

**Behavioral Sciences Regulatory Board
Board Minutes
September 27, 2021
DRAFT**

Call to Order. The meeting was called to order by Chair Leslie Sewester at 9:00 a.m.

I. Roll Call.

Board Members. Board Members present by Zoom: David Anderson, Donna Hoener-Queal, Jacqueline Lightcap, Bruce Nystrom, Andrea Perdomo-Morales, Mary Jones, Johnna Norton, Leslie Sewester, Laura Shaughnessy, Ric Steele, Deb Stidham, and Carolyn Szafran.

Staff. BSRB Staff present by Zoom: David Fye, Leslie Allen, and Cindy D’Ercole. Assistant Attorney General Laine Barnard and Assistant Attorney General Jane Weiler were present by Zoom.

Guests. None.

II. Agenda Approval. Laura Shaughnessy moved to approve the agenda as written. Mary Jones seconded. The motion passed.

III. Annual Planning Discussion Topics

- A. **BSRB Website Posting Policy.** The Executive Director noted the meeting packet included the current BSRB Website Posting Policy as well as draft language for potential changes recommended by legal counsel for the Board from the Attorney General’s office. Assistant Attorney General Laine Barnard highlighted changes she and Assistant Attorney General Jane Weiler recommend to better clarify for the public and for BSRB staff what items should be posted to the website in the areas of discipline. Ms. Barnard noted that the recommended language changes are not substantive, but better match the language in the Board’s mission policy and better identify what items would be posted. Additionally, these changes do not change the criteria for what items will be posted, but better explain what items will be posted. Dave Anderson moved to approve the new language for the BSRB Website Posting Policy and Ric Steele seconded the motion. The motion passed.
- B. **“Merit the Public Trust” Requirement for Licensure.** The Executive Director noted that BSRB statutes for licensure currently state that an applicant for licensure must have satisfied for the Board’s approval that the individual merits the public trust. A definition for “Merit the Public Trust,” can be found in the BSRB regulations. The agency has received questions whether this is the appropriate standard or whether a different standard should be used for licensure applicants, so the agency has asked legal representation for the Board to review this topic and provide feedback for the Board. Ms. Barnard noted that an evaluation in this area can be more subjective than evaluating educational criteria,

however after review of the definitions in the statutes and regulations, there does not appear to be a more appropriate method to evaluate licensure applicants in this area. Ms. Weiler discussed her experience with other regulatory boards and different methods used by different professions. Ms. Weiler noted that the “Merit the Public Trust” standard appears to be the best standard nationally. Board members discussed whether a standard could focus on ethics. Cindy D’Ercole, Special Investigator for the BSRB, and Leslie Allen, Assistant Director and Licensing Manager for the BSRB, noted that one issue with using “ethics” or referring to an ethical practice standard is that not all violations relate to practice. One example of this type of situation would be when an applicant has a criminal background, such having been convicted of a felony in a certain area. Board members discussed alternatives to the current language and noted that it has been helpful in certain cases when applicants supplied additional information to clarify the circumstances surrounding their situation or how they have experienced rehabilitation since the time of the incidents. Board members discussed the value of having a FAQ for applicants so that more individuals would know what information would be helpful for them to supply upfront without the Board having to follow up for that information later. Board members also discussed whether the elements in the regulatory definition of Merit the Public Trust are comprehensive enough to apply to all problems which present themselves when evaluating licensure applicants. Board members noted support for removing from the regulations the word “moral” and using terminology such as “as evidenced by” instead. Board members discussed review of attestation forms and whether language should be changed on the forms to note concerns. The Board also discussed if more information is sought, what should be the process for reviewing and considering that information. Board members also discussed whether other Boards have considered these issues and currently have similar items posted to their websites. Board members asked the Executive Director to research other Board’s websites and report back. Additionally, the Board would like legal representation from the Attorney General’s office review the regulatory language and provide recommendations on changes given the Board’s discussions.

- C. **Continuing Education Requirements in Diversity, Equity, and Inclusion.** Advisory Committees had recently discussed whether continuing education hours should be required for practitioners in the area of Diversity, Equity, and Inclusion (DEI). Board members discussed feedback from their committees, noting the value of training in this area, but expressed concerns on a requirement for hours in this area, if it would replace existing required ours in ethics and diagnosis and treatment. Board members asked if continuing education providers could be encouraged by the BSRB to offer training in this area, but Leslie Allen, Assistant Director and Licensing Manager, noted that it would be difficult for the agency to encourage offerings in a certain area. Ric Steele, Chair of the Licensed Psychology Advisory Committee, noted that the Licensed Psychology Advisory Committee recommended requiring 3 hours in DEI, and that the Advisory Committee was open to double counting of the hours, if courses could count for both ethics and DEI or diagnosis and treatment and DEI. Board members discussed the way that a requirement in DEI would be defined and discussed possible definitions of terms related to DEI. The Executive Director noted that a requirement in DEI would need the statutes to be changed, which would require a bill to be passed. Board members asked whether a change would need to be made for all professions under the BSRB. The Executive

Director noted that while there was a preference to have consistency between the professions, that was not a requirement, as there are certain differences between the professions. Board members were asked to take back the topic to Advisory Committees for further discussion on specific proposals for the Board.

- D. **Records of Deceased Practitioners.** The Executive Director noted the Board and Advisory Committees had recently discussed solutions to the issue of records that have no logical custodian, but from a single practitioner passing away unexpectedly, but also records that have been abandoned. Two questions for the Board are (1) who should take the records and (2) who should serve as custodian of the records. The Executive Director noted the Board of Healing Arts has a statute on this topic, though it was noted that there is a significant amount of difference between the two agencies in terms of available funding, and it was noted that the Board Healing Arts has fund specifically to assist with these situations. Board members discussed the benefit of having this item as a requirement for practitioners under their professional conduct standards, though several implementation questions and concerns were noted. Jane Weiler, Assistant Attorney General, stated that the Consumer Protection Division of the Attorney General’s office will seize and protect records that have confidential information if they are abandoned. Cindy D’Ercole, lead investigator for the BSRB, noted that Oregon requires certain mental health practitioners to identify another custodian of their records, though she noted that is the only state she is aware of having a requirement for mental health practitioners. Board members discussed the value of requiring practitioners to include the method records would be transferred in a disclosure statement or to provide other notice on the next custodian of their records. Laura Shaughnessy volunteered to assist the BSRB as the agency continues to research solutions in this area. The agency will investigate more information on this topic and bring it back to the Board for future consideration.
- E. **“In Residence” Educational Requirements.** The Executive Director highlighted a document showing the “in residence” educational requirements for each of the professions under the BSRB. Earlier in the year, the agency collected and shared with the Board feedback on potential changes to these requirements from representatives of educational institutions in Kansas and this topic has been discussed by Advisory Committees this past year. Leslie Allen, Assistant Director and Licensing Manager for the BSRB, highlighted the differences for “in residence” language between the professions. The Assistant Director noted the primary issue the agency has seen is from licensure applicants, including members of military families, who have obtained their degrees from online-only institutions, which may have no classes physically at an institution. Several Board members noted that they would discuss possible changes to the “in residence” requirements for their professions with their Advisory Committee members and would bring any recommendations back to the Board for discussion.
- F. **2021 Legislative Special Committee on Mental Health Modernization and Reform.** The Executive Director reported he was recently contacted by Legislative staff for the 2021 Legislative Special Committee on Mental Health Modernization and Reform (LSCMHMR), asking if he would present testimony at an upcoming committee meeting on September 28, 2021, on any actions the Board has taken that could relate to

recommendations made by the 2020 LSCMHMR. The BSRB was listed as a “lead contributor” for one recommendation, which recommended lowering the number of hours needed for individuals seeking clinical level licenses, and this recommendation was accomplished through changes requested by the Board in enacted 2021 Senate Sub. for HB 2208. The other two recommendations the BSRB was asked to address involved a workforce recommendation calling for a workforce investment plan as well as a recommendation involving quality assurance for telehealth. Members of the Board discussed that creation of new levels of licensure would involve defining scope of practice for those levels and that some of that could be driven by factors outside of the agency, such as reimbursements for services. Board members discussed other roles currently not overseen by the BSRB, such as mental health technicians, case managers, peer support, and that one of the main issues is low reimbursement rates for services. The Executive Director noted that some of the recommendations involving telehealth were accomplished through enactment of HB 2208. The Executive Director thanked the Board members for their comments and stated that he would summarize the Board member’s comments when presenting testimony to the Legislative committee.

- G. Allowing Master’s Level Practitioners to Test for a Licensed Addiction Counselor License.** The Executive Director noted that current statutory language allows master’s level (or higher) practitioners under the BSRB to test for a Master’s Addiction Counselor license, however the language does not allow for these individuals to be able to test for the lower level Addiction Counselor license. Deb Stidham, Chair of the Addiction Counselor Advisory Committee, noted that the Advisory Committee discussed this proposal and recommended the statutes be changed. Board members spoke in favor of the proposed change. Deb Stidham moved to allow master’s level practitioners of professions under the BSRB to be able to test for the Licensed Addiction Counselor examination. Carolyn Szafran seconded the motion. The motion passed.
- H. Clarification on Practitioners Providing Addiction Counseling Services in Facilities.** The Executive Director and Assistant Director were recently invited to attend a meeting held between representatives from the Kansas Department for Aging and Disability Services (KDADS) and representatives from addiction counseling facilities overseen by KDADS. The discussion at this meeting involved workforce concerns from addiction counseling facilities. The BSRB licenses individual practitioners and KDADS regulates facilities and has authority over which individuals may be hired at certain facilities to provide services. Individuals who are licensed by the BSRB at a certain level may diagnose and treat substance-related and addictive disorders, according to the DSM-5 and their level of education and training. However, providing these services does not make an individual an Addiction Counselor, as that is a specific license under the BSRB. The Executive Director noted that the information provided by the BSRB at the meeting and following the meeting is consistent with information that had been distributed by the agency in the past. The Executive Director noted that representatives from KDADS may be examining changing their position on which individuals may be hired in these facilities and it was noted that some of the information that was put forward by representatives of KDADS after the meeting had been somewhat confusing.

I. **Board Governance Policy.** The Executive Director noted the Board had previously asked him to review the Board Governance Policy (Policy) and to identify items for the Board to consider updating or changing within the Policy. The Executive Director created a report for the Board, which identified (1) items the Executive Director recommends the Board consider changing and (2) other items for the Board's review and discussion, to determine whether changes were needed. The Executive Director noted that part of his process of examining the Policy included surveying 45 small state agencies to identify the number of agencies using a similar document for their Boards or Commissions. Half of the agencies responded to the survey, and five entities use a document that is similar to the Policy used by the BSRB. The Policy is divided into three sections: (1) items concerning Board members; (2) items concerning BSRB staff members; and (3) Advisory Committee policies. The Executive Director summarized issues relating to the authority of the Policy, separation of powers concerns, current practices by the Board, and current practices of the Advisory Committees. The Executive Director provided a brief summary of several of the recommended changes in the report. Board members will review the report from the Executive Director and consider changes at the next meeting.

IV. **Adjournment.** The next meeting of the Board will be on October 25, 2021. The meeting was adjourned.