

**PUBLIC NOTICE OF A MEETING FOR
STATE OF NEVADA BOARD OF PSYCHOLOGICAL EXAMINDERS
MEETING MINUTES**

July 14, 2023

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

The meeting of the Nevada State Board of Psychological Examiners was called to order by President Whitney Owens, Psy.D., at 8:02 a.m. on July 14, 2023, online via "zoom" and physically at the office of the Board of Psychological Examiners, 4600 Kietzke Lane, Ste. B-116, Reno, Nevada 89502.

Roll Call: Board President, Whitney Owens, Psy.D.; members, Lorraine Benuto, Ph.D.; Soseh Esmaeili, Ph.D.; Stephanie Holland, Psy.D.; Catherine Pearson, Ph.D. were present at roll call. Members Stephanie Woodard, Psy.D. and Monique Abarca, LCSW were absent. Dr. Woodard is waiting for her approval from the Governor and will not be attending this meeting. Despite the two member absences at roll call, there was a quorum of the Board members.

Also present were Deputy Attorney General (DAG) Harry Ward; Board Investigator Dr. Gary Lenkeit; Executive Director Laura Arnold; Assistant to the Executive Director Kelly Weaver, and members of the public: Terry Beaumont, Sharon Jones Forest, Lewis Etcoff, Thomas Kinsora, Stephen Klee, and Leslie Feil.

2. Public Comment - Note: Public comment is welcomed by the Board and may be limited to three minutes per person at the discretion of the Board President. Public comment will be allowed at the beginning and end of the meeting, as noted on the agenda. The Board President may allow additional time to be given a speaker as time allows and in their sole discretion. Comments will not be restricted based on viewpoint. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken (NRS 241.020).

There was no public comment at this time.

3. Minutes.

A. (For Possible Action) Discussion and Possible Approval of the Minutes of the Regular Meeting of the State of Nevada Board of Psychological Examiners on June 2, 2023.

There were no comments or changes suggested for the minutes of the June 2, 2023, meeting.

On motion by Lorraine Benuto, second by Stephanie Holland, the Nevada State Board of Psychological Examiners approved the meeting minutes of the Regular Meeting of the Board held on June 2, 2023. Catherine Pearson approved the minutes as to form, but not content. (Yea: Whitney Owens, Lorraine Benuto, Catherine Pearson, Stephanie Holland.) Without Dr. Soseh Esmaeili's vote, the Board did not have quorum. DAG Ward believes under the open meeting law with a quorum the Board still has a vote that can be passed even with Dr. Pearson approving as to form and not content, but that ultimately it was up to Dr. Owens. As such, this was put on hold until Dr. Esmaeili can be involved in the vote.

As Dr. Soseh Esmaeili returned, the Board again brought a motion.

On motion by Soseh Esmaeili, second by Lorraine Benuto, the Nevada State Board of Psychological Examiners approved the meeting minutes of the Regular Meeting of the Board held on June 2, 2023. Catherine Pearson approved the minutes as to form, but not content. (Yea: Whitney Owens, Lorraine Benuto, Catherine Pearson, Soseh Esmaeili, Stephanie Holland.) *Motion Carried: 5-0.*

4. Financials.

A. (For Possible Action) Discussion and Possible Action to Make Changes to and/or Tentatively Close Out the Fiscal Year 2023 Budget subject to an annual audit.

Executive Director Arnold presents the Fiscal Year 2023 Budget. Executive Director Arnold indicated that Fiscal Year 2023 came to an end, the Board stayed on track outpacing its budgeted revenue and overall remaining on par or below the budgeted expenditures. There appears to be about \$37,000 left over, and the information that the FY2023 budget provides will inform revisions to the FY2024 budget that will be addressed in Item 4C. This is a tentative close out. A final close out of FY2023 will happen after it has been reconciled through an annual audit. She was unsure if the Board wanted to approve a tentative close out or wait until the audit. Dr. Owens stated she is okay with waiting.

Executive Director Arnold indicated she had not been involved in a close out before, so she wanted to confirm. Dr. Owens was unsure if the Board had ever approved a close

out before. She knows the Board has approved an audit before but unsure if it needs to be done twice. As such, the Board will wait to vote.

B. (For Possible Action) Discussion and Possible Action to Approve the Treasurer's Report for Fiscal Year 2023 (July 1, 2022, Through June 30, 2023).

As of June 30, 2023, the checking account balance was just under \$389,000.00 according to Executive Director Arnold. Through the end of FY2023, the Board was operating on \$170,959.93 of the deferred revenue primarily from renewals that have been previously addressed, and nothing has changed regarding the next expected deferred revenue allocations from renewals for the next biennium quarters have previously been identified and discussed.

The savings account balance was \$105,048.85.

In tentatively closing out the fiscal year, the Board brought in about 108% of the budgeted revenue and expenses were at about 89% of what was budgeted.

In addition to the end of FY2023, the Board has also completed the first quarter of the biennium, which allowed for the inclusion of the actual revenues and expenditures during that quarter with reference to what was budgeted.

On motion by Lorraine Benuto, second by Catherine Pearson, the Nevada State Board of Psychological Examiners approved the Treasurer's Report for Closing Out Fiscal Year 2023 and moving into Fiscal Year 2024. (Yea: Whitney Owens, Stephanie Holland, Lorraine Benuto, Soseh Esmaeili, Catherine Pearson.) Motion Carried: 5-0.

C. (For Possible Action) Discussion and Possible Action to Approve any Recommended Changes to the Proposed Budget for Fiscal Year 2024.

Executive Director Arnold stated that based on actual revenue and expenditure numbers from FY 2023, there are a few adjustments to the FY2024 Budget. Under revenue, the amount in the deferred income category of new licensure and registrations was increased to reflect the amount that came in over the first quarter of the biennium and cast forward into Q2, 3, and 4. The amount projected to come in from licensure applications was increased a little based on the increasing number of applications the Board has received. As for the changes to expenditures, several items were adjusted based upon the real numbers from those expenditures during FY 2023. All changes are identified in the orange highlighted boxes. The proposed budget remains balanced, with

revenue expected to exceed expenses, and moving forward, this will be the budget we will be working with for this fiscal year.

On motion by Soseh Esmaeili, second by Lorraine Benuto, the Nevada State Board of Psychological Examiners approved the revisions to the Fiscal Year 2024 Budget. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

D. (For Possible Action) Discussion and Possible Action to Approve Proposed Engagement Letter and invoice from David A. Hines of Campbell Jones Cohen CPAs for the Annual Board Audit.

Executive Director Arnold presented the issue of approving the proposed engagement letter and invoice from David A. Hines of Campbell Jones Cohen CPAs for the annual board audit. Campbell Jones Cohen CPAs handled the annual audit last year. The annual audit fee is \$12,000 and Campbell Jones Cohen CPAs requests a \$6,000 deposit to secure their services, which has been accounted for in the 2024 budget.

On motion by Stephanie Holland, second by Lorraine Benuto, the Nevada State Board of Psychological Examiners approved the Engagement Letter and invoice from David A. Hines of Campbell Jones Cohen CPAs for the 2023 Annual Board Audit. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0

5. Legislative Update

A. (For Possible Action) Report, Discussion and Possible Action on Legislative Activities, including the work of Interim Committees, the 2023 Session of the Nevada Legislature, and any position the Board may take on Bills and Bill Draft Requests that the Board is tracking, following, or that may impact the Board and its Operations.

Lobbyist Laxalt indicated that they were tracking approximately 35 bills after they were filtered. However, she discussed the top 10.

AB37 had to do with work force development. The Board was very supportive of that Bill. That Bill has gone on to be signed by the Governor in Chapter 424.

AB39 requires the collection of demographic information. A similar bill had previously passed in prior legislative sessions. There is some redundancy regarding what boards are already required to do.

AB198 did not pass. Assemblyman Orentlicher brought the Bill forward to the Board prior to the legislative session where it dealt with the uniform law act regarding telehealth. At that time, the Board was looking for a sponsor for their Bill and it was recommended they discuss it with Assemblyman Orentlicher. This Bill was in conflict with Psychology Compact. What ended up happening is that the Bill lowered the standards of what could be approved for telehealth in the state of Nevada. Essentially, the standards that the compacts had to be. From Orentlicher's explanation, this would be everyone who did not fit into the company. The Board opposed that Bill. The Bill got stripped in the first committee, but Assemblyman Orentlicher wanted again to strip that out and put the Bill back where it started. That changed nothing, so the Bill failed.

AB219 was regarding accepting public comment in open meetings.

AB236 was a psychology Bill the Board ran through Assemblywoman Monroe-Moreno which requires the correction department to stop using the term psychologist when dealing with their providers there that are not psychologists. This passed. This Bill was clean all the way through.

AB267 was similar to cultural competency training, which requires SB119 to make sure that insurance covers. Dr. Owens interjected and asked how many CEs licensees will need to take for cultural competency. Lobbyist Laxalt indicated it was increased from the 2 required from the last session. Dr. Chapple-Love confirmed it was 6 as she worked on the Bill.

SB119 requires insurance for telehealth.

SB150 failed. It required provisional licensees for psychologist assistants and part of that reasoning was insurance reimbursement. Dr. Owens believes it did not pass because it was heavily opposed by insurance companies. Dr. Owens would encourage the Board to try to work in future legislative sessions to revive the Bill as she will not be involved. She does not think it provides great protection to the public if they cannot be served by the Board's students. The insurance companies will likely continue to block the ability for the post docs to be paneled, which is not in the interest of the public.

SB431 was one of the governor's Bills and originally the Bill was putting in all kind of secretaries of the cabinet under the Governor's office. It ended up having a lot of changes. As it ended up coming out, it was stripped down quite a bit. The only impact to the Board was taking the Board's commission and placing them under the authority of Business and Industry. She has been assured by the executive of the Business Industry that it should not make any changes to what the Boards do. The Department of Business and Industry will be putting together a workshop due to the public questions. Some of the changes that may be looked at is ensuring there are standard

disciplinary procedures, but Lobbyist Laxalt does not know what this means yet. She does believe this is something the Board should keep an eye on.

Dr. Owens asked about the Bill regarding Board's having to meet in person 25% of the time. Lobbyist Laxalt believes it died.

Lobbyist Laxalt added that regulations will be worked on for AB244, just as a reminder, once that is done and the workshops are completed, it will go to the legislative commission so that is another opportunity to present the conflicts with the Board's ethics. There is a new chair. As such, the majority leader will be chairing the Legislative Commission now.

On SB431, Dr. Lenkeit looked it over and it said there must be a standard disciplinary policy. He thinks it would be hard to have a standard disciplinary that included psychologists, architects, plumbers, etc. all as one. In the complaint committee meeting the other day, Dr. Lenkeit suggested that the Board get together with MFTs, LCSW, and all the mental health professionals to use the Board's disciplinary policy as a standard for all the mental health professionals so they are prepared rather than going along with people that do not have the same ethical standards due to being in different professions. Lobbyist Laxalt confirmed her concern was voiced very loudly regarding the need to hear from the boards. She would like to get their opinions prior to moving forward.

Dr. Owens stated for the record that she did not understand the frenzy that is the legislative session for the Board. As such, she is acknowledging everyone's work, specifically Lobbyist Laxalt, Dr. Lenkeit, and Executive Director Arnold, throughout the session to keep her informed, working together, communicate with representatives, and making sure everything was in order to protect the folks the Board serves. Lobbyist Laxalt thanked Dr. Owens for Dr. Owens' hands on approach during session.

- B. (For Possible Action) Discussion and Possible Action on the Revision to Nevada Revised Statutes (NRS) 641.390, Representation or Practice Without License or Registration Prohibited, which passed and was signed into law during the 2023 Session of the Nevada State Legislature.**
- C. (For Possible Action) Discussion and Possible Action regarding and in response to 2023 AB244, which establishes certain rights of those who are compelled by court order to submit to a mental or physical examination.**

There were a lot of public appearances at the meeting to discuss the 2023 Session, which approved AB244. AB244 established certain rights of those who are compelled

by court order to submit to a mental or physical examination. Dr. Owens expressed AB244 is a concern for the Board. Dr. Owens shared her sentiment that DAG Ward's participation will be critical to this topic. As Dr. Kinsora specifically requested this item to be on the agenda, he will start the discussions on this item. With that, Dr. Owens gave the floor to Dr. Kinsora.

Dr. Kinsora presented the following statement:

Dear Members of the Nevada Board of Psychological Examiners,

I do not believe that in my 30 years of practice I have seen a greater threat to the practice of psychology than what is called for in AB244. There are three take-away here; this is a true public safety threat, it is a threat to the administration of justice, and if implemented, will destroy the validity of the tools that we use to appraise psychological, intellectual, and neurocognitive functioning.

I was fortunate to be trained by one of the leading neuropsychologists in the field, Manfred Greiffenstein. He would always tell me, with solemn seriousness that psychologists are the "Holders of the Measures". He taught me that this is a sacred responsibility, as the usefulness of many of our measures is entirely dependent on our ability to protect them.

The tools of our trade are standardized measures that only retain diagnostic validity when they are seen for the first time by a given patient or examinee (considerations for practice effects from a previous exam aside). Assuring public safety and assisting the triers of fact in civil and criminal proceedings are prominent roles played by psychologists and neuropsychologists. In clinical practice, neuropsychologists determine whether a physician can continue practicing medicine safely, an airline pilot can fly again, being responsible for the safety of dozens of lives, a police officer can return to duty with good judgement, or a bus driver can return to driving a bus. In the judicial system we assist the triers of fact in determining whether a brain injury has occurred, whether a defendant is competent to stand trial (or whether they are feigning incompetence), whether an aging individual can manage finances with sound judgement, or whether a plaintiff suffers from PTSD. Allowing protected test measures into the public domain as called for in AB244 will compromise these vital functions.

Neuropsychologists in particular are involved in examining test performance manipulation and symptom exaggeration. We assist the triers of fact in understanding the complex motivations behind a given litigants

symptom reporting and test performance, particularly in mild traumatic brain injury cases. In litigated cases it has been repeatedly shown that about 40% (+/- 10%) of litigants exaggerate or feign symptoms to win lawsuits. This is also true in workers compensation cases and disability insurance cases. This is a very consistent finding across many studies. Neuropsychologists and psychologists are the only experts who possess the empirically validated and legally/ethically protected test measures necessary to measure this type of deception and test manipulation. These are among the most protected measures that we use and they cannot fall into the hands of attorneys, nor the general public. If they do we will have no idea whether the examinee has learned which tests to pass and which items to endorse in order to feign injury.

Preventing a neuropsychologist from employing measures to detect malingering and deception appears to be one of the primary reasons for this legislation, despite what the legislators were told prior to voting on the bill. Most importantly, the drafters of this bill have forged a way to destroy the right that the opposing counsel has, to obtain an expert of their choosing to conduct an independent medical evaluation where exaggeration and test manipulation could be at play. They know that this legislation will deny them this expert if the neuropsychologist withdraws from the case. And it will give them the tools of our trade if we agree to proceed. Their relentless attempt to deny one side expert access to an evaluation has put psychologists in the middle of this fight.

However, they know that we cannot effectively argue this matter in court because no governing entity has provided unequivocal guidance with teeth. This is what I am urging the Licensing Board to do today; Give us the unequivocal rules that we need to protect standardized psychological and neuropsychological tests.

Presently and historically, the APA has walked far too softly on the matter of audio-recording of protected test material. The notion that with protective orders an attorney can safely have access to all of our protected test materials without any long term harm to our profession and to test validity is a fallacy. We have, however seen some teeth demonstrated in the two Amicus Briefs prepared by the Inter Organizational Practice Committee (IOPC) which is a coalition of representatives of all of the major national neuropsychology organizations in the US representing approximately 8,000 neuropsychologists in the United States.

The threat posed by attorney-possession of our test material is real. There are numerous publicized and researched examples of plaintiff attorneys misusing protected test material to coach their clients. Once psychologists allow attorneys access to our test materials, every personal injury attorney will have drawers filled with protected test manuals and forms; and full access to the performance and symptom validity measures that we use to detect test manipulation. These attorneys have no ethical guidelines that mandates the protection of these measures as is present for psychologists. Employees of the law firm will have full access to the measures. The measures will leak beyond those drawers further into the public sphere. This examiner is aware of several local personal injury attorneys who possess at least some protected test materials. Ultimately, with the dispersion of test items and test materials, our protected cognitive measures will lose validity and all of the research and funding that went into the development of those measures will be lost; and our ability to assist the triers of fact will diminish to the point of no return. Our ability to assist in public safety will be diminished.

And remember, under this law, the examinee, themselves can write down every item on the intellectual exam, every word on the memory exam, and can record every bit of it, without any restriction on how they use it, or where they post it.

Aside from the invalidating effect of test material dispersion, research clearly indicates that the mere presence of audio equipment, or other third party presence affects, and thus compromises neurocognitive test performance. In litigated cases, settlement often hinges on proving very mild changes in cognitive performance. Detecting mild changes with empirical confidence hinges on adhering to the standardized conditions in which the measures were developed. The increase in low scores caused by the presence of recording equipment and other interference allowed by AB244 would lead to erroneously identifying deficits where none exist. The effects of these interfering factors could be equal to or greater than the effects of a mild or moderate traumatic brain injury. To interpret under these conditions is impossible as the conditions would invalidate interpretation. Because of this, even if the neuropsychologist allowed recording, the expert would likely be subsequently disqualified from testifying; because, consistent with our ethical guidelines, the expert would be required to discuss the invalidating effects of the recordings. Thus, outside of catastrophic brain injury cases or severe dementia, there is no scenario under Third Party Observation in which we can ethically and validly interpret our test data. For this reason, the practice should be prohibited, even when the audio recording is only to be shared with

another psychologist. This means that psychologists must cease all test administration when confronted with these demands.

Only when the judicial system understands that no psychologist in Nevada is permitted to administer protected test measures under these conditions will they begin to form rules that are failsafe against this type of misinformed legislation. For this reason we need your guidance and a firm mandate on this matter or we will lose the fight entirely.

I am approaching the end of my career over the next five years, this is not from me. I have deep concerns over how passive psychologists have been. We seek to find compromise and work hard to try to understand where the opposite side is coming from. However, this law was wrought out of deceit in its presentation to lawmakers, and is designed for the destruction and removal of psychologists from half of the playing field in legal disputes. We cannot hesitate in this matter; for we would do so at our own peril.

*On October 1, 2018, the Nevada Board of Psychological Examiners drafted a letter to the Nevada State Supreme Court outlining the threats to validity when standardized measures are administered in the presence of audio recording equipment and/or other third party presence. And once again the Board weighed in on December 9, 2020 in the Supreme Court case *Moats v District Court (Burgess)*. These communications were deeply appreciated, and the latter served to overturn the previous legislation. However, we have repeatedly been told by the court that these communications are not really a directives by the Board, and that the only reason that we are refusing to allow the attorney to be present, or for a recording to be made, is because we choose to refuse. The letters are perceived of by the court as "wishywashy" in some respects. So, again, my plea to the Board is to give the psychologist of this state unequivocal guidance in a more clearly stated directive, in no uncertain terms that evaluations under these conditions runs counter to the ethical guidelines that psychologists follow and that it violates Nevada Revised Statutes (NRS) 52.380. The firming up of this guidance would greatly assist all psychologists when confronted with the demands of this legislation, and would go a great way toward preserving the validity of our measures for future use. Obviously, we are deeply concerned that the psychologist who only occasionally does forensic work will be intimidated by the legislation and will cave to the demands, unwittingly contributing the problem. Clear guidance from the Licensing Board would help in this instance. Finally, if the Board does draft something, please make it clear that this does not mean that psychologists from other States can enter Nevada and allow*

examinations under these same conditions. Obviously, if we cannot do them, attorneys could simply employ out of State psychologists who might be more than willing to destroy our profession for a forensic case in Nevada.

The final matter I would like to briefly discuss relates directly to a plea to the representative from the Office of the State Attorney General. The release of protected test material as allowed for in this bill is a clear threat to public safety. As already stated, psychologists and neuropsychologists are routinely asked to opine on matter related to an examinees ability to operate in the environment, or in their profession in a manner expected and in a manner that will provide safety to the broader community. The accuracy and validity of the cognitive and psychological measures is paramount to forming our opinions; opinions that could affect the safety and wellbeing of the general public. It is for this reason that we are ethically bound to protect these measures from dissemination, and to administer them in a manner consistent with standardization.

This AB244 is demanding that we disregard our ethical and legal obligations. Whether it be to an attorney heavily involved in personal injury litigation (and may be tempted by her cut of a multi-million dollar settlement), the examinee who may wish to feign the presence of a severe brain injury to win a lawsuit, the criminal who wants to feign incompetence without getting caught, the blogger who thinks that publishing the items from a standardized memory test would get him more attention on his blogger site, the paralegal who steals away the protected test material from the attorneys draw and shares them with others, or an airline pilot who wants to pass all of his cognitive tests, despite slipping toward dementia, the slow loss of these protected measures is a threat to the safety of the public and is a loss of our ability to assist physicians and the court in our examinations. Surely there must be a way to contest this on the basis of public safety. If there is merit to this possibility, I urge you to act quickly.

Dr. Owens thanked Dr. Kinsora for his statement.

Dr. Lenkeit stated that this type of measure has been in a lot of other states; it has passed in other states. He believes the way it has been interpreted is, AB244 says that a person can have an observer of choice present throughout the "examination" – Dr. Lenkeit thinks examination should be defined as a clinical interview only, psychological testing is an evaluation, it is not part of an examination/the entire process. Therefore, the client cannot have the observer present. Dr. Lenkeit reiterates that he believes that is the interpretation in other states.

Dr. Owens asked DAG Ward what his opinion as the attorney for the Board given Dr. Kinsora and Dr. Lenkeit's statements would be. While DAG Ward expresses his statement is not an official AG opinion, but it is his recommendation and opinion – psychologist and licensees should never disobey the law. If there is a statute or law, it is his suggestion that the licensee follow it. However, DAG Ward does provide some hypotheticals, such as: when the Plaintiff or defense attorney says you are going to be evaluated by court order and therefore they want to be there – hypothetically, what if the psychologist or psychiatrist implemented a disclaimer or waiver procedure which needed to be signed, and would not be released to the public, or put on the website, it is only to protect the licensee. DAG Ward believes licensees should be able to inform others that there is a concern to public safety if anything were to get out or be released to the public if the licensee complies with AB244. DAG Ward expressed his sentiment that he is not sure what else can be done. There is nothing else that can be done once a law is passed. DAG Ward cannot suggest that the licensees not follow the law because a licensee feels that their ethics override the law. He provides an example of a journalist; the journalist will say they will not disclose a person who gave them information then the Judge makes the decision to hold that person in contempt and put them in jail. DAG Ward cautions the licensees that a Judge can hold any person in contempt for not following the law.

Dr. Owens then posed a question, can the statutes of the Board clarify what Dr. Lenkeit said about the examination being only the clerical interview? Yes, DAG Ward does believe the Board can clarify or at least enact whether it is in statute or regulations to protect the Board's licensees. Granted, it may be in conflict with AB244, but that is something to deal with down the road. That would be an avenue or vehicle to attempt to resolve this problem.

Lobbyist Laxalt believes this Bill impacts all the healing arts, so there are quite a few professionals affected by this Bill. Lobbyist Laxalt asked DAG Ward, are other Boards doing anything to standardize how they are reacting to this Bill? She believes mental health is going to be impacted due to this Bill. Is there any unity for standardized regulation about the impact? DAG Ward says no, and he represents numerous other boards.

Dr. Owens reminds the public their comments are limited to 2 minutes and with that, opened the floor.

Dr. Jones-Forrester commented that she had 2 points: she is a neuropsychologist that does aeromedical waivers and fitness for duty evaluations. She acknowledged the Board and thanked them for their official statement and support for a similar issue made in October of 2018, regarding public safety and threat thereof to third party evaluations in particular. She acknowledges this is not simply a local issue or an issue

of individual practitioners, in neuropsychology, all of the national boards have made it clear that third party evaluation affects data and is unethical to present data in that scenario. Dr. Jones-Forrester does not feel it is appropriate where an evaluation should be conducted when the data is clearly invalid and against the rules of her professional organization, she confirms she believes it undermines professionalism also. She really appreciates DAG Ward's perspective on the legal implications. Dr. Jones-Forrester asked the Board to support them as they did in 2018, but also put in specific language how to guide them how to navigate this when asked to go against their own ethics and organization. It truly puts the licensees in a very difficult position. Dr. Jones-Forrester is very concerned about the public safety risk and reiterates that it undermines ethics and reputation. She thanks the Board and asks for continued support on this issue.

Dr. Etcoff is disappointed that the Board cannot do anything more strongly for the licensees, but, one thing he asked DAG Ward is, how do they get the Nevada Supreme Court involved as it was in 2021 with the previous for law restricting practice? He hopes there is a means to ask or petition the Supreme Court to once again rule against the law, which is about the money and "they" want to prevent neuropsychologists from doing these types of evaluations (as it costs them a lot of money). It is Dr. Etcoff's opinion that no psychologists should do this work, period. He believes if it is done, it would enable and cause someone to breach ethical guidelines, forensic guidelines, precepts. The research, as Dr. Kinsora stated, shows it simply should not be done. He expresses the most that can happen is record reviews and no IMEs should be conducted until the law is changed. Another part of the law that Dr. Etcoff believes is terrible is the threat of lawsuits against psychologists. He questions why a person would put them into a situation that would allow them to be sued, especially if a differing of opinion is a valid excuse for suit from the Plaintiff (if you were hired by the defense). When the Plaintiff is evaluated by a neuropsychologist, that neuropsychologist does not have a third party in the room, does not audio tape, does not video tape, and does not put at risk the neurological and psychological test. Why would only the neuropsychologist hired by the defense have to go through this procedure? Shouldn't the law be the same across the board, to be fair to everyone? Dr. Etcoff expresses the law is unfair in that sense. He asks the Board to do whatever they can to advise they strongly disagree with this law. He ends by sharing that he will not do another IME under these conditions.

Dr. Chapple-Love is present today as an ECP practicing in forensic psychology and as the NPA of the Nevada Psych Association. She believes she originally brought up her statement in May as she has a major concern now as she had then. NPA believes it is in theirs and the Board's interest to align to better help protect Nevadans, which is a major concern. She believes there will be a lot of people who will not do these evaluations, which evaluations are sorely needed throughout the state. Dr. Owens thanked Dr. Chapple-Love.

Dr. Belmont added that it is not isolated to a Nevada problem. Believes these measures are going to infect other states and potentially Canada, basically any jurisdiction that uses these evaluations. It will affect test validity. It is not just a Nevada problem. She expressed that protecting public safety for Nevada is the biggest point, but she believes every other state should also be protected before this law infects them.

Dr. Lang wondered if DAG Ward thought the Board had standing to seek injunction against the law as it is affecting so many? As an alternative, Dr. Lang asked if DAG Ward can ask the Attorney General for an official opinion given it is inconsistent with the last Supreme Court case. In response, DAG Ward indicated that this is not an official AG opinion, but he does not believe the Board has standing to seek an injunction for relief from AB244. He indicated the Board can request, in writing, for an AG opinion, which DAG Ward would assist the Board with preparing to put on the agenda. DAG Ward believes the AG's opinion would likely say something similar to DAG's earlier opinions. The AG cannot advise or suggest that anyone break the law. DAG Ward likes the idea that everyone digs in their heels to deny performing IMEs because it violates their ethics. Then the Board has to consider whether to bring an action against that licensee. Then maybe that licensee could bring their suit to the Supreme Court as unconstitutional, but that is a scenario that is 3-5 years into the future. It would be a long, drawn-out way to bring this discussion to the Supreme Court, but it cannot just be brought to the Supreme Court without foundation. There must be an action brought to advance to that level to be in front of the Supreme Court.

Dr. Owens asks DAG Ward, if the Board were to seek an AG's opinion and to seek information from national boards and organizations and ethics' code, not just referring to AB244, is it his opinion that essentially the only thing that can be done is that a licensee simply refuses to do the examination versus it being a violation of ethics and in opposition to public safety? DAG Ward reiterates this is not an official AG's opinion, but states he would not be involved in the AG's opinion because they have a solicited general and solicited assistant general that writes those but if they ask he would inform them he helped build the language for the request. However, DAG Ward would anticipate that the AG would tell the Board that the law must be followed. If the licensee feels that state or national ethics prevent you from doing this, then do not do it. But then where are the psychologists going to come from that are conducting these evaluations? The next question is does the Board have to file an action against the licensee for conducting the evaluation in violation of their ethics? If the Board does, then the defense is that state law requires the third party, it must be recorded, etc.

Dr. Etcoff points out that the base rate for malingering (symptom exaggeration) is conservatively 30%. He has been practicing for 40 years, and he believes that is correct. He poses the idea of how many millions of dollars it will cost the economy, the insurance companies, the state of Nevada to give people who are exaggerating in order

to receive money they do not deserve. He believes it will be wasteful for people who are not evaluated properly.

Dr. Kinsora addresses that the idea that the licensees give protected test materials to attorneys with the agreement that they protect them is worrisome. For example, the NFL used prior test materials to coach the players. So, in his opinion, they cannot put the test material into the hands of the attorneys, despite their ethical guidelines. He believes the licensees need to protect the test materials from everybody. With regard to following the law, if a law is created that tells the licensees that they have to torture the patient in order to get the truth out of them, they must refuse to take the case per their ethical guidelines. Why can't the Board create a guideline that prevents licensees from taking a case because it violates their ethical guidelines? He points out that no one forces the licensees to perform these tests, so they have to choose to not perform them and tell people to walk away when it is demanded. Dr. Etcoff expressed his shared sentiment.

Dr. Kuhl is a military psychologist and practicing in part-time forensic psychologist. He believes if it is appealed to the Nevada Supreme Court, they should consider the perception of the public and competing philosophies where they can see an opposing expert as a "hired gun". It is important to note that the role is not only to protect the client they are evaluating but also the public. If their tests are invalidated there is no potential way to get to the truth of the matter. The only way to protect the public is to preserve their test security to preserve truth. There is no way to do that if the tests are null and void. Sometimes the public may look at psychologists with a more sinister light.

Dr. Belmont wanted to add that as Dr. Kinosora and Dr. Etcoff noted, the law is about lawsuits, about personal injury litigants being able to beat licensees. She thinks the bigger picture is the protection of the public. She believes they will be taking services away from patients who need them, and it is not limited to personal injury cases, it is criminal work, people who are seeking information for educational purposes (ADHD, whatever that is, people who want to pass the bar exam but cannot because of complications), physician safety. There are so many different types of evaluations and services being removed that patients are not going to be able to receive, because the licensees will not provide these types of services. So, it is causing more damage to Nevada.

Dr. Lenkeit states that this is not just a Nevada issue, but that it has been brought up in other states. He indicates it has been implemented in other states and believes it will be important to look at those other states to see what they are doing, specifically for a work around. Dr. Lenkeit says that in other states, an observer can be present during an interview only and it does not expose the test material. He isn't sure what others think about this work around, but he believes it will be extremely difficult. Especially

considering this law has been enacted in other states and to his knowledge it has not been overturned by the Supreme Court.

Dr. Pearson asked if anyone knows how other state Psychology Boards have responded to similar legislation in their states. Dr. Lenkeit states the one state he knows about has not responded at all. The way it has been implemented is, yes you can be present during a clinical interview but no you cannot be present for psychological testing.

Dr. Benuto understands there is a subset of psychologists that will not be performing these evaluations, but her concern is that test security will be undermined as other psychologists may choose to participate in this process. This will have a significant impact on the field, not just the state. She reminds the Board of Dr. Kinsora's position that the psychologists refuse to conduct these types of evaluations so they are not violating their ethical guidelines but staying within the confines of the law. Dr. Benuto poses a question to Dr. Owens and DAG Ward, is the Board able to advise licensees of that? Dr. Owens deferred to DAG Ward. DAG Ward states the Board cannot implement a policy saying, licensee, you cannot do these interviews. The Board does not have that authority because there's a statute that would – a Board policy cannot override a statute or a regulation. A Board could adopt a policy for a complaint or administrative hearing, though. He would not suggest a policy saying the Board is going to prosecute a psychologist for conducting an examination while there is a third party in the room. One he believes it would be challenged as constitutional because it conflicts with a statute. He expresses that he believes the Board's hands are tied. DAG Ward thinks a way to challenge it would be for a psychologist or licensee to say they will do this and not obey the law, then be held in contempt by the Judge, they would have to hire an attorney, and bring it before the Supreme Court, indicate it is unconstitutional, ethically they cannot do this, etc. However, this would be time-consuming. The AG's office would not be able to represent that person should a licensee decide that route. It would be on the licensee to decide that. DAG Ward does like the idea of all the licensees saying no due to the third party and maybe setting their own confines within the law.

Dr. Owens asked DAG Ward if the Board can write a statement that discourages people from going against their ethical commitments. While Dr. Owens states she does understand the Board cannot tell people not to comply, she is wondering if a statement can be prepared that illustrates the ethical dilemma that discourages people from going against their ethical commitments. DAG Ward believes the Board expressed their opinion since 2018, that this is going to hurt the testing. The Board can issue a statement or policy and the Board can encourage its licensees to abide by the state and national ethics and not do anything unethical, even if there is a law that allows them to go outside of the ethics. Yes, the Board can take a stance. If it does, he suggests the language is put on the agenda and worked on with regards to AB244 to what the

licensee should or should not do with respect to complying with their ethics. The Board can adopt language to take a stance as the Board.

Dr. Holland asks if it would be feasible to include something, some educational information, for new licensees and renewals to educate the Board's psychologists about the dilemma. Even have them potentially sign something that says they have read the material. The Board would not tell them they cannot take a referral, but believes it is the role of the Board to inform the psychologists. Maybe it should be looked at from a different perspective since they cannot change the law. Instead, the Board should take a stand to educate psychologists more by attaching something they would need to acknowledge when they reup their licenses and apply. DAG Ward would have to look at the Board's regulations in regard to the application and/or renewal application to see if there is anything that can be done. There is a possibility to warn licensees to be aware of AB244, and leave it at that nature. DAG Ward said the Board cannot encourage them to not follow the law, but you can encourage them to be ethical.

Dr. Benuto informs the Board that in the past she knows that CEU requirements have been modified in the past on suicidality and ethics. Therefore, would it be possible to have a required CEU on the importance of test security? DAG Ward said yes, the Board has the authority under its regulations to require a CEU on testing, etc. He would have to review the Board's regulations, but believes it is possible. Simply put, the Board may just have to enact a regulation.

Dr. Owens points out there a few options to be considered and on the table. First, a statement on the Board's position relating to AB244. The other option would be asking for an AG's opinion. In terms of an AG's opinion, what Dr. Owens would want to happen is to have something beneficial and not more ammo or fuel for others to say that psychologists do not have to comply if they do not want to. If that is the only response that would come out of an AG's opinion, Dr. Owens is not confident that it would be especially helpful, but she is open to others' views. If there is an option that the AG's opinion would actually support it being in conflict with ethics and standard of practice, then she would be in favor of seeking an AG's opinion. The third option would be to clarify that an examination is just the clerical interview and not the testing. It sounds like this would need to be written into NAC, as soon as possible. Dr. Owens also mentions Dr. Benuto's suggestion for a CEU on test security. Dr. Benuto is concerned the CEU or Dr. Holland's suggestion is the delay for people to receive licensure. The broader issue is that there are a subset of psychologists that will adhere to the ethical code and refuse to do these evaluations, but the concern is those who are not going to. Also, she is worried about this being a financial avenue for those who do not have a strong background in assessment training and those individuals would be less likely to comply with respect to test security. The slow nature of going to the Supreme Court, CEUs, etc. would be too late because it only takes a few

of those test materials to be exposed in order for the information to be widely disseminated.

Also, Dr. Kuhl indicates that from a Legislative standpoint it should also be considered including test security within the Board's ethical training. So, there is exposure that way. Secondly, he believes they should be realistic with impending AI, some of the test security as it is already out there so it cannot be eliminated but more so minimize test security exposure. If anyone knows any colleagues doing this practice, they should be mindful to approach those colleagues as they may not know. But believes the conversation is important while considering other psychology and avenues.

Dr Jones-Forrester believes other states have resisted, believes Iowa is one. She is wondering if it would be helpful to the Board for those of them working on this topic for about a decade, would it be helpful to the Board to do research regarding what has been done in other states? How can they assist the Board, especially if it has been done really well elsewhere? Dr. Owens would like a bit of a conclusion about the next steps, but would appreciate expertise and guidance on the steps that will be taken to make this as helpful and useful as possible without reinventing the wheel.

Dr. Owens will accept 2 more comments before she wants to drive to a conclusion.

Dr. Etcoff suggested everyone attend the Second Annual Forensic Psychology Meeting and Workshops in Scottsdale in September 21-23. He expresses it is an amazing workshops with a zillion topics being taught by the most experienced people in the country.

Dr. Owens asks in regard to the Board issuing a statement on AB244, who would be in favor. Dr. Benuto, Dr. Holland, Dr. Esmaeili, and Dr. Pearson all support this option.

On motion by Lorraine Benuto, second by Catherine Pearson, the Nevada State Board of Psychological Examiners approved that the Board should create and issue a statement on AB244. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

Dr. Owens asked if anyone on the Board would like to work with Dr. Jones-Forrester and Dr. Kinsora to work on drafting the statement. Dr. Benuto indicated she would be happy to work with them on that and stated she believes Dr. Kinsora has a great starting point. Dr. Holland shared the same sentiment and indicated she would be willing to take the lead on this to take Dr. Kinsora's information to prepare a statement. With that, Dr. Owens states that Dr. Holland will work with Dr. Jones-Forrester and Dr. Kinsora to prepare a statement which will then be shared with Dr. Benuto before it is brought to the Board during next month's meeting. She would like a nice tight turn around. Dr. Owens invites all members of the public to attend next month to make

comments, suggestions, etc. The intent is that it will be statement to share with registrants and licensees.

The next suggestion is for an AG's opinion. Dr. Owens believes the pros and cons have been discussed. She reiterates her concern that she does not want to do something that would "shoot [the Board] in the foot" but instead her intent and hope would be that the AG's opinion would be in support of the dilemma regarding ethical concerns and safety of the public. She does not want an AG's opinion to be what they already know: the licensees can refuse to do these services or that it will not demonstrate what the Board wants, she does not believe it makes a lot of sense to go this route. DAG Ward again reminds the Board and public that his opinion is not an official AG's opinion, but essentially what the Board would be asking in seeking an AG's opinion is about a conflict in the laws, which is generally sought through an AG's opinion. This is exactly what the Board would be seeking. He does believe the AG's opinion would notate there is a conflict with AB244 and the ethics and that the licensee would have to make a determination therein. DAG Ward does not believe it would be a waste of money or time, but believes it is the best route to get an official AG's opinion. If the AG could demonstrate that the law is in conflict with the Board's ethics, she does believe it could be beneficial to the Board's argument. However, she will defer to the experts to determine if they believe it would be helpful or not (Dr. Jones-Forrester, Dr. Kinsora, Dr. Beaumont).

Dr. Kinsora is concerned an AG's opinion would be counterproductive. He thinks attorneys believe they can be handed confidential information that will be protected per the attorneys' ethical guidelines, despite many examples otherwise. Unfortunately, the temptation when money is involved to share and seek confidential information is too high. The attorneys do not have the same confidential ethical protections that psychologists have, so a compromise would simply be unacceptable to psychologists. So, Dr. Kinsora believes it would not be beneficial. Dr. Owens responds by stating that she believes DAG Ward is indicating that the AG's opinion would demonstrate the conflict for the psychologists between the law and the Board's ethics and how that may bolster neuropsychologist and other psychologist who may use this as an avenue for revenue, which may dissuade them. So, the AG's opinion would not have anything to do with the attorneys, but more of an advisement to psychologists about it being in violation of the ethics. If the opinion was confined to that specific matter, per Dr. Kinsora, he would be in favor but he's concerned it would be beyond that. Dr. Owens believes the question can be phrased in a specific way so that the AG's opinion responds specifically to the question and not opine further beyond the question. The question would be simply, does AB244 conflict with the Board's ethics. Dr. Kinsora and Dr. Etcoff believe that would work, if that is the case.

Dr. Hollands says she thinks it is a risk that she is unsure if the Board really wants to take. From DAG Ward's thoughts and other comments, she asks, if the Board does not

ask for an AG' opinion, would that be okay? Dr. Owens state as she talks though the issue, the AG's opinion may be redundant to what is already known and will be in conjunction with the statement with Dr. Kinsora. DAG Ward reiterated that he would assist the Board in order to define the question, and while the AG may respond as predicted there is also a chance the AG's opinion opines that a psychologist could get a court order to protect themselves, no one put the information on the website, etc. He confirms there is a risk that in addition to the specific answer, they also opine further regarding the licensee's position of violation as opposed to a licensee simply stating no because their ethics prevent them from conducting the examination. Dr. Owens reiterated that it sounds like the Board believes it is too risky.

The third option is Dr. Lenkeit's thoughts to clarify "examination." She asks Dr. Lenkeit if other states have interrupted it through statute or an informal interpretation. Dr. Lenkeit indicated he was not certain but believes it is a more informal interpretation.

Dr. Pearson asks if there is a way the interpretation can be included in the statement from the Board as a way to incorporate for psychologists to interpret AB244? DAG Ward stated comment cannot be made until the language is seen, so he had no comment regarding the legitimacy or language to be used. Dr. Holland shared her concern again about the risk. As a psychologist, they can choose not to accept a reference, but once they accept a referral, there is an obligation to conduct an evaluation or examination and that is where the interpretation lies. Whereas someone else is saying what an examination is. Her thought is maybe less is more and a psychologist should not have to accept a referral if it is against the licensee's ethics.

Dr. Owens pulled up NRS, NAC. There is a defined definition for telehealth, and therefore as it pertains to examination, would it be helpful to define examination versus assessment or another type of examination. Dr. Belmont believed this option may be a compromise and a way to provide good faith that the licensees want to comply and follow the law and provide these services, but that the observation and recording has to be limited to the interview. It is a compromise she has made previously to pacify the request. The struggle lies with determining how to put that into the language, however, this may be the best option. Dr. Etcoff agreed with Dr. Belmont. He said it is a way to point out that the testing must be protected, and the licensees are willing to do whatever it takes ethically to perform these evaluations and this option shows they are trying. Dr. Lenkeit would like to see it written into NAC to be defined. He shared the compromised position thought. Dr. Holland was curious how long it could take. Dr. Owens said six months and Dr. Lenkeit said not as long as a Supreme Court case. Dr. Belmont said there is a provision in Iowa that protected test data only goes to a licensed psychologist within the United States that is in accordance with their state laws. She believed it would be nice for Nevada to do something similar with respect to AB244. She will find the statute and share it with the Board. Dr. Lenkeit confirmed he believes it would be beneficial to define psychological examination and also to state that

they cannot release the test data to anyone. Dr. Owens said six months, but if someone focused their time on it, while they may not be able to pass it in six months, the record could be plead and it could be known that there will be a difference. Dr. Owens does not want to be the one who takes on this task as she does not do testing. Dr. Lenkeit stated he would be willing to work on it with someone else. Dr. Pearson confirmed she would be a second set of eyes if Dr. Lenkeit drafted the language first.

Dr. Owens asked for a motion to approve Dr. Lenkeit and Dr. Pearson to create language defining an examination. Dr. Lenkeit confirmed the other language will be to prevent or prohibit test data from being released to anyone other than a licensed psychologist. The word Dr. Lenkeit would be psychological testing. Dr. Kinsora wondered if the wording should be administration of standardized test because a lot of people misunderstand testing to include a talk test or diagnostic examination that involves just talk. Dr. Lenkeit encourages Dr. Kinsora's involvement in language drafting. Dr. Owens thinks the word examination could be in AB244, so she wanted to confirm that the Board creates a definition about that that is just the clinical examination and the administration of the standard test is just that, about standardized tests.

On motion by Stephanie Holland, second by Lorraine Benuto, the Nevada State Board of Psychological Examiners approved that Dr. Lenkeit and Dr. Pearson should create language defining an examination and a definition of standardized testing and additional language regarding the prohibition to release test data to anyone but a licensed psychologist which will be drafted by Dr. Lenkeit and Dr. Pearson. (Yea: Whitney Owens, Lorraine Benuto, Stephanie Holland, Catherine Pearson.) Dr. Soseh Esmaeli was not involved with this vote as she was temporarily unavailable from the meeting, but the Board still held quorum. Motion Carried: 4-0.

Dr. Owens thanks everyone and encourages everyone to appear at the next Board meeting to further discuss. Executive Director Arnold confirmed the meeting is August 11, 2023.

6. Board Needs and Operations

- A. (For Possible Action) Discussion and Possible Action to Select Officers for the State of Nevada Board of Psychological Examiners for a One-Year Term from July 1, 2023, through June 30, 2024, from the Current Board Membership: Monique Abarca, Lorraine Benuto, Soseh Esmaeli, Stephanie Holland, Catherine Pearson, Whitney Owens, and Stephanie Woodard. Officers to be Selected may Include President, Secretary/Treasurer, Continuing**

Education Review Officer, Non-Resident Consultant Application Review Officer, and Exam Officer.

Executive Director Arnold reminded the Board of the positions that still needed to be selected were Secretary/Treasurer and the CE Coordinator. Monique Abarca, the current CE coordinator, was not present. Dr. Owens indicated she believed the Non-Resident Consultant Application Review Officer and Exam Officer also still needed to be confirmed. Dr. Holland believed she thought they would wait for today's meeting to confirm if anyone else was interested in the ATEAM position.

Dr. Pearson was not present during the last meeting, so Dr. Owens inquired if Dr. Pearson would be interested in any of the open positions. Dr. Pearson would like to hold off on the other positions if the ATEAM is still something the Board needs to vote on.

Dr. Owens asked Dr. Benuto if she had put more thought into the Secretary/Treasurer position. Dr. Benuto shared she is happy to give the position to anyone else that may be interested in the position, but she is happy to accept the role if there is a need. Dr. Owens informed Dr. Benuto she does not believe Dr. Benuto would be overwhelmed due to the Board Office being in such a nice, clean position. Executive Director Arnold confirmed she will work closely with Dr. Benuto to assist with the role.

For the Continuing Education Review Officer, Dr. Owens assumed Ms. Abarca will be interested in remaining in this position assuming her renewal application is approved.

Dr. Owens asked if Dr. Holland wished to stay as the Exam Officer as Dr. Owens shares what a great job she does at this role and that Dr. Holland knows more about the role than anyone else on the Board. Dr. Holland confirmed.

On motion by Soseh Esmaili, second by Catherine Pearson, the Nevada State Board of Psychological Examiners approved Dr. Benuto as the Secretary/Treasurer, Monique Abarca as the Continuing Education Review Officer, and Dr. Holland as the Exam Officer for the Fiscal Year 2023 to 2024. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

- B. (For Possible Action) Discussion and Possible Action to Select the Membership of the Application Tracking Equivalency and Mobility (ATEAM) Committee for a One Year Term from July 1, 2023, through June 30, 2024, from the Current Board Membership: Monique Abarca, Lorraine Benuto, Soseh Esmaili, Stephanie Holland, Catherine Pearson, Whitney Owens, and Stephanie Woodard.**

Current Members of the ATEAM Committee are Soseh Esmaeili, Stephanie Holland, and Catherine Pearson.

Currently on the ATEAM is Dr. Esmaeili, Dr. Pearson, and Dr. Holland. Dr. Owens asked how they felt to continue as the ATEAM. Dr. Esmaeili and Dr. Pearson shared their interest in staying on the Board. Executive Director Arnold reminded the Board that Dr. Woodard expressed interest in being a part of the ATEAM. Due to her absence, this topic was tabled for the next meeting.

C. (For Possible Action) Report from the Nevada Psychological Association.

Dr. Chappel-Love presented the Report from the Nevada Psychological Association. As the Board can see, AB244 is creating issues. Nevada Psychological Association worked on this since before the measure went into law and will continue to work on the topic. Many psychologists for the state were encouraged to show up to today's meeting as it is likely to impact everyone. With their Legislative efforts this year, she was hopeful of and proud of those efforts. There is an upcoming executive board meeting, where she suspects it will be discussed how the Nevada Psychological Association can best assist the Board in giving people guidance and allowing them to make their own decisions regarding what they want to do on their license, while giving up to date ethical information on what they're allowed to do. That is the focus. The Mentorship Program is up and running, which is exciting. Dr. Owens thanks Dr. Chappel-Love.

D. (For Possible Action) Report from the Executive Director on Board Office Operations.

Before Executive Director Arnold began her report, she mentioned that the ASPPB annual conference is coming up at the end of September so that everyone can consider if they want to attend. It is scheduled for September 27 to October 1 in Cleveland, OH.

Executive Director Arnold presented the office statistics spreadsheet. June was extremely busy with licensure applications and state examinations. It far exceeded the other months of the fiscal year and helped the Board end on a very strong fiscal note. The Board currently has 666 active licensees and 108 applications for licensure. Information was also included regarding the data on the applicants and registrations for the Board's psychological assistants, interns, and trainees.

Dr. Owens asked about the applicants versus the registrations on psychology interns. Executive Director Arnold believed the applicants started and never continued, but this was prior to her employment. The Board Office is reaching out to individuals who are close to expiration to help facilitate with their applications. Dr. Owens wonders if it is

about the applicants not coming into the state or realizing they do not have to apply. Executive Director Arnold is not sure as she was not present when those applications were received, but the Board Office is starting with the most critical in terms of expiration and reaching back to see if the Board can facilitate anything. Dr. Owens expressed concern about applicants not being exploited and that the Board is clear on the rules. She would request some data on this in order to try to avoid unnecessary applications since interns do not have to register with the Board if they do not plan to receive Medicaid reimbursement. Dr. Owens believes it should be clear on the website and the language should be permissive. Executive Director Arnold expressed a future goal to address this concern.

Dr. Esmaili wanted to clarify that for the people that are registering for postdoc, does their application expire after a year and then they have to reapply? Executive Director Arnold confirmed that they simply have to pay a registration fee to extend the application for another year. What if the contract is a two-year contract, per the laws does the applicant then have to pay the extension fee for the second year. Executive Director Arnold will have to further confirm but believes there is language that allows for a second year. She would like to really scrub the regulations regarding a licensee asking and being granted a two-year registration. Any extension after three years would have to be sought through Board approval.

Executive Director Arnold wanted to share with the Board a little about what Assistant Executive Director Weaver and her have been doing since Assistant Executive Director Weaver started in early June. For starters, the new computer came in at the beginning of June, and the Board Office set that up and it is running. They also worked with EITS to get a new state email address for Assistant to Executive Director Weaver's position. It is a similar email, with its reference being administrative, and Executive Director Arnold advised the Board they will likely see emails from Assistant Executive Director Weaver from that address. Executive Director Arnold expressed that Assistant Executive Director Weaver has been a life changer for her in this role in terms of getting the office organized and taking care of the paper filing backlog. Assistant to Executive Director Weaver has also taken on preparing all meeting minutes, and the Board Office is working together to put Assistant Executive Director Weaver in charge of application processing and ensuring she makes a comfortable transition into taking ownership of that aspect of the office operations. Assistant to Executive Director Weaver is also working on a records retention research project to help create a records retention policy and to be able to come to the Board with proposals for dealing with some of the old files and information in the office.

Executive Director Arnold informed the Board that Assistant to Executive Director Weaver has about two decades in the legal field, currently owns her own paralegal

business, and holds a master's degree in leadership and management. This Board is certainly getting a lot of bang for its buck in Assistant to Executive Director Weaver.

Finally, Executive Director Arnold is nearly finished with a project regarding the Board's regulations being disjointed between what is publicly published and available, which is from 2016, and the amendments to those regulations that have been approved at various times since 2018, but never incorporated into the published version. Executive Director Arnold has created a document that is the Board's regulations with all of the amendments identified on the Board's website incorporated into it. This document includes both internal and external hyperlinks throughout for ease of navigation, and also includes some comments in the form of footnotes to identify an anomaly or a link to a reference that is no longer valid. It is still in draft form, as Executive Director Arnold works out a few kinks in a few of the hyperlinks and is doing a final review and proofing to ensure accuracy. Executive Director Arnold has also since discovered additional regulations that were approved, but are not available on the website, that she wanted to include in the fully incorporated regulations document. Her vision is to come back to the Board with the final version for consideration about how to make it available *for informational purposes only* to the Board and the public. Because this is not a product of the LCB, it cannot be an official document. It's just intended to be helpful and to have a single document in which to consult the regulations as they should currently be. With that, Executive Director pulled up the document and discussed the revisions. Dr. Owens thanked Executive Director Arnold and pointed out that the LCB is so incredibly behind on this, which makes it hard for the Board. Having this information in one place will be incredibly helpful.

Dr. Feil indicated she felt this would be very beneficial to applicants and wanted to know when it will be available to the public, especially for someone like her who is an out of state psychologist looking to apply to become licensed in Nevada. Executive Director Arnold indicated she would be happy to share the document but did reiterate it is in draft form and still needed future revisions. Dr. Owens confirmed there is no concern sharing the document with Dr. Feil.

No further questions or comments were made.

7. (For Possible Action) Discussion, and Possible Action on Pending Consumer Complaints.

- A. Complaint #19-0626
- B. Complaint #22-0930
- C. Complaint #23-0303

DAG Ward presented that Dr. Lenkeit, Dr. Young, Executive Director Arnold, and he met and those meetings are not subject to the open meeting law. These meetings are not under the open meeting law and are exempt from the open meeting law. Nothing has changed. During this meeting, they discussed the three listed complaints, as well as other pending complaints. DAG Ward and Dr. Lenkeit are available to answer questions should the Board have any questions or need to discuss specifics. They may have to have a hearing on one, they may have to add an agenda item for neuro feedback and licensing and biofeedback and licensing (under 2303) where a cease and desist letter may need to be discussed, which may need to be placed on the agenda for a future meeting. Dr. Lenkeit had nothing to add.

Dr. Owens acknowledged how short the complaint list is, but that it does not mean the Board Office is not receiving complaints with the exception of complaints that are not relevant to the Board's licensees.

No further questions or comments were made.

8. (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.

Dr. Owens requested approval for the following upon completion of licensure requirements: Monica Larson, Alexandra Montesi, Alexandra Matthews, Dalea Alawar, Stephanie Gstettenbauer, Danielle Miro, Margaret Jones, Jessica Liberman, Dallas Boyce, Elena Gavrilova, Leslie Feil, Katherine Beckwith, Leandrea Caver, Susan Chamberlain, Mary Lou Ancheta, Rachel Attya, Gail Shen, Anthony Bean, Kara Christensen, Osvelia Deeds, Amanda Wallick, and Steven Covelluzzi.

On motion by Esmaeili Soseh, second by Lorraine Benuto, the Nevada State Board of Psychological Examiners approved the above upon completion of licensure requirements. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

Dr. Owens expressed this is the longest list she has read and is a testament to how many applications the Board has received.

A. (For Possible Action) Discussion and Possible Action to Approve Dr. Melissa Stolsig's Application for Licensure.

Dr. Owens reviewed Melissa Stolsig's Application. Dr. Stolsig has been licensed in California since 2019, in Colorado and Florida since 2021. She attended the Chicago School of Professional Psychology in Los Angeles, which became APA accredited in 2018, but it was not APA accredited when Dr. Stolsig graduated. The ATEAM reviewed Dr. Stolsig's Application and did not have any concerns. Dr. Stolsig completed more than enough supervised hours for postop and the course work aligned with the criteria. The ATEAM approved Dr. Stolsig's Application and recommended the Board also approve. No further concern or comment.

On motion by Lorraine Benuto, second by Soseh Esmaeili, the Nevada State Board of Psychological Examiners approved Dr. Melissa Stolsig's Application. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

B. (For Possible Action) Discussion and Possible Action on Dr. David McIntyre's Reinstatement of his License.

Dr. McIntyre has requested reinstated to have his license reinstated after non-renewal during the last renewal period. He also stated that he currently is licensed and practicing in Arizona. The Board confirmed he is in good standing with the Arizona Board. After reviewing his CE information Dr. McIntyre provided additional information regarding the same. Executive Director Arnold confirmed Dr. McIntyre had more than enough CEUs. No questions for reinstatement.

On motion by Lorraine Benuto, second by Catherine Pearson, the Nevada State Board of Psychological Examiners approved Dr. David McIntyre's Reinstatement of his License upon payment of his reinstatement fees. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

C. (For Possible Action) Discussion and Possible Action on Dr. Lisa Rhee's appeal of the ATEAM's May 12, 2023, Decision Denying her Application for Licensure.

Dr. Lisa Rhee was an applicant for licensure whose initial application indicated she went to an APA-accredited program, but whose PLUS application revealed a discrepancy that required ATEAM approval. In reviewing Dr. Rhee's application and supporting materials, the ATEAM denied Dr. Rhee's application for licensure based on her internship not meeting Nevada's requirements. Dr. Rhee has appealed that decision.

In her initial application for licensure, Dr. Rhee indicated that her educational program – UCLA's Education Department and the Psychological Studies in Education program – is APA accredited. Upon review of the PLUS application, that accreditation was not

verified. In looking at the APA's accreditation website, it appeared that UCLA's Education Department and the Psychological Studies in Education program are *not* accredited by the APA.

The ATEAM first reviewed Dr. Rhee's application during its April 7, 2023, meeting. Dr. Holland had initially been assigned to review Dr. Rhee's application, but when she was unexpectedly unable to attend that meeting, Dr. Esmaeili and Dr. Pearson reviewed it and both had several questions on Dr. Rhee's coursework and internship/supervision. Dr. Esmaeili and Dr. Pearson decided to postpone any determination on Dr. Rhee's application until Dr. Holland returned and they could include her review of the application.

In advance of the May 12, 2023, ATEAM meeting, Dr. Holland provided her review sheet in which she indicated that Dr. Rhee's application would be denied based upon Dr. Rhee's internship, which had been supervised by an unlicensed psychologist and spanned over 4 years and because her degree is focused on research and not clinical work. During that meeting, which Dr. Rhee attended and in which she participated, Dr. Holland and Dr. Rhee talked at length about Nevada's specific requirements and guidelines as they related to Dr. Rhee's education and experience and Dr. Holland not knowing how she could get around those requirements. Dr. Rhee provided some information about her internship, and also noted that, since applying for licensure in Nevada, she became licensed in Texas and New Mexico. She also stated that she has met all of the requirements for licensure in California, only needing to pay the licensure fee to be licensed there. Dr. Rhee also explained that the opportunity she has to work in Nevada is to work with agencies that provide ADA services to clients who need diagnostic evaluations and help address the extensive waitlist that currently exists.

In appealing to the Board, Dr. Rhee has provided additional explanation regarding her internship and coursework, and stated that she is applying for licensure with the intent of providing diagnostic services for children with development concerns in the community.

Dr. Owens separately reviewed Dr. Rhee's application earlier in the week and confirmed she does not meet the criteria for licensure in Nevada. However, Dr. Owens is not sure how she was licensed in New Mexico, a green state, since they also have the APA requirement. She further confirms the internship and coursework also do not meet Nevada standards. While Dr. Owens believes it is unfortunate, she does not know how the Board can approve Dr. Rhee's application, despite the need for Dr. Rhee's services. Dr. Holland indicates Dr. Rhee does not meet the equivalency for multiple reasons, but it was discussed that Dr. Rhee come to the Board and appeal the decision based on the need in the community. But, Dr. Owens stated that the equivalency would not be there even if Dr. Rhee were to ameliorate other concerns of the application. Dr. Benuto agreed with Dr. Owens' point.

On motion by Lorraine Benuto, second by Catherine Pearson, the Nevada State Board of Psychological Examiners denied Dr. Lisa Rhee's Application. (Yea: Whitney Owens, Lorraine Benuto, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 5-0.

D. (For Possible Action) Discussion and Possible Action on:

- i. the Request for Psychological Assistant Tracy Basile to be supervised by Dr. Christopher Shewbarran (PY1022), a licensed Psychologist who has had supervised supervision and supervision coursework, but who has been licensed for less than three years.**
- ii. Granting Dr. Soseh Esmaeili an Exception to the Number of Supervisees she can Supervise in Order to be Able to Supervise Psychological Assistant Tracy Basile.**

After looking at all of the data over the past three years, Dr. Owens wanted to confirm that the decision to waive the three-year requirement was consistent with past decisions. She confirmed it has not been done a lot but, in some circumstances, this has been waived. For instance, in the past it was waived due to the person being the only individual to provide the specific kind training in the area. Dr. Owens thinks she would be comfortable with waiving the three-year requirement for Dr. Shewbarran with the understanding that Dr. Esmaeili can provide backup.

Dr. Esmaeili indicated that Ms. Basile needed to work so any delay on voting due to not having quorum may prevent Ms. Basile from future consideration. Dr. Esmaeili stated she does not believe Ms. Basile could hold off for another month to wait for a decision. Dr. Lenkeit proposed that a brief 10-minute Board meeting in a week that may resolve the vote before the next Board meeting. Dr. Owens wondered if Dr. Benuto could jump back on for the vote today. Executive Director Arnold called Dr. Benuto to request that she attend the meeting again for purposes of the vote. Dr. Benuto called back in to the meeting to participate in the vote on this agenda item.

On motion by Lorraine Benuto, second by Stephanie Holland, the Nevada State Board of Psychological Examiners approved waiver of the three-year requirement to approve Dr. Shewbarren to supervise Tracy Basile with Dr. Esmaeili as a secondary supervisor. (Yea: Whitney Owens, Lorraine Benuto, Stephanie Holland, Catherine Pearson.) Motion Carried: 4-0. Soseh Esmaeili recused herself from the vote.

9. (For Possible Action) Discussion and Possible Action on the June 28, 2023, meeting of the Ad Hoc Committee to Consider the Registration of Supervisors of Psychological Assistants, Psychological Interns, and Psychological Trainees.

Dr. Owens indicated it was a lively Ad Hoc Committee, but that they were getting closer. Dr. Paul brought some ideas per Dr. Owens during the last meeting revolved around calculating how many supervisees a supervisor can have. A discussion was held regarding ethical reasons why specification about how many supervisees a supervisor can have. Dr. Owens believe it is more than sufficient in order for a supervisor to have plenty of supervisees while protecting the public. There were discussions regarding no limitation on psychologists regarding how many patients can be seen and other discussion. The discussions seem to revolve around the number of lives that could be affected. The Ad Hoc Committee is hoping to have some recommendations for the Board in August around limiting number of supervisees, changing the three-year requirement to more of a competency based approach. The Subcommittee is so far not in favor of registering supervisors, but creating some of the other requirements to sure up the supervising requirements.

No further comment or discussions were held.

10. (For Possible Action) Discussion and Possible Action on Dr. Gary Lenkeit's Proposed Addendum to the Board's Complaint and Disciplinary Policy regarding Court Ordered Evaluations and Court Ordered Psychological Services.

Dr. Owens had a point of clarification she wanted to ask Dr. Lenkeit regarding the addendum to complaint policy for court ordered services as she does not address this type of work. The provision she wanted clarification on indicates "a complaint may not be filed with the licensee is under court appointment to provide the particular psychological service." With that, Dr. Owens asked Dr. Lenkeit why the complaint would not be able to happen while they are under the services. Dr. Lenkeit stated that some people are under court order for services and they do not want those services, so this may be an avenue to terminate those services by filing a complaint. Dr. Owens wanted to know if there was an argument to be had about a psychologist actually engaging in unethical or problematic behavior do they need to preserve a pathway for valid complaints. Per Dr. Lenkeit, the pathway would be for the individual to go back to court to have them removed, then file a complaint against them. Dr. Owens would like that to be clarified in the language as she does not believe the current language allows for an understanding of a future avenue, which may limit a person's understanding of their options. Dr. Lenkeit supposed that it could be stated that a complaint may not be filed with the licensee is under court appointment to provide the particular psychological service unless the person has applied to terminate services with the court. Dr. Holland

suggested that because they have recourse through the Court. Dr. Lenkeit confirmed that would be better. Dr. Owens believed it would be important to include additional language regarding this topic and then the rest of the policy looks fine to her. Executive Director Arnold to add addendum and revise with the additional information as discussed.

Dr. Pearson wanted to know for the addendum for the court ordered evaluations, the first section about a court order appointing a licensee in the case, at least for court ordered competency evaluations, she sees where the court orders do not specifically name the individual. Dr. Lenkeit is not sure how it is done outside Clark County but does recall the competency evaluations do not specifically name individuals as the person but believes simply a court order would be sufficient. Dr. Pearson is not sure if it is sufficient to ask for the name of the evaluator in the court order specifically for the examination. Dr. Lenkeit believes it would be sufficient to have the evaluation completed. Dr. Lenkeit has previously seen a court order with a letter appointing him to do that in the case of competency. Dr. Pearson confirmed sometimes a formal letter is not provided, but instead it is more of an informal process with the Court order indicating that this is the specific examiner. He is not sure how to revise the language to include this topic. Dr. Lenkeit thinks the language is sufficient, especially when considering family court services, the person would be named. So, a copy of the court order in the case and taking out appointment of the licensee would be sufficient. Dr. Owens thanked Dr. Lenkeit for preparing and believes this will make it clearer for those who need to utilize the pathway.

On motion by Stephanie Holland, second by Soseh Esmaeili, the Nevada State Board of Psychological Examiners approved Dr. Gary Lenkeit's Proposed Addendum to the Board's Complaint and Disciplinary Policy regarding Court Ordered Evaluations and Court Ordered Psychological Services with the changes as proposed by Dr. Owens and Dr. Pearson. (Yea: Whitney Owens, Soseh Esmaeili, Stephanie Holland, Catherine Pearson.) Motion Carried: 4-0.

11. (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, August 11, 2023, at 8:00 a.m.

No conflicts, questions, or comments were discussed or presented for the August 11, 2023, meeting date. Dr. Owens warned the Board that this meeting may be longer, again, due to AB244 and the suggested changes to the definitions. She indicated a three-hour meeting should be planned as opposed to the two-hour meeting. DAG Ward will not be present, but will prepare a substitute in his place for the meeting.

B. The date and location for the Nevada Board of Psychological Examiners' next strategic planning meeting.

Dr. Owen suggested the strategic planning meeting be held in Reno. These meetings are critical for the Board at least once a year. The future meeting dates were discussed and are scheduled for September 8, October 13, and November 3 per Executive Director Arnold. Dr. Owens cannot do the September meeting. Dr. Owens believes this will be a single-day meeting, that would not require an overnight stay for those out of the Reno area. DAG Ward pointed out that the strategic planning meeting can be done hybrid with zoom participation so the public may also join the meeting. Dates were discussed between the Board.

The strategic planning meeting is tentatively planned for November 3 after discussion with the Board member's schedules were held. Should Dr. Esmaeili or Dr. Holland not be able to attend in person, there will be a zoom exception allowed, but Dr. Owens urges everyone to attend the meeting in person, if possible. Dr. Owens believes food and flights will be provided by the Board due to the budget status. Executive Director Arnold will send an email to everyone to confirm their schedules and ensure everyone clears their schedules to attend.

12. Public Comment - Public comment is welcomed by the Board and may be limited to three minutes per person at the discretion of the Board President. Public comment will be allowed at the beginning and end of the meeting, as noted on the agenda. The Board President may allow additional time to be given a speaker as time allows and in his sole discretion. Comments will not be restricted based on viewpoint. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken (NRS 241.020)

No public comment at this time.

13. (For Possible Action) Adjournment

There being no further business before the Board, President Owens adjourned the meeting at 10:59 a.m.