

DPBH COMMISSION ON BEHAVIORAL HEALTH
MINUTES
March 15, 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 Ruiz-Lee, Las Vegas, Asma Tahir, Las Vegas, Tabitha Johnson, phone, Natasha Mosby, phone, Debra Scott, Sparks, Barbara Jackson, Sparks

COMMISSIONERS EXCUSED:

Lisa Durette, M.D.

Carson City:

Robin Williams, RRC, Stephanie Africa, Rural Clinics, Brook Adie, DPBH, Joseph Filippi, DPBH, Elvira Saldana, DPBH, Sarah Dearborn, DHCFP, Beth Handler, DPBH, Tina Gerber-Winn, DPBH, Jeanette Belz, NV Psychiatric Association

Sparks:

Julian Montoya, SRC, Kristen Rivas, DCFS, Alexandra Hall, NNAMHS, Betsy Neighbors, DPBH, Drew Cross, LCC, Agata Gawronski, Board of Examiners for Alcohol, Drug and Gambling Counselors, Christina Brooks, NNAMHS, Colleen Platt, Counsel for Board of Examiners for Alcohol, Drug and Gambling Counselors

Las Vegas:

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

Phone:

Mr. Filippi informed Ms. Ruiz-Lee would be chairing the meeting for Chair Durette.

Ms. Ruiz-Lee 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 November 16, 2018

Action: A motion was made by Ms. Scott, seconded by Ms. Tahir and passed to accept the minutes of November 16, 2018.

Consideration and Possible Approval of Agency Directors' Reports

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

Seclusion and Restraint Report

Ms. Park reported Northern Nevada Adult Mental Health Services (NNAMHS) had a spike in activity for restraints between September through December due to 1 or 2 patients. The seclusion data was similar with a spike between September through December. Southern Nevada Adult Mental Health Services (SNMAHS) also had a spike in restraint and seclusion activity between September through December. The statewide overall use of restraints and seclusion data reflects a spike at SNAMHS for the same timeframe due to a difficult patient. The average length of stay and waitlist at Dini Townsend is consistent throughout the year. The average length of stay at NNAMHS was consistent from October through December, compared to past data. The waitlist at Rawson Neal Hospital was lower in 2018.

Ms. Valerio reported for Desert Regional Center. Ms. Valerio informed the average is 3 to 5 restraints per month in Intermediate Care Facility. It appears to be the same individuals where the need for restraints is occurring. During December and January there was a spike in the number of incidents compared to previous months. The spike is contributed to patients being anxious through the holiday season. The length of time in restraint is dropping.

Discuss and make recommendations on Physician and Psychiatrist Role in Death Penalty

Dr. Ravin informed at the request of this body, the Division of Public and Behavioral Health conducted a review of the federal and state statutes regulating death penalty and execution protocols. The state of Nevada was discovered to be the only state requiring physician and specifically psychiatrist participation in death penalty execution. It offers the physician no ability to object to the participation, no anonymity, nor did it offer any protection to their license. It was found inconsistent with AMA Code of Ethics, as a result Senator Hardy is working on BDR No. 403, which may still translate into a Senate Bill. Dr. Ravin informed Chair Durette was working on a draft to propose to the Commission to support. The Commission has expressed desire to support any legislation which would remove any reference to physicians in Nevada State Law applying to execution protocols.

Mr. Filippi inquired if the agenda item should be tabled until Chair Durette can provide an update.

Dr. Ravin suggested he would like the Commission to consider. It will be late to take any action the next time the Commission reconvenes. It was the intent of the Commission to provide input to the legislators.

Ms. Ruiz-Lee inquired if a motion was approved to authorize Chair Durette to move forward with the letter from the Commission.

Dr. Ravin replied he believed there was not a motion for the letter.

It was determined the letter would need to be sent out within a few days.

Ms. Ruiz-Lee requested a motion to authorize Chair Durette to finalize the letter in accordance with previous Commission approvals and to send it.

Action: A motion was made by Ms. Tahir, seconded by Ms. Scott and carried to authorize Chair Durette to finalize the letter and send on behalf of the Commission.

Local Governing Body Reports

Ms. Scott reported she attended both Lake's Crossing Center and NNAMHS Local Governing Board meetings, however did not have a report.

Ms. Malay reported for the SNAMHS Local Governing Board. The Bureau of Health Care Quality and Compliance provided a presentation at the meeting. The juvenile assessment center, The Harbor, will be providing a presentation at the next meeting.

Update on the Bureau of Behavioral Health, Wellness and Prevention

Ms. Adie reported the Governor's budget approved to continue the Certified Community Behavioral Health Clinics (CCBHC) program and expand the clinics. The Bureau is currently working on an 1115 demonstration which is a program to expand the CCBHC's for an additional 5 years. A formal community integration plan was created to prioritize funding for adults and adolescents. The Bureau has a behavioral health priorities presentation they are focusing on.

Ms. Ruiz-Lee requested a copy of the community integration plan and the behavioral health priorities presentation.

Update on Aging and Disability Services Division

Ms. Williams reported the Division's first budget hearing was held on March 8th. Within the budget, a major initiative is the expansion of Elder Protective Services to an Adult Protective Services. Adult Protective Services will cover individuals between the ages of 18 to 59 who are vulnerable. An audit was conducted by the Legislative Counsel Bureau of all developmental services supportive living arrangements. The Division is waiting on the final audit report.

Ms. Ruiz-Lee asked if there is money being allocated this legislative session for the Adult Protective Services Program.

Ms. Williams replied it is a grant funded initiative with input and technical assistance at the federal level. The positions will eventually roll over into state positions.

Update on Licensing Boards in relation to AB457

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

Agenda item #11 was tabled for later in the meeting to hear the item close to 10:00 a.m.

Policies

The following policies were presented by Ms. Park:

A 4.0 Emergency Notification

A4.7 Media Contact/Events

BHO-001 Benefits for Payment: Healthcare Coverage

BHO-004 Medication Clinic Services

CRR .014 Risk Management and Reporting Serious Incidents

CRR 1.2 Prohibition of Abuse or Neglect of Consumers and Reporting Requirements

CRR 2.0 Nevada Disability Advocacy Law Center (NDALC) Visitation in Civil Facilities

CRR 6.05 Treating Personal Representative as the Individual

FS 2.6 Prevention, Management and Reporting Escapes from Forensic Units

HR 5.031 Bullying Prevention

IMRT 2.1 Basic Documentation Guidelines for Clinical Medical Records

SP 4.12 Intradivision Transfers

SP 4.29 Suicidality Assessment Procedure

SP 4.31 Treatment Plan and Treatment Team Civil Inpatient/Outpatient and Forensic

SP 4.43 Coordination of Services for Persons with Dual Diagnosis

SP 4.53 LOCUS/CASII Screening and Rating Instruments

SP 6.14 HIPAA Employee Training Requirements

Ms. Scott recommended to list what DHHS stands for and to be consistent with the spelling of AVATAR.

Ms. Ruiz-Lee recommended to add a subsequent email must be sent for formal notification when using text in 6.1.9 of policy A 4.0 Emergency Notification.

Action: A motion was made by Ms. Scott, seconded by Ms. Tahir and carried to approve the policies with the recommended changes.

Discuss, review and approve Commissioner Member Orientation packet, and the duties and responsibilities listed

Mr. Filippi informed the administrative staff for the Division of Child and Family Services would like to review the packet and update it before the Commission approves it.

Action: A motion was made by Ms. Scott, seconded by Ms. Tahir and carried to approve the orientation packet with any logistical updates from the Division of Child and Family Services.

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

Mr. Filippi reported the Subcommittee has conducted two meetings. Several commissioners and Division staff have participated. Previous letters submitted in previous years have been reviewed. At the last meeting, the Chair requested for various entities provide bulleted information with updated suggestions for the new letter. The suggestions have not yet been discussed. Another meeting will be scheduled within the next few weeks.

Ms. Ruiz-Lee inquired if there is a deadline for submission of the letter.

Mr. Filippi responded the statute does not provide a deadline, it states at the beginning of each year.

Future Agenda Items

- Continue with standing agenda items

Ms. Ruiz-Lee informed a break would be taken and the Commission would reconvene at 10:00 a.m.

Ms. Ruiz-Lee called the meeting to order at 10:00 a.m.

Consider the Appeal of Board of Examiners for Alcohol, Drug and Gambling Counselors Case No. 2018-04 regarding license No. 1491-L

Ms. Scott stated she had to recuse herself from the agenda item.

Ms. Johnson stated she may need to recuse herself from the agenda item.

Ms. Ruiz-Lee informed this is the first appeal for the Commission since the new law was enacted. Each of the parties will have an opportunity to present their case and give the Commission an opportunity to ask any questions. The Commission will have a general discussion about the appeal and move to decision making if able to or take additional time if needed.

Ms. Platt stated she represents the Board and represented the Board in the administrative hearing. The intent is supposed to be a review of the record. The Board acted within its scope of authority. A regulation was previously adopted which included a Code of Ethics and it was found Mr. Horton violated the Code of Ethics. As a result, Mr. Horton was disciplined, his license was suspended for a year and he had to pay costs associated with it. Ms. Platt offered to answer any questions relating to the record. Ms. Platt stated the Board stands behind its action and record.

Ms. Ruiz-Lee inquired what the associated costs were.

Ms. Platt replied the costs were a little under \$5,000.

Ms. Ruiz-Lee asked about the minutes for the hearing.

Ms. Platt informed a cd disc was provided with the audio of the hearing.

Mr. Filippi stated Chair Durette was notified of the length of the recording and asked whether the Commission wanted to review the recording. Chair Durette did not confirm. The appellant's attorney requested a transcript of the recording and the Board was unable to provide.

Ms. Platt stated pursuant to 233B, the Board is not required to transcribe the hearing.

Ms. Ruiz-Lee asked if the Division of Public and Behavioral Health could send the CD to a transcriptionist to convert to a document.

Ms. Sliwa stated she did not know if the Division has that responsibility.

Ms. Ruiz-Lee stated part of the dilemma in assessing the information provided by the Board is, it is not robust. The transcription, in this case, might become important.

Ms. Platt stated a CD file of the recording of the hearing was sent. It was Ms. Platt's understanding the file would be put onto CDs for the Commission members to hear and play.

Ms. Singh commented the problem throughout the hearing is you are unable to know who was speaking. Most of the time, names are not used and there are multiple Board members talking. It is not possible to get a good transcript. Ms. Singh suggested it might be better to listen to the recording to get the sense of the formality and who is talking.

Ms. Ruiz-Lee stated in absence of not having listened to the hearing, she would like to walk through the facts the Board assessed in the Board's decision making.

Ms. Platt stated the facts the Board found are in the order. There were several facts alleged in the complaint and during the hearing it was determined the facts contained in the order were proven which then support the violations of law. It was decided to suspend Mr. Horton's license for a year and require him to pay for the costs associated with the investigation and hearing within 18 months. Mr. Horton will come back before the Board in a year to discuss the suspension and presumably decide if he is able to receive his license again.

Ms. Ruiz-Lee commented based on the conclusion of law, there is a section where the Board identifies Mr. Horton has been telling clients about his use of drugs, however there is not a finding of fact to that. Ms. Ruiz-Lee inquired where the finding of fact is in which this impacted his engagement with clients.

Ms. Platt replied the fact found was Mr. Horton had taken a ketamine class, video taped himself and his participation in the class. Through the videos he articulated the effects of ketamine to students. It was decided those facts supported a violation of the use of drugs including ketamine as a therapeutic agent and/or using them himself and telling a client about the use of drugs, i.e. ketamine. Mr. Horton failed to

maintain the integrity of the profession and personal relationships in violation of Principle III-2 of the NAADAC Code of Ethics.

Ms. Ruiz-Lee asked where the finding of fact is indicating he engaged with the client about his use of drugs.

Ms. Platt replied it states and/or.

Ms. Ruiz-Lee inquired if the Board had a conversation and decided whether Mr. Horton recommended or told clients specifically about his use of ketamine or was the fact not presented during the hearing and are talking about his presentation of information as an educator.

Ms. Platt replied count 2 is what the Board determined was the violation of law supported by the facts.

Ms. Ruiz-Lee asked if during the hearing anyone concluded the action was geared towards a client or if it was during his role as an educator. Ms. Ruiz-Lee also asked if the clause 'and/or telling a client about his use of drugs' could have been omitted from the finding of facts due to Mr. Horton not telling a client about his use of drugs.

Ms. Platt stated it could be omitted. Ms. Platt informed there was conversation during the hearing about whether he told a client about his use of drugs.

Ms. Ruiz-Lee inquired if there was a decision or affirmation of the fact Mr. Horton had done that.

Ms. Platt replied not to her recollection.

Ms. Ruiz-Lee asked if there was any conversation during the hearing from Truckee Meadows Community College or any of the educational facility professionals about Mr. Horton's activity or if action was supported by the university.

Ms. Platt replied there was no testimony from Truckee Meadows Community College. The Commission has an email from Bob Fletcher admitting to evidence by Mr. Horton regarding his courses.

Ms. Ruiz-Lee asked Commission members if anyone had questions.

Ms. Jackson asked if it was based on the fact Mr. Horton took the course and took drugs during the course.

Ms. Platt informed the Board received a complaint regarding Mr. Horton's potential use of drugs and articulating his use of drugs to his students. The complaint was investigated. There were three videos Mr. Horton made after he had participated in the ketamine clinic the day the videos were shown to his students and he talks about his experience with ketamine that day.

Ms. Jackson asked if it is against the law.

Ms. Platt replied it is against the ethical codes for Drug and Alcohol Counselors. The NAADAC Code of Ethics describes how counselors should hold themselves to the public and in their professional capacity.

In Mr. Horton's professional capacity as a substance abuse counselor he was teaching the class, articulated he is a counselor and participated in using the drugs.

Ms. Jackson asked if the training class is unethical.

Ms. Platt stated they were not able to identify who put on the class and Mr. Horton did not provide the information nor was the person whom taught the class or any accrediting body with regards to it. The class is not one in which continuing education requirements are received.

Ms. Ruiz-Lee asked if Mr. Horton requested from the Board, to receive CEU's or anything that would be applicable to his license for attendance in the educational program.

Ms. Platt replied no.

Ms. Ruiz-Lee inquired what authority the Board has in terms of governing professional educational experiences license holders may have upon their request to receive a CEU for participation.

Ms. Platt stated whether Mr. Horton requested CEU's for courses is irrelevant. What the Commission has before them today is whether he violated the NAADAC Code of Ethics when he showed the videos to his students and when he described his use of ketamine.

Ms. Ruiz-Lee asked if the Board considered whether his students were his clients.

Ms. Platt informed it was not part of the discussion. It is whether Mr. Horton is violating the Code of Ethics regarding how you are carrying yourself in a professional manner as a licensed Alcohol and Drug Abuse counselor and carrying in your professional capacity.

Ms. Gawronski stated the use of ketamine in a therapeutic setting is not an approved program or treatment in the State by the Board. The Board saw a licensed Alcohol and Drug counselor in the State of Nevada using a schedule II drug, administering it to himself, recording himself and showing it to young and impressionable students who are training to become substance abuse counselors. The Board saw it as unethical and unprofessional because it is not an approved accredited program. It is considered as experimenting and Mr. Horton took it upon himself to teach others whom are shaping to become substance abuse counselors in Nevada to teach and promote it.

Ms. Jackson asked if the Board does not know anything about the training class how can they say what they are saying.

Ms. Gawronski replied ketamine is not approved in Nevada as a therapeutic agent for substance abuse disorders, depression or other mental health disorders. The effects of the drug are only seen if you are suffering from depression or substance abuse disorder. In Mr. Horton's renewal application for license/certification, he did not indicate he was suffering from depression or a substance abuse disorder.

Ms. Platt stated the principle the Board determined Mr. Horton violated states the professional shall conduct himself with integrity, aspire to maintain integrity in their professional and personal

relationships and activities. Provider shall communicate to clients, peers, and the public honestly, accurately, and appropriately. By teaching the class in the manner he did, he violated the Board's Code of Ethics.

Ms. Ruiz-Lee asked what type of authority the Board has decided to assume over institutions of higher learning since the education Mr. Horton provided was offered through the university system and was not offered to patients/clients.

Ms. Gawronski stated the Board is not regulating what counselors teach.

Ms. Platt added it was not the class, it was the act Mr. Horton did during the teaching of the course. The glorification of the use of ketamine during the course is what caused the Board to discipline Mr. Horton.

Ms. Ruiz-Lee stated Ms. Singh would now provide an overview and presentation of Mr. Horton's case for the Board.

Ms. Singh informed she represented Mr. Horton in the hearing. Going into the hearing, every fact found by the Board had been admitted to in the first response. There was not anything gained factually by the 8-hour hearing. Ms. Singh stated additional information was attempted to be given to the Board and was rejected. The course was a test dose for therapy purposes only. The purpose was for ketamine assisted therapy which just got FDA approval. The name of the course was Ketamine Assisted Therapy. The Commission would have the course materials had the Board allowed them to be introduced into evidence.

Ms. Platt commented the course material was not provided. A photocopy of the top of a book and a copy of the agenda was provided.

Ms. Sliwa inquired if the documents described were admitted and considered by the Board.

Ms. Platt replied they were not. The Board did not see those documents.

Ms. Singh stated the course content was irrelevant. Taking a course and teaching others about the course does not violate the statutes. When the hearing is listened to, you will find the statutes cited in the findings of fact and conclusions of law were not discussed. The statutes cited are 641C.700, (4) and (7). NRS 641C.700(4) refers to incompetence and the Board did not discuss it. It was discussed on record it did not include clients and removed from the factual section. The Board is trying to say today it was due to Mr. Horton abusing drugs or drug use. It involved two doses being given during a course to all participants in a controlled environment and medically released by the physician present at the session. The reason provided for going to hearing was it violated a Code of Ethics which came to having integrity and being appropriate. Mr. Horton was honest about his experience in the class. Appropriateness was left to the professor and his superiors. The Commission has a letter included in the packet reflecting the videos were reviewed and no action was taken. The Board discussed they did not believe glorifying was proven and it was removed.

Ms. Ruiz-Lee asked if there was a complaint or any subsequent action by the Marriage and Family Therapists Board.

Ms. Singh replied a complaint was submitted, however it was not acted on.

Ms. Singh stated the facts presented here are the facts known from day one. Mr. Horton admitted he had taken a course on ketamine which included a round of ketamine for himself, he taught his class about the ketamine information learned and throughout this process nothing else was established. There is not a violation to a statute we can find amounting to taking his license. Ms. Singh hopes the Commission will see the order as erroneous due to it not amounting to the statute cited. Exaggerated statements were made to influence the taking of his license. Ms. Singh stated she begged for evidence and the only evidence the Board had was Mr. Horton's own letter admitting the facts. Ms. Singh demanded and said it was not evidence.

Ms. Platt objected. Ms. Platt stated there is a statute issue, NRS 641C.800 states you are supposed to make your decision based solely on the record below. Ms. Platt added Ms. Singh is attempting to put in exculpatory evidence and provide testimony.

Ms. Singh informed everything said today was exactly what was said in the hearing. There is not anything new being presented. Ms. Singh stated she appreciates the Commission taking the appeal under consideration.

Ms. Tahir asked about alleged facts 5 and 6.

Ms. Singh informed those alleged facts were taken out.

Ms. Jackson inquired on principles III-17, III-22 and III-30.

Ms. Platt clarified principle III-2 was the violation.

It was discussed the 12-month suspension was based on the Board's determination and what they deem appropriate.

Ms. Ruiz-Lee asked if it would be feasible to have the opportunity to listen to the hearing and not re-hear the conversation and dialogue that already took place.

Ms. Sliwa commented it would be feasible. The parties have had an opportunity to present their respective cases.

Ms. Ruiz-Lee stated she would like to provide the Commission with the opportunity for deliberation and be able to ask questions from all parties. Ms. Ruiz-Lee asked if any of the Commission members were ready to make a motion about a decision or findings.

None of the Commission members responded they were ready.

Ms. Ruiz-Lee asked if any Commission members were ready to make a motion to continue the decision making of this item until the next meeting, provided the Commission members have an opportunity to review the transcript or listen to the audio.

Action: A motion was made by Ms. Mosby, seconded by Ms. Tahir, and carried to approve to give Commission members an opportunity to review the hearing.

Ms. Ruiz-Lee clarified the agenda item would be continued to the next meeting to allow the opportunity for the Commission members to listen to the audio or review the transcript. At the next meeting, time will be allocated for Commission members to ask questions of either parties prior to decision making.

It was agreed the complete audio file would be sent to the Commission members.

Public Comment

There was no public comment.

The DPBH Commission on Behavioral Health meeting was adjourned to the Executive Session at 11:25 a.m.