

TENNESSEE BOARD OF EXAMINERS IN PSYCHOLOGY

DATE: March 16, 2017

TIME: 9:00 a.m., CDT

LOCATION: Health Related Boards
Poplar Room
665 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT DURING HEARING: Janice Pazar, Ph.D., Chair
David C. Mathis, Ed.D.
H. R. Anderson, Jr., SPE
Timothy Urbin, Ph.D.
J. Dale Alden, Ph.D.
Connie Mazza (via phone)
Jennifer Winfree (via phone)

**BOARD MEMBERS WHO
RECUSED THEMSELVES
DURING HEARING DUE TO
PRESENCE DURING
SCREENING PANEL:**

Rebecca Joslin, Ed.D., Ph.D.
Hugh D. Moore, Ph.D.
Annette Little, Ph.D., BCBA-D

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David C. Mathis, Ed.D.
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Hugh D. Moore, Ph.D.
Annette Little, Ph.D., BCBA-D
J. Dale Alden, Ph.D.

BOARD MEMBERS

ABSENT FROM MEETING: Connie Mazza, SPE
Jennifer Winfree, Consumer Member

STAFF

PRESENT: Teddy Wilkins, Unit Director
Lisa Williams, Board Administrator
Paetria Morgan, Office of General Counsel

Dr. Pazar, Chair, called the meeting to order at 9:49 a.m. A roll call was conducted and a quorum was present.

Contested Case Hearing – Sandra L. Kirkpatrick

Judge Tom Stovall presided over the Contested Case Hearing for **Sandra L. Kilpatrick, Ph.D.** Judge Stovall said that Dr. Kilpatrick is not present. With two Board Members, Connie Mazza and Jennifer Winfree, participating by phone, the board hearing the case consisted of David Mathis, Janice Pazar, H.R.. Anderson, Timothy Urbin, and David Alden. There was a quorum. Dr. Kilpatrick was not present, therefore the hearing proceeded in default. Dr. Pazar read the Findings of Fact Paragraph 1 and 2 of the order which states that Dr. Kilpatrick has been at all pertinent times licensed by the Board as a psychologist in the State of Tennessee, having been granted License No. 2100 on March 8, 1997, which has a current expiration date of April 30, 2018. On or about June 22, 2011, Dr. Kilpatrick taught a psychology class to patients receiving pain medication at Superior One Medical Clinic. During the class, Dr. Kilpatrick gave the patients instruction on how to avoid law enforcement detection. A motion was made by Dr. Urbin and seconded by Dr. Mathis to adopt the findings of fact of paragraph 1 and 2 of the order to be factual. A roll call vote was taken and the motion carried.

Dr. Pazar read the Conclusions of Law which states: The allegations of fact in Section I, paragraph two (2), supra, constitute grounds for disciplinary action against Respondent's license to practice as a psychologist in the State of Tennessee pursuant to Tenn. Code Ann. 63-11-215(b)(1) which authorizes disciplinary action against a Respondent who has engaged in unprofessional, dishonorable, or unethical conduct. A motion was made by Dr. Mathis to accept these Conclusions of Law and seconded by Dr. Urbin. A roll call vote was taken and the motion carried.

Dr. Pazar read the Order. The Order places Dr. Kilpatrick's license on probation for 5 years. Dr. Kilpatrick must within 60 days contact the Tennessee Colleague Assistance Foundation (TCAF) and make arrangements for an evaluation. She must follow recommendations including entering into a RAMP contract if recommended. Upon completion of the order, Dr. Kilpatrick becomes eligible to petition for an "Order of Compliance" lifting the probation. She must appear before the Board in person as part of the Order of Compliance. Dr. Kilpatrick must pay reasonable costs of prosecuting this case. These costs shall not exceed four thousand dollars (\$4,000.00). Any and all civil penalties and cost shall be paid in full within thirty (30) days after the issuance of the Assessment of Costs. Dr. Urbin made a motion to accept the order as written and Dr. Mathis seconded the motion. A roll call vote was taken and the motion carried.

Dr. Pazar read the Policy Statement. Dr. Mathis made a motion to accept the policy statement and Dr. Urbin seconded the motion. A roll call vote was taken and the motion carried.

Minutes

Upon review of the December 8, 2016 minutes, Dr. Urbin made a motion, seconded by Dr. Little, to approve the minutes as corrected. The motion carried.

Investigative Reports

Ms. Dorroh said there are seventeen (17) open psychologist complaint cases in Investigations. Ms. Dorroh reviewed the list of currently monitored practitioners with the Board.

Office of General Counsel

Ms. Morgan stated there are five (5) consent orders and no agreed orders. There are thirteen (13) cases open in OGC and no appeals in chancery court.

Ms. Morgan stated she has a consent order to present to the Board for **William F. Blackerby, Ph.D.** who failed to obtain the required number of continuing education hours for 2013/2014.

Ms. Morgan said Dr. Blackerby has agreed to pay one (1) Type C Civil Penalty in the amount of \$100 for falsely certifying on his license renewal that he completed the required continuing education and one (1) Type C Civil Penalty in the amount of \$100 for failing to complete the required continuing education hours for a total assessment of \$200. Ms. Morgan stated that he agrees to obtain the forty hours (40) hours of continuing education for the 2013-2014 cycle, he also agrees to submit proof of completion within a year and these are in addition to the hours he must take for the current cycle. He has agreed to pay the actual or reasonable cost of prosecuting this case not to exceed \$3,000. This matter will be reported to the National Practitioner Data Bank. Dr. Urbin made a motion to ratify the order as written, seconded by Dr. Moore. The motion carried.

Ms. Morgan stated she has a consent order to present to the Board for **Bruce E. Compas, Ph.D.** who failed to obtain 9 of the required number of continuing education hours for 2013/2014. Dr. Compas did complete the 9 hours in July and November of 2015. Dr. Compas asserts that it was not purposeful when he falsely certified on his renewal application when he renewed in April 2015.

Ms. Morgan said Dr. Compas has agreed to pay one (1) Type C Civil Penalty in the amount of \$100 for falsely certifying on his license renewal that he completed the required continuing education and one (1) Type C Civil Penalty in the amount of \$100 for failing to complete the required continuing education hours for a total assessment of \$200. He has agreed to pay the actual or reasonable cost of prosecuting this case not to exceed \$3,000. This matter will be reported to the National Practitioner Data Bank. Dr. Urbin made a motion to ratify the order as written, seconded by Mr. Anderson. The motion carried.

Ms. Morgan stated she has a consent order to present to the Board for **Tamra A. Fagan, Ph.D.** who failed to obtain the required number of continuing education hours for 2013/2014. She asserts that she completed the hours, but she failed to maintain documentation of the continuing

education hours that were completed. She is in violation of unethical conduct, board rules that state a licensee shall maintain documentation of continuing education hours for five years and should prepare a summary report with documentation yearly.

Ms. Morgan said the terms of the order are that Dr. Fagan's license will be reprimanded if the board so chooses to adopt this consent order or ratify it. She has one (1) Type C Civil Penalty to be paid within 60 days in the amount of \$100 for failing to complete the required continuing education hours for a total assessment of \$200. Ms. Morgan stated that she agrees to obtain the forty hours (40) hours of continuing education for the 2013-2014 cycle, she also agrees to submit proof of completion within a year and these are in addition to the hours she must take for the current cycle. She has agreed to pay the actual or reasonable cost of prosecuting this case. This matter will be reported to the National Practitioner Data Bank. Dr. Moore made a motion to ratify the order as written, seconded by Mr. Anderson. The motion carried.

Ms. Morgan stated she has a consent order to present to the Board for **Amy R. Mariaskin, Ph.D.** From on or about October 31, 2015 to September 21, 2016, Dr. Mariaskin engaged in the practice of psychology without an active license. Her license was reinstated in September 2016. She is in violation of unprofessional conduct and violation or attempted violation of any lawful order of the board.

Ms. Morgan said the terms of the order are that Dr. Mariaskin's license will be reprimanded if the board so chooses to adopt this consent order or ratify it. She shall pay nine (9) Type B Civil Penalties in the amount of \$200 each representing a penalty for every month beyond the sixty day grace period that Dr. Mariaskin practiced psychology on an expired license for a total of \$1,800. She has 60 days to pay this penalty amount. She has agreed to pay the actual or reasonable cost of prosecuting this case not to exceed \$3000. This matter will be reported to the National Practitioner Data Bank. Dr. Mathis made a motion to ratify the order as written, seconded by Dr. Joslin. The motion carried.

Ms. Morgan stated she has a consent order which encompasses three cases to present to the Board for **Stephen L. Owens, Ph.D.** Dr. Owens had a therapeutic relationship with K.P. from 2004 to 2016. Dr. Owens began a romantic relationship with K.P. in 2006 and continued this relationship until 2016. Dr. Owens admits to billing Blue Cross Blue Shield for therapeutic services that he did not render to K.P. Dr. Owens failed to maintain a patient record for K.P. Violations include making false statements in representation, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the course of professional practice, unprofessional, dishonorable, or unethical conduct, APA code of ethics in reference to documentation of professional and scientific work and maintenance of records including sexual intimacies with current patient and the rule that require the duty to maintain patient records.

Ms. Morgan said Dr. Owens has agreed to voluntarily surrender his license to practice in psychology in the State of Tennessee which has the same effect as revocation. Dr. Urbin made a motion to ratify the order as written, seconded by Dr. Little. The motion carried.

Discuss Legislation and take action if needed

Ms. Morgan said SB0059 deals with the termination date of this board. Currently this board is set to terminate June 30, 2017. This current bill seeks to extend that termination date to June 30, 2021.

Ms. Morgan said SB0239, HB 678 is in reference to the Behavioral Analysts Committee. Currently the Behavioral Analysts Committee is set to terminate June 30, 2022. This current bill seeks to amend the termination date to June 30, 2018.

Ms. Morgan said SB0449 will impact the board's code of ethics in the way that it's currently incorporated into the rules. Currently the code of ethics is incorporated into the board's rules through incorporation. This bill is requiring that the board physically incorporate the code of ethics into the rules and have control of the changes made to the code of ethics. By doing this it prevents the APA from making changes to the code of ethics that affect the board. As it stands now, APA can make changes to the code of ethics and the board has no control over these changes. The board chose not to take a position on this.

The telepsychology rules are still in the internal review process. The rules are not at the Attorney General's Office.

Ms. Morgan went over the process of rules. Once the board makes the decision to change a rule, the language is reviewed by the attorney, the deputy, the chief deputy, the general council, the commissioner's office, and the governor's office. Then the rule change is filed with the secretary of state where we have to give 45 plus 5 business days' notice for a rulemaking hearing. Then there is a rulemaking hearing. Individuals come from the public to make comments. After the rulemaking hearing, the board makes any adjustments if any that were decided at the rulemaking hearing. Then the rules are sent to the attorney general's office. The attorney general checks those rules for legality. When the rules come back with the approval from the attorney general, those rules go into effect within 90 days. During that 90 days, at some point, the rules have to go before the Government Operations Committee and they can stay the rules which is pausing the effective date of the rules for 75 days. Once that period of time has passed, then the remainder of the 90 days continues if the Committee has decided to let the rules go forward.

The Applied Behavioral Analysts rules are with the attorney generals' office.

Update from Tennessee Colleague Assistance Foundation

Dr. Brian Wind gave an update from the Tennessee Colleague Assistance Foundation referencing a letter dated March 10, 2017. A contract was broached with the Licensed Professional Counselor's board to provide colleague assistance services. At this time the LPC board has decided to defer issuing any requests for proposals at this time for a contract. Ms. Wilkins stated that the LPC board was not moving forward due to lack of funds. The foundation at this time has decided to assist only the Board of Examiners in Psychology. They have eight contracts open currently and one pending contract. The foundation is going to present a

symposium on the opioid epidemic at the Tennessee Psychological Association Annual Conference this year. The foundation is collaborating with other states concerning colleague assistance matters.

Update from Tennessee Psychological Association

Dr. Pam Auble, Tennessee Psychological Association liaison, reviewed two items from TPA. Dr. Auble referenced a document concerning the position on mandatory continuing education in suicide prevention provided by Mark Green, lobbyist for the Tennessee Psychological Association. TPA's recommendation to require continuing education in suicide prevention to date has not been accepted by legislation. Tennessee's Suicide Prevention Network has in past year's encouraged Tennessee General Assembly to require mandatory continuing education in suicide prevention and they have included Psychology for the past couple of years. That legislation has not been successful and TPA has lobbied against it. This year TPA is not included in their bill to mandate the suicide CE hours. However, it is TPA's understanding that the TN Suicide Prevention Network is going to approach the board of examiners to have a rulemaking hearing to add to the complexity of our continuing education requirements to include 3 hours of CE's on suicide prevention every license cycle. Aaron Patel, APA practice organization, asked Dr. Auble in referencing the North Carolina Dental Board attempt at monopolizing a service to mention the legislation that seeks to abolish boards citing the right to a lawful occupation. This is not in Tennessee. Arkansas is dealing with pending legislation in their general assembly which has the impact of consolidating all boards into one board. TPA is monitoring these situations. Dr. Auble gave an update on the ASPPB that they are looking for states to introduce a national model for both telepsychology and for out-of-state practitioners coming in to do brief evaluations and treatments of people in the state that are not part of the state. Dr. Auble described as being a passport type of model. The American Psychological Association has a model licensing law. The model licensing law was updated in 2010. It recommends that people complete a doctoral degree, and then they complete an internship, and then they complete a second year of training and the second year does not have to be post-doc. It can be pre-doc. It can happen before you get your doctorate.

Applicant File Review

Dr. Pazar discussed the file of **Dr. Alicea Bailey** as needing review based on the fact that her program was not APA approved. Dr. Pazar went over Dr. Bailey's qualifications and the comparison grid of her coursework with APA requirements that was provided by Dr. Bailey. Dr. Bailey is requesting approval to sit for the EPPP Exam, to sit for the E&J Exam and full licensure upon successful passing of the exams. The board is being asked to use their discretion based on TCA 63-11-208 (c) (7) concerning PsyD program and the 1564 hours of internship. Ms. Williams will verify the status of Dr. Bailey's EPPP Exam. It has been questioned if she has actually ever taken the exam. Dr. Mathis made a motion for Dr. Bailey to take the EPPP and the E&J Exams with full licensure pending, seconded by Dr. Urbin. Motion carried.

Administrative Report

Ms. Williams stated as of March 13, 2017 there are currently 1,411 licensed Psychologists, 411 licensed Psychological Examiners/Senior Psychological Examiners and 47 licensed Certified Psychological Assistants.

Ms. Williams stated there are currently 21 Psychologists applications in process, 9 newly licensed, 180 renewals with 127 renewing online for a percentage of 71%. Ms. Williams stated that there were 6 retired, 6 expired and 2 reinstated licenses.

Ms. Williams stated there are currently no applications, or newly licensed, Psychological Examiners/Senior Psychological Examiners, 2 upgrades, 46 renewals with 23 renewing on line for a percentage of 50%. Ms. Williams stated that there were 4 retired, 5 expired and 1 reinstated license.

Ms. Williams stated there are currently 2 Certified Psychological Assistant applications, 1 newly licensed, 8 renewed with 6 renewing online for a percentage of 75%. Ms. Williams stated that there were 0 retired, 1 expired and 0 reinstated licenses.

Ms. Williams stated the next scheduled Board Meeting is June 15, 2017 and the following dates have been scheduled for 2017:

September 14, 2017

December 7, 2017

Ms. Williams asked the Board members to sign their travel and per diem claims as well as their conflict of interest forms.

Ms. Williams pointed out paperwork supplied to the board members concerning the ASPPB conference being held in Memphis, TN on April 27-30, 2017. Ms. Williams named Dr. Pazar, Dr. Mathis and Dr. Moore as the board members who will be attending the conference and reminded the board members of RSVP action needed.

Ms. Wilkins mentioned the new online licensing system is nearing the final stages and hopefully set to launch in May. We will begin testing the system in the next week or two. This system is an online application system. General discussion ensued regarding how the system would work.

Ms. Williams reported on Ethics and Jurisprudence Exam pass or fail statistics. Based on the time period of September 2, 2016 thru March 10, 2017 there were 39 applicants who took the exam. Applicants taking the exam for the first time with a passing score numbered 28 with the majority scoring 92%. Applicants taking the exam for the first time with a failing score numbered 11 with the majority scoring 88% and 86%. Applicants taking the exam for the second time with a passing score numbered 7 with the majority scoring an even spread between 90% and 100%. Applicants taking the exam for the second time with a failing score numbered 0.

Discuss and Ratify/Deny Newly Licensed and Reinstated

Newly Licensed

Dr. Little made a motion, seconded by Dr. Urbin to ratify the following newly licensed Psychologists and Certified Psychological Assistant:

Psychologists

Nicole Mary Alberts
Elizabeth Mcpherson Botts
Jennifer A. Correll
Nancy B. Farris
Kensa K. Gunter

Eugenia Suzanne Hatchett
Jamie T. Kuhlman
Elyse G. Kupperman
Ron J. Nieberding

Psychological Assistant

Jocelyn Wesleigh Reid

Sr. Psychological Examiner - Upgrade

Percey Beasley
Glenda Smith

The motion carried.

Reinstated

Dr. Moore made a motion, seconded by Dr. Little, to ratify the following reinstated Psychologists and Psychological Examiner:

Psychologist

Allison Sue Bender
Erin Elizabeth Hardin

Psychological Examiner

David A. Rankin

The motion carried.

Review and Vote on Referrals for Board Consultant

Ms. Morgan explained the purpose of a consultant is to meet with OGC to review complaints that come in. Ms. Morgan stated that Dr. Auble can no longer be a consultant because of the

other position she now holds. Dr. Auble referred Julie A. Gallagher, PsyD and Donna L. Moore, PhD. for this position. Dr. Mathis suggested only having three consultants versus four and this suggestion was supported by Ms. Morgan which means only choosing one consultant from the two recommendations. Dr. Mathis recommended Dr. Gallagher. Dr. Mathis made a motion to select Dr. Gallagher, seconded by Dr. Joslin. The motion carried.

Ratify Agreed Citations

Dr. Urbin made a motion to accept Dr. Robert Berberich's agreed citation as written, seconded by Dr. Mathis. The motion carried.

Dr. Moore made a motion to accept Dr. Gilbert R. Parra's agreed citation as written, seconded by Dr. Urbin. The motion carried.

Dr. Moore made a motion to accept Dr. Kay S. Friedman's agreed citation as written, seconded by Dr. Urbin. The motion carried.

Twelve Day Authorization to Practice

Ms. Morgan stated her intention to address the statute a little more in-depth and her objective is to allow the board members to walk away with a better understanding of their authority concerning the actions that can and cannot be implemented. Ms. Morgan reviewed T.C.A. § 63-11-206 with the board members which concerns criminalizing the practice of psychology without a license. Ms. Morgan then proceeded to address T.C.A. § 63-11-211(b) giving a statutory interpretation of the statute. Ms. Morgan stated that in the statute the words "may permit" allows the board to give or deny permission for a licensee from out of state to temporarily come into the state to practice. Ms. Morgan stated acceptable standards the person must meet. Ms. Morgan stated that there needed to be a mechanism in place to verify and ascertain that this person is qualified to come into the state to practice. A previous board implemented rule 1180-02-.05(3)(f) to try to bring clarity to this statute. The standards in the rule acceptable to the board were a request for authorization, reason for the authorization, the dates of the activities, the name of the supervising Tennessee psychologist, a letter from the supervising psychologist and a verification of a valid license in good standing. A previous board added the component of supervision. Ms. Morgan stated that the board can set standards acceptable to the board prior to a person coming to Tennessee to engage in these activities for a set twelve day period. And they determined a mechanism of the board permitted or denying access from a person from another state that is licensed in another jurisdiction. The board shall designate a current board member or qualified person to review the authorization request and approve, deny or defer such request to a quorum of the board for consideration. The current placement of this rule is under the temporary license section. The first sentence references applying to the board for authorization and this rule has never been about applying for a license. Ms. Wilkins reinforced the understanding that administration has always known the rule concerned authorization and it was never a question of licensing. Ms. Morgan clarified discussions and intentions from past conversations that the board wanted the person to have a consultant. The board decided from the March 16, 2017 board meeting to remove the policy allowing a person coming into the state with expert testimony to utilize a licensed psychologist as a consultant and the policy stated the Board does not interpret the supervisory requirement listed in TENN. COMP.R. & REGS. 1180-02-

.05(3)(f) to require clinical supervision of services performed. She stated that the rules say the person coming for the twelve days for the authorization must have a supervisor. Ms. Morgan posed the question to the board asking if the standards were acceptable to the board. If the standards are acceptable, than it's up to the board to the leave the rule as written or engage in a discussion if they are not acceptable. A decision concerning what the board considers acceptable standards does not have to be made at this board meeting. Dr. Urbin broached the subject of past discussions concerning a supervisor versus a consultant. Discussion ensued concerning the requirement of the supervisor. Dr. Auble was asked to speak concerning the use of a supervisor. She stated her concerns committing to supervising an individual without being confident about the qualifications of that person in reference to Tennessee ethic and jurisprudence laws. Dr. Moore suggested utilizing CE's as a form of qualification and eliminating the possible need of a supervisor. Ms. Morgan pointed out that the requirement of a supervisor is in the rules and the rules would have to be changed to implement Dr. Moore's suggestion. Dr. Mathis stated his belief that the rule needs clarification. Ms. Morgan reminded the board that you can't change any part of the statute, but you can modify the rule. Dr. Pazar addressed the sentence on the 12 Day Authorization Form concerning the letter from a supervising psychologist is problematic. Dr. Pazar asked for discussion concerning changing the wording of this sentence or alternatives to this sentence. Dr. Moore suggested researching the method of other states before the board proceeds. Dr. Urbin will look into the procedures by Virginia. Dr. Pazar suggested considering the standards and come in with ideas for the board meeting being held June 15, 2017.

Dr. Mathis made the motion to adopt the policy statement on Expert Testimony, seconded by Dr. Urbin. The motion carries.

Dr. Mathis suggested changing the application form. Suggestions were made to change the form to identify the licensed psychologist that is consulted, to supply the reason why the authorization is needed, to provide the state and license number of the person and to list the four ways that a person can practice with a temporary authorization and have them indicate which way they are attempting to practice.

Dr. Mathis suggested tabling this discussion until the next board meeting.

Ms. Wilkins offered to send a question to the list serve to determine what the other states do regarding temporary authorization to practice in other states.

Behavioral Analysts

Ms. Morgan discussed the Behavioral Analyst rules and presented three suggestions to be made. The reason these changes are not going back to the rule-making hearing is because the Attorney General has determined that these changes would be considered technical changes.

The first suggestion was to delete (n) which makes a person re-submit documents if the document is over a year old. Dr. Urbin makes a motion to accept the deletion of (n), seconded by Dr. Moore. The motion carried with a roll call vote.

The second suggestion presented by Ms. Morgan dealing with denying a person a license, what rights they have and their right to a contested hearing. The suggestion is to provide more detail

to the description. Dr. Mathis made a motion to accept the recommended modification, seconded by Dr. Urbin. The motion carried with a roll call vote.

The third suggestion deals with orders of compliance, the probation period that doesn't coincide with the board meetings and the individual being on probation longer than the required time. The suggestion is to allow the individual to petition for an order of compliance before the board at the board meeting being held before their probation ends and allow the board to accept the petition and holds it in abeyance. Dr. Urbin made the motion to make the change, seconded by Dr. Moore. The motion carried with a roll call vote.

Continuing Education Rules, Credits, and Audits

Dr. Mathis mentioned that administration asked the board to consider some issues that administration has encountered when processing audit documents and CE's. Ms. Wilkins suggested the forms may need some re-designing to make the forms a little less confusing. Dr. Mathis requested administration to document anything that would enable the board to better prepare for consideration for the next board meeting. Dr. Pazar suggested examples also be provided. Ms. Wilkins mentioned the audit letter that also needs some slight changes. The letter actually comes from the audit coordinator. Ms. Wilkins pointed out that the letter has incorrect information on it and she has not received the requested copy of the letter to date. Dr. Little made a motion to table the discussion until the next board meeting, seconded by Dr. Urbin. The motion carried.

With no other Board business to discuss Dr. Little made a motion, seconded by Dr. Mathis, to adjourn at 4:10 p.m. The motion carried.

Ratified by the Board of Examiners in Psychology on this the 15th day of June, 2017.