

**BEHAVIORAL SCIENCES REGULATORY BOARD
SPECIAL BOARD MEETING MINUTES
OCTOBER 24, 2022**

Approved Minutes

- I. Call to Order and Roll Call.** The meeting was called to order by Chair Mary Jones at 9:00 am.

Board Members. Mary Jones, David Anderson, Donna Hoener-Queal, Jim Kilmartin, Jacqueline Lightcap, Richard Nobles, Johnna Norton, Andrea Perdomo-Morales, Cynthia Schendel, Ric Steele, Laura Shaughnessy, and Deb Stidham attended in person.

BSRB Staff. BSRB Staff members David Fye, Leslie Allen, Cindy D’Ercole, Ashley VanBuskirk, Tyla Wadsworth, and Assistant Attorney General Jane Weiler attended in person.

Other Attendees. Blaise Mesa.

- II. Agenda Approval.** Cynthia Schendel moved to approve the agenda as written. David Anderson seconded. The motion passed.

- III. Overview and Update on BSRB Operations by Executive Director David Fye.** David Fye, Executive Director for the BSRB, provided an update on agency operations, including information on licensing, discipline, revenue, and expenditures. Board members requested a future report summarizing frequency of practitioner violations by type of violations.

- IV. Discussion and Possible Action on Items**

A. Use of Expert Review Process for Evaluation of Certain License Applicant Information. The Executive Director provided an overview of the expert review process utilized by the agency for the review of certain license applicants. In most situations, the BSRB uses a small set of experts when an applicant received their education from a program not accredited by a national accrediting body recognized by the BSRB, but the applicant may meet the requirements in regulation, though this analysis requires review of program and course specific information. The Executive Director note the agency has struggled to reach agreements with very many experts, so there are delays for some applicants while the applicants are waiting to be reviewed by an expert. As an alternative to the current process, the Executive Director provided information on the Center for Credentialing and Education (CCE), which performs these types of applicant reviews for other states. The Executive Director noted the cost would be around \$100 to \$150 per review, paid by the BSRB, though this is comparable to the amount currently being paid to experts for review services. CCE offers an opinion and report at the end of the review and guarantees a turn-around in 6 weeks. Board

members expressed concerns about the qualifications of individuals performing these types of reviews and the Board discussed other technical issues. The Board requested the Executive Director contact a representative from the company to provide more information to the Board and answer questions from Board members at the next full Board meeting.

- B. Licensing Hearings.** The Board discussed alternatives to the current practice of holding license hearing before all members of the Board. Members discussed the option of holding license hearing at the Office of Administrative Hearings, however it was noted that costs for these hearings would be expected to be significantly higher than the current cost for the license hearing process and other technical complications were noted as well. The Board discussed the option of holding license hearings before a subset of the Board serving as a hearing panel and Board members expressed support for this method. By consensus, the Board decided to begin using hearing panels for license hearings that will consist of five Board members, including one professional member licensed in that profession and one Board member serving as a public member. The remaining three members of each hearing panel could be any Board members. It was noted that certain license hearings that require a 2/3 vote of the Board to license certain applicants would need to be held before the entire Board.
- C. Impaired Provider Programs.** The BSRB does not currently utilize an impaired provider program. The Board recently received information on impaired provider programs. Under these types of programs, professionals struggling with substance use or mental health concerns can seek directly from program and licensing boards can use these programs as alternatives to other disciplinary measures. The Executive Director noted he spoke with representatives from other states concerning their utilization of these types of programs. There is not a consensus in other states regarding whether most similar agencies have impaired provider programs, and reports of outcomes from such programs are mixed. The Executive Director provided a summary of research he collected on other state agencies in Kansas utilizing impaired provider programs, such as the Board of Nursing and Board of Pharmacy. Board members spoke in favor of beginning to utilize an impaired provider program for licensees under the BSRB. Board members asked how the program would be funded. The Executive Director noted that most programs are funded by the agency's that participate in the program though some states require a small amount of the cost to be provided by the individual participating in the program. The Board discussed whether associations would be willing to contribute to the cost of the program. Board members discussed whether licensees would be able to utilize such programs anonymously, considering an unprofessional conduct regulation that requiring certain disclosures to the Board. It was noted that under the current regulations, as long as the reason for utilizing the program did not involve practice, a licensee would not need to report entering the program to the Board. By consensus, the Board recommended for the Executive Director to move forward with getting information on possible vendors for these services through exploration of a Request for Proposals (RFP) process.

D. License Reciprocity Requirements. Leslie Allen, Assistant Director and Licensing Manager for the BSRB, summarized the general statutory requirements for reciprocity for professions under the BSRB. For most professions, there are two pathways for reciprocity. The first path requires that an applicant holds a license from a jurisdiction that has substantially similar licensure requirements, though it was noted that most licenses in Kansas have detailed course and program requirements while most other states do not have as detailed requirements. It was also noted that the type of license examinations required in Kansas sometimes differ from what those required in other states. The second statutory reciprocity pathway requires that an applicant have a lack of serious disciplinary history, have attained an appropriate degree, and be licensed for four years and practicing in another jurisdiction. For applicants at the clinical level, most applicants must show they meet two of three criteria: (1) sufficient coursework or passage of the appropriate examination; (2) 3 years of clinical practice; or (3) an attestation from a professional meeting certain criteria that the applicant is competent to diagnose and treat. The Executive Director noted the Behavior Analyst statutes do not include reciprocity language, though a method of reciprocity is provided under enacted 2021 HB 2066 (now in statute as K.S.A. 48-3406). The Executive Director noted there are significant differences between the types of licenses issued in Kansas compared to other states, in part because some states have a system designed for applicants to move to a clinical level of license, while the licenses for the BSRB allow practitioners to practice at any level for an undefined period, or for a practitioner's entire career.

The Executive Director summarized the different reciprocity process under 2021 HB 2066/K.S.A. 48-3406, including expedited processing of applications for military members and military spouses. The Executive Director clarified the definition of a complete application, and that the statute calls for applicants to be evaluated first under the existing reciprocity statutes, then if they do not meet those standards, the BSRB is able to evaluate applicants under a different reciprocity process which calls for a similar scope of practice, having practiced one-year in another jurisdiction, and other requirements listed in the statute. Board members noted that applicants living in bordering states likely would not be able to apply for reciprocity under the standards in HB 2066/K.S.A. 48-3406, because they are not planning to reside in Kansas. It was noted that for some types or levels of licensure in Kansas, there may not be comparable licenses in other states. Board members expressed a desire to be able to license more individuals who had practiced in another jurisdiction for a significant period of time. The Executive Director noted that multi-state compacts are being discussed for the professional counselor profession and the social work profession, however the counseling compact would only be for the clinical level of licensing and it is unclear at this point whether the draft language for the social work compact will be ready for states to review during the 2023 legislative session or whether it would be ready for the 2024 legislative session, so it appears that multi-state compacts will not resolve all of the concerns regarding reciprocity standards.

Board members asked BSRB staff whether they could identify the main reasons some applicants are not eligible for licensure in Kansas. Staff reported that for the addiction

counseling profession, the requirements in Kansas are very different than other states. Also, a growing number of applicants are not attending programs accredited by national accrediting bodies and are having difficulty meeting the alternative requirements in regulation. Board members asked about the difference in license requirements between Kansas and other states. It was noted that in some situations, Kansas requires more credit hours than some states. Previously, Kansas had required more client contact hours than a majority of states, though statutory changes in 2021 brought Kansas in line with the majority of states after that legislation was passed. By consensus, the Board recommended asking Advisory Committees to consider changes to reciprocity requirements, to be forwarded back to the Board for consideration. It was noted that the reciprocity statutes for different professions are similar, but the main area of differences are the requirements for professions in regulation. Advisory Committees were asked to review current requirements in regulations for possible changes.

E. Proposal for Temporary Decreased Reinstatement Fee - 90-Day Time Range Every 5 Years. The Executive Director noted that one factor that contributes to the overall number of individuals holding permanent licenses under the BSRB are individuals who have allowed their licenses to expire. The Executive Director noted that one way to address workforce concerns may be to provide a creative solution to encourage former licensees to reinstate their licenses. Currently, after an individual has an expired license, to reinstate that license, the cost is double the renewal fee (as a reinstatement fee/penalty must be paid) and all continuing education hours must be obtained from the prior license period prior to reinstating the license. The Executive Director proposed a new plan to submit in regulation a process that would decrease the reinstatement fee during a 90-day period which would recur every 5 years. During that time, former licensees could reinstate their licenses for the regular renewal fee with no penalty. The Board discussed whether to eliminate the reinstatement fee/penalty and it was noted that there is no penalty for a practitioner's license expiring, so long as the practitioner does not practice after it has expired. Staff noted the reinstatement fee is helpful to ensure that licensees renew their licenses in a timely manner. As an alternative to the proposed solution, by consensus, the Board requested creation of a new option for reinstatement, for former licensees whose licenses had been expired for at least a year. Under this new method of reinstatement, these former licensees could seek reinstatement for half of the current cost to reinstate a license (paying only the renewal fee). Also, as an alternative to completing all necessary continuing education hours prior to reinstating, a new option would be created so if these applicants had not earned all continuing education hours currently required to fully reinstate a license, those applicants could request a temporary license for a period not to exceed six months, during which time those applicants would be able to earn the continuing education hours necessary to fully reinstate their license. The applicants' continuing education hours would be audited after they had completed the necessary hours and if the applicant had obtained the necessary hours, then this special temporary license would convert to a permanent license.

V. Lunch. The Board recessed for lunch.

VI. Continued Discussion on Possible Action on Items. Following lunch, the Chair of the Board resumed the meeting and continued discussion of items on the agenda.

F. Interpretation of K.A.R. 102-3-7a(b) and K.A.R. 102-5-7a(b), for LCPC Applicants and LCMFT Applicants Pursuing Doctoral Degrees Seeking to Complete a Minimum of One Half of the Postgraduate Professional Experience Requirements Prior to Completion of a Doctoral Degree. The Executive Director noted the BSRB has interpreted K.A.R. 102-3-7a(b) and 102-5-7a(b) to mean that applicants are able to use the provisions in the regulation to obtain half of the hours in pursuit of a clinical license, if they already hold a doctorate degree. The Board has been asked whether applicants who are in the process of obtaining a doctoral degree should be allowed to use the provision in regulation to obtain half of the hours while pursuing their doctoral degree. By consensus, the Board agreed that the BSRB should continue to use the current interpretation of the regulation and applicants must already hold their doctoral degree before seeking to use the provision allowing only half of the necessary hours. The Board did not recommend adding additional language to the regulations.

G. Consideration of Changes to K.S.A. 65-7504 for the Behavior Analyst Profession, to Add Additional Disciplinary Remedies for Consistency with Other BSRB Professions. The Executive Director noted that under K.S.A. 65-7504, the Board is limited in what disciplinary remedies could be brought against a Behavioral Analyst or Assistant Behavior Analyst that has committed unprofessional conduct and it was noted that the relevant statutory language does not match the list of remedies available to the Board in statutes for other professions. Also, in K.S.A. 65-7504(a)(15), the statute uses the term guilty of unprofessional conduct, though this phrasing is typically found in criminal statutes, rather than administrative statutes. David Anderson moved to request changes to K.S.A. 65-7504 providing disciplinary remedies consistent with the marriage and family therapy profession and changing the phrasing of (a)(15) to match the phrasing more closely in the relevant marriage and family therapy profession statute. Ric Steele seconded. The motion passed.

H. Consideration of Adding Board Member for Behavior Analyst Profession. K.S.A. 74-7501(a) identifies the process by which the Governor appoints 12 individuals to the Board, though the statute does not list a board member for the behavior analyst profession. Andrea Perdomo-Morales moved to request a statutory change to add a new member to the Board for the behavior analyst profession. Jim Kilmartin seconded the motion. The Executive Director noted that the yearly cost of adding a new member to the Board would be expected to increase BSRB expenditures by about \$3,000 to \$5,000 each year, based on projected meetings attended, mileage reimbursements, and other costs. The Board member serving as Chair of the Behavior Analyst Advisory Committee stated that the Behavior Analyst Advisory Committee would likely be supportive of this change, though the Advisory Committee had previously expressed concerns regarding any changes to statutes, due to uncertainty of other legislative changes. The motion to add a new member to the Board passed. The Executive Director noted that if the Board is supportive of making changes to this statute, he would recommend the Board clarify other phrasings describing professional Board members,

to avoid any confusion based on levels of licensing described for some professions but not described for other professions in the statute. Jim Kilmartin moved to make clarifying changes to that section of the statute. Donna Hoener-Queal seconded. The motion passed.

- I. Consideration for Creation of Temporary License for Social Work Applicants from Schools that are in Candidacy for Accreditation.** The Executive Director noted that the national accrediting body for the social work profession, the Council on Social Work Education (CSWE), utilizes an accreditation process that lasts longer than other professions, at times lasting three to three and a half years. CSWE utilizes a process called “candidacy.” During candidacy, schools meet thresholds to demonstrate they are on track to reach accreditation. When a program becomes accredited, CSWE will backdate the accreditation for the program to when the program entered candidacy. However, due to the length of the candidacy process, it is possible that applicants will graduate from schools while the program is in candidacy. Under the BSRB statutes and regulations, if an applicant receives their education from a non-CSWE accredited program, they must meet the requirements in regulations, which currently includes an in-residence physical presence requirement, which would be difficult, if not impossible for applicants from online programs to meet. The licensing board for social workers in Minnesota offers a one-year temporary license specifically to applicants who graduate from schools that are in candidacy for accreditation, and this temporary license can be extended by the Board if their program continues to be in candidacy. Applicants would be able to obtain a permanent license when their program becomes accredited. Board members asked whether this process can be used for other professions. The Executive Director noted that he did not believe it could be used for other professions, because other professions do not use an official process of candidacy and the accreditation process for other professions generally takes a shorter period of time. Additionally, the retroactive accreditation process CSWE utilizes when programs reach accreditation is not used in the same way by the accrediting bodies for the other professions, which deem a program accredited at the time they become the accreditation standards, rather than when those programs entered a pre-accreditation process, such as candidacy. Ric Steele moved to request statutory changes developing a new temporary license program for bachelor’s and master’s social work applicants who graduate from programs that are in candidacy for accreditation, similar to the model used by Minnesota. Cynthia Schendel seconded. The motion passed.
- J. Discussion on Disparities in 2022 Association of Social Work Boards (ASWB) Exam Pass Rate Analysis.** In August 2022, ASWB released a report with demographic data on examination pass rates for the different levels of social work licensing examinations. The report showed disparities in pass rates between different categories of individuals. The Executive Director noted that he has seen comments from individuals specifically concerning the disparities by race, age, and other groupings. The Council on Social Work Education (CSWE), the national accrediting body for social work programs, sent a letter to licensing bodies requesting those licensing bodies suspend the use of the ASWB licensing examinations (aside from the clinical level examination) and to accept CSWE accreditation as sufficient for most levels of

licensing. The letter noted that Illinois stopped requiring an examination for licensure in January 2022. The Executive Director noted the statutes and regulations for the social work profession currently require passages of an examination for licensure, so if the BSRB were to follow the recommendation by CSWE, the BSRB would either be unable to license social workers or would be in violation of current law.

Representatives from ASWB provided information to the Social Work Advisory Committee at the Advisory Committee meeting on October 17, 2022, and summarized actions that ASWB has taken following the release of this report, including making more examination test prep materials available to colleges and universities, utilization of certain processes to evaluate test questions for bias, holding townhall meetings to receive comments on this topic, and sharing other relevant materials posted on the ASWB website. The Executive Director shared communications from representatives from ASWB on social work regulations in different jurisdictions. Board members asked how the pass rate for Kansas schools compares to the national average and it was noted that the passage rate for Kansas is higher than the national average. Board members discussed whether similar demographic data was available for other professions under the BSRB, but it was noted that very few standardized examinations have released similar demographic data for comparison. Board members from the social work profession noted that the disparities were not uniform for all schools and representatives from ASWB informed the Advisory Committee they intend to continue this conversation with schools regarding why certain colleges and universities are experiencing these disparities while others are not experiencing the disparities. It was noted that some states only allow the examination to be taken a limited number of times, while other states have no limit, so there are multiple factors between states that could contribute to some of the differences in examination pass rates. It was noted that one state is seeking additional funding for students to have better access to test prep materials, to resolve certain equitability issues. The Board noted it intends to continue monitoring this situation.

K. Consideration of Requirements for Board-Approved Supervisors for Social Work. The Social Work Advisory Committee recommended forwarding to the Board for discussion a possible requirement for Board-approved supervisors for the social work profession. The Executive Director noted a bill requested by the BSRB during the 2021 legislative session included language to require Board-approved supervisors for the social work profession, though that language was removed from the bill when it was heard in legislative committees. In December 2021, the BSRB sent a survey to social workers, requested by the Social Work Advisory Committee, which collected feedback from social workers on supervision and other topics. Respondents to the survey noted problems while receiving supervision and difficulties from individuals who had served as supervisors. Board members discussed lack of supervisor training opportunities and concern that more restrictions would lead to fewer supervisors. It was noted that some individuals reported difficulty finding supervisors. Board members expressed support for the BSRB making available a list of individuals who had provided supervision. David Anderson moved to request statutory language for Board-

approved supervisors for the social work profession. Donna Hoener-Queal seconded the motion. The motion passed.

L. Discussion on Continuing Education Requirements and Consideration of New Requirement for Continuing Education Hours in Diversity, Equity, and Inclusion (DEI) for Social Work Profession. The Social Work Advisory Committee previously recommended forwarding for Board discussion, whether there should be a new continuing education requirement in DEI. The Executive Director researched continuing education requirements in other states and provided a short memo to the Board comparing the continuing education requirements of the BSRB to continuing education requirements in other states. It was noted that while most states require some hours in ethics, the BSRB requirement of specific hours in diagnosis and treatment by practitioners is uncommon compared to the requirements in other states. However, 13 other continuing education topics are required in different states, including DEI, and that list was provided to the Board for review. Board members discussed whether to add a new continuing education requirement that would allow a licensee to choose between some of these different areas or whether to request legislation to require continuing education hours in DEI for all professions, while reducing the number of continuing education hours in diagnosis and treatment. Deb Stidham moved to reduce the required number of continuing education hours in diagnosis and treatment from 6 hours to 3 hours, and to add a new continuing education requirement of 3 hours in DEI, for each license renewal period, for all BSRB licensees that are able to diagnosis and treat. Ric Steele seconded the motion. The language to be used should be the same language used in the regulations for Texas, which states “acceptable cultural diversity hours include, but are not limited to, professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, and cultural economic status.” Board members noted concern about availability of continuing education classes in these areas. The motion passed. Deb Stidham moved that for levels of license that do not currently require continuing education hours in diagnosis and treatment, those licensees will have a new requirement of 3 continuing education hours in DEI. Mary Jones seconded. The motion passed.

M. Discussion on Educational Requirements for Professional Counseling Licenses in K.A.R. 102-3-3a, Concerning Requirements for Chairs of Other Related Fields. The Executive Director summarized requirements for license applicants in K.A.R. 102-3-3a, specifically that applicants must receive their education from a program that is not below the accreditation standards of the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or meets other requirements in regulation. One of the requirements in regulation is that the program be chaired or directed by a person who holds a doctoral degree in counseling but does not allow for a degree to be held in other related fields. The Professional Counseling Advisory Committee recently discussed this requirement and did not recommend a change. Board members noted concerns that applicants may be denied for licensure, due to program chairs holding non-counseling degrees. Deb Stidham moved to add language to regulation to allow for the person chairing or directing a program to have a doctoral

degree in counseling or other related fields. Ric Steele second the motion. The motion passed. Laura Shaughnessy voted no.

N. Discussion on Records of Decreased Practitioners Records. The Executive Director summarized the discussion by the Board and Advisory Committees during the previous year on the topic of how the BSRB can aid in situations when practitioners pass away unexpectedly, and another custodian of their records has not been identified. The Executive Director noted the Advisory Committees reviewed and made recommendations on other changes to the unprofessional conduct regulations for the professions this year, including unprofessional conduct on recordkeeping, and stated a possible solution may be to add language to the unprofessional conduct regulations for each profession that it would constitute unprofessional conduct if a practitioner failed to identify a custodian of their records in the event that they pass away unexpectedly. If this change is adopted, then the BSRB would be able to add a question to license renewal applications, asking practitioners to attest that they have identified a custodian of their records if they should pass away unexpectedly. Board members discussed whether there should be a requirement to list the name of the next custodian on the renewal application. Ric Steele moved to add language to the unprofessional conduct regulations, for all professions, that it would constitute unprofessional conduct for a practitioner to fail to have identified another custodian of their records in the event of an emergency so that they are no longer being able to provide care for a client. Donna Hoener-Queal seconded. The motion passed. The Board recommended having further discussion on how this process could be implemented at the next full Board meeting on November 14, 2022.

VII. Adjournment. Deb Stidham moved to adjourn the meeting. Cynthia Schendel seconded. The motion passed.