

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