

**APPLIED BEHAVIORAL ANALYST LICENSING COMMITTEE
MEETING MINUTES**

DATE: May 22, 2017

TIME: 9:00 A.M.

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

**COMMITTEE MEMBERS
PRESENT:**

Mary Annette Little, Ph.D., BCBA-D, Chair
Michael S. Tonos, MS, BCBA
Catherine Terry, Ph.D., M. Ed., Citizen Member
Tammy L. Davis, LBaBA
Peter A. Beddow, Ph.D.

**STAFF
PRESENT:**

Lisa Williams, Board Administrator
Teddy Wilkins, Unit Director
Paetria Morgan, Assistant General Counsel

Dr. Little called the meeting to order at 9:03 a.m. A roll call was conducted and a quorum was present.

Dr. Little introduced and welcomed the new Committee Member, Dr. Peter Beddow.

Review/Approve Minutes

Upon review of the November 11, 2016 and February 13, 2017 minutes, Dr. Terry made a motion, seconded by Mr. Tonos, to approve the minutes as corrected. The motion carried.

Office of General Counsel

Ms. Morgan stated there are no consent orders, agreed orders or open cases in the Office of General Counsel because there are no licensed individuals. She reviewed the conflict of interest policy.

Ms. Morgan stated that the rules have an effective date of June 21, 2017. The rules currently are at the Secretary of States' Office waiting for that effective date.

Ms. Morgan reviewed the way a complaint becomes a case. Complaints come through the Office of Investigations. These complaints are made by phone call or online.

The Committee will choose a consultant today. The consultant is integral in the disciplinary process. The consultant is the person who works directly with Ms. Morgan to review all complaints and determines discipline. Ms. Morgan and the consultant see all complaints that come in from Investigations. They set a minimum discipline. Once the minimum discipline is set, Ms. Morgan can increase the discipline. Ms. Morgan cannot decrease the severity of the discipline without conferring with the consultant. She recommended choosing two consultants.

Ms. Morgan stated that when a complaint is received it is referred to as a Case Review. The first step is to ask if there has been a practice act violation. If there is no practice act violation, the case will be closed. If they cannot determine if it is a practice act violation, Ms. Morgan and the consultant will send the complaint out to investigations. Ms. Morgan and the consultant will supply a list to Investigations describing the information needed to make a determination concerning the complaint. Once the complaint is returned to Ms. Morgan and the consultant with the information requested, they will review the information and determine if it is a practice act violation. If it is determined that it is a violation, it is sent to Ms. Morgan's office and she attempts to reach a settlement with the individual in violation. The individual is not required to have an attorney although they may have one. If Ms. Morgan reaches a settlement with this individual, the settlement document will come in two forms. It can come to the Committee as a consent order and are only privy to the information in that document. Any other information a Committee Member might request cannot be divulged based on the rights of the individual. Once the Committee has ratified the consent order it becomes effective and that is the effective date of the order. After the consent order is ratified, it goes back to the office of investigations. Investigations will ensure that the individual meets the terms of their agreement to meet the order of compliance. If a settlement is not reached within a certain amount of time, formal charges will be filed. At that time, preparations will be made for a contested case or trial. At this point an individual may decide to settle and Ms. Morgan will bring an Agreed Order before the Committee. The only difference between a Consent Order and an Agreed Order is the timing. An alternative dispute resolution is the Screening Panel. A screening panel may be used whenever the individual acknowledges that they committed the offense, but they disagree with the proposed discipline. Two committee members are asked to volunteer in the screening panel. At the screening panel, the individual will be present and the two board members will have an opportunity to hear the individual's version of the case and to ask the individual questions. This screening panel is to aid Ms. Morgan by the recommendation from the two committee members. Both Ms. Morgan and the individual must agree to accept the recommendation. If both accept the recommendation, Ms. Morgan will put the recommended terms into the consent order and the consent order with the recommendations will be at the next committee meeting. The committee members participating in the screening panel will have to recuse themselves when the consent order is brought before the committee for a vote for a consent order or a contested case if the recommendations are not accepted.

Mr. Tonos asked if the information divulged at a screening panel would be more than was permitted with the consent order. Ms. Morgan assured the committee that was the purpose of the screening panel to hear more information and why the panel would need to recuse themselves at a trial because of the additional information they obtained.

Dr. Terry asked if an individual was permitted to practice while under investigation. Ms. Morgan explained that an individual could practice while being investigated until proven guilty. The only parameters that would inhibit their ability to practice is either a suspension or revocation. With revocation, the individual can come back after a year and ask to be reinstated unless the committee makes it a permanent revocation. Dr. Terry asked if the violation was an egregious act, would the process be same. Ms. Morgan stated that there is an option called a summary suspension. If there is imminent danger to the public, we will not wait to go through the full process. An emergency meeting will be called with the committee and the information will be presented to the committee within days of Ms. Morgan receiving it. Approval will have to be received from the Attorney General's Office because the license is a property right and we have to protect that individual and give due process. Mr. Tonos confirmed that if it is a criminal act, those proceedings that are going on are an independent act from the committee's actions. Mr. Tonos wanted it stated that this committee exists for the protection of the public and not the protection of the profession.

Financial Report

Ms. Wilkins stated that Ms. French would not be attending the meeting today to give the report. Ms. Wilkins mentioned that the committee is currently in negative numbers, but the fiscal year doesn't end until June 30, 2017 and there is a possibility of ending in positive numbers. Ms. Wilkins stated that the negative numbers were not cause for concern since the current status should clear up by the end of fiscal year 2018.

Ms. Wilkins went over the renewal process and what to expect.

Administrative Report

Ms. Williams reported that there are no licensees or applications pending. The next committee meeting is August 14, 2017 and the remaining meeting is November 13, 2017.

Lacey Blair, Legislative Liaison with the Department of Health, referenced five bills that passed through the legislative session.

Public Chapter 86 legislation creates the Tennessee Council on Autism Spectrum Disorder which is tasked with establishing a long term plan for individuals with autism and their families and will take effect on July 1, 2017.

Public Chapter 215 legislation requires state entities that establish guidelines to practice to do so through the promulgation of rules rather than policy and took effect on April 28, 2017. Ms. Blair affirmed that the Behavior Analysts rules were compliant as they adopt the BACB code of ethics in full and do not automatically update.

Public Chapter 240 legislation was brought by the Department of Health and was designed to address a number of issues throughout all licensing boards, committees and councils which took effect on May 2, 2017.

Senate Bill 1309, House Bill 1067 legislation creates a new violation of a health care practitioner's practice act if that practitioner refuses to submit to or test positive for any drug the practitioner does not have a lawful prescription or valid medical reason for taking or using the drug.

Senate Bill 639 legislation allows health care providers to satisfy one hour of continuing education requirements through the performance of one hour of voluntary provisions of health care services. The maximum amount of annual hours of continuing education that a provider can receive through providing voluntary health care services is the lesser of eight hours or twenty percent of the provider's annual continuing education requirement which took effect May 12, 2017.

Mr. Tonos clarified that the bills presented were for all boards and not just this committee. Ms. Blair stated that the one bill she thought would be of particular interest to this committee was the Tennessee Council on Autism Spectrum and that the rest of the bills did apply to all health licensing boards.

Dr. Little asked in reference to Senate Bill 1309 concerning the peer assistance program, if the Behavior Analyst utilize the Board of Examiners in Psychology's peer assistance program or is there a separate program for this committee. Ms. Morgan addressed that question. She stated that the Board of Examiners in Psychology is under contract with the Tennessee Colleague Assistance Foundation (TCAF). They pay for the peer assistance program out of revenue obtained from their licensees. The Behavior Analysts Committee does not have that arrangement. She suggested considering cost effectiveness and the possible amount of usage of the program.

Mr. Tonos asked for clarification concerning Senate Bill 639 referencing continuing education credits for pro-bono work. Ms. Blair stated that there would be some rules as to what would be considered voluntary provisions of health care services.

Ms. Wilkins asked if the suicide prevention bill was passed. Ms. Blair confirmed that the bill 839 did pass. She stated that the bill pertained to very few boards and would need to see if it pertained to this committee, but it was her belief that it did not.

Dr. Little referenced a letter presented to the committee concerning the Association for Behavior Analysis International (ABAI) State Chapter Organization which is having a Conference meeting this Friday, May 26, 2017 in Denver, Colorado.

Consultants

Ms. Morgan in answer to Dr. Terry's question stated that it was public knowledge when a committee member's term ends. It was also stated that it would not be appropriate to choose a committee member as a consultant since that person would continually have to recuse

themselves. Ms. Wilkins also pointed out that a former committee member cannot be appointed as a consultant for six months after their committee term ends. Ms. Morgan referenced the method that the Board of Examiners in Psychology has chosen a consultant is recommendations from a former Board member or from a current Board member. These recommendations are brought before the Board for all to look at and a vote is taken. The role does not have to be filled today but two positions need to be filled. Mr. Tonos asked if it was within the scope of the ability of the Committee to invite or suggest a person to serve as consultant. Ms. Morgan discussed that there needs to be a willingness to serve before a person is recommended. The consultant would meet in person with Ms. Morgan about four times a year reviewing files. Ms. Wilkins suggested having two names ready to present at the next committee meeting. The Office of Investigation does the vetting process. Ms. Morgan stated the consultant must be licensed. Dr. Little clarified that it would be helpful to have the names of consultants submitted before the next committee meeting so they can be vetted.

Election of Officers

Dr. Little called for a motion for the position of chairman. Dr. Terry made a motion to nominate Mr. Tonos for chair, seconded by Dr. Beddow. The motion carried. Mr. Tonos is the new chairman and will be attending the Psychology Board meetings as well.

Ms. Wilkins thanked Dr. Little and Ms. Davis for their support of this committee as their term is ending.

Dr. Beddow asked Dr. Little if she would be willing to be a consultant once six months had passed from the end of her term and she agreed.

Ms. Morgan stated we will only need one more consultant besides Dr. Little.

Other Board Business

With no other Committee business to conduct, Ms. Davis made a motion, seconded by Mr. Tonos, to adjourn at 10:12 a.m. The motion carried.