BOARD MEETING MINUTES

Department of Consumer Affairs
1625 N. Market Blvd., Trinity Room (307)
Sacramento, CA 95834
(916) 574-7720

TELECONFERENCE LOCATIONS

8920 Wilshire Boulevard, Suite 334
Beverly Hills, CA 90211
(310) 275-4194

Los Angeles Harbor College
1111 Figueroa Place,
Suite NEA147
Wilmington, CA 90744
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320 W. Fourth Street
Room 5C
Los Angeles, CA 90013
(213) 576-6273

Wednesday, July 27, 2016

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 9:19 a.m. A quorum was present and due notice had been sent to all interested parties.

Members Present

Stephen Phillips, JD, PsyD, President
Nicole J. Jones, Public Member, Vice-President
Lucille Acquaye-Baddoo, Public Member
Michael Erickson, PhD
Jacqueline Horn, PhD

Others Present

Antonette Sorrick, Executive Officer
Sandra Monterrubio, Enforcement Program Manager
Karen Johnson, Licensing Coordinator
Jason Glasspiegel, Central Services Coordinator
Jacquelin Everhart, Continuing Education/Renewals Coordinator
Norine Marks, DCA Legal Counsel

Agenda Item #2: President's Welcome
Dr. Phillips welcomed everyone in attendance and read the Board's mission statement. He announced that the next Board meeting would be held August 18 and 19, 2016 at the Wright Institute in Berkeley. He then explained that the Board would be discussing agenda item 4(n) first.

**Agenda Item #4: Review and Consideration of Proposed Legislation and Positions**

n) SB 1194 (Hill) Psychology: Board of Psychology: Personnel

Mr. Glasspiegel indicated that the hearing is scheduled for August 3, 2016. Sarah Huchel, Business, Professions and Economic Development Committee, said the content in SB 1194 will be moved to SB 1193 and the current SB 1194 will be the new vehicle of SB 1195.

Ms. Sorrick presented recommended language changes for the Board to consider. She said the American Osteopathic Association (AOA), the Osteopathic Physicians and Surgeons of California (OPSC) and the American College of Osteopathic Neurologists and Psychiatrists (ACONP) requested that the definition of psychiatrist in Section 2913 be changed to reflect acceptance of a certification from the American College of Osteopathic Neurologists and Psychiatrists, which was consistent with regulatory equivalencies for psychiatrists.

Ms. Sorrick said the discussion at the June/July Licensing Committee meeting was to add “Self-Directed Study” as a fifth category of the Continuing Professional Development (CPD) model. She suggested that this new learning activity be placed under one of the already established four categories.

Dr. Phillips said this category was created as an independent basis for licensees to accrue hours since the Board wants psychologists to obtain hours from two different categories.

Dr. Horn suggested that “Self-directed Study” be placed in the Academic category because people participating in self-directed study are engaging in academic-like activities. She thinks most people will obtain a majority of their hours using the continuing education category and said that the Academic category is narrow and including self-directed study will broaden its options.

Dr. Phillips said he appreciates the clarification and her explanation makes sense. The Board members agreed not to include “Self-Directed Study” as a fifth category.
Ms. Sorrick said the text highlighted in Section 2915(f) is consistent with the Licensing Committee’s discussion at its June/July meeting. The Committee wanted to make the language more consistent with the organizations that are providing continuing education courses. The recommended amendment is to take out the terms “sponsored” and “courses that have been” and replace “private, non-profit organization” with the term “entity”.

Dr. Linder-Crow asked why “Self-Directed Study” will not be included as a fifth category, but rather within another already established category.

Ms. Sorrick said that from a policy perspective, the Board kept the language in Section 2915(c) very general. She said the Senate Business and Professions Committee and the Legislative Council had asked what categories would be included in the CPD model. The Board already sent the Committee the regulatory package and since the “Self-Directed Study” option was just discussed at the Licensing Committee’s last meeting, it has not been full vetted. She said that she did not want the suggested changes to impact legislation.

Dr. Linder-Crow asked if a fifth category would be added in regulations if there were only four listed in statute.

Ms. Sorrick said that the statues and regulations need to be consistent and would have to be the same.

Dr. Linder-Crow said that the Licensing Committee already agreed to bring this fifth category to the full Board and asked if it would not be brought back to the full Board if it is not kept.

Ms. Sorrick explained that it has to do with the timing of the CPD regulations. She said the Licensing Committee met at the end of June and has not completed its review. She said the Committee will meet again in September or October to solidify the language to bring to the full Board at the November Board meeting. She indicated that if the Board takes a different path with the categories, it can then wait for legislative session to clean up the language.

Dr. Phillips indicated that the Licensing Committee will need to revisit this issue. He said that “Self-directed Study” is not going to be ruled out, but it will not be considered a separate category as this time.

It was M(Acquaye-Baddoo)/S(Horn)/C to support SB 1194 with the amendments as stated.
Agenda Item #3: Public Comments for Items not on the Agenda

No public comments were received.

Agenda Item #4: Review and Consideration of Proposed Legislation and Positions

Ms. Jones thanked staff for its hard work.

a) AB 796 (Nazarian) Health Care Coverage: Autism and Pervasive Developmental Disorders

Mr. Glasspiegel reported that the Board sent an “Oppose” position letter to the Senate Health and Human Services Committee as well as to the author’s office. The Board has since been amended out of the bill. Staff’s recommendation is to take an “Oppose” position to the amended version of the bill.

Dr. Horn asked why the Board should take an “Oppose” position if the Board has been taken out of the bill.

Ms. Sorrick reported that this bill would provide insurance coverage for applied behavior analysis without establishing licensure. She requested the Board to consider having Ms. Arias-Bhatia work with staff to draft an “Oppose” letter.

Dr. Horn said she would support an “Oppose” position.

Ms. Jones asked if it would make sense for the Board to take a position on this bill.

Dr. Horn said it did make sense to take a position on the bill because if there is no licensure, the profession lacks consumer protection.

It was M(Acquaye-Baddoo)/S(Horn)/C to oppose AB 796 and to have Ms. Arias-Bhatia work with staff to draft an “Oppose” letter.

Vote: 5 aye (Horn, Erickson, Acquaye-Baddoo, Jones, Phillips) 0 no
Ms. Sorrick clarified that staff would include that the Board is opposing the bill for the lack of consumer protection because of no licensure in addition to not having a sunset date included in the language.

The Board agreed to her clarification.

b) AB 1715 (Holden) Healing Arts: ABA

Mr. Glasspiegel reported that the hearing was canceled because the author is no longer pursuing the bill; therefore, no action is required.

c) AB 1835 (Holden) Private Postsecondary Education: Exemptions

Mr. Glasspiegel indicated that this agenda item is for informational purposes only.

d) AB 1962 (Dodd) Criminal Proceedings: Mental Competence

Ms. Jones indicated that this bill would require the California Department of State Hospitals to adopt guidelines for education and training standards for psychiatrists or licensed psychologists to be considered for appointment by the court in consultation with relevant stakeholder groups. This bill would provide that if there is no reasonably available expert who meet the guidelines, the court shall have discretion to appoint an expert who does not meet the guidelines.

Mr. Glasspiegel reported that the Board has not taken a position and that staff has been watching this bill.

Dr. Horn indicated that it looks like the Department of State Hospitals would create the guidelines, but that they would not just be used in State Hospital issues, but for determining competency throughout the state, regardless of what it is for. She said there are groups of forensic psychiatrists and groups of forensic psychologists that already have guidelines, and the courts throughout the states use these already established guidelines from those groups. She wondered what this bill would actually do.

Dr. Phillips said that to his understanding the bill is focused on criminal proceedings in state courts. He said it has been reported that many people are being referred to the state hospitals for treatment as incompetent to stand trial when they do not meet the standard for incompetency from the outset. He stated there might be grounds for concern that the uniform standards could favor psychologists who work at or have been trained in State Hospitals over other equally qualified forensic psychologists who have
no past or present relationship to the state system. He also raised the issue as to whether the Department of State Hospitals is the appropriate forum for setting the relevant standards given their own institutional problems with overcrowding. He expressed concern there might be some institutional considerations, such as overcrowding, that may influence the standards created. Dr. Phillips stated that he understands that relevant stakeholders will be involved in the development of these standards and that such concerns will hopefully be addressed in that process.

Dr. Horn said her concern is about when there might not be any qualified people.

Dr. Phillips said he thinks there will be qualified people; however, he is concerned that these qualified individuals will all have at one time or another worked at the Department of State Hospitals if they set the standards in a way that rules out other types of psychologists. He is concerned with how the process is going to play out. Dr. Horn said she agrees that there will always be a qualified person available, but if there is not, who does the court appoint?

Dr. Phillips said he believed the courts will then have to make an independent determination as to alternative professionals with appropriate expertise in order to appoint someone who does not comply with the standards as determined by this legislatively mandated process. He added that sometimes the experts courts appoint experts from a different part of the state and the courts typically have special funding sources to retain such experts. He added that this bill does not prevent either party from retaining their own experts regardless of the standards developed for appointment by the courts.

Dr. Horn said she would feel comfortable with a “Watch” position on the bill just in case something happens down the line.

Dr. Erickson said that the Board previously discussed whether the term “licensed” needs to precede “psychologist” because all psychologists working in California must be licensed. He said he is not sure if this is the appropriate time to bring this issue up, but he wanted to take the opportunity to raise this issue so that the Board could consider it.

Ms. Sorrick indicated that unlicensed individuals in exempt settings are sometimes labeled as “psychologists” and this may be the reason for using the term “licensed” before psychologist.

Ms. Amanda Levy, California Psychological Association (CPA), said CPA has met with the author’s office to discuss this bill and the intent is to include professional
associations and unions representing psychologists in the state facilities to develop the standards.

Ms Marks pointed out that subsection (h)(2) states “If there is no reasonable available expert who meets the guidelines or who has equivalent experience and skills, the court shall have the discretion to appoint an expert who does not meet the guidelines”. She said that to her, this implies that it does not necessarily mean that an expert will only be someone who meets the guidelines.

Dr. Erickson said he believes that State Hospitals did not go along with the regulations some years ago when it became possible for psychologists to become part of State Hospital staff. He said he is not clear how the State Hospital system operates under separate regulations or authority from other settings in California. He asked how the Board can work closely to understand what the State Hospitals are doing and to make clear what the Board is doing when it comes to taking a position on this bill. He asked Dr. Linder-Crow if she recalls any of this information.

Dr. Linder-Crow, CPA, indicated that in 1990 the California Supreme Court ruled that psychologists could be a part of the medical staff at State Hospitals and regulations were created to implement this ruling. She said that in most cases State Hospitals have not applied these regulations. She said it is a very complicated issue and the organization known as Psychology Shield continues to work on this issue. She indicated that it is the opinion of both CPA and its attorney that State Hospitals are not following the law. She said that CPA has taken a “Support” position on the bill because CPA supports the establishment of standards and she is sure that CPA will be a part of the stakeholders group to create these standards. She said Dr. Erickson’s recollection of State Hospitals not enforcing the regulations is accurate, but that this is a separate issue from this bill.

Dr. Erickson said this information was very informative and thanked Dr. Linder-Crow for her comment.

Ms. Jones asked the Board members if they would like to entertain a motion and the Board members agreed to continue watching this bill.

e) AB 2017 (McCarty) College Mental Health Services Program

Ms. Jones indicated that the Board took a “Support” position in May. She said at the time the motion was made, there was unspecified amount for the grant and now there is a $4 million allocation.
Mr. Glasspiegel indicated that there is no hearing scheduled and the bill is currently in the Senate Education Committee.

Ms. Jones asked Ms. Marks if the Board needs to make a motion and Ms. Marks said their original decision to take a “Support” position would still stand.

f) AB 2086 (Cooley) Workers Compensation: Neuropsychologists

Mr. Glasspiegel indicated that staff has not heard if the Board’s amendments are being considered and reported that there would be a hearing on August 1, 2016.

Ms. Sorrick reported that staff reached out to Assembly Member Cooley’s office to confirm that they received the Board’s position letter and asked the Department of Industrial Relations (DIR) if they needed additional information. DIR said they were working with the author’s office and would let the Board know if anything else was needed. She reported that the Senate Appropriations Committee also has the Board’s “Support if Amended” position letter.

Dr. Erickson suggested that the Board reconsider a position at its August Board meeting if the amendments are accepted or not.

Ms. Jones asked if the motion made at the May Board meeting allowed staff to change the Board’s position.

Ms. Sorrick indicated that staff has the inherent authority change the Board’s position if the amendments were accepted.

Dr. Linder-Crow, CPA, thanked the Board for its conversation on this bill. She indicated that CPA is actively working on this bill and asked the Board what it would do if their amendments were not accepted. She said workers are losing out on appropriate evaluations and CPA wants to see the bill pass.

Ms. Jones suggested that staff and Dr. Erickson work together if the Board’s input is needed and Dr. Erickson said he would be glad to help.

g) AB 2443 (Baker) Improving Mental Health Access for Students

Ms. Jones indicated that the Board took a “Support” position at its May Board meeting.

Mr. Glasspiegel reported that no changes have been made to this bill and it has been held in the Assembly Appropriations Committee.
Ms Jones stated that no action is requested at this time.

h) AB 2507 (Gordon) Telehealth: Access

Mr. Glasspiegel indicated that AB 2507 has been held in the Assembly Appropriations Committee.

Dr. Horn asked what it meant when a bill is held in a committee.

Ms. Sorrick indicated that it could be for a number of reasons such as at the request of the author. However, she said that bills could still move after being held in committee. She said this is the reason staff continues to keep these bills on its radar.

Dr. Erickson said he noticed that texting and chat conferencing have been removed from the list of specifics that were previously in the bill and that it now just lists video and telephone communications. He said Business and Professions Code Section 2290.5 specifies information technologies, but does not specify the type of acceptable technologies; thus, texting and chat conferencing could still be considered adequate means to provide services. He said insurance companies are not required to pay for services rendered via telehealth unless there is a statute to require them to do so.

i) AB 2859 (Low) Professions and Vocations: Retired Category

Mr. Glasspiegel reported that staff has been watching this bill and there is language included in the Board’s Sunset Bill that will be heard at a hearing on August 1, 2016. He indicated that no action was required.

j) SB 1033 (Hill) Medical Board: Disclosure of Probationary Status

Mr. Glasspiegel indicated that this bill is currently in the Senate Inactive file and is no longer moving forward.

Dr. Horn asked if this bill means that probationary status is currently not provided to the public.

Ms. Sorrick indicated that if passed, this bill would require public posting for licensees of the Medical Board, the Osteopathic Medical Board, the Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Neuropathic Medicine Committee, and the Acupuncture Board. She explained that if this bill applied to the Board of Psychology, if a client came to the office of a licensee who is on probation, the
psychologist would need to publically notice that they are on probation. She said even though the Board is not included in the bill, staff still wants to watch it.

k) SB 1034 (Mitchell) Health Care Coverage: Autism

Mr. Glasspiegel indicated that staff’s recommendation is to take an “Oppose” position and that the hearing would take place on August 3, 2016. He said this bill is slightly different from the other reimbursement for autism services bill because it would extend the Sunset date until January 1, 2022.

Ms. Sorrick indicated that staff is recommending an “Oppose” position because licensure is not required for the professional providing the services; therefore, there is a lack of consumer protection.

Dr. Horn said she is really concerned with the public protection issue and that it keeps reoccurring. She said it is not that the Board doesn’t want people who provide autism services to be reimbursed, but this is not the issue.

Ms. Jones thanked Dr. Horn for her comment and said the important part of the motions is to use the position letters with the reasons included for the Board’s opposition as a vehicle to express those reasons. She said that the quality of the letters reflects the Board’s robust conversations and sentiments.

Ms. Sorrick said staff would convey in the Board’s position letter that it is important for individuals needing services from autism service providers to have ready access to those services and for those services to be competent and have consumer protections in place.

It was M(Horn)/S(Acquaye-Baddoo)/C to oppose SB 1034 and to ask Ms. Arias-Bhatia to work with staff to include the reasons for its opposition in the Board’s position letter.

Vote: 5 aye (Horn, Erickson, Phillips, Jones, Acquaye-Baddoo) 0 no

I) SB 1101 (Wieckowski) Alcohol and Drug Counselors: Regulation

Mr. Glasspiegel indicated that SB 1101 was held in the Senate Appropriations Committee.

m) SB 1155 (Morrell) Professions and Vocations: Licenses: Military
Mr. Glasspiegel indicated that the hearing is scheduled to be held in the Senate Appropriations Committee on August 3, 2016.

o) SB 1195 (Hill) Professions and Vocations: Boards: Competitive Impact

Ms. Jones indicated that staff will continue to watch SB 1195.

Ms. Sorrick said that this bill will become SB 1194 and the language will be available in the next couple of weeks.

p) SB 1204 (Hernandez) Health Professions Development: Loan Repayment

Mr. Glasspiegel indicated that Senator Hernandez has decided not to pursue SB 1204 at this time, but is pursuing SB 1471 (Hernandez), which only applies to physicians, surgeons, and psychiatrists under the Steven Thompson Physician Loan Repayment Program. He said staff will continue to watch this bill.

q) SB 1217 (Stone) Healing Arts: Reporting Requirements: Liability

Mr. Glasspiegel indicated that staff has contacted Senator Stone's office and they have confirmed that they are no longer pursuing this bill.

r) SB 1334 (Stone) Crime Reporting: Health Practitioners: Trafficking

Ms. Jones indicated that staff has been watching this bill.

Mr. Glasspiegel reported that SB 1334 has been held in the Senate Appropriations Committee.

Amanda Levy, CPA, said if the bill moves out of the Committee, it will be made clear that psychologists are not included in the mandatory reporting requirements.

s) SB 1471 (Hernandez) Health Professions Development: Loan Repayment

Mr. Glasspiegel presented the background of SB 1471.

Dr. Phillips suggested that the Board continue to watch this bill because it does not impact the Board.

The Board members agreed to watch this bill.
421  t) Legislative Items for Future Meeting
422
423  Ms. Jones said that the last day to amend on the Floor is August 19.
424
425  **Agenda Item #5: Telepsychology Committee Report and Consideration of**
426  **Committee Recommendations**
427
428  Dr. Erickson presented the proposed additions to the California Code of Regulations
429  (CCR) Title 16 to address Standards of Practice for Telehealth and the Committee's
430  review of a public comment from Dr. Adam Alban. Dr. Erickson said that the
431  Telepsychology Committee has been meeting for a couple of years and asked the
432  Board members and the public to review the proposed language. He said the next step
433  is to move forward in the regulatory process.
434
435  Ms. Sorrick said that once the Board agrees on language, staff can notice the proposed
436  language for a hearing and then send it out for public comment. She said if the Board
437  were to agree on the language at this meeting, it may be able to have the hearing at the
438  November Board meeting.
439
440  Dr. Erickson said the Committee reviewed Dr. Alban's comments and agreed that his
441  observations were informative, but the Committee decided to move forward with its
442  revisions.
443
444  Dr. Phillips said the revisions capture the different factors that the Committee felt were
445  important to communicate to licensees. He said the language does not provide specific
446  guidance, but rather general. He requested that a colon be added at the end of the first
447  sentence.
448
449  Dr. Horn said she is happy that the Board is drafting language because they know that
450  telehealth is occurring and appreciates that psychologists have to be competent in the
451  use of telehealth.
452
453  Dr. Erickson said that the term "recipient" needs to be changed to "patient or client"
454  throughout the document.
455
456  Ms. Jones said the language covers the basics and asked if the Committee discussed
457  the different methods used for telehealth.
458
459  Dr. Erickson said that including texting or chat conferencing as methods to deliver
460  psychological services is generally looked upon with a big question mark. He said using
these methods can pose many hazards and the Committee would not recommend using
them. He asked Ms. Marks if she recalls any additional discussion that the Committee
had about texting or chat conferencing.

Ms. Marks said she did not recall any additional conversations about it. She said one of
the ways the Committee was trying to deal with this issue is to ensure that the licensee
was competent enough to use the technology, which is more important than the type of
technology used because these methods are constantly changing. She said unless the
statute restricts particular technologies, the Committee is just trying to address the
different considerations that arise when licensees are using technology in real time
versus technology that is not in real time.

Dr. Linder-Crow asked what in the regulations hints that texting is not an appropriate
form of technology. She said technology is growing so quickly and there are younger
clients who frequently text.

Dr. Erickson asked what the Board would do if a licensee is texting a client and a
complaint is filed about the service. He said many questions could be raised such as
why texting was chosen versus talking over the telephone or in person and why texting
was a preferable method to deliver the service? He said this does not mean it is wrong
and there may be very good reasons to text with a client. He said some other questions
could be whether texting is confidential enough and if the provider is competent enough
to use texting. Dr. Linder-Crow said she appreciated Dr. Erickson's comments. She said
she expects that there will never be a level of specificity to make everyone comfortable;
however, she believes these guidelines will allow psychologists to determine what
delivery method they should use. She asked what the Board would do if a complaint
was received about service delivered using texting and who would get to determine that
the delivery method was appropriate. She said the next question might be how does
one decide what method is or is not appropriate.

Dr. Horn said that the Board already does this for non-technical complaints. She
said a majority of the complaints do not result in an accusation. She said the Board
wants to disseminate these guidelines for licensees to consider.

Dr. Elizabeth Winkelman, CPA, suggested changing the term “resident” to “a recipient
located in California”. She the term “resident” is confusing because it can capture those
not in California.
Dr. Linder-Crow said a psychologist in California whose patient goes to college on the East Coast cannot legally deliver services to this client. She said the guidance would need to come from the state in which the recipient is physically located.

Ms. Marks said that this Board and other boards have struggled with this issue because California might not have complete control. She stated that the psychologists may not even know where the patient is located. She said the Board wants to protect the citizens of California to ensure that someone who is licensed elsewhere but not in California does not continuously provide services within California. She said the definitions for distance site and originating site do not include where the services are provided. She said the Board may not have an issue with a psychologist licensed in California providing services across state lines, but the other state might and vice versa.

Dr. Winkelman said most guidelines indicate that the licensee must be licensed in both the place where the services are being provided and the place where the services are being received.

Dr. Linder-Crow suggested that the Board only provide guidance to psychologists in California and define what it means to deliver telehealth in California.

Ms. Marks said the Board is trying to address those who reach out across the border to establish a relationship with someone in California.

Dr. Winkelman said one way to address this issue might be to say that California psychologists providing services to clients outside of California need to be in compliance with other states’ laws.

Dr. Phillips said that perhaps the Board needs to think this issue through and determine what it needs to do in order to address the jurisdiction question. He said this could become a question of professional judgment as to whether Telepsychology is an appropriate form of delivering services. He said the Committee should have another meeting to further discuss the concerns raised.

Dr. Erickson said that professional judgment is key.

Dr. Linder-Crow suggested that the Board give informal guidance and suggest licensees to contact the board in the state in which the patient is physically located.
Dr. Linder-Crow suggested that the Board leave the interjurisdictional issue out of it and only consider the jurisdiction in which the patient is receiving the service.

It was agreed that Dr. Phillips and Dr. Erickson would meet as the Telepsychology Committee to refine the language and bring recommended changes to the August, 2016 meeting.

**Agenda Item #6: President’s Report**

**a) 2016 Meeting Calendar and Locations**

Dr. Phillips reported that the next Licensing Committee meeting is being rescheduled and the next two Board meetings are on August 18 and 19, 2016 in Berkeley and on November 17 and 18, 2016 in San Diego.

**b) Committee Updates**

Dr. Phillips said the Enforcement Committee is working on the Disciplinary Guidelines to bring back to the full Board for consideration. He said the Licensing Committee is working diligently to refine the Continuing Professional Development (CPD) regulations and review the Pathways to Licensure. He said the Policy and Advocacy Committee is doing a great job and the Outreach and Education is without a chair. He said there are some draft committee delegations to be included in the Administrative Procedures Manual and will provide a more detailed update the next time the Board meets.

**c) Review and Consideration of Draft Committee Delegation to be Included in the Administrative Procedures Manual**

Dr. Phillips indicated that this agenda item will be discussed at a future meeting.

**Agenda Item #7: Recommendations for Agenda Items for Future Board Meetings**

Dr. Horn suggested that the Board draft guidelines on the appropriate use of social media.

**Agenda Item #8: Closed Session**

The Board met in closed session pursuant to Government Code Section 11126(c)(3) to discuss disciplinary matters including the above petitions, petitions for reconsideration, stipulations, and proposed decisions.
The Board adjourned at 12:51 pm.

President

Date

9/27/16