



Governor
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Committee on Behavior Analysts

MINUTES OF TELEPHONIC MEETING

December 6, 2019
Scheduled at 9:30 a.m.

1740 W. Adams St.
Conference Room A (First Floor)
Phoenix, Arizona 85007

1. CALL TO ORDER

The regular session of the Arizona State Board of Psychologist Examiners Committee on Behavior Analysts was called to order by Chairman Davidson at 9:30 a.m. A quorum was established. One Executive Session was held.

2. ROLL CALL

Committee Members Participating by Telephone

Daniel Davidson, Ph.D., BCBA-D, Chair
Bryan Davey, Ph.D., BCBA-D (departed the meeting at 12:00 p.m.)
Paige Raetz, Ph.D., BCBA-D
Donald Stenhoff, Ph.D., BCBA-D

Committee Members Absent

Diana Davis-Wilson, DBH, BCBA (recused)

Staff Present

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

Assistant Attorney General

Marc Harris, Esq.

3. CALL TO THE PUBLIC

There were no requests to address the Committee.

4. APPROVAL OF MINUTES

October 28, 2019 Regular Session

MOTION: Dr. Stenhoff moved to approve the minutes as drafted with the correction that the meeting included an Executive Session. Dr. Davey seconded the motion.

VOTE: The motion carried 4-0.

October 28, 2019 Executive Session

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

VOTE: The motion carried 4-0.

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

Complaint No, 20-12, Eric Frey

Dr. Stenhoff summarized the complaint allegation, the statutes and code pertaining to the allegations, and the respondent's response to the complaint. Ms. Michaelsen advised the Committee that the complainant is not available to attend the meeting, but that Mr. Frey was present on the phone and wished to make a statement. Mr. Frey made a brief statement concerning one of the events reported in the complaint. The Committee asked Mr. Frey to explain what steps he has taken to ensure similar events do not occur in the future. He reported that his apology to the complainant was accepted, he has apologized to his staff, and has acknowledged his behavior was unprofessional and unacceptable. He explained that he tries to own his behavior and he believes he has done so with respect to this matter. The respondent self-disclosed some personal challenges he believes adversely impacted his behavior and conduct, but that he is determined to learn from this and circumvent it from occurring again. The Committee questioned Mr. Frey whether he is being truthful when he declares on his licensure renewal application whether he is a risk to the public. Mr. Frey stated he is confident he is being truthful when he indicates he is safe to practice. In response to the Committee member questioning, he stated the communication he issued is not reflective of his typical conduct with clients. The Committee members discussed the potentially relevant sections of the Professional and Ethical Compliance Code for Behavior Analysts: 1.04, Integrity; 1.06, Multiple Relationships and Conflicts of Interest; and 2.06, Maintaining Confidentiality. The members concurred the facts do not support Mr. Frey having violated sections 1.04 and 1.06. The Committee further deliberated and questioned Mr. Frey relative to whether client confidentiality was violated. Mr. Frey stated the Register Behavioral Technician chimed in with an unsolicited comment, but that statement was not attributed in any way to him. Mr. Frey stated he believed he obtained only the information necessary to best serve his client and is committed to modeling behavior consistent with that required by the Code of Ethics.

The committee discussed concerns relative to the expectations of the conduct that BAs are required to exhibit, and emphasized that the responsibility extends to the conduct of the RBTs they supervise. The Committee discussed the complaint disposition options available, including non-disciplinary options.

MOTION: Dr. Stenhoff made a motion to forward the complaint to the Board with a recommendation to dismiss. Dr. Raetz seconded the motion.

DISCUSSION: The Committee discussed whether a Letter of Concern is appropriate in this instance as it would address the licensee's disclosure as to whether he has any condition that might adversely impact ability to practice. The Committee noted a "no" disclosure might not be appropriate in the future. Board Counsel advised that while it is non-disciplinary, the letter can articulate anything of concern relative to this case and serve as a reminder of the responsibility to adhere to the required Code of Ethics. Mr. Harris also advised a Letter of Concern informs the licensee that future conduct of this nature could rise to the level of a finding of a violation. He also stated that a Letter of Concern is public record. Dr. Stenhoff moved to amend his original motion to include a Letter of Concern addressing the issues discussed: collaborative and professional conduct, reminder that conduct must adhere to the Code of Conduct, and consideration of dealing with Mr. Frey's self-disclosed conditions. Dr. Raetz agreed to second the modified motion. Ms. Michaelsen advised the Board that this matter would be presented to the Board on its January agenda. Mr. Harris advised the Board will have all of the same materials presented to the Committee, and Mr. Frey will be noticed of the Board's review of the case.

VOTE: The motion carried 4-0.

Mr. Harris advised Mr. Frey that the Committee's action today is a recommendation to the Board, and that the Board has the authority to either accept the recommendation or to vote to take an alternative action. He listed all of the of the possible outcomes the Board may take relative to the complaint.

Complaint No, 20-16, Colten Oliver

Dr. Davey summarized the complaint allegation, the statutes and code pertaining to the allegations, and the respondent's response to the complaint. He noted the Behavior Analysts Certification Board (BACB) also received this complaint and has advised this Board that they are conducting their own investigation. The Committee discussed whether the respondent is currently under the jurisdiction of the Committee and the Board. Mr. Harris confirmed Mr. Oliver is under their jurisdiction by virtue of the fact he has filed an application with the Board, noting that the application for licensure submitted by Mr. Oliver did disclose the matter before the Committee today. Ms. Michaelsen advised the Committee that both the complainant and the respondent are attending this meeting by phone and both have requested to speak.

The complainant D.W. briefly summarized the allegations of the complaint. She advised the Committee that her company ultimately incurred substantial costs associated with the investigation and with the corrected billings. She stated she respectfully disagrees with the respondent that the incorrect billings were a simple oversight. She acknowledged that while in the beginning the errors could have been a result of rounding errors, the trend continued; over time Mr. Oliver actually increasingly padded his billing after the early errors were discovered and after coaching was provided. She further stated this is an unfortunate situation as Mr. Oliver is a skilled clinician. D.W. informed the Committee that Mr. Oliver did not acknowledge the fraudulent billing, but his statement to the effect that at the end of the day he needed to provide for himself speaks to his character and disinterest in adhering to the profession's established Code of Ethics.

Mr. Oliver stated an apology to the complainant, the members of the complainant's company, and to the Committee. He admitted to placing short term gratification over long term success. Mr. Oliver expressed his commitment to the profession and to the clients he has served. He clarified that he did not mean his comments to reflect that his actions were motivated by financial self-benefit. He acknowledged making foolish and careless mistakes, but has reflected on his actions to better understand them. In response to questions from the Committee members, Mr. Oliver described his BACB self-reporting as being in compliance with their requirements, and explained how he intends to ensure compliance with billing requirements going forward.

In response to the Committee's question, D.W. stated there were a total of 55 occurrences of overbilling, stretching back to early 2019. She noted that the more autonomy he was allowed, the more frequent the instances. She called to the Committee's attention the instances of the alleged forged signatures on his billing. The Committee inquired of Mr. Oliver whether any of his incorrect billings were not attributed to rounding errors? Mr. Oliver stated that the errors related to the clients' varying schedule, inconvenient locations, and his "misjudgment".

The Committee members discussed the fact that the records indicate what appears to be forged signatures, multiple instances of billing irregularity, compromised trust in care-focused relationships – all of which are serious allegations concerning someone who has applied for licensure as a behavior analyst. The members acknowledged that while the Board has the option of denying Mr. Oliver the opportunity to ever practice in Arizona, perhaps remediation was an appropriate solution. The committee also noted Mr. Oliver has the potential to be a skilled clinician if given the opportunity, however the allegations are very concerning.

Dr. Davidson moved to meet in Executive Session. The motion was seconded by Dr. Raetz. The motion carried 4-0. The Committee entered Executive Session at 11:20 a.m and resumed public session at 11:52 a.m.

The roll call confirmed all members were present and a quorum was established. The Committee discussion reflected the respondent's conduct includes potential violations of A.R.S. § 32-2091(12) Unprofessional Conduct to include (a) Obtaining a fee by fraud or misrepresentation, (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service and also (dd) Violating an ethical standard adopted by the board. Additionally the potentially relevant sections of the Professional and Ethical Compliance Code for Behavior Analysts for this complaint include 1.04, Integrity; and 2.13.

MOTION: Dr. Davidson moved to forward to the Board the recommendation that had Mr. Oliver been licensed, to find the applicant in violation of A.R.S. § 32-2091(12)(a), (p) and (dd). Dr. Raetz seconded the motion.

VOTE: The motion carried 4-0.

MOTION: Dr. Davey moved the application be denied based upon a finding of a violation of A.R.S. § 32-2091(12)(a), (p) and (dd). Dr. Raetz seconded the motion.

ROLL CALL:

The motion carried 4-0.

Mr. Harris advised the Committee that the recommendation will be presented to the Board on the January 2020 meeting agenda. Assuming the Board formalizes the denial, a notice of such will be sent to the applicant. The applicant may appeal that denial and have opportunity for a hearing. The applicant may re-apply in the future and will have the burden to demonstrate to the Board that he meets the standards for licensure and effectively addressed the issues identified in the complaint.

- 1) **Allan Robert Smith, M.Ed. (FAIR*)**
Discussion and possible action on this application was tabled.
- 2) **Ashley E. Ramirez, M.A.**
Discussion and possible action on this application was tabled.

- 3) Cierra Patricia Miller, M.Ed. (FAIR*)**
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 deficiency that generated the FAIR has been effectively addressed. It was the consensus of the Committee to forward the application to the Board for approval.
- 4) Derrel Ann White, 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. The Committee members agreed that while a disclosure was made on the application, the matter is about 20 years in the past and does not impede the applicant from being granted licensure. It was the consensus of the Committee to forward the application to the Board for approval.
- 5) Gretchen Childers, M.S.**
The Committee proceeded with a substantive review of the application. Dr. Stenhoff and Dr. Raetz both disclosed having served as her instructor but stated this past relationship does not create any bias with respect to the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules. It was the consensus of the Committee to forward the application to the Board for approval.
- 6) Jamie Lynn Jones, M.S.**
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. It was the consensus of the Committee to forward the application to the Board for approval.
- 7) Jonathan Ruchlin, M.S.**
Discussion and possible action on this application was tabled.
- 8) Kayla Marie Kelley, M.Ed.**
The Committee proceeded with a substantive review of the application. Dr. Raetz reported the applicant is now employed at the same agency at which she is employed, but they have little to no interaction and therefore she has no bias concerning the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules. It was the consensus of the Committee to forward the application to the Board for approval.
- 9) Megan Vincent, 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. It was the consensus of the Committee to forward the application to the Board for approval.
- 10) Olivia M. Shaw, 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. It was the consensus of the Committee to forward the application to the Board for approval.
- 11) Sarah Guinea, M.S.**
The Committee proceeded with a substantive review of the application. Dr. Stenhoff disclosed having served as her instructor but has no bias concerning the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules. It was the consensus of the Committee to forward the application to the Board for approval.
- 12) Sarah L. Limon, M.S.**
Discussion and possible action on this application was tabled.

13) Starlla K. Duran, M.Ed.

The Committee proceeded with a substantive review of the application. Dr. Davidson disclosed having served as her instructor but has no bias concerning the application. The members noted that while the file was complete, the application indicated the applicant's supervisor is a relative. Staff was directed to contact the application to obtain an explanation or clarification and any supporting documentation.

14) Travis B. Bell, Jr., M.S., 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. It was the consensus of the Committee to forward the application to the Board for approval.

15) Vanessa Martin, M.S.

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. It was the consensus of the Committee to forward the application to the Board for approval.

16) Victoria Ann Diforte, M.Ed.

The Committee proceeded with a substantive review of the application. The members noted the application contained disclosure of an incidence that occurred about 4.5 years ago but the matter has been resolved with no subsequent incidents. The Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules. It was the consensus of the Committee to forward the application to the Board for approval.

17) Colten Oliver, M.A.

Action on this application was taken on agenda item number 5.

MOTION: Dr. Stenhoff moved to forward the following applications to the Board for approval: **Cierra Patricia Miller, M.Ed., Derrel Ann White, M.Ed., Gretchen Childers, M.S., Jamie Lynn Jones, M.S., Kayla Marie Kelley, M.Ed., Megan Vincent, M.Ed., Olivia M. Shaw, M.A., Sarah Guinea, M.S., Travis B. Bell, Jr., M.S., M.Ed., Vanessa Martin, M.S., and Victoria Ann Diforte, M.Ed.** Dr. Raetz seconded the motion.

VOTE: The motion carried 3-0.

MOTION: Dr. Stenhoff moved to continue the applications for **Allan Robert Smith, M.Ed., Ashley E. Ramirez, M.A., Jonathan Ruchlin, M.S. and Sarah L. Limon, M.S.** Dr. Raetz seconded the motion.

VOTE: The motion carried 3-0.

MOTION: Dr. Stenhoff moved to direct staff to contact the supervisor of **Starlla K. Duran, M.Ed.** to obtain clarification concerning whether they are related.

VOTE: The motion carried 3-0.

7. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING AHCCCS PUBLIC COMMENTS FOR 320-S-BEHAVIOR ANALYST SERVICES POLICY CHANGE – Dr. Davey

This matter was tabled and will appear on a future meeting agenda.

8. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING THE UNIVERSAL RECOGNITION STATUTE (A.R.S. § 32-4302)

This matter was tabled and will appear on a future meeting agenda.

9. NEW AGENDA ITEMS FOR FUTURE MEETINGS

No items were identified.

10. ADJOURNMENT

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

VOTE: The motion passed on a vote of 3-0.

The meeting concluded at 12:28 p.m.