

Behavioral Sciences Regulatory Board  
Board Minutes  
March 9, 2015

Called to order at 9:10 a.m. Roll call for attendance.

**Members Present:** Barbara Burks, Barbara Callahan, Grant Edwards, Todd Frye, Kathy Herzog, Terry Pfannenstiel, Cheryl Reynolds, Larry Salmans, Marcia Simoneau, & Carolyn Szafran. Jill Craven joined the meeting by phone. Kathy Armstrong was absent due to conflicting meetings.

**Staff Present:** Max Foster, Leslie Allen, Cindy D’Ercole, Marilyn Revell, Marty Snyder, Jan Arndt, Whitney Casement

**Audience Present:** Sky Westerlund - KNASW

**I. Approval of Minutes**

**Item:** January 12, 2015 Board Meeting Minutes, January 21, 2015 phone meeting, February 5, 2015 phone meeting.

**Action:** Cheryl asked that when the board minutes for the second phone meeting held on February 5, 2015 are expanded to include that the changes voted on were the changes discussed at the January 21, 2015 phone meeting. Cheryl moved that the minutes from February 5, 2015 be corrected and then the board approve the minutes for all 3 board meetings. Kathy Herzog seconded the motion. Grant asked for a vote on the motion. The motion carried.

**II. Agenda: Announcements and Approval**

Agenda Item IV - Remove subcommittee reports as these committees have not met since the last board meeting in January 2015. Add these reports to the May Agenda.  
Addition – what goes on the website?

**III. Public Comments**

Sky expressed the concerns of the KNASW about the legislation and statutory language being proposed in SB254. She will talk about it when we discuss the bill later on the agenda.

**IV. Staff Reports**

Max: Bruno will be out for some time yet. Other staff members have been helping out with the three professions for which Bruno is responsible (MFT, LPC, and LMLP). We did hire a temporary staff member to help out for 8 weeks.

- Website update – on hold for now due to staff shortage.
- Budget analysis – BSRB is right where it needs to with the budget at this time of the fiscal year.
- Meetings with Legislative Fiscal Analyst
- Comments from Secretary of Administration Clark – IT licensure sharing throughout the state agencies, sharing expertise (especially IT expertise), monumental building surcharge, retirement payouts and changing annual leave/sick leave policy to a block of time given at the beginning of each year.
- Legislative session/Kanfocuz
- General Discussions with legislators – legislature may run past the regular time this session and there may be no discussion of budget until May.
- Presentations by BSRB Staff to Washburn, KU, Avila, Wichita area universities.

**V. Complaint Review Committee Report** – Terry Pfannenstiel

- 18 cases were reviewed
- 3 CAOs SPOs with fines
- 3 suspensions of a license
- 1 formal censure for CEUs
- 4 cases were dismissed due to no supporting evidence
- 3 cases with cautionary letters
- 3 cases were subpoenaed
- 106 open cases. Marty and Whitney from the Kansas Attorney General's office is helping get rid of old cases and keeping current with new cases.

Next meeting will be held April 13<sup>th</sup>.

Presentation to the KAMFT about BSRB, ethics questions and licensing processes.

Barbara B asked if the CRC had looked over the recommendations from the LAC committee.

Cheryl, Terry and Grant shared with the board that CRC used the recommendation already in making decisions. They appreciated the work that the LAC committee did and asked that those recommendations be available in the CRC folder in iTunes U for the board members for reference.

**VI. Profession Reports**

- A. **Psychology** – Barbara Callahan – Advisory Committee met on February 10, 2015. Reviewed the January 15<sup>th</sup> meeting minutes. Discussed Behavior Analysis licensure issues and looked at the Behavior Analysts certification board website. The committee discussed the telemental health and encouraged using broad strokes in telemental health. Chris Habben is leaving and Ric Steele, in the KU clinical child psychology program would like to join the LP committee. Grant appointed Dr. Ric Steele to the committee. Next meeting is scheduled April 21, 2015.
- B. **Telemental Health** – Barbara Callahan – will meet this Friday, March 13, 2015.
- C. **Social Work** – Carolyn Szafran & Marcia Simoneau. The committee met January 12<sup>th</sup>, February 12<sup>th</sup> and are meeting again March 25<sup>th</sup>. We had put together an ad hoc committee to put together a survey that we want to submit to our LSCSWs concerning the supervisor training. We are looking at surveymonkey.com as a service to use to conduct the survey. Carolyn and Marcia agreed to help on the telemental health subcommittee. Leslie will send the questions to Marcia and Carolyn so they can look those over before they join the meeting by phone at noon on Friday.
- D. **Professional Counselors** - Todd Frye - reported that the LPC Advisory committee met Monday, February 2, 2015. The committee wants to compare the change in the ACA Code of Ethics with the current BSRB misconduct statutes. Todd will ask graduate students at various Kansas universities as part of an ethics course to help with the comparison. There are 8 counseling education programs in Kansas. The ACA Code of Ethics has had two revisions since BSRB has changed its misconduct regulations. The results should be back by August so BSRB could look at changes in statutes next fall. The biggest missing piece is the reference to the use of technology. Are there other professions looking at their misconduct regulations? Grant stated that the APA code of ethics is probably even with our regulations at the BSRB. Terry said that the MFT regulations were updated in 2012.
- E. **Masters Level Psychologists** – Larry Salmans – no formal meeting, but he has spoken with a couple of committee members. Who can give psychological exams? That was the subject of discussion. At diagnostic centers, computer-generated answers are “cookbook” answers and may not even be close to the real diagnosis when unauthorized people are conducting these tests.

Terry agreed that these tests should NEVER be used as the “sole instrument” to diagnose. There is a lot of conflicting information in these tests and the interpretation of the tests should be referred back to a psychologist. If someone is practicing outside of their scope of practice, i.e. anyone other than psychologists, then a complaint should be filed against that licensee. Larry stated that insurance companies are using the results of these unauthorized tests that have conflicting information, because persons who have taken a class on testing think they are qualified to test and interpret the results.

- F. **Marriage and Family Therapy** – Terry Pfannenstiel – will be meeting this Wednesday, March 11, 2015. In the last couple of committee meetings, discussion has focused on supervision guidelines for supervisors of post grad candidates with a training plan. Telemental health issues were also discussed. A new issue has come up with regards to the training of the supervisors. KAMFT asked if their organization could be involved in developing the training program for supervision. Chris Habben is now gone from the committee since he will now be president of the national organization. The national organization is changing the bylaws to eliminate state associations and to move to “regional associations” or “divisions” based on specialties.
- G. **Addictions Counseling** – Barbara Burks – held a committee meeting by phone last Friday, March 6, 2015. The committee discussed SB 254 and some concerns that members have with the bill. In KAPA, the committee discussed applications that will be presented to the Board today.

**Grant called a recess at 10:12 a.m.**  
**Board reconvened at 10:26 a.m.**

## **VII. New Business**

### **A. Board Authorizing CRC to speak for the Board**

**Item:** Board needs to confirm the authority of the CRC to speak for the Board when issuing orders to licensees.

**Action:** Cheryl moved to have the Board formally authorize the CRC to make decisions on behalf of the Board on those matters that come before the CRC. Barbara B seconded the motion. Motion passed.

### **B. What Goes on the Website for reporting**

**Item:** BSRB’s website/NPDB (formerly HIPDB) reporting policy. Board members were given a memorandum and chart that defined what was reportable and what was not reportable. Whitney stated that anything related to delivery of health care services IS to be reported. Those things that are NOT related to delivery of health care related services are things such as CEU violations or administrative violations. It is her interpretation that if it is NOT reportable (related to the delivery of health care services), then BSRB does not need to put that disciplinary action on our website or report it to the NPDB. That disciplinary information would still be available in OPEN RECORDS. It goes in the licensee’s file. Barbara B asked if there was a question on the application if there has been past discipline. Yes, Leslie confirmed that it IS on the application and that we would know that information when the licensee attempts to renew online. The licensee, if answering the questions truthfully, will be kicked off the online renewal site and must submit a paper renewal. It is in our database that the licensee has been disciplined. Cheryl asked if we ever audit renewals for disciplined? Leslie said no. We have no way of making that happen. The disciplinary database is on a different drive than the regular database and the two databases can’t communicate. We do NOT check every applicant for disciplinary actions, only reciprocity applications and out of state applications and applicants that admit to a past criminal history are run through the national databank. It was cost-prohibitive to run every applicant

through the national databank. Whitney pointed out that the memorandum goes into more detail about the NPDB reporting requirements. Cheryl asked if there was a conflict area that we should be concerned with. Grant said that the board has no discretion to reporting “reportable incident” to the national databank, and that those “reportable incidents” could be interpreted as requiring a more severe action required than that required of a “non-reportable incident”. Marty pointed out that the CRC does a very good job of determining the severity of the action appropriate to infraction. A “yes” on the chart ALWAYS has to be reported, but a “no” can be reported or not. It would be up to the Board. Cindy said that if it goes on the BSRB website, it would be reported to the NPDB.

**Action:** Cheryl moved that the Board adopt the chart with the “no’s” at the discretion of the board for reporting to NPDB and the “yeses” were automatically reported to the NPDB, if we report to one, we report to both. Amend the motion to allow that the Board “may adjust” the chart based on changes in federal regulations. Kathy Herzog seconded the motion with the friendly amendment. Motion passed.

## **VIII. Old Business**

**F. Item: Retired/Inactive License Status** – This was discussed while Marty was still here to advise on this issue. Leslie received a letter asking to create a “retired” or “inactive”. Kathy H stated that if you are practicing your profession, you need to be licensed. Barbara B remembered that the Board had discussed many times the creation of an “inactive license”. Leslie said that the letter writer had asked about this status in the case of an emergency or disaster. Kathy H emphasized that if you are retired, you shouldn’t be practicing your profession. Much discussion ensued about creating an “inactive” status so that a professional could be “reactivated” in an emergency situation. Grant said that since there is much interest in this issue, was there anyone who would like to research the “inactive status” in other states.

**Action:** Cheryl moved to create a subcommittee/workgroup to study the issue of “retired/inactive” status. Larry seconded the motion. Motion carried. Barbara Burks, Larry Salmans, and Kathy Herzog volunteered to comprise this committee with Kathy appointed as chair. The committee will meet this Friday, March 13, 2015 at 9:30 a.m. by phone.

### **New Business D & Old Business A**

Budget FY 2016 and 2017 with the Impact of 10% Increase of Revenue Sweep

Max shared a chart that compared scenarios of the effect of the Fee fund Sweep increase to BSRB carry forward balance. Max would recommend to the Board that we adjust our current plan if the Fee Fund Sweep is increased to 20%. Both houses of the legislature have been appraised of the situation with BSRB concerning the Fee Fund Sweep. Not every fee funded agency in the state is affected. As far as the submission of the BSRB budget is concerned, everything went smoothly. Barbara B pointed out the Board cannot change any of our regulations until the BSRB statutes have been changed in the current SB 254 to go before the Senate.

- B. SB 254** – Max reported where this bill stood in committee. It was introduced into the Senate Ways and Means Committee by Senator O’Donnell. It is now in the Senate Health and Welfare Committee which is headed by Senator Pilcher-Cook. Max has met with both of these senators to explain the bill as submitted. At this time no hearings are scheduled for this week.

Sky Westerlund, guest at the Board meeting, speaking for KNASW, said the organization appreciates the flexibility of the Board in reducing fees. KNASW also is in favor of the reciprocity licensure changes. KNASW is also in favor of adding the ability for people with criminal histories to be able to be licensed if those people meet the BSRB requirements for licensure. KNASW does have some concerns with the following changes: changing the last two professions to be under KAPA

rules seems to reduce the transparency that the committee has now for social workers; the cost to the applicants/renewals of the fingerprinting and or background checks; expanding reasons to refuse, deny or suspend a license due to “incompetence” which has no statutory definition; “substantiation of abuse” is an overreach as it does not involve due process; CE credit for licensure renewal before the applicant is licensed (as part of the education process), the Safety Awareness for social workers should happen when they are in a job, not in school; Addictions practice act – proposed level of Masters level to be added - parallel licensing if licensed at the masters level in another profession; no reference language that the Bachelors level of Addiction Counselors are required to have supervision; striking the DSM language in statute; approved clinical supervisor training requirements – because it is not required for all the professions represented by the Board.

No motion was made or voted on concerning the comments from the KNASW.

**Item:** Some discussion ensued concerning the changes of statutes in SB254. It was decided to put Max’s testimony that he will present to the Senate Health and Welfare committee when the Hearing is called on the website. This will be available for all to view on the BSRB website. This will serve to answer questions from licensees.

**Action:** Cheryl moved that the Board will put Max’s testimony on the website and the staff can then refer people to the website for questions concerning SB254. Jill seconded the motion. Cheryl then added a friendly amendment that the BSRB Board is endorsing the testimony as written. Barbara B. seconded the motion as amended. Motion passed.

**E. Autism/ABA law** – neither trailer bills nor additional change are forthcoming on this law. Max suggested that the Board needs to craft language for rules and regulations concerning this law.

**Item:** The Board needs to talk more in depth about those rules and put together a committee. Terry wants to be on that committee.

**Action:** Cheryl moved that we establish a pseudo-advisory committee to start that process with three to seven members with the membership made up of cross disciplines appointed by the BSRB Chair and chaired by a member of the BSRB with one public member from the board, and folks knowledgeable in this profession. Marcia seconded the motion. Grant then asked for volunteers from the Board to serve on this committee. Terry, Larry, Grant and Jill volunteered to be on the committee and represent the BSRB.

#### **IX. Applications Needing Board Action**

**Action:** Kathy H. moved that the Board approve the application of LW based on the previous motion to approve CRC Recommendations. Cheryl seconded the motion. Motion passed. LJS’s non-disciplinary CAO should come from Jan and not from Marty or Whitney.

#### **X. Recess**

**Action:** Cheryl moved to recess the meeting. Kathy Herzog seconded the motion. Motion carried. Meeting recessed at 12:00 p.m.

#### **XI Board reconvened at 12:14 for Executive Session and KAPA proceedings**

#### **XII Adjournment**

**Action:** Cheryl moved to adjourn the meeting. Motion was seconded. Motion carried. Meeting was adjourned at 12:45 P.M.