

**DRAFT MINUTES
BOARD OF COUNSELING
QUARTERLY BOARD MEETING
NOVEMBER 16, 2012**

- TIME AND PLACE:** The meeting was called to order at 9:06 a.m. on Friday, November 16, 2012, in Board Room 2 at the Department of Health Professions, 9960 Mayland Drive, Henrico, Virginia.
- PRESIDING:** John Penn Turner, Chair
- BOARD MEMBERS PRESENT:** Zena Bowen
Johnston Brendel, Ed.D.
Michael Fletcher
Sandra Malawer
Charlotte Markva
Charles McAdams, Ed.D.
Patricia Mullen
William Scott, Ph.D.
Catherine Shwaery
Terry Tinsley, Ph.D.
- BOARD MEMBERS ABSENT:** Donnie Conner, Ph.D.
Linda Seeman, Ph.D.
- STAFF PRESENT:** Sharon Bowles, Administrative Assistant
Howard Casway, Senior Assistant Attorney General
Catherine Chappell, Executive Director
Jennifer Lang, Administrative Assistant
Patricia Larimer, Deputy Director-Discipline
Arne Owens, DHP Chief Director
Elaine Yeatts, Senior Policy Analyst
- ORDERING OF AGENDA:** The agenda was accepted as amended, to include the presentation of a Consent Order.
- APPROVAL OF MINUTES:** A motion was made by Dr. Brendel to approve the minutes of the August 17, 2012 meeting as presented. The motion was seconded by Mr. Fletcher and the motion passed unanimously.
- A motion was made by Dr. Brendel to approve the minutes of the August 24, 2012 meeting as presented. The motion was seconded by Mr. Fletcher and the motion passed unanimously.
- PUBLIC COMMENT:** *Eleanor Fukushima.* Ms. Fukushima, representing the Virginia Association of Rehabilitation Providers, expressed her interest in working with the Board in creating a standardized competency test for exam

applicants who apply for the Rehabilitation Provider Certification.

Michael Jeffrey. Mr. Jeffrey, representing the Virginia Clinical Counselors Association, expressed his concern regarding the future of the Counseling profession with expected changes in healthcare reform.

Becky Bowers-Lanier. Ms. Bowers-Lanier, representing the Virginia Counselors Association, expressed the Association's support of Dr. Gerard Lawson's petition for rule-making which was before the Board for consideration.

Loretta Schultz. Ms. Schultz, representing the Northern Virginia Licensed Professional Counselors, expressed her group's concern about the application process in order to be approved for supervision and licensure.

DHP DIRECTOR'S REPORT: On behalf of Dr. Reynolds-Cane, Mr. Arne Owens reported that the Board of Health Professions (BHP) was reviewing the transitioning of military members, spouses, and veterans back into the workforce. To assist military personnel in this transition, the BHP was developing a website link to contain relevant licensure requirements and additional available resources.

He further reported that the Agency had been selected to participate in a national prescription drug abuse reduction coalition. Dr. Reynolds-Cane is leading the program which also includes Ralph Orr of the Virginia Prescription Monitoring Program, Virginia State Police and several other programs in hopes to address the issue of prescription drug abuse. The coalition will focus on monitoring programs and prescription drug disposal.

In addition, he advised that new board member appointments for the Board of Counseling are pending, and stressed the importance of expired Board Members continuing to serve until they are replaced by the Governor.

Mr. Owens responded to board member questions regarding administrative staffing needs of the Board of Counseling. He advised that although the State hiring freeze presents a challenge, the Agency is looking into additional part-time or temporary worker to assist the board's staff. The department is awaiting approval to fill the open position of Deputy Executive Director for Licensing.

EXECUTIVE DIRECTOR'S REPORT:

Acknowledgements

Catherine Chappell thanked the Board Members for their dedication in ensuring that a quorum for the meeting was established and thanked the stakeholders for expressing their thoughts and concerns during the public comment period.

Board Member Appointments

She reiterated that 4 board seats are expired and expressed concern about quorum issues at committee activities as well. A sign-up list was circulated for board members to indicate their interests in serving on the standing committees for the coming year.

Staff updates

Jennifer Lang detailed the application and supervisor registration process and the need for more administrative staff to support these efforts. With the current two-person staff, the volume of information received by the Board continues to be difficult to manage. Ms. Lang reported that changes to the regulations in 2008, which required the registration and approval of all supervision, and then the Medicaid regulation changes in 2010, have caused the volume of applications and registrations to increase by 127%. In addition, Board staff currently has about 200 files in the review process and another 300 files waiting for administrative reviews and/or a follow-up letter. The contracted Credentials Reviewers continue to be in the office for file reviews at least twice per month. In addition to the applications, Board staff also receives approximately 200 calls per week and over 300 incoming and outgoing emails to and from applicants and licensees. Although the volume continues to increase, the Board licensed 20% more Licensed Professional Counselors (LPC) and Licensed Marriage and Family Therapists (LMFT) licensees in the current year compared to last year and the customer service satisfaction rate continues to increase. The Board is also responsible for 3,568 LPC licensees and 810 LMFT licensees, which renew yearly. Ms. Lang expressed appreciation for contracted worker, Sharon Bowles, for her continued assistance to the Board and her outstanding customer service skills.

Ms. Chappell addressed the need to fill the position for Deputy Director for Licensing, which was vacated when Ms. Chappell accepted the Executive Director position for the three behavioral sciences boards.

Board Financial Information

Ms. Chappell provided financial information on the Board of Counseling as of September 30, 2012. The revenue and expenditures report documented that sufficient cash flow existed as of that date, which is attributed to annual licensure renewal which allows the Board to sustain itself.

Outreach Efforts

Since the last Board meeting, Ms. Chappell has presented information to several groups of stakeholders. Her presentations have focused on mental health provider workforce issues, the need for qualified and competent providers and supervisors, and the application process for licensure. Stakeholders have expressed their desire to work with

applicants and supervisors to ensure that they submit complete packets, in order to minimize delays in processing times.

She reported that board staff takes every opportunity to educate applicants and supervisors about the process to become a resident.

Trends in licensing

Ms. Chappell provided insight into recent trends in licensure seen by staff.

1. Website Advertising. Some applicants have expressed interest in starting their own businesses, advertising through web sites and offering reduced rates to clients, which do not comply with regulations. Applicants should not provide services unless they are under board-approved supervision, and until licensed, cannot solicit clients or accept any direct form of payment.
2. Supervision training. Although supervisors must document training in order to meet qualifications requirements, the Regulations only require that they obtain the training one time. Often, supervisors and residents do not appear to understand the regulations regarding the qualifications to become a supervisor or their responsibility for applicants' activities.
3. Unlicensed Practice. The Board continues to receive questions and complaints about unlicensed practice, and often individuals don't understand that they must be licensed or certified to provide certain services.

LEGISLATIVE UPDATE:

Elaine Yeatts commented that the Agency had not yet learned if the Board's proposed legislation would be included in the Governor's package to the General Assembly. She anticipated that she would learn in December whether the legislation would move forward

She commented that Governor McDonnell had requested that all boards review their current regulations and submit any changes that may reduce the burden of or clarify a regulation.

The Regulatory Committee is scheduled to begin review of the Licensed Substance Abuse Treatment Providers (LSATP), Certified Substance Abuse Counselors (CSAC) and Certified Rehabilitation Providers (CRP) regulations as part of the regulatory review process.

DEPUTY DIRECTOR'S REPORT- DISCIPLINE:

Patricia Larimer reported that since the last meeting, the Board of Counseling had received 52 new cases, 47 cases had been closed, and had 33 open cases, of which 17 were being reviewed by the enforcement division, 15 were at Board level and 1 Consent Order would be presented to the Board in closed session.

With respect to trends in disciplinary activity, Ms. Larimer commented that she is receiving complaints relating to residents who appear to be participating in fraudulent activity, agency directors billing for “license eligible” providers, unlicensed activity cases, and divorce/custody matters which amount to approximately 75% of the disciplinary actions.

BOARD COUNSEL REPORT: Howard Casway, Senior Assistant Attorney General, reported that the one appealed credentials case to circuit court had been settled.

Mr. Casway also presented a brief presentation on board member conduct and conflict of interest concerns.

REGULATORY COMMITTEE: Petitions for Rule Making:

Petition from Julia Sayre for LMFT regulations

A petition for rule-making was submitted to request that the clinical practice of residents be allowed to begin 30 days after receipt of registration of supervision by the Board office. The petition was discussed by the Board, and Ms. Markva made a motion to reject the petition. The motion was seconded by Dr. McAdams and the motion passed unanimously. The Board determined that the regulations did not allow for unlicensed individuals to provide clinical counseling services in the absence of approved supervision, and determined that it would be a disservice to an applicant to allow him or her to accumulate hours of supervised practice prior to a determination of eligibility, if those hours would later have to be disallowed. In order to protect the public, supervised practice can only be conducted by persons who have been determined to be qualified and have received approval from the Board.

Petition from Sandra Gedney Anderson for LPC regulations

A petition for rule-making to provide for a registry of qualified supervisors for residents in professional counseling was contemplated. The petition was discussed by the Board and Dr. Brendel made a motion to reject the petition. The motion was seconded by Ms. Markva and the motion passed unanimously. While members recognized the value of a listing of qualified supervisors, the Board concluded that there was no authority in the statute to register supervisors or maintain a list of qualified persons. Such authorization would require introduction of legislation in the General Assembly and a change in the law.

Petition from Gerard Lawson for LPC regulations

A petition for rule-making to amend the requirements for supervisors of residents to only allow supervisors who are licensed by the Board of Counseling to supervise counseling residents was submitted for consideration. The petition was discussed by the Board and Dr. Brendel made a motion to reject the petition. The motion was seconded by Ms. Markva and the motion passed unanimously. The Board was supportive

of the amendment and had already included the change in its recommendation for a proposal pursuant to its periodic review of that regulation.

EDUCATIONAL SUMMIT:

Dr. McAdams reported on the success of the Educational Summit which was held on October 5, 2012. Three issues were discussed at the summit which included an update from the last summit, a discussion of regulation of the *act* of counseling vs. the *profession* of Counseling, and solicited feedback from educators on required coursework. With the information obtained at the summit and further Board feedback, he suggested that the Board issue a guidance document to assist applicants in choosing the correct courses in order to meet regulations. He anticipated that the document would be presented to the Board for consideration at the next meeting.

BOARD OF HEALTH PROFESSIONS:

Ms. Markva reported that a new member has been appointed to the Board of Health Professions from the Board of Medicine. The BHP continues to examine opportunities for collaborative efforts among medical professions.

CREDENTIALS COMMITTEE:

Dr. Brendel reported that the Credentials Committee was scheduled to meet immediately follow the Board meeting. He reported that there have been over fifty (50) letters sent to applicants who had been impacted by the Board's decision in August with respect to acceptable degrees and some have now resubmitted applications.

CLOSED MEETING:

Consent Order

Dr. Tinsley moved that the Board of Counseling convene in closed session pursuant to §2.2-3711(A)(7) of the Code of Virginia in order to consult with legal counsel to consider a Consent Order. He further moved that Howard Casway, Catherine Chappell, Patricia Larimer, Jennifer Lang and Sharon Bowles attend the closed meeting because their presence in the meeting was deemed necessary and they would aid the Board in its consideration of the matter. The motion was seconded and carried.

RECONVENE:

Dr. Tinsley moved that pursuant to §2.2-3712 of the Code of Virginia that the board heard, discussed or considered only those public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act and only such public business matters as identified in the original motion. The Committee agreed unanimously.

Kenneth P. Wells, LPC – The Board considered a Consent Order accepting the indefinite suspension of Mr. Wells' rights to practice as a Professional Counselor. Dr. Brendel made a motion to accept the Consent Order as presented. Ms. Markva seconded the motion. The motion carried unanimously.

NEW BUSINESS:

Mr. Turner asked for Board member input with respect to board leadership transition. He commented that Dr. McAdams is chair-elect, but his term will expire in July 2013. He suggested that the Board discuss succession planning at the next meeting.

ADJOURN:

The meeting adjourned at 12:19 p.m.