BOARD MEETING

The Westin San Diego
Gaslamp Quarter
910 Broadway Circle
San Diego, CA 92101
(619) 239-2200

October 3 - 4, 2019

Thursday, October 3, 2019

Members Present
Stephen Phillips, JD, PsyD, President
Seyron Foo, Vice-President
Sheryll Casuga, PsyD
Marisela Cervantes
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
Lea Tate, PsyD

Members Absent
Alita Bernal

Others Present
Antonette Sorrick, Executive Officer
Norine Marks, DCA Legal Counsel
Cherise Burns, Central Services Manager
Stephanie Cheung, Licensing Program Manager
Sandra Monterrubio, Enforcement Program Manager

Agenda Item #1: Call to Order/Roll Call/Establishment of a Quorum
Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 10:08 a.m. A quorum was present and due notice had been sent to all interested parties.

Agenda Item #2: President’s Welcome
Dr. Phillips read opening remarks.

Agenda Item #3: Public Comment for Items not on the Agenda. The Board May Not Discuss or Take Action on Any Matter Raised During this Public Comment
Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)]

No public comment was offered.

**Agenda Item #4: President’s Report**

a) 2019 Meeting Calendar and Locations – Meeting materials were provided in the meeting packet.

b) 2020 Meeting Calendar and Locations – Dr. Phillips emphasized how important it will be for as many Members as possible to come to the Legislative visits the day before the February 2020 Board Meeting.

c) Committee Updates – Dr. Phillips explained that there had not been a significant change to Committee assignments and that there would be an election of officers at the end of the open session, noting that the incoming president will revisit the Committee assignments after the election.

**Agenda Item #5: Executive Officer’s Report**

Ms. Sorrick said that the Board’s Licensing and BreEZe Coordinator, Mai Xiong, would be leaving the Board to take a position at OSHPD in October 2019. Ms. Sorrick expressed that Ms. Xiong will be missed and that she has done a great job. Staff is working with OHR to backfill the position. There were no further organizational updates, and no Board comments followed.

**Agenda Item #7: Discussion and Possible Approval of the Board Meeting Minutes: August 15-16, 2019**

It was M(Foo)/S(Harb Sheets)/C to approve the minutes as amended with any technical changes previously submitted by Board Members.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

**Agenda Item #6: DCA Executive Office Update**

Ms. Sorrick introduced a letter from Deputy Director of DCA Board and Bureau Services Chris Castrillo, which provided the Department of Consumer Affairs (DCA) Executive Team update. Patrick Le, Assistant Deputy Director of BBS, had left BBS for a position as a consultant with the Assembly Business and Professions Committee. The Board had not yet had an Assembly Consultant assigned.

The Director’s Quarterly Meeting would be held on October 16, 2019 for Board Presidents and Executive Officers at DCA Headquarters. This meeting would be a
check-in with all the divisions within DCA and to report to the Boards on progress being made in any particular areas.

DCA has put together a new publication called “We’re Listening” which offers ways to improve our interactions with the public.

The Future Leadership Development program is continuing with its third cohort and had its kickoff in September 2019 and will continue through 2020.

No Board or public comments followed.

**Agenda Item #8: Budget Report**

Ms. Burns provided the update on this item. Ms. Burns explained that not all our expenditures are loaded into the Fi$Cal system, so a full budget report will follow at the February 2020 Board meeting. The Board’s budget analyst is expected to present their report in February.

Mr. Foo asked when Fi$Cal will be working better, at least well enough to be useful. Ms. Burns said it will be a few years until then.

Dr. Horn asked why the budget is ‘tight’. Ms. Burns explained that personnel costs are going up and will continue to increase until after the Governor’s budget goes through. She explained further that the Board does not always spend the entire budgeted expenditures for contracts, so even though that money looks like it’s being spent in the budget overview report, reversions are just estimates until the fiscal year books are closed. She also explained that Fi$Cal is still closing out last year and the Board would not be able to release all of that information before the Governor’s budget is finalized.

Dr. Harb Sheets asked about the impact of increasing department costs, costs the Board will be charged, and whether the Board has been impacted by those yet. Ms. Burns responded in the negative, stating that we are accruing those increased Office of Attorney General (OAG) fees and will have to continue to track those fees. Ms. Burns explained further that the Board can make current year augmentation requests to cover the increased OAG or Office of Administrative Hearing expenses if needed.

Dr. Phillips mentioned that Board staff is expanding the size of the office suite to better accommodate staff and asked how that expansion will impact the budget. Ms. Burns replied that even though the remaining reversion funds will be drawn down a little more than anticipated to cover some minor facilities costs, the Board should be fine since the Board operates on baseline budgeting as well as is waiting on the January numbers in the Governor’s Budget to be updated.
There were no further Board or public comments offered.

**Agenda Item #9: Licensing Report**

Ms. Cheung provided the update on this item. Ms. Cheung explained that the Board has seen approximately 100 active new licensees and 20 registrants since the August 2019 Board meeting. She also noted a slight decrease in the number of registered psychologists.

Ms. Cheung highlighted the Workflow reports in Attachment B which reflected an increase in the number of new applications and explained that part of that increase resulted from a workflow BreEZe enhancement that triggered some applicants to reapply.

Dr. Horn asked about whether Attachment B indicated how many applications had been opened or did it show how many have been approved? Ms. Cheung explained that the number of open applications is a byproduct of applicants signing up to take the EPPP or CPLEE and that staff would have to look at each record individually to know the status.

**Agenda Item #15: Petition for Early Termination of Probation – Paul Whitaker, PhD**

Administrative Law Judge Debra D. Nye-Perkins presided. Deputy Attorney General Rosemary Luzon was present and represented the People of the State of California. Paul Whitaker, PhD was present and represented himself.

**Agenda Item #16: Closed Session**

In the interest of time, the Board postponed this closed session and combined it with Agenda Item #18: Closed Session.

**Agenda Item #17: Petition for Reinstatement of License – Todd Gaffaney, PhD**

Administrative Law Judge Debra D. Nye-Perkins presided. Deputy Attorney General Rosemary Luzon was present and represented the People of the State of California. Dr. Gaffaney was present and was represented by Lindsay Johnson.

**Agenda Item #18: Closed Session**

The Board met in closed session pursuant to Government Code Section11126(c)(3) to discuss disciplinary matters including the above Petitions, Proposed Decisions, Stipulations, Petitions for Reconsideration, and Remands.

The meeting adjourned at 6:08 p.m.
Friday, October 4, 2019

9:30 a.m. – OPEN SESSION

Agenda Item #19: Call to Order/Roll Call/Establishment of a Quorum

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at approximately 9:30 am. A quorum was present and due notice had been sent to all interested parties.

Members Present
Stephen Phillips, JD, PsyD, President
Seyron Foo, Vice-President
Sheryll Casuga, PsyD
Marisela Cervantes
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
Lea Tate, PsyD

Members Absent
Alita Bernal

Others Present
Antonette Sorrick, Executive Officer
Norine Marks, DCA Legal Counsel
Cherise Burns, Central Services Manager
Stephanie Cheung, Licensing Program Manager
Sandra Monterrubio, Enforcement Program Manager
Gloria Castro, Deputy Chief Attorney General, OAG

CLOSED SESSION

The Board met in Closed Session pursuant to Government Code Section 11126(a)(1) to Conduct its Annual Evaluation of its Executive Officer.

OPEN SESSION

Returned to open session at 11:11 am

Agenda Item #20: Public Comment for Items Not on the Agenda. Note: The Board May Not Discuss or Take Action on Any Matter Raised During this Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)].

No public comment was offered.
Agenda Item #21: Legislative and Regulatory Affairs Update

a) Board Sponsored Legislation for the 2019 Legislative Session: Review and Possible Action
   1) SB 275 (Pan) – Amendments to Section 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact

Mr. Foo provided an update on SB 275. Ms. Burns explained the nature of grammatical amendments made to the bill to further clarify the definition of sexual contact.

It was M(Tate)/S(Casuga)/C to approve the proposed amendments and direct staff to continue working with Senator Pan on SB 275.

There was no further Board discussion and no public comment.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

2) SB 786 (Committee on Business, Professions and Economic Development) Healing Arts – Update on Amendments to Sections 2940-2944 of the Business and Professions Code Regarding Examinations

Ms. Sorrick pointed out that the Governor signed SB 786.

b) Review and Consideration of Proposed Legislation
   1) Review of Bills with Active Positions Taken by the Board
      A. AB 1076 (Ting) Criminal Records: automatic relief.
      B. AB 1145 (Garcia) Child abuse: reportable conduct.
      C. SB 53 (Wilk) Open meetings.
      D. SB 66 (Atkins) Medi-Cal: federally qualified health center and rural health clinic services.
      E. SB 425 (Hill) Health care practitioners: licensee’s file: probationary physician’s and surgeon’s certificate: unprofessional conduct.

Dr. Phillips requested an explanation of SB 53. Ms. Burns explained that SB 53 has died in committee and did not reach the Governor’s desk.

The Board did not discuss “Review and Consideration of Proposed Legislation” bills in 21(b)(1)(A), 21(b)(1)(B), 21(b)(1)(D), or 21(b)(1)(E).

2) Review of Bills with Recommended Watch Status
A. AB 5 (Gonzalez) Worker status: employees and independent contractors.
B. AB 8 (Chu) Pupil health: mental health professionals.
C. AB 166 (Gabriel) Medi-Cal: violence preventive services.
D. AB 189 (Kamlager-Dove) Child abuse or neglect: mandated reporters: autism service personnel.
E. AB 241 (Kamlager-Dove) Implicit bias: continuing education: requirements.
F. AB 289 (Fong) California Public Records Act Ombudsperson.
G. AB 469 (Petrie-Norris) State records management: records management coordinator.
H. AB 476 (Rubio, Blanca) Department of Consumer Affairs: task force: foreign-trained professionals.
I. AB 496 (Low) Business and professions.
J. AB 512 (Ting) Medi-Cal: specialty mental health services.
K. AB 565 (Maienschein) Public health workforce planning: loan forgiveness, loan repayment, and scholarship programs.
L. AB 577 (Eggman) Health care coverage: maternal mental health.
N. AB 744 (Aguiar-Curry) Healthcare coverage: telehealth.
O. AB 798 (Cervantes) Maternal Mental Health.
P. AB 1058 (Salas) Medi-Cal: specialty mental health services and substance use disorder treatment.
R. AB 1184 (Gloria) Public records: writing transmitted by electronic mail: retention.
S. AB 1519 (Low) Healing Arts.
T. SB 163 (Portantino) Health care coverage: pervasive developmental disorder or autism.
U. SB 331 (Hurtado) Suicide prevention: strategic plans.
V. SB 601 (Morrell) State agencies: licenses: fee waiver.
W. SB 639 (Mitchell) Medical services: credit or loan.
X. SB 660 (Pan) Postsecondary education: mental health counselors.

The Board did not have any “Watch” bills they wanted to discuss.

3) Review of Two-Year Bills with Recommended Watch Status
A. AB 71 (Melendez) Employment standards: independent contractors and employees.
B. AB 184 (Mathis) Board of Behavioral Sciences: registrants and licensees.
C. AB 193 (Patterson) Professions and vocations.
D. AB 312 (Cooley) State government: administrative regulations: review.
E. AB 396 (Eggman) School employees: School Social Worker Pilot Program.
F. AB 536 (Frazier) Developmental services.
G. AB 544 (Brough) Professions and vocations: inactive license fees and accrued and unpaid renewal fees
H. AB 613 (Low) Professions and vocations: regulatory fees.
I. AB 768 (Brough) Professions and vocations.
K. AB 895 (Muratsuchi) Pupil Mental Health Services Program Act.
M. AB 1271 (Diep) Licensing examinations: report.
N. AB 1601 (Ramos) Office of Emergency Services: behavioral health response.
O. SB 181 (Chang) Healing arts boards.
P. SB 201 (Wiener) Medical procedures: treatment or intervention: sex characteristics of a minor.
Q. SB 546 (Hueso) Unlicensed activity.
R. SB 700 (Roth) Business and professions: noncompliance with support orders and tax delinquencies.

The Board did not have any Two-Year Bills with Recommended Watch Status that they wanted to discuss.

**Agenda Item #22: Legislative Items for Future Meeting. The Board May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Board to Discuss Such Items Pursuant to Government Code Section 11125.4**

No comments were offered.

**Agenda Item #23: Regulatory Update, Review, and Consideration of Additional Changes**

a) 16 CCR Sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants
b) 16 CCR Sections 1391.13, and 1391.14 – Inactive Psychological Assistant Registration and Reactivating a Psychological Assistant Registration
c) 16 CCR Section 1396.8 – Standards of Practice for Telehealth
d) 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees
e) 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development
Mr. Foo provided the update on item (d) regarding newly-proposed language for retired license status and referred to the revised draft language provided in the meeting materials. Ms. Burns explained that retired status would not extend to individuals with disciplinary cases, accusations, or other restricted licenses (legal or administrative). The new language clarifies these definitions in regulations for licensees and applicants.

It was M(Harb-Sheets)/S(Tate)/C to approve the revised regulatory language for noticing.

There was no further Board discussion and no public comment on item (d).

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

The Board did not discuss items 23(a)-(c) or 23(e)-(f).

**Agenda Item #28: Licensure Committee Report -- Consideration and Possible Approval of Committee Recommendations**

d) Consideration of Seeking Statutory Change to Allow the Licensure Committee to Meet in Closed Session to Make Final Licensure Determinations

Dr. Horn explained that the Licensure Committee deliberates on certain requests in closed session to protect applicant’s and licensees’ privacy. The Committee must then bring their recommendations to full the Board for action, meaning that confidentiality is potentially compromised. Dr. Horn commented that statute requires this Committee be only an advisory committee to the full Board.

Pursuing a statutory change to allow the Licensing Committee to be the final decision-maker on licensure determinations would mean that the Committee would not have to come before the public and the full Board for action. Precedent has been established for this process through the Dental Board’s Practice Act.

The Licensure Committee requested that the Board allow it to have the ability to make decisions in such a way as to keep licensees’ information private. Dr. Horn commented that she could not recall a time when the Board had not agreed with this Committee’s recommendations. Dr. Phillips said there was one instance regarding course in human sexuality for out-of-state psychologists, which Dr. Horn recalled, but she could not recall another time during her past six years on the
Board. Dr. Phillips pointed out that there might be a very long lag between the Licensure Committee meeting and the consideration of their recommendations at a Board meeting, which could cause an inordinate amount of time between the Committee’s approval and Board action to the detriment of the applicant or petitioner.

It was M(Foo)/S(Harb Sheets)/C to approve the proposed statutory language and seek legislation to implement these changes.

Ms. Marks pointed out that under current language, the Board will still delegate this authority to the Licensure Committee, but that the Board would retain that power of delegation.

There was no further Board discussion and no public comments were offered.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

**Agenda Item #24: Review and Consideration of the Sunset Review Committee Report -- Review and Possible Approval of Board’s Sunset Report**

Dr. Phillips mentioned the upcoming Sunset Review Teleconference scheduled for November 8, 2019 to review revisions. Ms. Sorrick described the Sunset process. Board discussion ensued on a section by section basis.

Section 1: Background and Description of the Board and Regulated Profession. Ms. Cervantes asked about the timeframe covered in the report. Ms. Sorrick explained that each section contained different time information as it was requested. Ms. Burns explained that there would be differences in the information reported depending on which span of time was being requested. No further Board or public comment was made on Section 1 of the Sunset Report.

Section 2: Performance Measures and Customer Satisfaction Surveys. No Board or public comments were made on this section.

Section 3: Fiscal and Staff. Dr. Harb Sheets commented that the language regarding the license renewal cycle in question #14 is confusing since the language only pertains to new licensees. Ms. Burns explained that all new licenses issued are on a two-year cycle from the date of issuance, not birthday-month related as was done in the past. Dr. Harb Sheets found this confusing, and Dr. Horn agreed. Discussion ensued about interpreting a renewal date based on licensure date.

Ms. Sorrick asked Dr. Harb Sheets to provide clarifying language. Dr. Harb Sheets recommended the following language, which Ms. Burns captured live and revised based on further discussion:
Licensed psychologists renew their licenses biennially. Psychological assistants renew annually. There have been no changes to the renewal cycle in the last 10 years; however, for a license issued on or after January 1, 2016, the renewal cycle is two years from the date of issuance. For those licensed on or prior to December 31, 2015, the license continues to expire at 12 midnight of the last day of the month of the birthdate of the licensee.

There was no further Board discussion and no public comment made on this section.

Section 4: Licensing Program. No Board or public comment was initially made on this section.

Section 5: Enforcement Program. Dr. Harb Sheets commented that in question #43, she didn’t see probation violations fitting into citable violations since they don’t really look like the other citable violations. Ms. Sorrick asked whether Dr. Harb Sheets thought cite and fine should include violation of probation, and Dr. Harb Sheets replied in the affirmative.

Discussion ensued as to whether probation violation should be included as one of the offenses upon which a citation and fine should be based. Dr. Horn commented that probation violation is in fact formal discipline. Mr. Foo agreed with Dr. Horn’s comment. Dr. Harb Sheets commented that they are not being additionally formally disciplined, just receiving a citation and fine. Ms. Monterrubio agreed with Dr. Horn and will add probation violation as one of the five most common citable offenses under question #45 and further suggested taking failure to maintain proper recordkeeping off the list, since the bullet list only allows the five most often-cited violations. No change was made to question #43.

Ms. Cervantes asked Ms. Monterrubio whether poor recordkeeping is a common violation of the terms and conditions of probation. Ms. Monterrubio replied in the negative, noting that on the Overview of Enforcement Activity, the statistic is for probation violations, not poor recordkeeping. Dr. Phillips asked Ms. Monterrubio to confirm whether citation and fine is for lesser violations and Ms. Monterrubio confirmed that this was the intended purpose, and that recordkeeping violations do not usually rise to the level of formal discipline.

Dr. Linder-Crow, CEO of the California Psychological Association (CPA), asked for clarification of the meaning of “the average dollar amount” referred to in question #38b. Ms. Monterrubio explained that she believed this dollar amount spoke to settlements above a certain monetary threshold and that this was an average dollar amount of those awards reported to the Board. Ms. Sorrick commented that the Board sees very few of these awards and therefore this dollar amount is skewed, but that this is what the Board was instructed to report.
Section 4: Licensing Program. Ms. Marks asked for clarification on question #21 from a previous section [Section 4 – Licensing Program] regarding denials based on criminal history. She asked whether this included only licenses being denied outright, or also included denials that resulted in a license later being issued. Ms. Monterrubio explained that she believed that this data applied to applicants initially being denied which resulted in a Statement of Issues.

Dr. Harb Sheets pointed out fiscal year 15/17 should be 16/17 in question #21. Ms. Burns corrected this error.

Dr. Horn wondered whether the Board’s answer to question #21 regarding denials will be clear to the Legislature when they read the report. Discussion ensued as to whether clarifying words could be added. Dr. Phillips suggested using the term ‘initial’ denials; however, Ms. Cervantes countered that this would lead to additional questions. Dr. Phillips suggested that the Board not alter the categories defined by the Legislature. Ms. Marks asked the Board whether it would be helpful to include a note following the statistics on denials to say, ‘these are cases where applicants would be subsequently issued a license.’ Dr. Phillips recommended that the Board answer the questions posed, and let the Legislature ask clarifying questions, if necessary.

No public comment was made on this section.

Section 6: Public Information Policies. No Board or public comments were made on this section.

Section 7: Online Practice Issues. Dr. Phillips said it was not clear what the Legislature was asking in question #59 regarding online practice, since telepsychology was the only area the Board addressed and so that will be the Board’s focus. Discussion ensued as to what the Legislature’s intent was in asking this question. Ms. Cervantes speculated that this question may be there to give the Board an opportunity to call attention to emerging trends in online therapy. Ms. Cervantes spoke of being aware of a growth of technology and asked whether the Board should mention those here. Dr. Phillips cautioned that since the Board has not done any in-depth exploration of these items, it could be a misstep to speculate on trends at this point. Ms. Burns pointed out that the Board had not received complaints about online therapy, just telepsychology. Dr. Phillips commented that many of the Board’s policies were enforcement-driven.

Dr. Harb Sheets commented that this section appeared to be two questions which the Board had only partially addressed. Dr. Harb Sheets wondered whether the thought behind this approach was ‘less is more’. Dr. Phillips repeated that the Board should not volunteer information that was not requested, and that the Board was trying to be as responsive as possible based on current information. He suggested to let the
Legislature come back with clarifying questions. Ms. Sorrick commented that the Board could include a definition of online services, in response to Dr. Horn’s question about whether online therapy could be an Outreach and Communications Committee endeavor. Ms. Sorrick felt it would be too early to start defining new outreach goals right now, but that the Board could clarify the definition in this draft to catch it in Sunset. Ms. Burns captured this revised language live as follows and incorporated it into the Board’s response to question #59:

“The Board defines online practice as one method of delivery of psychological services pursuant to BPC Section 2290.5 on telehealth.”

Dr. Winkelman, CPA Director of Professional Affairs, commented that the prevalence of online practice is the most common topic among CPA membership. As for the need for regulation, she continued, there is an increase in text-based therapy, provided by out-of-state providers to in-state consumers.

No further Board discussion or public comment was made on this section.

Section 8: Workforce Development and Job Creation. No comments from the Board or public were made on this section.

Section 9: Current issues. No comments from the Board or public were made on this section.

Section 10: Board Action and Response to Prior Sunset Issues. Dr. Phillips commented that the Board picked language up verbatim from the previous Sunset report and cannot change this language except to make changes in the “update” box at the end of each issue. Dr. Horn asked whether this whole section was written by the previous Sunset Review Committee. Ms. Sorrick explained that this is a compilation including the Committee’s questions and the Board’s responses and all the Board does is provide the update. The Board also updated one table.

No further Board discussion ensued and no public comments were made on this section.

Section 11: New Issues. Dr. Phillips brought up that this Board had addressed the question of delegation to the Licensure Committee earlier in these proceedings. Dr. Phillips asked whether this language was written in anticipation of this question coming before the full Board and Ms. Burns confirmed that it was.

No further Board comments were made and no public comments were made on this section.
Section 12: Attachments. Dr. Phillips pointed out that most of the attachments are documents already in existence. Ms. Burns mentioned that the Administrative Procedure Manual will be taken up at the February 2020 Board meeting.

No further Board discussion ensued and no public comments were made on this section.


Gloria L. Castro, Senior Assistant Attorney General, Health and Quality Enforcement Section, Office of the Attorney General, made as presentation to the Board on these issues.

Dr. Phillips asked for clarification on the difference between Levels of Proof, namely ‘preponderance of evidence’, ‘clear and convincing evidence’, and ‘beyond a reasonable doubt’. Ms. Castro explained the difference. Dr. Phillips put it into lay terms. Ms. Castro confirmed his explanation. Dr. Phillips emphasized that every case is taken very seriously and that in some cases, the Board simply does not have what is needed to move forward with a case. Ms. Castro repeated this in terms of the OAG’s view, where every case is viewed individually. For confidentiality reasons, the OAG cannot always share weaknesses or background information related to why a filed case was not accepted for prosecution. It is an intangible benefit that licensees read disciplinary decisions and that it does speak to their own practice.

Dr. Casuga commented about cases where Board Enforcement staff sends a letter indicating insufficient evidence and that consumers are at a loss to know what else they could have provided. Dr. Casuga asked Ms. Castro whether there was anything else a complainant could present to bolster their case. Ms. Castro replied that Enforcement staff and OAG take all cases very seriously. It is helpful when a complainant turns over all their material and is willing to cooperate fully, but the Subject’s side of things is also considered. OAG considers both sides of the complaint in determining whether to proceed, but they must leave it to the expert to see what is ‘wrong with this picture.’

Mr. Foo asked whether the occasion of multiple complaints from multiple people against a single licensee meets the clear and convincing level of proof. Ms. Castro replied that complaints are not taken globally, and that Mr. Foo’s scenario would not be enough to show merit for pursuing a case. Pattern and practice are more telling indicators, but those cases are rare enough to not guide OAG policy. Investigations are still conducted case by case, so DAGs and investigators may consider patterns in a big picture, but it is not clear and convincing as initially presented and the merits are evaluated based on
the records and the expert’s opinion. Dr. Phillips comments that it is not an additive process, meaning that several cases coming in together do not add up to clear and convincing and Ms. Castro agreed with this assessment. Mr. Foo asked if it presents an obstacle when staff cannot obtain a Release from the Complainant and Ms. Castro confirmed that it is an obstacle. Dr. Phillips commented that health care providers are trained to not turn over records in order to protect patient privacy and that the easiest way to enable the provider to turn records over is to receive a Release. Ms. Castro confirmed that the Release is critical to the investigation so as not to hold up the process.

Dr. Winkelman asked Ms. Castro about the educational aspect of publishing an Accusation and subsequent discipline. Dr. Winkelman referred to a case in which gross negligence was alleged over the use of email communication, and that the topic came up at an earlier Board meeting. Dr. Winkelman wondered whether more detail might be included in some Accusations to fulfill the educational purpose of reading these materials. Ms. Castro referred to ‘notice pleading’ as the standard in California. Ms. Castro did not believe more detail would be useful, since every case is different. Where the expert reads and finds gross negligence in a case with email communication, the expert would have picked up something in the context or intent and whether the licensee fell short of community standards upheld by all licensees. Ms. Castro said that the instructional aspect of disciplinary publications is food for thought, but she did not feel there would be a situation where a licensee reading a Decision would identify precisely with that Respondent. She indicated the licensee might see similarities which could be used to correct their own practice, which would be in the interest of public protection. Dr. Winkelman asked for even just a few more clarifying words, so that the violation does not appear just to be the email itself, but the content of the email. Ms. Castro replied that Dr. Winkelman’s request was well-stated.

Dr. Phillips thanked Ms. Castro for her informative presentation which will be used for informational purposes so that people better understand the standards and procedures in enforcement.

Agenda Item #27: Enforcement Committee Report – Consideration and Possible Approval of Committee Recommendations

c) Child Custody Stakeholder Meeting Implementation Update

Ms. Monterrubio reported that at its April, 2019 meeting, the Enforcement Committee directed staff to work on five Action Items based on the September 2018 Stakeholder Meeting: 1) Mandate Child Abuse/Domestic Violence Education for Subject Matter Experts, 2) Screen Child Custody Subject Matter Experts that Subscribe to Parental Alienation, 3) Educate Public on Clear and Convincing Evidence, 4) Create a Complaint Fact Sheet, and 5) Review and Consider Statutory Language Related to Documentation.
Considered for Child Custody Complaints. Ms. Monterrubio described the implementation timeline. Dr. Horn asked about the Action Item #2 and whether staff could add “Syndrome” to “Parental Alienation”, but Dr. Phillips stated the five items were based on the comments of stakeholders felt it was inappropriate to restate their concerns. Ms. Marks confirmed that the Board does have that authority to adopt or amend the action items. Dr. Horn had requested this be done to decrease confusion.

It was M(Horn)/S(Casuga)/C to adopt, as amended, the Child Custody Stakeholder meeting implementation plan with Action Item #2 amended to add “syndrome” to “parental alienation” to read “parental alienation syndrome”.

Mr. Foo asked about Action Item #3, what was meant by “definition” of Clear and Convincing Evidence and what would be posted. Ms. Monterrubio explained that DAG Liaison Joshua Templet had previously provided this definition for posting.

Discussion ensued as to the appropriateness of adding additional criteria for screening out experts, many of whom would be highly-qualified to act in that capacity.

Dr. Linder-Crow commented that she and Dr. Winkelman have heard that since the publication of the Journal with the Enforcement Committee meeting summary, many licensees have come forward with questions. Dr. Linder-Crow expressed concerns about the stakeholder meeting itself and with Action Items #1 and #2. She stated that the stakeholder meeting as originally promoted did not appear to be something CPA needed to be involved with because the meeting was geared toward the Center for Judicial Excellence regarding actions of the courts, the Board’s disciplinary process and a discussion of the burden of clear and convincing evidence. Now as she reads the summary, the content turned out to be much broader, and she commented that CPA was not invited to this facilitated meeting to triage the list of concerns and to comment. Dr. Linder-Crow asks to be considered a stakeholder in any situation that might affect licensees. To that end, she requested a follow-up stakeholder meeting, to include CPA, subject matter experts, and the chapter of Association of Family and Conciliation Courts (AFCC).

Dr. Linder-Crow commented that Action Item #1 is already a requirement under the California Rules of Court and said that this requirement raises concerns and she wondered how this came to be implemented. On Action Item #2, Dr. Linder-Crow commented that using the correct language is hugely important and that the Journal and the April Board meeting minutes did not clearly explain what this screening entailed. She indicated that Board language edges out many experts who are skilled in detecting the nuances of parental cases and that the Board’s screening process is unknown and wondered whether staff would oversee screening.
Dr. Winkelman said she has spoken with many experts about parental alienation. She says that there is widespread disbelief in parental alienation syndrome, but that there are many kinds of resistive family dynamics, and that well-regarded experts in the field would be screened out without further consideration when instead they need to be a part of this conversation. She echoed that these are very complex issues and that the Board should consult with experts and work on clarifying this requirement.

Dr. Linder-Crow urged the Board to take a step back on implementation, because these issues are too critical to go forward without CPA and experts in on the conversation. Dr. Phillips explained that a former Board member and a child custody expert would be making that determination and would provide consultation to staff in screening experts. Dr. Phillips explained that the Board is looking specifically at parental alienation syndrome. Dr. Linder-Crow countered that there was concern among experts who know the difference between parental alienation and parental alienation syndrome and that this screening may be applied too broadly.

Dr. Phillips echoed this sentiment and said that consultant expert is very-highly qualified and that this is how the Board came up with parental alienation ‘syndrome.’ The Board is being very careful and respectful while also screening experts to make sure the Board is comfortable with their opinions. Dr. Phillips acknowledged that CPA would have been welcome to attend had they so chosen. Dr. Phillips said that he does not see it as a burden to impose the educational requirement of Action Item #1 on subject matter experts. Dr. Linder-Crow commented that CPA will try harder to communicate to licensees just how seriously the Board takes these considerations and issues and the ways in which the Board works.

No further Board discussion or public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

The Board did not discuss items 27(a), (b), or (d).

**Agenda Item #29: Election of Officers**

Ms. Marks explained the process of nominating and electing officers. Discussion ensued as Board Members voiced their nominations for the offices of President and Vice-President of the Board.

Ms. Marks opened the nominations for the office of President.

Dr. Phillips nominated Mr. Foo.

Dr. Casuga nominated Dr. Horn. Dr. Horn declined the nomination.
Dr. Casuga nominated Dr. Phillips. Dr. Phillips declined the nomination.

Dr. Casuga nominated Dr. Harb Sheets. Dr. Harb Sheets declined the nomination.

Mr. Foo was elected as President.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

Ms. Marks opened the nominations for the office of Vice-President.

Mr. Foo nominated Dr. Casuga.

Dr. Phillips nominated Dr. Harb Sheets.

During a roll-call vote, Dr. Casuga received two votes (Foo, Horn) and Dr. Harb Sheets received five votes (Casuga, Cervantes, Harb Sheets, Phillips, Tate).

Dr. Harb Sheets was elected as Vice-President.

Ms. Marks introduced a motion for the term(s) of office to be for one calendar year and to commence on January 1, 2020.

It was M(Foo)/S(Casuga)/C for the terms of office to begin January 1, 2020 and last for one calendar year.

No Board further discussion and no public comment offered.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

**Agenda Item #28: Licensure Committee Report – Consideration and Possible Approval of Committee Recommendations**

Dr. Horn provided the update on this item, stating that the Board would only be reviewing action items at this time.

b) Discussion and Consideration for Grievance Process: Options in Resolving a Discrepancy between Weekly Log and Verification of Experience forms.

Dr. Horn said that staff had been directed to investigate ways to resolve these discrepancies and bring their recommendations back to the Licensure Committee.

Staff recommended the following options: 1) amend Title 16 of the California Code of Regulations (16 CCR) section 1387.5 to require submission of weekly log with the VOE forms; 2) amend 16 CCR section 1387 to mandate the completion of the weekly log as a component of the required face-to-face supervision; or 3) present the case to the
Licensure Committee for review and consideration as a licensure qualification issue on a case-by-case basis during closed session at committee meetings.

It was M(Foo)/S(Casuga)/C to recommend that the Board adopt option 3 for the Licensure Committee to conduct case-by-case reviews to resolve discrepancies identified between weekly logs and verification of experience forms.

No Board discussion ensued and no public comment was made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

c) Discussion and Consideration of Revisions to the Guidelines for the Review of Requests for Extension to the California Code of Regulations sections 1391.1(b) and 1387(a)

Dr. Horn stated that since the Board was seeing a lot of extension requests, the Board should better communicate how the process works. Staff came up with additional guidelines for people requesting an extension to speed up that process and to aid staff in making those determinations.

It was M(Foo)/S(Harb Sheets)/C to adopt the revised extension request guidelines as written.

Dr. Casuga voiced support that this revision is a good idea.

No further Board discussion ensued and no public comment was made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

e) Consideration of Licensure Committee Recommendations Regarding Requests for an Extension of the 30-Consecutive Month Limitation to Accrue 1500 Hours of Post-Doctoral Supervised Professional Experience Pursuant to Section 1387(a) of the California Code of Regulations

PSY Applicant #1 – Dr. Horn provided a summary of PSY Applicant #1’s extension request and the Licensure Committee’s recommendation regarding this request.

It was M(Foo)/S(Tate)/C to approve the Licensure Committee’s recommendation to grant PSY Applicant #1’s request for an eight-month extension to the 30-consecutive month limitation to accrue post-doctoral SPE.

No Board discussion ensued and no public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes
PSY Applicant #2 – Dr. Horn provided a summary of PSY Applicant #2’s extension request and the Licensure Committee’s recommendation regarding this request.

It was M(Foo)/S(Tate)/C to approve the Licensure Committee’s recommendation to grant PSY Applicant #2’s request for a three-year-and-four-month extension to the 30-consecutive month limitation to accrue pre-doctoral SPE.

Dr. Phillips commented that he appreciates that some school programs act effectively as gatekeepers.

No further Board discussion ensued and no public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

PSY Applicant #3 – Dr. Horn provided a summary of PSY Applicant #3’s extension request and the Licensure Committee’s recommendation regarding this request.

It was M(Foo)/S(Tate)/C to approve the Licensure Committee’s recommendation to grant PSY Applicant #3’s request for a one-year extension to the 30-consecutive month limitation to accrue post-doctoral SPE.

Dr. Phillips asked Dr. Horn whether the Licensure Committee was satisfied with the documentation related to the mental health of the candidate and Dr. Horn replied in the affirmative.

No further Board discussion ensued and no public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

f) Consideration of Licensure Committee Recommendations Regarding Requests for an Extension of the 72-Month Registration Period Limitation for Registered Psychological Assistant Pursuant to Section 1391.1(b) of Title 16 of the California Code of Regulations

Dr. Horn provided a summary of PSB #1’s extension request and the Licensure Committee’s recommendation regarding this request.

It was M(Foo)/S(Casuga)/C to approve the Licensure Committee’s recommendation to deny PSB #1’s request for a one-year extension of the 72-month limitation for the psychological assistant registration.

Dr. Harb Sheets commented on the increase in this PSB’s mental health symptoms and noted that there had already been a request for an extension that was denied. Dr. Horn explained that the materials submitted in support of the request did not preclude the
PSB from taking the EPPP. Dr. Horn emphasized that the 72-month period is specifically a training period. Dr. Phillips noted that the Board has seen several such requests made in the past by candidates who viewed this psychological assistantship as a terminal licensing class instead of a pass-through registration.

No further Board discussion ensued and no public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

9) Consideration of Renaming Registered Psychological Assistant

Dr. Horn notes that more jurisdictions use “Psychological Associate” in the way this Board currently uses “Psychological Assistant.

It was M(Foo)/S(Casuga)/C to approve the Licensure Committee’s recommendation to continue with the renaming of “Psychological Assistant” to “Psychological Associate.”

Dr. Phillips commented that the Board may still be causing confusion since some jurisdictions use “Associate” as an independent practice designation. Dr. Phillips suggested calling it a “Registered Psychological Associate” to make a distinction from terminal independent-licensing categories.

Mr. Foo commented that “psychological associate” emerged from stakeholder meetings held by the Board and facilitated by SOLID. He added that using the category psychological associate would honor the process and input from stakeholders. Additionally, as the term is used widely in other jurisdictions, it should not cause confusion.

It was M(Foo)/S(Casuga)/C to amend the Licensure Committee’s recommendation to continue with the renaming of “Psychological Assistant” to “Registered Psychological Associate.”

No further Board discussion ensued and no public comments were made on this item.

Vote: 7 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips, Tate), 0 noes

h) Pupil Personnel Services Credential: Report on Presentation and Discussion by Commission on Teacher Credentialing (CTC) for a Credential with a Specialization in School Psychology

i) Update on the California Association of School Psychologists Regarding Written Statement to Clarify the Role of Licensed Educational Psychologists
These items were informational only and were discussed in context with item 28(j) to follow.

j) Discussion and Consideration of How to Inform Consumers Regarding the Respective Roles of a Licensed Psychologist, Licensed Educational Psychologist, and Individuals Holding a Credential with a Specialization in School Psychology

Discussion ensued regarding how best to educate consumers on the distinctions between what services a Licensed Educational Psychologist and a Licensed Psychologist could deliver in their respective practices.

It was M(Foo)/S(Tate)/C for the Board to co-host a stakeholder meeting in the near future to solicit input on how to best inform consumers regarding the respective roles of the three professions with the Board of Behavioral Sciences, the Commission on Teachers Credentialing, and other relevant stakeholders.

Dr. Horn suggested staff should work with these organizations to identify all the various stakeholders. Ms. Sorrick pointed out that at the September Committee meeting, all present participants in the meeting agreed to make a list of all their respective stakeholders. Dr. Casuga recommended the Association of Regional Center Agencies (ARCA) be one of the stakeholders invited to the stakeholders meeting that is being planned.

Dr. Casuga wanted to include as a topic making proper referrals to licensed psychologists when clinically indicated.

Dr. Harb Sheets pointed out that this is more an issue with Licensed Educational Psychologists in private practice and that it is worrying that the Board of Behavioral Sciences does not consider this to be a problem.

Dr. Horn clarified that the issue was whether consumers know the difference between what an Licensed Educational Psychologist can do and when it is appropriate to refer out to a Licensed Psychologist.

Mr. Foo commented that Kim Madsen, Executive Officer of the Board of Behavioral Sciences (BBS), made it very clear that this was a stakeholder meeting and that BBS was not interested in reopening their Practice Act.

Dr. Harb Sheets said consumers are reluctant to tell their stories a second time to another professional, thinking that their present Licensed Educational Psychologist should be able to treat the student.

Dr. Phillips agreed, that consumers may not be fully aware of their options.
Ms. Cervantes commented that when the Board distributes information on this topic, there needs to be a sensitivity to language and cultural differences, because there are so many stakeholders involved in K-12 education.

Mr. Foo asked Ms. Sorrick whether the “Therapy Never Includes Sexual Behavior” brochure was translated to other languages. Ms. Sorrick responded that it was translated into Spanish and that DCA uses Google Translate for other languages. Mr. Foo suggested that the Board should at least create this informational piece in Spanish and refer to Google for translations to other languages.

No further Board discussion ensued and no public comments were made on this item.

Vote: 6 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips), 0 noes, 1 absent for this vote (Tate)

It was M(Foo)/S(Harb Sheets)/C to accept the Licensure Committee report covering the remainder of the non-action items.

No Board discussion ensued and no public comment were made on this item.

Vote: 6 ayes (Casuga, Cervantes, Foo, Harb Sheets, Horn, Phillips), 0 noes, 1 absent for this vote (Tate)

Agenda Item #21: Legislative and Regulatory Affairs Update

c) Update on California Psychological Association Legislative Proposal Regarding New Registration Category for Psychological Testing Technicians

Mr. Foo introduced Dr. Winkelman, CPA, who provided an update on this item.

Mr. Foo asked Dr. Winkelman whether the proposed language will go to the Board for review or go straight to the Legislative and Regulatory Affairs Committee first. Dr. Winkelman did not directly reply, but Dr. Phillips asked Dr. Winkelman for a preview once it is available. Dr. Winkelman replied that this would be done. Mr. Foo asked whether Dr. Winkelman is aiming for February 2020, and she confirmed that that was the hope. In the meantime, CPA would reach out to Board staff for technical guidance.

Dr. Phillips indicated that CANRA was not on this meeting’s agenda but would be brought up on the February agenda.

Agenda Item #30: Recommendations for Agenda Items for Future Board Meetings. Note: The Board May Not Discuss or Take Action on Any Matter Raised
During This Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code Sections 11125 and 11125.7(a)].

Dr. Casuga expressed that she wanted to share her experience with the EPPP Part 2 pilot exam at a future meeting.

No further Board or public comment was offered.

In closing, Dr. Phillips expressed his gratitude and appreciation to his fellow Board members, to Board managers and staff, and to Ms. Sorrick for all the support he received over his four year-presidency. His remarks were warmly received.

Meeting adjourned at 4:16 pm.

The following agenda items were not discussed at the meeting:

Agenda Item #10: Continuing Education and Renewals Report
Agenda Item #11: Strategic Plan Action Plan Update
Agenda Item #12: Board’s Social Media Update
Agenda Item #13: Website Update
Agenda Item #14: Update on Newsletter
Agenda Item #25: Enforcement Report