

(Approved 5-19-05)

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

February 17, 2005

**THE HORTON GRAND
311 ISLAND AVENUE
SAN DIEGO, 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

STAFF PRESENT

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

GUEST LIST ON FILE

The meeting was called to order at approximately 9:10 a.m.

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. Meade called the role and a quorum was established.

2. CLOSED SESSION

The closed session began at 9:10 a.m. and ended at 9:45 a.m.

3. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. Meade called the role and a quorum was established.

Mr. Riches introduced Melissa Meade, who joined the Board in January. Ms. Meade will be taking over the minutes, arranging the Board meetings, working on all the Board logistics as well as personnel work in the office.

4. PRESENTATION FROM DR. TRACY MONTEZ, Ph.D., CHIEF OF THE OFFICE OF EXAMINATION RESOURCES REGARDING EXAMINATIONS ADMINISTERED BY THE BOARD

Dr. Montez introduced the Office of Examination Resources (OER) to the Board. Dr. Montez spoke about the examination services provided to the Board, which include in depth occupational analysis and examination development for Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), and Marriage and Family Therapists (MFT). The presentation included passing rates with a discussion of the fluctuations in scores for the standard written and the clinical vignette examinations, a description of the differences and similarities in the standard written and clinical vignette examination questions, and an overview of examination development; which included the cycle of examination development, test scoring and item analysis, and the use of feedback from subject matter experts, Board staff and candidates.

Dr. Montez stated that OER would like to maintain separate examinations, expand the clinical vignette examination to include pre-test questions, use item response theory to provide additional information evaluating the performance of the question, and continue to meet the mandates of Business and Professions Code Section 139.

Ms. Morrow thanked Dr. Montez for the wonderful presentation and said the presentation answered many questions she had.

Mr. Gerst asked Dr. Montez if there were any numbers that amplify the data of how many candidates were taking the two tests or if it is the first time the candidates are taking either of the two tests. Dr. Montez directed Mr. Gerst to the Board's Web site for statistics. He then asked how many candidates came within one question of passing. Dr. Montez explained that OER does not focus on individual candidates. Mr. Gerst questioned Dr. Montez on her confidence level that this is a fair test; Dr. Montez assured Mr. Gerst that it is fair.

Mr. Law questioned Dr. Montez as to who OER uses as their subject matter experts. Dr. Montez explained that they are licensees that the Board recruits. The Board asks for volunteers and there are criteria that must be met. Dr. Montez further explained that the subject matter experts are rotated. There are six to nine experts per workshop and workshops are scheduled throughout the year.

Ms. Kay asked for public comment.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, questioned Dr. Montez on how much swing in pass rates is tolerable. Dr. Montez feels comfortable with a 65%-75% pass rate. Ms. Riemersma questioned Dr. Montez on the evaluation of what happens every ten days, and when these evaluations are done what opportunity is there for OER to make changes over the course of the exam. Dr. Montez said changes could be made at any point in time. OERs goal is to make sure they test the minimum competency. If at any time OER sees anything in the exam they are concerned about, they bring it to the Board's attention.

Gerry Grossman, of Gerry Grossman Seminars, questioned Dr. Montez on the possibility of a student saying he/she missed the exam by one point on a particular date, but had that student taken the exam on a different date where the cut score went from 22-20, that student would have more than likely passed. Dr. Montez responded by saying they are testing the minimum competency, he should let the student know he is sorry they missed it by 1%. Ms. Kay added

that Mr. Grossman should start out by saying it is a different examination and a different pool of candidates. Mr. Grossman questioned Dr. Montez as to when pre-test questions will be incorporated. Mr. Riches responded with an explanation of the factors involved and stated ample notice will be given.

Doni Whitsett, Clinical Associate Professor, University of Southern California, School of Social Work, questioned Dr. Montez on candidate differences, whether an analysis has been done between candidates. Dr. Montez reinforced that OER does not collect individual candidate data. There would need to be a specific purpose as to why individual data would be collected. Ms. Whitsett explained her reasoning behind this question, as there are candidates with language barriers that need to translate questions into their first language. Ms. Pines added that her classes at Pepperdine are diverse as well. Ms. Johnson responded that we do accommodate those individuals if they apply in advance.

Carole Bender, LCSW, UCLA, CA Society for Clinical Social Work, stated that you need some preparation to take the examinations. Concentrating on the written exam and looking at the statistics from 02-04, her view is that the trend is going down. Ms. Bender would like to know if there are certain areas in the exam that the candidates are missing in terms of the knowledge or if there is a better way to prepare the candidates for taking the exam and if there are specific areas to prepare the candidates on. Ms. Kay stated that the candidates who are not passing get informed as to where they did not perform well on the exam.

Janlee Wong, National Association of Social Workers, questioned Dr. Montez on whether the exam has become more difficult than the last two cycles. Dr. Montez responded that the passing score hasn't changed dramatically, it has only been within two points. Dr. Montez reminded Mr. Wong that the examinations, although different forms, still have questions that we have been using for several cycles.

Heather Halperin, USC, School of Social Work, questioned Dr. Montez whether any educators are included or if there are outreached educators reviewing the test. Dr. Montez explained it is mentioned in the Board's newsletter. Mr. Gerst is concerned and asked the public if they are satisfied with what has gone on and if there are any reservations they may have. Mr. Wong responded by saying there is nothing wrong with the exam, it must be the candidate pool. Ms. Riemersma added that there will always be reservations and questions, they realize this exam is a process, it will always be evolving, improving and they want to help the Board to move the process along so that the exam can be better and more effective. Ms. Kay responded that as things evolve the questions change and some of the questions need to be asked repeatedly.

The Board recessed at approximately 12:10 p.m.

The board reconvened at approximately 1:11 p.m.

5. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. Meade called the role and a quorum was established.

Ms. Kay announced that we must do our Regulatory Hearing at 2:00 p.m. today. Tomorrow morning we will begin at 8:30 a.m. due to losing our quorum at 12:00 p.m. Ms. Kay also commented that the Petition for Reinstatement scheduled for 4:00 p.m. was withdrawn.

6. APPROVAL OF NOVEMBER 18-19, 2004 MINUTES

HOWARD STEIN MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE NOVEMBER 18, 2004 MINUTES.

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7. ELECTION OF BOARD CHAIR AND VICE CHAIR

HOWARD STEIN MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO APPOINT CATHERINE KAY AS BOARD CHAIR. CATHERINE KAY ABSTAINED.

KAREN PINES MOVED, HOWARD STEIN SECONDED, AND THE BOARD CONCURRED TO APPOINT PETER MANOLEAS AS VICE CHAIR. PETER MANOLEAS ABSTAINED.

8. ADOPTION OF BOARD POLICY REGARDING THE SUCCESSION OF OFFICERS

The Board reviewed a proposed policy that would allow the Vice Chair to succeed to the duties of the Chair if he/she is unable to full his/her duties.

KAREN PINES MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO ADOPT THE POLICY.

9. DISCUSSION AND ACTION ON RECOMMENDATIONS FROM THE BOARD JOINT COMMITTEE ON BOARDS, COMMISSIONS AND CONSUMER PROTECTION

Ms. Kay and Mr. Riches provided the Board with an overview of the Sunset Review hearing in January. The four specific issues relative to the Board were continuing as a Board, Continuing Education on the Internet, issuing restitution to complainants, and posting unlicensed activity citations.

The majority of the discussion with the Sunset Review Committee was regarding the issue of post-licensed individuals completing their full continuing education requirements online. The Board discussed the issue of verification mechanisms in place to ensure that licensees participate and complete these online courses. Mr. Riches indicated that he would research the issue and bring back to the Board at a future meeting.

The matter of issuing restitution to complainants was discussed by the Board and determined to be something that does not fall within the statutory responsibility of public protection by the Board.

KAREN PINES MOVED, ROBERT GERST SECONDED, AND THE BOARD CONCURRED TO NOT PURSUE RESTITUTION AUTHORITY AT THIS TIME BECAUSE OF THE BOARD'S PRIMARY STATUTORY RESPONSIBILITY OF PUBLIC PROTECTION.

Mr. Riches then briefly discussed the issues of loans to the state fund. At this time the Board has not been reimbursed for the monies that were taken from our fund. Ms. Kay directed anyone that wanted more information to the Sunset Review Report.

10. DISCUSSION AND POSSIBLE ACTION ON THE GOVERNOR'S PROPOSED REORGANIZATION PLAN RELATING TO THE BOARD

Ms. Kay announced that the Governor withdrew his proposal to abolish the Boards. Ms. Kay thanked the trade associations for their participation in the Little Hoover Commission as well as their letters to Little Hoover Commission.

The regulation hearing began at approximately 2:00 p.m.

11. REGULATION HEARING ON PROPOSED AMENDMENTS TO TITLE 16, SECTION 1888 OF THE CALIFORNIA CODE OF REGULATIONS RELATING TO DISCIPLINARY GUIDELINES

Ms. Kay opened the regulation hearing to public comment at approximately 2:00 p.m.

After receiving no public comment, the regulation hearing closed at approximately 2:06 p.m.

12. PRESENTATION ON STRATEGIC PLANNING BY LINDLE HATTON

Mr. Riches explained that the Board will be going through a comprehensive Strategic Planning process this year. With a new Executive Officer, it is a good opportunity to get the Board, staff and public to be operating on the same page in terms of establishing our objectives and what our goals should be. This process will be different from the process the Board has used in years past. The intent of this process is to go forward in conjunction with the May Board meeting. Mr. Riches introduced Dr. Hatton, a professor in the Business Department at CSUS.

Dr. Hatton informed the Board that the strategic planning model involves four phases. This model has been prepared parallel with the state strategic planning guidelines. The first phase of the model is scanning activities, which answer the question of where are we now and will bring in multiple constituents. The second phase is strategy formulation, which answers the question where do we want to be. The third phase is strategy implementation, which concerns actualizing the plan (how do we get there; align your outcome specifically with the goal; put in specific measures for each of those items, multiple objectives bring out multiple measures), Work Action Plan Template. The final phase is measurement/performance, which is where we are not interested in inputs or outputs, but outcomes.

Phases we will go through are assessment, development and implementation. During the assessment phase, Dr. Hatton will meet with Mr. Riches to present the SWOT and STEP Analysis. Dr. Hatton would like to complete this by March 31st. During the development phase, data will be collected. Dr. Hatton recommended the Board have a strong input on the vision statement. An example of a visionary statement is when President Kennedy stated "we will put a man on the moon". A vision statement will need 8-10 words. This statement is a 5, 10, 15, 20-year statement. There will be something to respond to at the May meeting. During the implementation phase, the final phase, the strategic plan is made into a proactive management tool.

Dr. Hatton explained that he has interacted with many state agencies. Dr. Hatton expects full engagement as executive and staff participation will provide a better outcome.

Ms. Kay requested questions from the audience.

Jose Luis Flores, Phillips Graduate Institute questioned Mr. Riches as to who is included as a stakeholder. Mr. Riches would like anyone that is interested to be included as a stakeholder. Mr. Riches reminded everyone that the Board meeting in May will be an open meeting.

Dino Koutsoliotsos, Pacific Oaks College explained how important the involvement of stakeholders is and wanted to know what the timeline is for the process. Ms. Kay said the Board would look to Dr. Hatton to ensure that his view and the staff's view is that everyone has had an opportunity to participate. Ms. Kay explained further, if the process moves too rapidly, the process could slow down. Mr. Riches responded to the timeline stating that it is moderately aggressive but not unreasonable. Mr. Koutsoliotsos requested a meeting in Southern California for stakeholder input. Ms. Kay recommended that he give Mr. Riches a call about setting up a meeting in Southern California, as many stakeholders are located in Southern California. Mr. Gerst recommended the Attorney General's office be involved to hopefully buy into what the

Board comes up with. Mr. Riches stated the key moment in this process is at the scanning stage, which is ultimately where we want stakeholder participation.

The meeting adjourned at approximately 2:45 p.m.

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Kristy Schieldge, Legal Counsel
Julie McAuliffe, Administrative Analyst
Melissa Meade, Administrative Technician

GUEST LIST ON FILE

The meeting was called to order at approximately 8:40 a.m.

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

1. CHAIRPERSON'S REPORT

Ms. Kay announced the resignation of Jane Nathanson. Ms. Nathanson resigned due to conflicts that would keep her from attending Board meetings.

In order for a quorum to be established, six members are required to be present. Ms. Kay requested that Board members inform herself or Mr. Riches if they know in advance they cannot be present at Board meetings or need to leave early, this way the agenda can be arranged accordingly.

Mr. Riches will contact Board members regarding their schedules for August. There is a possible conflict with the current Board meeting dates of August 18th and 19th. This will be discussed in more detail at the May Board meeting.

Ms. Kay would like to visit the possibility of an 8:30 a.m. start time on Fridays. Ms. Kay believes this would provide more time for addressing matters.

2. LEGISLATIVE PROPOSAL REGARDING SECTIONS 4982.26, 4986.71 AND 4992.33 (SEXUAL CONTACT CASES)

Mr. Riches stated that a first offense sexual contact with a client is a mandatory revocation of license following a hearing. Mr. Riches does not believe the current statute lacks clarity in this respect, however there have been cases in which this has not been the discipline suggested in a proposed decision. Therefore, Mr. Riches feels that it is beneficial to the Board to further clarify this mandatory revocation requirement.

The Board discussed the proposed language and determined that "shall contain an order of revocation" should be removed as extraneous. Ms. Kay questioned legal counsel as to whether the proposed language limited the Board's ability to settle or to enter into stipulations before an APA hearing. Ms. Schieldge indicated that she felt comfortable with the proposal.

ROBERT GERST MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO ACCEPT THE PROPOSED LANGUAGE WITH THE AMENDMENT.

Earl Plowman, Deputy Attorney General, advised the Board that the legislative file should include a distinct explanation that this proposal does not limit the Board's ability to settle or enter into a stipulation in these types of cases.

3. ENFORCEMENT WORKSHOP

a. Introduction by Board Chair:

Within the last six months, there have been a variety of questions from Board members about how internal staff perform their functions that we have delegated to them in complaint investigations, citation and fine, and other disciplinary processes. Ms. Kay informed the Board the value in having our various constituent organizations that help us with disciplinary activity to come speak with the Board about the flow in which things are done.

b. Overview of Board Enforcement Processes:

Mr. Riches discussed the internal complaint process. Complaints from the public come to the enforcement staff where they perform an initial evaluation of the case. After their preliminary investigation is complete, they talk with Ms. Johnson to see what the issues are and what direction we are going. Prior to a case being sent for formal action, the analyst who received the case, the enforcement lead, Ms. Johnson and Mr. Riches, review it.

Ms. Ulevitch questioned Mr. Riches as to what percentages of complaints come to the Board that he or Ms. Johnson see before proceeding to the Attorney General's office. Mr. Riches estimated that they see fifty or sixty percent of complaints.

c. Presentation by Earl Plowman, Deputy Attorney General:

The Office of the Attorney General is responsible for prosecuting actions on behalf of licensing agencies. Mr. Plowman discussed his role with the Board as the Board's Attorney General liaison.

Mr. Plowman expressed his belief that the Board's enforcement staff is the best with the Department of Consumer Affairs.

Ms. Kay questioned Mr. Plowman on the process of preparing the Accusation and figuring out which elements of the statute have been violated. Ms. Kay wanted to know if this was done in the AG's Office with input and review from the Board. Mr. Plowman explained that not all cases come through the AG's Office. Gross negligence and repeated negligence cases have four eyes look at it before it arrives at the AG's office. Mr. Riches explained the review process when getting the Accusation back from the AG's Office. The analyst will read through and make sure it is consistent with the Board's understanding of the case.

Mr. Manoleas questioned Mr. Plowman about a sufficient "firewall" between the Board and the Executive Officer. Mr. Plowman said there is a good "firewall" between the Board and the Executive Officer.

Ms. Schiedge clarified that the Board would typically see the case for the first time after there is a proposed decision or a proposed stipulation. Board members do not have any involvement with the prosecution nor does Ms. Schiedge. Ms. Ulevitch questioned how a complaint is made, who makes it, and how did it come to the attention of the Board.

Mr. Riches asked Mr. Plowman to talk about the settlement process to the Board. Mr. Plowman explained that settlements occur in a couple of ways. There are those that are instituted between respondents in the AG's Office and there are those that occur as a result of settlement conferences with OAH. He then directed the Board to discuss this with Judge Grovner.

Mr. Riches commented on the enforcement procedures in the office. Enforcement analysts follow the case all the way through. The Deputy Attorney General that has the case with an offer of settlement contacts the enforcement analyst. They sit down and talk through what the Deputy thinks about the case, there is commonly a recommendation whether the settlement is good or weak which varies based on the Deputy. They bring the terms of the case to the meeting. The Board uses the disciplinary guidelines as a reference point.

Mr. Plowman described the second range of settlement negotiations that are settlement conferences conducted by the Office of Administrative Hearings. Cases that last longer than a week will have either one or two pre-hearing conferences and mandatory settlement conferences.

- d. Presentation by Janis Rovner, Presiding Judge, Los Angeles Office of Administrative Hearings (OAH).

Ms. Rovner provided the Board with an overview of their role and the hearing process within the disciplinary process including the Board's burden of proof and evidentiary standards. Ms. Rovner then explained that it is the right of the respondent to have a fact-finding hearing. Once the hearing is complete, the Administrative Law Judge prepares a proposed decision for the Board's review and possible adoption. Ms. Rovner explained the format of a typical proposed decision issued by ALJs. If the Board does not adopt the proposed decision, they then review the transcript from the hearing and make their own decision.

Mr. Gerst asked about settlement conference and whether BBS participates in settlement conferences. Mr. Riches and Ms. Johnson explained that they don't see any cases without the discussion of a settlement.

Mr. Law asked how it is determined which Administrative Law Judge is assigned to cases. Ms. Rovner explained that judges exposed to all types of cases are beneficial to

gain knowledge in other areas. Judges get disciplinary guidelines from their Internet but they need to make sure they are up to date before using them. Usually OAH will get notification when disciplinary guidelines are updated. Ms. Rovner explained that the ALJ should always explain a deviation from the guidelines.

The Board recessed for a ten-minute break at 9:50 a.m.

4. EXECUTIVE OFFICER'S REPORT

a. Budget Update

Mr. Riches indicated that the budget remains in good condition. He informed the Board that we are undergoing an internal audit from the Sunset Review process and we are toward the end of that process. Expect to see results by the May meeting.

At the November Board meeting, there were some questions raised regarding the loan repayment program. Mr. Riches informed the Board that licensees pay a surcharge on their renewal fees to fund a loan program for people in school seeking to become licensed as MFTs and LCSWs. This program is administered by a foundation that is an arm of the Office of Statewide Health Policy and Development. There will be a regulation package available soon and the Board is on the mailing list.

b. Miscellaneous Matters

Mr. Riches informed the Board of an opportunity to meet with Dean Midgely, U.C. Berkeley, School of Social Work, to start setting up the regional meetings for the schools of social work. Dr. Midgely offered to host the meeting and to work with the Board on the agenda as well as getting invitations out to the appropriate people. At this point, the anticipation is for a late May or early June meeting. Mr. Riches also spoke to Ms. Whitsett at the University of Southern California. There is an interest in setting up a Southern California meeting as well.

Mr. Riches stated that a meeting with the Attorney General's Office would happen soon. One issue is that the Board can't go to OAH to discuss any specifics in a case until the case is final.

Ms. Morrow recognized Mr. Riches in the way he has come ready and prepared, full of all the knowledge at the Board Meetings after just two and a half months. She expressed her appreciation. Ms. Ulevitch could not second that more.

5. APPROVE / NOT APPROVE COMMITTEE RECOMMENDATIONS

a. Examination Committee

No recommendation.

b. Education Committee

No Recommendation.

c. Consumer Services / Consumer Protection Committee

GLYNIS MORROW MOVED, HOWARD STEIN SECONDED, AND THE BOARD CONCURRED TO SPONSOR THE PROPOSED LEGISLATIVE TO FURTHER DEFINE "DISCOVERS" IN STATUTE OF LIMITATIONS LAWS CHANGE.

d. Licensing Committee

HOWARD STEIN MOVED, SUSAN ULEVITCH SECONDED, AND THE BOARD CONCURRED TO ASK STAFF TO IMPLEMENT THE SURVEY FOR APPLICANTS FOR LICENSURE REGARDING CLINICAL EXPERIENCE.

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

Ms. Whitsett commented on the topic raised at the November meeting in regards to the issue on Homeland Security disclosure problem.

Mr. Chong found the enforcement discussion to be extremely helpful. In the future, Mr. Wong would like an explanation of rights for therapists for licensees and some clarification of what they can and can't do during the process.

The meeting adjourned at approximately 11:40 p.m.