clear related to testing. She recommended asserting that the Board has adopted the ASPPB and APA ethics and conduct standards to which psychologists are subject.

President Owens asked Mr. Ward to explain why an opinion letter would be preferred over an amicus brief.

Mr. Ward responded that an Amicus Brief is not necessarily very persuasive to a Court. They also tend to be very long. An opinion letter is more concise and more likely to be reviewed by the Court as it expresses to the justices the opinion of the Board.

There was discussion about drafting an opinion letter that would focus on the areas of ethics and test security. It was expressed that the role of the Board is regulatory, not advocacy. The potential for an ethical violation, the regulatory concern, should be considered.

Dr. Kinsora expressed his opinion that protection of testing materials is a public safety concern. He added that if the tests get out, attorneys could use them to coach their clients.

Dr. Lenkeit agreed and added that the stronger point for the Board to stress is that it is an ethical violation.

Mr. Ward further explained that once the Board takes a formal position, such as with an Amicus Brief, the Board could be asked to recuse itself in a future matter by a defense attorney.

President Owens asked the members for a volunteer to draft the opinion letter.

On motion by Stephanie Woodard, second by Monique McCoy, the Nevada State Board of Psychological Examiners approved the creation of a letter to the Nevada Supreme Court in support of test security and citing the ethical conflict related to third party observers during neuropsychological and forensic psychological evaluations. (Yea: Whitney Owens, John Krogh, Monique McCoy, Soseh Esmaili, Stephanie Woodard) Motion Carries: 5-0

Dr. Woodard will draft the letter on behalf of the Board.

Mr. Ward stated for the record that the opinion letter will be written in lieu of the Board joining on an amicus brief.

21. Legislative Update. Discussion of the Upcoming 2021 Session of the Nevada Legislature Scheduled to Begin in February 2021

Neena Laxalt, Board Lobbyist, provided an update on the status of the bill draft requests for the upcoming Session of the Nevada Legislature.

A. (For Possible Action) Discussion and Possible Action on the Status of a Bill Draft Request Proposing Changes to Nevada Revised Statutes to Clarify Purpose, Scope of Use, and Use of Audio and Video Recordings in Therapy and Assessment Training for Psychological Trainees, Interns and Assistants.

She had been working with the Legislative Counsel Bureau on the Board's Bill Draft Request. The Board of Medical Examiners does not want to be part of bill draft. Ms.

Laxalt stated she will contact the other boards (social work, MFT, and drug/gambling counselors) to ensure they are okay being part of the bill.

B. (For Possible Action) Discussion and Possible Action on the Status of a Proposal to Remove Language from NRS 641.390, Representation or Practice Without License or Registration Prohibited, During the 2021 Nevada State Legislative Session.

This potential change is pending discussion with the Department of Corrections and will likely not be ready for the 2021 Session of the Nevada Legislature.

22. (For Possible Action) Discussion and Possible Action on Regulations Submitted to the Legislative Counsel Bureau (LCB) for Changes to Nevada Administrative Code (NAC) Chapter 641 Including:

Director Scurry stated that the following regulations are with the Legislative Counsel Bureau pending final approval of adoption. There was no other update.

A. R057-19: Fees

B. R058-19: Endorsement Language

23. (For Possible Action) Discussion of U.S. District Court Case 2:20-CV-00651-KJD-VCF Where the State of Board Psychological Examiners is a Named Defendant.

Mr. Ward explained that there was no update on this item as no movement has occurred.

24. (For Possible Action) Schedule of Future Board Meetings, Hearings, and Workshops. The Board May Discuss and Decide Future Meeting Dates, Hearing Dates, and Workshop Dates

A. The next regularly scheduled meeting of the Nevada Board of Psychological Examiners is Friday, December 11, 2020 at 8:30 a.m.

25. Requests for Future Board Meeting Agenda Items (No Discussion Among the Members Will Take Place on This Item)

There were not requests from Board members. As discussed previously, Board staff will work on Board policies or procedures related to background checks and personnel/staff.

26. Public Comment

There were no public comments at this time.

27. (For Possible Action) Adjournment

There being no further business, President Owens adjourned the meeting at 11:43 a.m.