



STATE OF ARIZONA
BOARD OF PSYCHOLOGIST EXAMINERS
1740 WEST ADAMS STREET, SUITE 3403
PHOENIX, AZ 85007
PH: 602.542.8162 FX: 602.364.8279
WEBSITE: www.psychboard.az.gov
EMAIL: kathy.fowkes@psychboard.az.gov

DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKONEN
Executive Director

Committee on Behavior Analysts

MINUTES OF TELEPHONIC MEETING

March 30, 2020

Scheduled at 9:30 a.m.

1740 W Adams Street
Conference Room C (1st Floor)
Phoenix, AZ 85007

1. CALL TO ORDER

Dr. Davis-Wilson called the meeting to order at 9:30 a.m.

2. ROLL CALL

Committee Members Participating by Telephone

Diana Davis-Wilson, DBH, BCBA - Chair
Bryan Davey, Ph.D., BCBA-D
Paige Raetz, Ph.D., BCBA-D
Donald Stenhoff, Ph.D., BCBA-D

Staff Present

Heidi Herbst Paakkonen, Executive Director
Kathy Fowkes – Licensing Specialist
Jennifer Michaelsen – Deputy Director

Assistant Attorney General Present

Jeanne Galvin, Esq.

3. REMARKS/ANNOUNCEMENTS

- **General Committee Remarks, Announcements and Updates**

No remarks, announcements or updates were discussed.

4. APPROVAL OF MINUTES

- March 6, 2020 Regular Session**
- March 6, 2020 Executive Session**

MOTION: Dr. Stenhoff moved to approve the minutes as drafted. Dr. Davey seconded the motion.

VOICE VOTE: The motion was approved 4-0

5. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING COMPLAINTS AND RECOMMENDATION TO THE BOARD

Complaint No. 20-32, Karen Peterson

Dr. Davis-Wilson announced that she is recused from this item. Dr. Stenhoff disclosed for the record that he has attended meetings with one of the individuals mentioned in the complaint but that he is able to objectively consider this complaint.

Dr. Stenhoff summarized the complaint consisting of concerns submitted by complainant J.G. that a child C.B. was struck by a non-certified staff member of the agency in November of 2019. The complaint named Karen Peterson, a behavior analyst and the agency director, as not having appropriately addressed the situation. The complaint further alleged that non-certified staff of the agency are working beyond their scope. In her response to the complaint Ms. Peterson stated that she was not employed with the agency at the time of the incident concerning C.B. She further explained in the response that she recalls learning of an incident where a staff member restrained a child from spitting on her, and that this may be the event described in this complaint. Ms. Peterson affirmed in her response that there is an open and unresolved police investigation concerning this event. Tricia Schafer, Esq. counsel for Ms. Peterson, stated to the Committee that this appears to be an institutional issue between J.G. and the school and that there has been no action taken against Ms. Peterson by the agency. Ms. Peterson stated she was very surprised by the news that she was under investigation as she did not witness the incident described in the complaint, and also because J.G. was her mentor. She also noted she wasn't advised to take any action beyond that which was originally advised. Ms. Peterson stated she later elected to report the incident to the Phoenix police.

The Committee members raised the issue of a behavior analyst's duty to report allegations of harm to a child under Arizona law and questioned Ms. Peterson's understanding of this responsibility. She stated she has in the past reported concerns to Child Protective Services, but as a new administrator she felt she should report concerns to her supervisor, a higher level administrator. Ms. Peterson affirmed she did not witness the event described in the complaint, and it was unclear whether the description of the event was accurate or perhaps the outcome of a personnel conflict. She confirmed that the incident reporter is not a licensed behavior analyst and clarified that J.G. left his consulting role with the agency prior to the event. Ms. Peterson stated that while she isn't entirely clear, the event in question was described to her as a response block of the child from spitting in the form of the staff member placing his hand out to prevent C.B. from approaching closer. She stated this could have looked like a strike to the child from a distance. She advised the Committee that, under questioning, the accuser later stated he never used the term "hit" to describe the event. In response to questioning, Ms. Michaelsen and Ms. Peterson affirmed that the police report has not been completed and obtained. Ms. Michaelsen also stated that no additional information has been received and affirmed that the complainant is not in attendance.

The Committee members' deliberations of the complaint included identifying the possible jurisdiction of the complaint:

A.R.S. §32-2091.12 (Definitions) for "Unprofessional conduct" including (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice, (dd) Violating an ethical standard adopted by the board (specific to the Behavior Analyst Certification Board's Professional and Ethical Compliance Code for Behavior Analysts at sections 1.02, 1.04, and 7.02), and also A.R.S. §13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception;

violation; classification; definitions at (A)(4) as it relates to school personnel. The Committee members concurred that while other follow-up by the licensee could have been warranted concerning this case, there is no finding of a violation.

MOTION: Dr. Davey moved to recommend closure of the complaint with a finding of no violations. Dr. Raetz seconded the motion.

VOICE VOTE: The motion was approved 3-0.

6. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATION TO THE BOARD PERTAINING TO APPROVAL OF BEHAVIOR ANALYST APPLICANTS

A. Behavior Analyst Application for Licensure

1) Brandi N. Dufek, M.Ed. (*FAIR*)

Dr. Raetz disclosed that she is recused from the consideration of this item. Dr. Davis-Wilson reminded the Committee that previous review of this application found that the applicant reported on her application she was previously charged with a crime, and also reported she was sued by a former employer for allegedly billing beyond actual hours of service. Additionally her supervisor reported she did not provide direct observation of her while she was an applicant. Dr. Davis-Wilson noted that the committee had asked the applicant to address the assault charge and to explain the other situations. She called to the Committee's attention the letter Ms. Dufek submitted reporting that the lawsuit was dismissed with no judgment against her. Ms. Dufek clarified for the Committee that with respect to the criminal matter she was not actually charged with assault and that the disorderly conduct charge was ultimately dismissed. She explained she was at a bar and a member of their party was behaving in such a way that their group was denied admission. She further explained that her sister was shoved to the ground by the bouncer and she tried to intervene to protect her. Ms. Dufek stated that the reporting of the events to the police was misconstrued resulting in three members of the group taken to jail to de-escalate the situation. She stated to the Committee that she learned from this event that compliance and restraint are always ideal, and that while she doesn't know what she might do differently, she recognizes how the situation became out of control. She expressed regret for the event, and stated she rarely uses alcohol so there are no impairment issues involved. With respect to the school employment matter, Ms. Dufek clarified she was a consultant for the institution. She explained that the first claim raised by the employer stated that the firm for who she worked had sued the school district to recoup the contract amount as the district was attempting to cancel the firm's contract. Ms. Dufek explained that the school lacked understanding of her evidence-based and data-driven approach to providing and documenting services, but she also admitted to making some data and clerical errors due to the many responsibilities she was trying to manage in addition to a lengthy commute. Ms. Dufek stated this experience taught her of the importance of maintaining very thorough documentation. She affirmed that the school district never filed a complaint against her (now lapsed) Speech Language Pathologist Assistant license, and did not follow through with the lawsuit. She stated that as a result of these events she elected to leave the firm and work for one that more closely adheres to the BACB code of ethics.

The Committee members acknowledged that 1099 employment arrangements for behavior analysts are discouraged for some of the reasons that this matter raises. The Committee noted where the BACB requirements seem to insufficiently address certain supervision issues, specifically that the BACB used to require more frequent observation in the natural environment in alignment with the Behavior Analyst rule A.A.C. R4-26-404.2. Supervised Experience Requirements. In response to Committee questions Ms. Dufek described her meetings with her supervisor as being every two weeks with much of that observation occurring in the natural environment, although not as frequently as she would have liked. She stated she and her supervisor elected to leave the company due to its standards being too much of a departure from that of the Association for Behavior Analysis. She indicated that if the Committee determined it was necessary, she

would try to locate calendars documenting the dates of events that are under scrutiny. The Committee members discussed the fact that the documentation could address the questions concerning whether the supervision supplied sufficiently meets the licensure requirements. The members further noted that the Committee may need to notify the BACB of this situation at a future date, acknowledging that BACB certification alone does not determine whether licensure requirements are met.

MOTION: Dr. Davis-Wilson moved to request additional information from Ms. Dufek’s supervisor in the form of documentation addressing the frequency of supervision and observation to ascertain whether the applicant completed the supervised hours requirements. Dr. Davey seconded the motion.

VOICE VOTE: The motion was approved 3-0.

2) Caitlin Carlon Welty, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

3) Elizabeth Jordan, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

4) Gina Marie Mastroianni, M.Ed.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

5) Julie Tyma, M.A.

Dr. Raetz stated that she has had some limited professional interaction with the applicant but she can review the application without bias.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

6) Kassandra Montijo, M.Ed.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that while the materials submitted were complete and fulfilled the requirements of statutes and rules, some possible clerical errors were noted in the documentation. Ms. Fowkes verified the correction were made and the members concurred. The Committee determined the application can be forwarded to the Board with a recommendation to grant the license.

7) Krisha Pungot Agatep, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

8) Mayra A. Gaytan, M.Ed.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

9) Meagan Sullivan, M.Ed.

Dr. Davis-Wilson disclosed that she was not involved with the applicant's supervision; although the applicant came to work for the organization from which she was departing, she is able to review the application objectively. The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

10) Morgan Brown-Chipley, M.S.

Dr. Davis-Wilson reminded the members that the applicant was invited to an interview to clarify the discrepancies in the descriptions of the event she reported on her application. Ms. Brown-Chipley explained that on the day of the reported incident her car was experiencing difficulty navigating the snowy and icy roads so she parked it off on the shoulder of the road to retrieve later. She stated that while in the company of a friend later that day she had some drinks, but out of concern for her well-being she elected to leave that person's company to retrieve her car and return home. She then explained that once at the car she determined she was not safe to drive and decided to sleep in it. Ms. Brown-Chipley admitted the police were called when someone attempted to pull her from the car. She affirmed that she did not attempt to drive the car in that condition, and denied that she was actually driving it (refuting the witness report), and that given the weather conditions the witness likely believed the car was on the road and had been driven. Ms. Brown-Chipley stated that she realizes that the DUI charge legitimately stems from her being in the driver's seat with possession of the keys. In response to Committee questions she stated she does not currently drink, and this event caused her to "grow up" and choose to abstain from alcohol. The members concurred that this description helps connect the dots in terms of the information submitted with the application.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

11) Patricia Egan, M.Ed.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation to grant the license.

MOTION: Dr. Davis-Wilson moved to forward all applications with the exception of that for Ms. Dufek to the Board with a recommendation to grant licensure. Dr. Raetz seconded the motion.

VOICE VOTE: The motion was approved 4-0.

7. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING CONTINUATION OF THE ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS, AND PROPOSED LEGISLATION INCLUDING BUT NOT LIMITED TO SB1054, HB2224, HB2184, HB2288, HB2809, SB1211, SB1212, AND SB1507

Ms. Herbst Paakkonen advised the Committee that the Arizona State Legislature voted to recess for at least 3 weeks given the public health and safety risks associated with the COVID-19 virus outbreak. She stated that prior to the recess, the Board's continuation bill SB1054 passed through the Legislature and was signed by Governor Doug Ducey thus extending the agency through June 30, 2028. Ms. Herbst Paakkonen also reported that the fate of

HB2224 is uncertain as the recess initiated just before the bill's final 2 floor votes in the Senate. She assured the Committee that she will continue to monitor this situation in the coming weeks and report updates.

8. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECENT UPDATES FROM THE BEHAVIOR ANALYST CERTIFICATION BOARD (BACB)

Ms. Herbst Paakkonen explained to the Committee that the BACB periodically issues regulatory information to licensing board contacts and that she will provide such information to the Committee. The members concurred that this will be useful as in the past information issued by BACB has come to the CBA relatively late, and therefore the sooner it is supplied, the better poised the Committee is to discuss and address it in the form of making and pursuing policy recommendations and decisions intended to protect the public.

9. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATIONS TO THE ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS FOR BEHAVIOR ANALYST RULE REVISIONS

Ms. Herbst Paakkonen reminded the Committee that this matter was placed on the previous meeting agenda, but due to time limitations it was not addressed. She explained that the behavior analyst rule revisions package on the May 5, 2020 agenda of the Governor's Regulatory Review Council will be in effect sometime in July, assuming a favorable review. She summarized the two potential rule changes she has captured for consideration at a later date: awarding continuing education credit for serving on the CBA, and adding language to allow for asynchronous supervision of behavior analyst candidates for licensure. Dr. Davis-Wilson encouraged the Committee members to invest some time reviewing the rules for purposes of discussing them at a future meeting. Ms. Herbst Paakkonen reminded the Committee members that a rulemaking moratorium is still in effect, and that given the COVID-19 public health emergency, rulemaking approvals will likely require even more time to secure than has been the case in the past.

10. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATIONS TO THE ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS CONCERNING A.R.S. §32-2091.15

Ms. Herbst Paakkonen summarized the Committee's March 6, 2020 discussion of the statutes and advised the Committee it is up to its members to determine at which point in time it may be appropriate to discuss pursuing possible changes. Such changes would need to come in the form of proposed legislation, and the earliest point in time to introduce a bill would be early 2021. Dr. Davis-Wilson summarized the concerns that some of the restrictive portions of the language could result in Committee vacancies that negatively impact review of applications for licensure, inability to review and forward complaint investigations, and other challenges. Additionally the statute language suggests that the Committee is entirely responsible to achieve the stakeholder input prescribed, but there is a lack of reciprocation from invited stakeholders. The Committee acknowledged these concerns, focusing on the fact that term conclusions will only exacerbate the problem given that appointments are not being made in a timely fashion. Ms. Galvin advised the Committee that if no successors are appointed, term-concluded appointees can continue in their posts until a successor is in place. The Committee also noted that the issue of whether members are eligible for travel reimbursement and compensation should be discussed at a future date.

11. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING STRATEGIES TO IMPROVE COMMUNICATIONS WITH STAKEHOLDERS

The members discussed the fact that the language of A.R.S. §32-2091.15(E) should be addressed at a later date, ideally before the full Board. The members' discussion emphasized that the stakeholders felt very strongly that the language be included, and the intent to revisit this language is not a reflection of an attempt to try to box them out from providing input. The Committee members expressed hope that members of the profession understand the fact that well-intended language has unintended consequences of potentially hampering the effectiveness of the

Committee to protect the public and to advance applications for licensure for Board action. The members acknowledged that at the last CBA meeting the members of the Arizona Association of Behavior Analysis (AzABA) in attendance did not express any of these concerns or sentiments. The members also mentioned the organization called Four Corners ABA as another key stakeholder group with which to engage. Ms. Herbst Paakkonen assured the Board she would reach out to this group's leadership.

12. NEW AGENDA ITEMS FOR FUTURE MEETINGS

The members directed staff to add an item to the next agenda specific to the outcome of the Board's March 31, 2020 special meeting. The members also requested an item concerning the BACB Supervisor form requiring the attestation of the supervisor having provided observation at least once during every 2-week period as the Committee may deem it is appropriate to revisit that revised standard and present suggested policy changes for consideration and adoption.

13. ADJOURNMENT

MOTION: Dr. Davey moved to adjourn the meeting. Dr. Stenhoff seconded the motion.

VOICE VOTE: The motion was approved 4-0 and the Committee adjourned at 11:53 a.m.