

(Approved February 17, 2005)

**BOARD OF BEHAVIORAL SCIENCES  
FULL BOARD  
MEETING MINUTES**

**November 18, 2004**

**FAIRMONT SAN JOSE  
170 SOUTH MARKET STREET  
SAN JOSE, CA**

**MEMBERS PRESENT**

Catherine Kay, Public Member, Board Chair  
Robert Gerst, Public Member  
Victor Law, Public Member  
Peter Manoleas, LCSW Member  
Glynis Morrow, Public Member  
Karen Pines, MFT Member  
Howard Stein, Public Member  
Susan Ulevitch, LCSW Member

**MEMBERS ABSENT**

Jane Nathanson, MFT Member

**STAFF PRESENT**

Paul Riches, Executive Officer  
Denise Johnson, Assistant Executive Officer  
Kristy Schieldge, Legal Counsel  
Julie McAuliffe, Administrative Analyst

**GUEST LIST ON FILE**

The meeting was called to order at approximately 9:00 a.m.

**1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM**

Ms. McAuliffe called the roll and a quorum was established.

**2. ANNOUNCEMENT AND INTRODUCTION OF EXECUTIVE OFFICER**

Ms. Kay stated that the Board has appointed a new Executive Officer. Mr. Paul Riches has had extensive experience in the legislative arena and has worked as chief of staff for legislators, worked for a trade association, and most recently was the chief of legislation and regulations for the Board of Pharmacy. Ms. Kay provided Mr. Riches educational background and indicated how pleased the Board was to have him as their Executive Officer.

Ms. Kay then stated that Dr. Tracy Montez was ill and would not be presenting information on the examinations this afternoon. The Board will reschedule her presentation for the February meeting.

The Board adjourned the meeting at approximately 9:03 a.m.

(Approved February 17, 2005)

**BOARD OF BEHAVIORAL SCIENCES  
FULL BOARD  
MEETING MINUTES**

**November 19, 2004**

**FAIRMONT SAN JOSE  
170 SOUTH MARKET STREET  
SAN JOSE, CA**

**MEMBERS PRESENT**

Catherine Kay, Public Member, Board Chair  
Robert Gerst, Public Member  
Victor Law, Public Member  
Peter Manoleas, LCSW Member  
Glynis Morrow, Public Member  
Karen Pines, MFT Member  
Howard Stein, Public Member  
Susan Ulevitch, LCSW Member

**MEMBERS ABSENT**

Jane Nathanson, MFT Member

**STAFF PRESENT**

Paul Riches, Executive Officer  
Denise Johnson, Assistant Executive Officer  
Kristy Schieldge, Legal Counsel  
Julie McAuliffe, Administrative Analyst

**GUEST LIST ON FILE**

The meeting was called to order at approximately 9:00 a.m.

Ms. McAuliffe called the roll and a quorum was established.

**1. APPROVAL OF AUGUST 19, 2004 MINUTES**

GLYNIS MORROW MOVED, SUSAN ULEVITCH SECONDED, AND THE BOARD CONCURRED TO APPROVE THE AUGUST 19, 2004 MINUTES. Ms. Pines abstained.

**2. APPROVAL OF SEPTEMBER 13, 2004 MINUTES**

KAREN PINES MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE SEPTEMBER 13, 2004 MINUTES. Dr. Stein abstained.

**3. APPROVAL OF OCTOBER 6, 2004 MINUTES**

ROBERT GERST MOVED, PETER MANOLEAS SECONDED, AND THE BOARD CONCURRED TO APPROVE THE OCTOBER 6, 2004 MINUTES. Dr. Stein abstained.

**4. RATIFICATION OF BOARD CHAIR AND APPOINTMENT OF VICE CHAIR**

VICTOR LAW MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO CONFIRM MS. KAY'S APPOINTMENT AS BOARD CHAIR.

Ms. Kay explained that the Board would be voting on the 2005 Board Chair and Vice Chair at the February Board meeting.

Ms. Pines nominated Ms. Morrow as Vice Chair and stated that Ms. Morrow has an extensive understanding of public service and mental health issues.

KAREN PINES MOVED, ROBERT GERST SECONDED, AND THE BOARD CONCURRED TO APPOINT GLYNIS MORROW AS VICE CHAIR.

The Board asked that a policy be drafted to address situations when the Board chair is unable to serve for reasons including term expiration and absences.

**5. CHAIRPERSON'S REPORT**

Ms. Kay stated that the Board has been very pleased thus far with the executive staff of the Board. Mr. Riches had suggested that the Board begin a rigorous strategic plan process in 2005 and Ms. Kay will provide more detail on this issue in the future. Ms. Kay then stated that she would be attending the Sunset Review Hearings in January in Sacramento.

**6. EXECUTIVE OFFICER'S REPORT**

a. Budget Update

The current Expenditure Report and Analysis of Fund Condition were included in the meeting materials. Mr. Riches indicated that there may be possible budget change proposals in the future but nothing critical. He thanked the Board members and Board staff for the ease in his transition to Executive Officer.

Mr. Gerst asked for a specific breakdown of the Office of Administrative Hearing costs.

1. Breakdown of Cost Recovery (Case Investigations and Prosecutions)

Mr. Manoleas thanked staff for the breakdown of cost recovery in relation to case investigations and prosecutions.

2. Breakdown of Probation Monitoring Cost Recovery

Mr. Manoleas thanked staff for the breakdown of cost recovery amounts.

3. Breakdown of Collection of Assessments for the Licensed Mental Health Services Provider Loan Repayment Program

Mr. Manoleas thanked staff for the assessments collected by license type. The regulations for this program are still in the rulemaking process. Mr. Riches will provide more detail on the implementation of this program by the Office of Statewide Planning and Development at the February meeting.

b. Miscellaneous Matters

1. Update on Sunset Review Report

Mr. Riches indicated that as of this meeting the Board is scheduled for their Sunset Review Hearing on January 4, 2005. The preliminary meeting with sunset review staff was very positive and there does not appear to be any controversial issues with the Board. Ms. Kay thanked Ms. Johnson and Board staff for their work on the Sunset Review Report.

Mr. Riches then stated that the Board office would be included in the Department of Consumer Affairs office move scheduled for late 2005.

2. Website Statistics

The current statistics were included in meeting materials.

**7. REVIEW AND POSSIBLE RATIFICATION OF PUBLIC DISCLOSURE POLICY**

At the May meeting the Board had adopted the Public Disclosure Policy with information on the disclosure of citation and fines. The California Association of Marriage and Family Therapists had submitted comments about this policy to the Board for consideration. The Association had asked for more clarity regarding the disclosure on the Board's Web site. Ms. Schieldge provided the Board with suggested changes to the policy including further clarification that a request from the public includes access to the Board's website and to quote the section of law that clarifies that "payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure", on the first page of the policy. In addition, she suggested language clarifying that information is extracted nightly to the Board's Web site for the purpose of public disclosure, so the public can access the information.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, asked that further clarity that an act of alleged violation has occurred and a fine has been paid be included. She then suggested that this should be done by regulation and asked that it be clear that this is not a disciplinary action. The Association's position is that they should not be printed at all, and if the Board decided they should be printed, clear language should be included explaining citation and fine.

Mr. Gerst stated that he disagreed with Ms. Rieimersma's comments. The Board has an effective citation and fine program and a licensee who has been sanctioned by a fine has the opportunity to appeal the Board's decision.

Ms. Kay mentioned that one area of sunset review asked questions about use of the Web site with respect to discipline and the Sunset Review Committee is very serious about public access.

Ms. Schieldge stated that citation and fine information is a matter of public record under the Public Records Act and reproducing does not constitute an underground regulation. In addition,

the Board has a record retention policy that indicates a five year timeframe for retaining the citation and fine record and this time is consistent with the timeframe for publishing citation and fine information on the Web site. She then clarified that a policy governing the internal management of an agency does not need a rulemaking.

ROBERT GERST MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO ACCEPT THE RECOMMENDED CHANGES BY BOARD COUNSEL.

## **8. DISCUSSION REGARDING THE EFFECT OF THE PATRIOT ACT ON LICENSEES GOVERNED BY THE BOARD**

The Board had been asked to discuss this issue at their meeting and Board member Peter Manoleas had expressed an interest in discussing this issue. Section 215 of the Patriot Act requires therapists to disclose information on their client when requested by the Federal Bureau of Investigation and are prohibited from notifying anyone, including the client, of the disclosure.

This is a very difficult dilemma for practitioners who are required to notify their client of potential release of their information in certain circumstances. Therapists are concerned that clients may withhold information out of fear of release and this withholding could be detrimental to therapy.

Geraldine Esposito, Executive Director of the California Society for Clinical Social Work, stated that a number of organizations were involved in the correspondence to the Board informing them of the problematic issues with the Patriot Act and asking the Board for assistance. The Society and the National Association of Social Workers have received numerous inquiries from clinicians regarding the particular section of the Patriot Act that requires release of all information. There are severe ethical and legal conflicts with this requirement and the practice of Licensed Clinical Social Work (LCSW) and Marriage and Family Therapy (MFT). Practitioners must obey the laws regarding confidentiality and the provisions of the Patriot Act go against the ethical guidelines and legal mandates.

Ms. Esposito asked if the Board would consult with other healing arts boards to determine if guidelines could be provided to practitioner's regarding this dilemma.

Kathy Anolick spoke on behalf of the Therapists for Social Responsibility and Social Justice. She stated that confidentiality is the cornerstone of therapy and allows clients to speak freely about their problems without fear. Therapists inform clients on the onset of therapy of the exemptions from confidentiality and will now need to include the Patriot Act requirements. Several therapists are concerned about this Act and question their record keeping practices and are concerned about contradictions of state law since some feel that their records should now be minimum. This Act has caused great distress and anxiety among therapists and some are unable to do their best work. She asked the Board for guidance on the multitude of concerns. Mr. Gerst asked Ms. Anolick for a copy of her presentation.

Ms. Riemersma indicated that the Association is quite concerned about the implications of this section of the Patriot Act and, from an educational perspective, therapists should notify their clients in their disclosure statement about mandated breaches of confidentiality. She encouraged therapists to continue to keep records in compliance with the law. She indicated that she was not sure what the Association or the Board would be able to do about this mandated release of information. She has not heard from her members about this issue and feels that it will be an

infrequent request although it is one more encroachment upon the therapeutic relationship. Ms. Riemersma then indicated that 87% of MFTs use an informed consent disclosure statement, which includes the exceptions of confidentiality.

Ms. Esposito agreed that this information should be included in the informed consent disclosure statement that is provided to the client prior to treatment.

Ms. Kay stated that this is a disturbing provision of federal law and the Board's ability to assist is limited other than educating licensees of this mandate through the website and newsletter.

Mr. Manoleas thanked the speakers for their presentation. He then suggested that the Board take steps to inform therapists of this mandate.

Mr. Riches stated that he would inquire with other licensing boards to determine if they are having the same inquiries about the Patriot Act and determine ways to disseminate this information to licensees. He then indicated that licensees should seek their own legal counsel in determining how to comply with the requirements. In addition, educational institutions need to be notified of this mandate and include this in their law and ethics courses.

Mr. Gerst stated that it has not been determined whether this is a big issue. There will be litigation in the future making decisions for those who do not comply and the Board may want to wait until it is determined that this is an issue that needs to be addressed by the Board.

Ms. Esposito stated that the potential for the use of this Act in ways that are unforeseeable at this time is not unrealistic. She then indicated that medical doctors and therapist's professions are so different since medical doctors are based on science and therapists are based on trust and this is why so many therapists are imminently concerned.

Ms. Riemersma stated that these discussions mirror the Tarasoff discussions and decision many years ago and the outcome of that decision was that privilege ends where public peril begins and there is a balance that should be kept in mind.

Ms. Kay thanked the audience for their presentations and information on this issue.

Mr. Riches will report back at a future Board meeting on the findings of other boards and dissemination of information on this issue.

Ms. Pines stated that when the Board talks about this again, they might want to consider taking a position as requested by Ms. Ulevitch.

Mr. Riches introduced Nancy Hall, Deputy Director of Board Relations within the Department of Consumer Affairs. Ms. Hall congratulated Mr. Riches on his appointment and informed the Board of her duty to visit Board meetings and be informed on issues of importance.

The Board recessed at 10:15 a.m. and reconvened at approximately 10:30 a.m.

Dr. Stein stated that he would like to make various motions on this issue at a future meeting.

## **9. 2004 CHAPTERED LEGISLATION THAT IMPACTS THE BOARD**

The meeting materials included a listing of 2004 chaptered legislation that will impact the Board in 2005.

## **10. REVIEW AND POSSIBLE APPROVAL OF 2005 LEGISLATION PROPOSALS**

Mr. Riches provided an overview of legislation proposals for 2005. Ms. Kay indicated that these proposals were a first draft and no action was needed at this time. Mr. Gerst asked for a further explanation of the proposed changes to Section 4992.1. Mr. Riches explained that these amendments would clarify an applicant's ability to continue in the examination process while under investigation for a violation of the law.

The additional proposals place all educational licensing requirements in one place in the law. Ms. Kay reminded the Board that the proposals should be non controversial. Mr. Riches assured the Board that the proposals were merely clean up proposals.

Ms. Schieldge cautioned the Board about codifying regulations in statute as it limits the Board's flexibility. Ms. Kay agreed and asked that the final proposals do not include specific regulation sections.

### **a. Other Legislation of Interest to the Board**

The Board was not notified of other pending legislation proposals being pursued by interested parties.

## **11. APPROVE / NOT APPROVE COMMITTEE RECOMMENDATIONS**

### **a. Examination Committee**

Ms. Pines notified the Board that the Committee approved their minutes and reviewed the examination statistics. The Board will discuss issues regarding examinations at their meeting in February.

### **b. Education Committee**

Mr. Manoleas provided the Board with an overview of the meeting. The Committee approved their minutes then took a preliminary look at the Licensed Educational Psychologist licensing requirements and determined a need for expert input from professionals. The Committee asked staff to arrange for these professionals to attend a meeting. The Committee also asked staff to begin arrangements to meet with the schools of social work in Northern California in the near future.

Ms. Kay asked that members who are not on a particular Committee but would like to provide comments on an issue of interest to direct their comments to Mr. Riches and staff can incorporate changes to the materials for the next meeting.

### **c. Consumer Services / Consumer Protection Committee**

Mr. Gerst stated that the Committee approved their minutes, reviewed their statistics, and discussed the possibility of defining "discover" in the statute of limitations laws and provided direction to staff for changes to come back to the Committee at the February meeting. The

Committee then reviewed draft additions to the citation and fine regulations. Further discussion on this issue will be included in the enforcement workshop at the February meeting.

d. Licensing Committee

Ms. Kay provided an overview of the meeting. The Committee approved their minutes and reviewed the draft survey regarding experience and supervision. The Committee received comments and asked staff to incorporate the suggested changes as well as develop a methodology for capturing the information and bring these back to the Committee for review. The Committee then reviewed the Board's authority to approve continuing education providers and course content and the issue seems to be exhausted.

Mr. Gerst asked that Board members receive examination materials in advance and to have Dr. Montez address her findings of the clinical vignette examination thus far.

Mr. Law asked that Dr. Montez be prepared to discuss the issues regarding correlation of education, experience, and examination.

Ms. Kay indicated that if Board members would like to have specific issues addressed in presentations in the future they could contact her or Mr. Riches beforehand to ensure the issues are included.

**12. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

Diana Simon from Loma Linda University asked for further explanation for curriculum planning regarding the draft legislation proposal that would move the aging and long term care requirement to the section that addresses all coursework required and currently requires that the chief academic officer sign off on completion. Mr. Riches explained that some of the courses are required within the degree program and others can be fulfilled outside the required degree, therefore the requirement of completion from the chief academic officer should be taken out. Mr. Riches then clarified that all the additional courses are pre-licensure requirements and can be taken at a university.

Ameena Gier explained her hardship case in which she had gained all of her pre and post-degree hours of experience then was stricken with a life threatening disease and did not continue to renew her registration or participate in the examinations in the required period of time. She is now in remission and asked the Board if there was some way to allow her to apply her hours gained in the past toward licensure to qualify her to participate in the examinations.

The meeting adjourned at approximately 10:55 a.m.