

**Behavioral Sciences Regulatory Board
Board Minutes
October 25, 2021
DRAFT**

Call to Order. The meeting was called to order by Chair Leslie Sewester at 1:00 p.m.

I. Roll Call.

Board Members. Board Members present by Zoom: David Anderson, Donna Hoener-Queal, Jacqueline Lightcap, Johnna Norton, Bruce Nystrom, Andrea Perdomo-Morales, 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 Jane Weiler was present by Zoom.

Guests. None.

II. Agenda Approval. Donna Hoener-Queal moved to approve the agenda as written. Laura Shaughnessy seconded. The motion passed.

III. New Business

A. Addiction Counselor Advisory Committee Recommendations for New Members.

The Addiction Counselor Advisory Committee recommended Chad Jacobs and Charity Kossin be appointed to the Addiction Counselor Advisory Committee. Leslie Sewester, Chair of the Board, appointed Mr. Jacobs and Ms. Kossin to the Advisory Committee.

B. Professional Counselor Advisory Committee Recommendations for New Members.

The Professional Counselor Advisory Committee recommended Jessica Allison, Harriet Bachner, Michelle Fairbank, and Edil Torres Rivera be appointed to the Professional Counselor Advisory Committee. The Chair of the Board appointed Ms. Allison, Ms. Bachner, Ms. Fairbank, and Mr. Torres Rivera to the Advisory Committee.

IV. Annual Planning Discussion Topics

A. Creating Guidelines for Public Attendees of Board and Advisory Committee Meetings.

The Executive Director noted there is a need for the agency to create a document which outlines expectations for public attendees of Board meetings and Advisory Committee meetings. The Executive Director noted that while public attendees may attend meetings infrequently, if individuals wish to bring information for consideration to the Board or Advisory Committees, it is important that those individuals know the correct methods to provide information to the Board. Additionally, with the prevalence of electronic meetings, it is important for attendees over Zoom to understand what processes they must follow to ensure that the meetings of the Board are secure. The Executive Director highlighted an example of such a document, from the Legislative

House Appropriations Committee. The Executive Director noted that he will create a draft version of a document for BSRB meetings and will provide it to the Board for review at the Board's next meeting.

B. Continued Discussion on Continuing Education Requirements in Diversity, Equity, and Inclusion. The Executive Director noted that at the Board's meeting on September 27, 2021, the Board asked Advisory Committees to continue discussions on whether the Board should require continuing education hours in the areas of Diversity, Equity, and Inclusion (DEI) for any of the professions under the Board. The Board asked Chairs of Advisory Committees to bring back any specific proposals for the Board's consideration on this topic. Board members discussed the value of having training in diverse populations. Ric Steele, Chair of the Licensed Psychology Advisory Committee, noted that the Licensed Psychology Advisory Committee recommended requiring 3 hours of continuing education in the categories of DEI. Information was highlighted that between 7 to 10 states currently require DEI continuing education for Licensed Psychologists. Carolyn Szafran, Co-Chair of the Social Work Advisory Committee, noted the Social Work Advisory Committee discussed this topic, and the Advisory Committee preferred the training in this area to be through educational teachings as part of a curriculum. The Social Work Advisory Committee did not recommend changing continuing education requirements. Information was highlighted that 2 states currently require DEI continuing education for Social Workers. It was noted that a survey will be sent out to social workers to obtain additional input from licensees on this topic. The Board discussed how a requirement in DEI continuing education would relate to the Board's mission of public protection. Board members asked if there had been an increase in complaints related to issues connected to DEI. Cindy D'Ercole, Lead Investigator for the BSRB, noted that the BSRB has received allegations from individuals alleging discrimination, which is often alleged to be based on demographics, such as sex, gender, foster parent status, etc. The Board discussed whether continuing education changes would be effective at remedying some of the issues identified in this area. The Executive Director noted that changes to continuing education requirements would require a change to statute, so a bill would be needed to make any changes requiring additional continuing education hours for any of the professions. Ric Steele noted that he would like the recommendation of the Licensed Psychology Advisory Committee to advance from the Board to be included in draft legislation, even if Licensed Psychology would be the sole profession requiring continuing education hours in DEI. The Board permitted the recommendation for Licensed Psychology to be included draft legislation for the 2022 Legislative session. The Executive Director clarified that the proposal recommended by the Licensed Psychology Advisory Committee was to require Licensed Psychologists to obtain 3 continuing education hours in DEI each two-year licensure renewal period and double counting of DEI hours would be allowed if the DEI hours also satisfied an existing requirement in either ethics or in diagnosis and treatment.

C. Continued Discussion on Records of Deceased Practitioners. The Executive Director thanked Board member Laura Shaughnessy for assisting with the agency's research on this topic. At the Board's previous meeting on September 27, 2021, it was noted that certain mental health professionals in Oregon were required to identify a future custodian

of their records. The Executive Director provided language from the Oregon statutes, as well as a specific form which certain Oregon practitioners must fill out listing the future custodian of their records. Laura Shaughnessy noted she spoke with Kyle Kessler, Executive Director for the Kansas Association of Community Mental Health Centers. Mr. Kessler noted support for direction for practitioners on how to handle this issue, as there is a need for members of the public to be able to locate their records if their practitioner passed away unexpectedly. The Executive Director noted that he is still working with the Attorney General's office concerning in which instances that office would take possession of records. If records are abandoned, the Attorney General's office would seize the records, but the agency is still working out the logistics in situations where a practitioner passes away unexpectedly, but the records are in a safe location. The Executive Director noted the agency wishes to be helpful in these matters, but there are still several legal issues to resolve. To ensure that appropriate instructions can be given to practitioners to implement any new requirements, the agency needs additional time to continue to work out the logistics on a solution to this issue.

D. Continued Discussion on Board Governance Policy Potential Changes. The

Executive Director referenced the current Board Governance Policy (Policy) which was last updated in 2011, and a report created by the Executive Director identifying (1) items the Executive Director recommends the Board consider changing within the Policy and (2) other items within the Policy that should be reviewed and discussed by the Board. Noting that the Board is a creation of the Kansas Legislature, thus primarily governed by statutes, then by regulations, then by any other processes the agency agrees to follow, Board members discussed that they could either make no changes to the existing Policy, make some changes, or completely eliminate the Policy. The Executive Director noted that some of his apprehensions with the existing language in the Policy are due to concerns that the Board may not have authority over all matters described in the Policy and that some topics are already addressed in Kansas statutes elsewhere. The Executive Director noted that he spoke with Mark Skoglund, the Executive Director for the Kansas Governmental Ethics Commission, concerning some of these issues and noted that Mr. Skoglund would be available if the Board wished to have training at another Board meeting on some of the issues which may apply to Board members. Jane Weiler, Assistant Attorney General, indicated that other agencies she works with have Board member orientation documents and the majority of boards she works with have yearly ethics trainings. Board members asked for clarifications on the purpose of the Policy when it was created. Leslie Allen, Assistant Director and Licensing Manager for the BSRB, noted that the document was created over ten years ago in an effort to bring representatives from the different professions together in agreement on certain issues.

The Executive Director reviewed each of the items identified in his report for the Board. The Board discussed possible changes and agreed to make the following modifications to the Board Governance Policy:

- The Board Governance Policy would be replaced by two new documents: (1) An Expectations for Board Members (Expectations) document and (2) a separate Advisory Committee Policy;

- The Expectations document includes language noting conflicting statutes and regulations hold higher authority to provisions in this document;
- The Expectations document changes many of the “shall” phrasings in the Code of Conduct section to “should,” due to the Governor’s office having authority over the appointment and removal of Board members, rather than the Board having the authority to enforce qualifications for membership on the Board;
- The Expectations document notes that a Board member should not commit acts that would lead to investigations or complaints, replacing previous language that a Board member would not be under investigation of charges or complaints (this change is due to the BSRB having a duty to investigate any complaints, so a Board member may have no control over whether they are under investigation);
- The Expectations document clarifies that meetings of the Board take place every other month and reports by the Executive Director to the Board are provided at every full Board meeting, which reflect current practices of the Board;
- The Expectations document would not include restrictions on staff of the BSRB, aside from language relating to the Executive Director, due to state employees already having restrictions in statutes covering their activities;
- The Expectations document clarifies the yearly performance evaluation of the Executive Director of the BSRB would be performed each calendar year;
- The Advisory Committee Policy clarifies that all Board members serve on Advisory Committees. The previous language stated that the Chair of the Advisory Committee would be licensed in the profession of the Advisory Committee, but was silent to the second member of the two professions that have multiple members on the Board. The new language also states that the Chair of an Advisory Committee is not only licensed in the profession but has been appointed by the Governor to represent that profession on the Board;
- The Advisory Committee Policy includes a maximum of ten non-Board members on Advisory Committees;
- The Advisory Committee Policy does not include the phrase “Board member may serve on the Advisory Committee,” which was previously included in the Board Governance Policy. There is no restriction on previous Board members serving on the Advisory Committee, nor language that previous Board members will be automatically added to the Advisory Committees.
- The Advisory Committee Policy changes terminology to recommend the Assistant Director or Licensing Manager attend the Advisory Committee meetings, rather than the previously titled Credentialing Specialist, and notes the Assistant Attorney General representing the Board should attend when their attendance is requested;
- The Advisory Committee Policy clarifies appointments should be staggered to avoid having too many members reach maximum length of service at the same time;
- The Advisory Committee Policy includes new language on reviewing nominees for membership, noting that the Committee should work to ensure that there is diverse representation, including but not limited to, geographic setting, gender, culture, and ethnicity;

- The Advisory Committee Policy includes revised terminology to replace the use of the term “nominations,” in certain sections, so it is clear the Advisory Committee will reach recommendations for new members and those recommendations will be provided to the Chair of the Board for consideration; and
- The Advisory Committee Policy removes language that the list of recommendations would be provided to the Chair at a Board meeting and allows for appointees to be contacted by e-mail.

E. Re-Adding Language to K.S.A. 65-6306(C) to Allow “Postgraduate Supervised Experience as Determined by the Board” to Fulfill Requirements of K.S.A. 65-6306(D). The Executive Director stated that when 2021 HB 2208 was heard during the 2021 Legislative session, an amendment was added to the bill striking statutory language previously requiring 350 hours of direct client contact for individuals pursuing a clinical level social work license. However, while advocates of the amendment noted the purpose of the amendment was to eliminate the 350-hour requirement, the actual amendment struck language that followed the requirement, which previously allowed the agency to accept other postgraduate supervised experience. Leslie Allen, Assistant Director and Licensing Manager for the Board, noted that the issue with the new language is that it would only allow clinical practicums, and some individuals previously were able to satisfy the requirements for licensure with administrative practicums. The Assistant Director noted that this has already been a problem with individuals submitting training plans, to the point where if this is not changed, they may have to go back to school to do a second practicum. The Executive Director noted that he does not believe the intent of the amendment was to be limiting, so he recommended the Board add back language to allow “postgraduate supervised experience as determined by the Board.” The Board authorized the language to be included in draft legislation for the 2022 Legislative session.

F. Continued Discussion on “In Residence” Educational Requirements. The Assistant Director noted that the current regulatory language for the Marriage and Family Therapy profession requires that for any program, half of all coursework must be completed “in residence,” physically at the location of the educational institution. However, the Marriage and Family Therapy Advisory Committee recommended changing existing regulatory language to allow programs that are accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) to not be required to meet the residency requirement. This would bring this profession in line with the requirements for the Professional Counselor profession. The BSRB would require non-COAMFTE accredited programs to continue to have half of their coursework completed in residence. The Assistant Director noted that she would amend the language and bring it back to the Board for Approval.

V. Adjournment. Deb Stidham moved the Board adjourn. The motion was seconded by Laura Shaughnessy. The motion passed.