

DPBH COMMISSION ON BEHAVIORAL HEALTH

MINUTES
May 10, 2019

MEETING LOCATIONS:

Division of Public and Behavioral Health
4150 Technology Way, Room 303, Carson City, NV
Northern Nevada Adult Mental Health Services
480 Galletti Way, Bldg. 22, Sparks, NV
Desert Regional Center
1391 S. Jones Blvd., Training Room, Las Vegas, NV

COMMISSIONERS PRESENT:

Lisa Durette, M.D., phone, Lisa Ruiz-Lee, phone, Asma Tahir, phone, Tabitha Johnson, phone, Natasha Mosby, phone, Barbara Jackson, Sparks

COMMISSIONERS EXCUSED:

Debra Scott

Carson City:

Brook Adie, DPBH, Tracy Palmer, DPBH, Beth Handler, DPBH, Joseph Filippi, DPBH, Elvira Saldana, DPBH, Tina Gerber-Winn, DPBH, Jessica Adams, ADSD

Sparks:

Julian Montoya, SRC, Drew Cross, LCC, Ana Huntsberger, NNAMHS, Kipper Horton

Las Vegas:

Susanne Sliwa, DAG, Marina Valerio, DRC, Gujuan Caver, DRC, Jo Malay, SNAMHS, Rose Park, DPBH, Leon Ravin, M.D., SNAMHS, Stan Cornell, Stein, Tracy Singh, Counsel for Kipper Horton

Phone:

Kristen Rivas, DCFS

Chair Durette called the meeting to order at 8:30 a.m. Roll call is reflected above. It was determined that a quorum was present.

Public Comment

There was no public comment.

Approval of the Minutes March 15, 2019

Action: A motion was made by Ms. Ruiz-Lee, seconded by Ms. Mosby and passed to accept the minutes of March 15, 2019.

Agenda item #11 was taken out of order.

Consider the Appeal of Board of Examiners for Alcohol, Drug and Gambling Counselors Case No. 2018-04-1 regarding license No. 1491-L and decide whether to affirm the decision of the Board or modify or set aside the disciplinary action as set forth in NRS 641C.800(3)

Ms. Ruiz-Lee inquired if the Commission could proceed with the agenda item as it is crafted if the Commission chooses to.

Ms. Sliwa replied the Commission could proceed with the agenda item as it is crafted. A continuance of the appeal could be voted on in the context of the agenda item if the Commission would like to or the Commission could hear and discuss the item as it is.

Ms. Ruiz-Lee asked if any of the commissioners had a preference.

There was no comment from commission members.

Chair Durette asked Ms. Ruiz-Lee if she had a motion she would like to put forth.

Ms. Ruiz-Lee informed she did as long as there is no objection or desire by other commission members to continue the item. Not hearing any objections, Ms. Ruiz-Lee asked Ms. Sliwa if the motion should be simple in terms of the decision or lengthy to justify the rationale.

Ms. Sliwa informed it is at the pleasure of the Commission. It is not necessary for it to be a lengthy motion. The rationale can be discussed. The motion can be simple.

Ms. Ruiz-Lee made a motion to have the Nevada State Board of Examiners for Alcohol, Drug and Gambling Counselors decision for disciplinary action against Mr. Kipper Horton set aside in its entirety. The basis for the recommendation is set in the statute in terms of the authority the Commission has. Based on the documentation provided and the audio file, criteria e and/or f of statute 641C would have been met, the decision is erroneous in the view of the reliable probative and substantial evidence of the whole record and the decision is arbitrary and capricious or characterized by abuse of discretion. Ms. Ruiz-Lee stated she did not come to this conclusion lightly. Through the last meeting and the documentation, she found the disciplinary action to be grounded in a specific set of conclusions of law that do not seem to bear out given the facts presented. The three counts found against Mr. Kipper Horton are all related to a violation of integrity and professional relationships related to a Code of Ethics and NRS 641.700, sections 4 and 7 were cited, which are related to professional incompetence and engaging in behavior contrary to ethical standards as set forth by Board regulations. Some of the facts found in the interviews at the last hearing and the documentation relevant and seemed contrary to those facts was the fact that Mr. Kipper Horton was not working with or seeing clients in his capacity as

a Licensed Alcohol and Drug Counselor (LADC) at the time of the alleged violations occurred, he was acting in his capacity as an educator for Truckee Meadows Community College, and the community college approved the training with a commitment from those who attended and he would return to work and incorporate the materials into the educational curriculum. During the Commission hearing, the Board's attorney acknowledged the finding of facts related to Mr. Horton telling his clients about his use of drugs was erroneous and could have been omitted. Further, they identified the discipline issue was not based on his treatment or services to clients in his capacity as an LADC. The curriculum Mr. Horton added related to his training was reviewed by the college and administration did not find fault or wrongdoing in the curriculum development and ultimately his participation in the training was related to his work as an educator. During the Commission meeting, the Board further acknowledged they have no oversight of the Nevada Higher Education System and no control or input in the curriculum taught. The Board also acknowledged his LADC license is not a requirement for the position he held as an educator for Truckee Meadows. Like the other training attendants and participants, the record reflected while attending the workshop Mr. Horton received two doses of ketamine under medical supervision of licensed psychiatrists and in a medically controlled setting. Ms. Ruiz-Lee stated she did not find anything to reflect an inappropriate use or abuse of controlled substances outside of the training program Mr. Horton attended. The Board referenced Mr. Horton's participation in the training fell outside of the scope of generally acceptable practices for LADCs and the drug was not approved for substance use treatment. However, during the meeting the Board acknowledged Mr. Horton was dually licensed as a Marriage and Family Therapist (MFT), within the scope of practice he could work with clients suffering depression and at the time the Commission pointed out ketamine was approved by the United States Food and Drug Administration (FDA) for treatment of severe depression and therefore he could work with patients in his role as an MFT who receive ketamine therapy. The Board acknowledged they do not provide guidance to licensees on what training is or is not acceptable and/or what training could potentially jeopardize their individual licensure. The Board also acknowledged they forwarded the complaint to the MFT Board who did nothing with the complaint received. Mr. Horton did not ask for continuing education units from the Board for his attendance in the training. Lastly, the National Association for Alcoholism and Drug Abuse Counselors (NAADAC) Code of Ethics were looked at, which is cited in the Board's findings and related to a violation of integrity. Based on the facts, Ms. Ruiz-Lee stated she would conclude there was a demonstrated lapse of integrity given the alternative explanations and counter facts provided. Mr. Horton's role as an educator and the forthcoming way he provided the information to the Board about the training he attended. If the Code of Ethics are reviewed and applied to the fact patterns, there are codes of ethics that contradict the findings specifically principle III-17 which is related to continuing education and identifies the licensed professional's pursuit of professional development that maintains and enhances scientific developments and treatment modalities.

Action: A motion was made by Ms. Ruiz-Lee to have the Nevada State Board of Examiners for Alcohol, Drug, and Gambling Counselors decision for disciplinary action against Mr. Kipper Horton set aside in its entirety, seconded by Ms. Jackson and passed unanimously to set aside the disciplinary action.

Consideration and Possible Approval of Agency Directors' Reports

Action: A motion was made by Ms. Johnson, seconded by Ms. Mosby and passed to accept the Agency Directors' reports as submitted.

Seclusion and Restraint Report

Mr. Filippi informed there were previously court orders included with the denial of rights reports. The court orders do not have to be reviewed.

Ms. Park reported both the Northern Nevada Adult Mental Health Services (NNAMHS) and Southern Nevada Adult Mental Health Services (SNAMHS) restraint data is below the national mean except for October and December of 2018. The seclusion data is similar for the month of October. In reviewing the statewide comparative data between NNAMHS and SNAMHS, there are peaks in October and December of 2018 which are patient specific related events. The average length of stay and waitlist for Dini-Townsend are consistent for 2018.

Ms. Sliwa informed there was an issue with the way the information was posted online for the Desert Regional Center reports. The information was not redacted properly. It has been addressed and taken care of.

Ms. Valerio reported for Desert Regional Center. Ms. Valerio informed there were 6 incidents in February with a total of 186 seconds spent in restraint. In March there were 5 incidents with a total of 399 seconds spent in restraint. Ms. Valerio reported most of the time with re-direction, the individuals can be re-directed and not need any type of physical intervention.

Agenda item #6 was tabled for later in the meeting.

Local Governing Body Reports

Ms. Huntsberger reported for NNAMHS. The local governing body meeting was held on May 1st. The agency department reports were reviewed and there were no issues noted.

Ms. Malay reported for SNAMHS. The local governing body held a meeting last month. The Harbor, a juvenile assessment center, provided a presentation. Data reports were presented, and they did not require any additional follow up.

Mr. Cross reported for Lake's Crossing Center. The local governing body meeting was held last week. All reports were received except for the report from the Social Work department.

Update on the Bureau of Behavioral Health, Wellness and Prevention

Ms. Adie reported the

During the community integration plan there were priorities set for Nevada's behavioral health and funding within the Bureau will be targeted towards the priorities. The Bureau is working on a project, in collaboration with the Division of Health Care Financing and Policy. The project is a 1915(i) Home and Community Based Services State Plan Option which is to establish supportive housing services and

supports for individuals who are experiencing homelessness. Another service the Bureau is working on implementing is Assertive Community Treatment. The Bureau is also working with Crisis Services of Nevada to implement Crisis Now. Zero Suicide is a new practice shifting from suicide care to a holistic, comprehensive approach. The Early Serious Mental Illness and First Episode Psychosis program

Update on Aging and Disability Services Division

Ms. Adams reported the Division's budget was approved by the Joint Subcommittees of Human Services on Wednesday May 8th. The full committee approval of the budget closing is scheduled for May 13th. Within the budget there was a rate increase approved for the supported living arrangement providers. The budget appropriations for the expansion of Elder Protective Services to Adult Protective Services were approved. Senate Bill 540 was introduced on the floor which will give Aging and Disability Services Division (ADSD) the authority to operate the Adult Protective Services program. The Senate Bill was referred to the Senate Committee on Finance. The bill will need to pass for ADSD to operate the Adult Protective Services program. The Legislative Counsel Bureau (LCB) completed their audit on the supportive living arrangements (SLA) program and the findings were positive. The audit included a legal opinion which LCB requested and stated SLA homes could not support individuals with dual diagnosis of intellectual or developmental disability and mental illness without the home also receiving community-based living arrangement (CBLA) certification. One of the recommendations was to develop a process to make sure SLA homes would also receive CBLA certification if they are supporting individuals with a mental illness diagnosis. Assembly Bill 471 was introduced which made changes to NRS 435, allowing for the certified SLA provider to provide services to any person with a primary diagnosis of an intellectual or developmental disability and any other secondary diagnosis the person may have including mental illness. Assembly Bill 471 has passed both bodies and is sitting on the Governor's desk for signature. The Division avoided having to get the dual certifications. The other recommendation from the audit was to develop policies and procedures to ensure the Division's records contain accurate and up to date information on where individuals are living.

Update on Licensing Boards in relation to AB457

There was no one present from the Licensing Boards to provide an update.

Policies

The following policies were presented by Ms. Park:

- A5.1 Division Level II Incident Report Management and Closure Process (Recommended for Archive)
- A6.2 Clinical Services Disaster Plan Requirement
- HR1.3 Criminal Background Checks and Employee Reporting of Convictions
- SP1.2 Serving Individuals with Co-Occurring Mental Health and Substance Use Disorders
- SP1.09 Lobbying
- SP4.010 Care and Treatment of Dual Diagnosed Clients (Recommended for Archive)
- SP 4.37 Professional Behavior of DPBH Employees

Action: A motion was made by Ms. Johnson, seconded by Ms. Tahir and carried to approve the policies as presented.

Discuss updates and progress from the Annual Governor's/Legislature Letter Subcommittee

Chair Durette informed there is a meeting scheduled on May 20th. There are some final sections to be added to the letter. Once the draft is complete it will be provided to the Commission for approval.

Mr. Filippi inquired if a special meeting should be called prior to the September meeting for approval of the draft letter.

Ms. Rivas informed approval of the draft letter could be placed on the July agenda for the Commission on Behavioral Health meeting with Division of Child and Family Services.

Discuss any updates relating to Senate Bill 307

Chair Durette informed the Senate Bill did not progress. Chair Durette stated the item can be left on the next agenda however, it appears the bill will die.

Identification of Future Agenda Items

- Continue with standing agenda items
- Discuss membership

Public Comment

There was no public comment.

Ms. Malay informed Dr. Ravin stated the Senate Bill is dead. It did not get a hearing in the Committee. Chair Durette requested the item be removed from the agenda for the next meeting.

The DPBH Commission on Behavioral Health meeting was adjourned to the Executive Session at 9:47 a.m.

DPBH COMMISSION ON BEHAVIORAL HEALTH
MINUTES
August 2, 2019

TELECONFERENCE MEETING:

Conference Call: 888-636-3807 Access Code- 1961091

COMMISSIONERS PRESENT:

Lisa Durette, M.D., Lisa Ruiz-Lee, Asma Tahir, Tabitha Johnson, Barbara Jackson, Debra Scott

COMMISSIONERS EXCUSED:

Natasha Mosby

STAFF AND GUESTS:

Susanne Sliwa, DAG, Julie Slabaugh, DAG, Kristen Rivas, DCFS, Krystal Castro, DCFS, Steve Nicholas, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, Stephanie Steinhiser, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, Joseph Filippi, DPBH, Elvira Saldana, DPBH

Chair Durette called the meeting to order at 8:31 a.m. Roll call is reflected above. It was determined that a quorum was present.

Public Comment

There was no public comment.

Consider the Appeal of Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors regarding denial of application for licensure for Sherita Nelson and decide whether to affirm the decision of the Board or modify or set aside the disciplinary action as set forth in NRS 641A.289

Chair Durette reminded the Commission members of the rules on appeals, apply to six categories. The Commission must decide whether the decision by the Board violates constitutional or statutory provisions; exceed the statutory authority of the agency; was made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion.

Ms. Ruiz-Lee inquired if anyone reviewed the Administrative Code definitions of unprofessional conduct contained in Nevada Administrative Code (NAC) 641A.256.

Mr. Nicholas stated he is the current Chair of the Marriage and Family Therapists Board and he did not review them.

Ms. Ruiz-Lee stated one of the concerns she has with the denial is the definition of unprofessional conduct contained in NAC. It does not identify anything in proximity to the actions that were documented in the file records. Ms. Ruiz-Lee informed she does not see it in NAC, the ability to call it unprofessional conduct because it does not fit the definition. Ms. Ruiz-Lee did notice in the materials provided there was documentation in the record around criminal history. It looked like there was outstanding information yet to be received from one of the relevant police departments. Ms. Ruiz-Lee asked the Board if any of the information arrived before the decision to deny the application was made, based on unprofessional conduct.

Ms. Steinhiser replied the background check from the Department of Public Safety reflected an arrest in which a charge was filed. However, additional information has not been received. In the memo submitted to the Board, the information received was outlined.

Ms. Ruiz-Lee asked Ms. Steinhiser if she had contacted the police department on May 9th to obtain disposition and if she is still waiting to receive it.

Ms. Steinhiser replied it was correct.

Ms. Ruiz-Lee stated the information was thorough and complete. Ms. Ruiz-Lee did not see the connect points based upon the definition of unprofessional conduct in NAC as a basis for denial. What may have been more appropriate, would have been to pend the decision until all the requisite criminal history information had been returned and then decide based upon that. Ms. Ruiz-Lee asked the Commission members if they would like for her to read the unprofessional conduct language.

Chair Durette asked the Board if she was correct in understanding there was a disclosure of one of the arrests in the initial application and it was discovered there were two arrests which indicated the Board did not have full disclosure at the time of license application. If so, Chair Durette inquired why the decision would not have been based on that versus the conversation with staff.

Ms. Steinhiser stated Chair Durette was correct, Ms. Nelson disclosed one arrest and the Board had to get more information on it. The disclosed arrest the charges were dismissed. When the background check was received, there was a second arrest with charges filed and Ms. Nelson did go to jail. The Board gives every applicant the opportunity to provide an explanation when something like this occurs. If the interactions with Ms. Nelson had gone differently there would have been an opportunity to get the information from her or why she failed to disclose the other arrest.

Chair Durette asked Ms. Ruiz-Lee to provide the unprofessional conduct definitions.

Ms. Ruiz-Lee stated Nevada Revised Statute (NRS) 641A.310 which identifies grounds for denial, suspension or revocation of license, number 7 is unprofessional conduct as determined by the Board. The administrative code is NAC 641A.256, Disciplinary action: "Unprofessional conduct" interpreted; acts constituting unprofessional conduct.

1. For the purposes of subsection 7 of NRS 641A.310, the Board will interpret the term “unprofessional conduct” to mean a lack of knowledge, skill or ability in discharging a professional obligation, and to include, without limitation, malpractice and gross negligence.

2. The Board will consider the following acts by a marriage and family therapist, clinical professional counselor or intern to constitute unprofessional conduct:

(a) Performing services relating to the practice of marriage and family therapy or the practice of clinical professional counseling as an intern outside the scope of an approved plan of internship.

(b) Performing services relating to the practice of marriage and family therapy or the practice of clinical professional counseling as marriage and family therapist, clinical professional counselor or intern under a license that has lapsed or been deactivated.

(c) Failing to cooperate with any investigation of a complaint filed against the marriage and family therapist, clinical professional counselor or intern, including, without limitation, denying or failing to cooperate with a request for records made by the Board.

3. As used in this section:

(a) “Gross negligence” means conduct in the practice of marriage and family therapy or the practice of clinical professional counseling which represents an extreme departure from the standard of care required from a marriage and family therapist, clinical professional counselor or intern under the circumstances.

(b) “Malpractice” means conduct in the practice of marriage and family therapy or the practice of clinical professional counseling which falls below the standard of care required from a marriage and family therapist, clinical professional counselor or intern under the circumstances.

Ms. Ruiz-Lee commented the closest connection was 2(c), failing to cooperate with any investigation of a complaint filed against the marriage and family therapist, clinical professional counselor or intern, including, without limitation, denying or failing to cooperate with a request for records made by the Board. Ms. Ruiz-Lee felt the denial did not meet any of the related definitions of unprofessional conduct. Ms. Ruiz-Lee was unsure if it would be categorized as erroneous or unlawful procedure.

Ms. Johnson mentioned Ms. Nelson may have crossed 3.7 Harassment and 3.12 Professional Misconduct of the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics.

Mr. Nicholas stated NAC 641A.252, the Board does adopt the AAMFT Code of Ethics.

Ms. Ruiz-Lee stated she considered it as an option however when she reviewed the statutory language, she could not determine how it would tie into a denial of a license based upon the statute.

Chair Durette inquired about Ms. Nelson’s current verification of the California license.

Ms. Steinhiser replied Ms. Nelson was licensed in the state of California however the license did not get approved until the date of application with their Board. A copy of the license could not be obtained as it had not been issued yet.

Ms. Ruiz-Lee asked if it was possible to say to the Board the license does not have to be granted however the Board can complete the criminal history investigation, gathering of information and make a new decision based on the totality of all the facts.

Ms. Sliwa recommended continuing with the statute. The first part of the analysis is what should go to the Board, if approved by the Commission. The Commission's role is not to adjust the other action the Board could take.

Ms. Ruiz-Lee inquired if the Commission could state to the Board they are going to overturn the denial of the license, however it would not mean they must grant the license.

Ms. Sliwa stated that was correct.

Ms. Ruiz-Lee asked if the Commission overturns the denial, if it then goes back to the Board to render a new decision.

Ms. Sliwa replied the Commission takes the action it is authorized to take, and it goes back to the Board to take whatever action they are authorized to take.

Ms. Steinhiser inquired if the applicant/appellant is informed it will go back to the Board to decide and determine, in the event of an overturning of the denial.

Ms. Sliwa replied with the last appeal a decision was issued and sent to all the relevant parties.

Ms. Steinhiser asked if in the decision, it is disclosed the Commission is only responsible for overturning not granting.

Ms. Sliwa stated the Commission takes the action it is authorized to do.

Ms. Ruiz-Lee commented overturning the denial gives the impression the license is therefore granted. Ms. Ruiz-Lee suggested to ensure the meeting minutes reflect it is not the case and the Board retains the responsibility for reviewing the application.

Action: A motion was made by Ms. Ruiz-Lee to have the Nevada State Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors set aside the denial of the license based upon the facts the statutory rationale does not meet the administrative code definition of unprofessional conduct, seconded by Chair Durette and passed unanimously to set aside the action of the Board.

A second motion was made by Ms. Ruiz-Lee to overturn the denial of the license based upon NRS 641A.289 (e), is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, seconded by Chair Durette and passed unanimously.

Public Comment

There was no public comment.

The DPBH Commission on Behavioral Health meeting was adjourned at 9:12 a.m.

DRAFT