



STATE OF ARIZONA
BOARD OF BEHAVIORAL HEALTH EXAMINERS
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JANET NAPOLITANO
Governor

KATHLEEN PHILLIPS
Board Chair

DEBRA RINAUDO
Executive Director

BOARD OF BEHAVIORAL HEALTH EXAMINERS MEETING MINUTES
March 4, 2005

Members Present: Cedric Davis, Dan Wright, Jose Herrera (out at 12:40 p.m.), Kathleen Phillips, Ruth Lee, Steve LeGendre (in at 8:50 a.m.)

Members Absent: Laura Waterman

Staff Present: Debra Rinaudo, Marc Harris, A.A.G., Victoria Mangiapane, Solicitor General's Office, Kami Thur, Mary Wilson

Public Present: Kerry Faizoni, Don Burchfield, Kim Bushaw, Clare Cory, Gary Kriege, Lynda Durfy, John Lare, Dennis Kroll, Grant Nees, Bob Fern, David Van Wagner, Geri Giles, Donald Giles, Andres Bustamante, Michael Cowley, Tim Hofmann, Carol Stambaugh

Public by telephone: Jean Dubose, Barbara Burstein, James Krehbeil, Michael Kennedy

1. Call to Order

The meeting of the Arizona Board of Behavioral Health Examiners was called to order on March 4, 2005, at 8:42 a.m. with Ms. Phillips presiding.

2. Roll Call

See above.

3. Review and Approval of Minutes

Dr. Davis moved, seconded by Ms. Lee, to approve the general meeting minutes from the February 4, 2005, meeting as amended. The motion carried with Mr. Wright abstaining.

4. Administrative Hearings

A. Grant Nees, CPC applicant

Board members and staff were introduced. Ms. Mangiapane from the Solicitor General's Office appeared on behalf of the Board. Ms. Phillips reviewed the rules of procedure for a formal administrative hearing.

Mr. Nees appeared in person and gave an opening statement. Mr. Harris, A.A.G., appeared on behalf of the State and gave an opening statement.

Mr. Nees was sworn in and testified on his own behalf. Mr. Nees submitted a letter from Kim Callura as evidence.

Ms. Phillips admitted Respondent's Exhibit 'A' into evidence.

Ms. Rinaudo, Executive Director of the Board, was sworn in and testified regarding the basis for the Counseling Credentialing Committee's denial of Mr. Nees' Certified Professional Counselor application.

Mr. Nees cross-examined Ms. Rinaudo.

Ms. Phillips admitted State's Exhibits 1-14 into evidence.

Mr. Nees made a closing statement and requested that the Board overturn the Committee's denial of his certification application.

Mr. Harris made a closing statement and requested that the Board affirm the Committee's denial of Mr. Nees' certification application.

Following discussion, Dr. Davis moved, seconded by Mr. Herrera, to affirm the Counseling Credentialing Committee's denial of the professional's certification application. The motion passed unanimously. See attached roll call.

B. John Lare, CSAC applicant

Board members and staff were introduced. Ms. Mangiapane from the Solicitor General's Office appeared on behalf of the Board. Ms. Phillips reviewed the rules of procedure for a request for review or rehearing of the denial of a certification application.

Mr. Lare appeared in person and addressed the Board. He asked the Board to grant his request for a review or rehearing based on information he obtained through a public records request to the Board for the educational background from 30 LISAC files randomly selected. Of the 30 files reviewed, only six had bachelor degrees.

Mr. Harris responded by noting that Mr. Lare's application was not denied because he had a bachelor's degree in psychology, but because the degree did not have 30 semester hours of counseling related coursework. Mr. Harris also noted that the information regarding other applicants' education is not newly discovered evidence as required pursuant to A.A.C. R4-6-1003, as it was available at the time of the initial hearing. Additionally, Mr. Lare failed to address the fact that the denial of his application was also based on his failure to establish that he met the minimum requirements for supervised work experience in substance abuse counseling.

In response, Mr. Lare argued that the Board's determination not to accept all of his work experience hours was made contrary to law. Mr. Lare provided no new information in support of this argument.

Mr. Harris responded that this argument was made at the initial hearing.

Following discussion, Dr. Davis moved, seconded by Mr. Wright, to deny the applicant's request for a review or rehearing of the Board's order denying certification because he failed to demonstrate that he possessed newly discovered evidence relevant to his case and he did not demonstrate any other reason materially affecting his rights as required pursuant to A.A.C. R4-6-1003. The motion passed unanimously. See attached roll call.

The Board took a break at 10:45 a.m., reconvening its public meeting at 11:05 a.m.

5. Review, consideration and action of complaints and other disciplinary matters

A. 2005-0047, Andres Bustamante, LISAC-11769

Ms. Rinaudo summarized the facts and history of the complaint. Mr. Bustamante appeared in person and addressed the Board.

Following review and discussion, Mr. LeGendre moved, seconded by Dr. Davis, to approve the Substance Abuse Credentialing Committee's recommendation to dismiss the complaint as unsubstantiated. The motion passed unanimously.

B. Lynda Durfy, LPC-2554

Ms. Thur summarized the facts of the complaint. Ms. Durfy appeared in person and addressed the Board.

Following review and discussion, Mr. LeGendre moved, seconded by Dr. Davis, to remand this matter to the Counseling Credentialing Committee for further consideration, including an independent psychological evaluation in order to determine the professional's ability to safely and competently practice. The motion passed unanimously.

C. Phyllis Austin, LPC-10600

Ms. Rinaudo summarized the facts supporting a possible summary suspension of the professional's license.

Following review and discussion, Dr. Davis moved, seconded by Mr. Wright, to accept the signed interim consent agreement, which provides that the professional agrees not to practice until she receives Board approval to do so. The motion passed unanimously.

The Board took a break from 11:28 a.m., reconvening at 11:35 a.m.

D. Michael Kennedy, LCSW-10321

Mr. Harris reviewed the facts of the case. Mr. Kennedy was noticed, but did not appear. Mr. Harris reported that the professional was arrested with methamphetamines in his possession.

Following review and discussion, Dr. Davis moved, seconded by Ms. Lee, to summarily suspend the professional's license to practice based on the proposed findings of fact and conclusions of law. The motion passed unanimously. See attached roll call.

After this motion was made, Ms. Rinaudo reported that Board staff had reviewed an e-mail from Mr. Kennedy requesting to appear telephonically. The Board elected to contact Mr. Kennedy to allow him to address the Board.

Mr. Kennedy addressed the Board telephonically and requested a copy of the meeting tape where his matter was reviewed. Ms. Rinaudo agreed to send him information regarding requesting the tape.

E. Robert Fern, LISAC-10813

Ms. Rinaudo summarized the facts of the complaint and Mr. Fern's admission during the Substance Abuse Credentialing Committee meeting on December 17, 2004, that he participated in the creation of a fraudulent CPC certificate and NBCC exam score in Mr. Bustamante's name, and his subsequent relinquishment of his substance abuse license to Board staff.

Mr. Fern was present and addressed the Board. He stated that the consent agreement offered by the Substance Abuse Credentialing Committee misstated his statements to the committee as he personally did not create the documents.

Following review and discussion, Mr. LeGendre moved, seconded by Mr. Herrera, to remand this matter to formal hearing for the purpose of revocation. The motion passed unanimously.

F. 2003-0056, Norma Reed, LISAC-10136 and counseling applicant

Ms. Rinaudo summarized the facts of the case. The Counseling Credentialing Committee denied the professional's Certified Professional Counselor application and offered a consent agreement under her LISAC license. The professional was noticed, but did not appear. Ms. Rinaudo reported that the professional has recently retained counsel. Her attorney has expressed interest in trying to resolve this matter through a revised consent agreement, but needs additional time to review this matter.

After review and discussion, Dr. Davis moved, seconded by Ms. Phillips, to remand this matter to formal hearing. The motion passed unanimously.

G. 2004-0012, Don Burchfield, LPC-1969

Ms. Rinaudo summarized the facts of the complaint. Mr. Burchfield appeared in person and addressed the Board.

Following review and discussion, Mr. Wright moved, seconded by Mr. Herrera, to approve the Counseling Credentialing Committee's recommendation to accept the signed consent agreement. The motion passed unanimously. See attached roll call.

H. 2005-0003, Karen Kewley, LPC-10258

Ms. Rinaudo summarized the facts of the complaint. The professional was noticed, but did not appear. The complainant appeared in person and addressed the Board. The complainant's attorney, Barbara Burstein, addressed the Board telephonically.

Following review and discussion, Mr. LeGendre moved, seconded by Ms. Lee, to remand this matter to formal hearing. The motion passed unanimously.

I. 2002-0048, Kathleen Keil, LCSW-2246

Ms. Rinaudo reported that the Chair of the Social Work Credentialing Committee approved the professional's request for release from the consent agreement. Ms. Keil was noticed, but did not appear.

Following review, Dr. Davis moved seconded by Mr. Wright, to release the professional from the terms of the consent agreement. The motion passed unanimously.

J. 2003-0014, James Krehbeil, LPC-1847

Ms. Rinaudo reported that the Chair of the Counseling Credentialing Committee approved the request for release from the consent agreement. Mr. Krehbeil addressed the Board telephonically.

Following review, Dr. Davis moved, seconded by Mr. Wright, to release the professional from the terms of the consent agreement. The motion passed unanimously.

K. 2003-0034, Jean Dubose, LCSW-0198

Ms. Rinaudo summarized the facts of the complaint. Ms. Dubose addressed the Board telephonically. The complainant appeared in person and addressed the Board.

Following review and discussion, Mr. Wright moved, seconded by Mr. Herrera, to approve the Social Work Credentialing Committee's recommendation to dismiss the complaint as unsubstantiated. The motion passed unanimously.

L. 2005-0038, David Van Wagner, LISAC-10030

Ms. Rinaudo summarized the facts of the complaint. Mr. Van Wagner appeared in person and addressed the Board.

Following review and discussion, Mr. Wright moved, seconded by Mr. Herrera, to approve the Substance Abuse Credentialing Committee's recommendation to dismiss the complaint as unsubstantiated. The motion passed unanimously.

M. 2004-0008, Gary Kriege, LPC-0061

Ms. Rinaudo summarized the facts of the complaint. Mr. Kriege appeared in person and addressed the Board. The complainant appeared in person and addressed the Board.

Following review and discussion, Mr. LeGendre moved, seconded by Dr. Davis, to approve the Counseling Credentialing Committee's recommendation to dismiss the complaint as unsubstantiated. The motion passed unanimously.

6. Review, consideration and action of applications for licensure.

Social Work

Dr. Davis moved, seconded by Mr. Wright, to approve nine applicants as Licensed Clinical Social Workers and seven applicants as Licensed Master Social Workers. The motion passed unanimously.

Counseling

Dr. Davis moved, seconded by Mr. Wright, to approve 14 applicants as Licensed Professional Counselors and eight applicants as Licensed Associate Counselors. The motion passed unanimously.

Substance Abuse

Dr. Davis moved, seconded by Ms. Lee, to approve one applicant as a Licensed Independent Substance Abuse Counselor and two applicants as Licensed Associate Substance Abuse Counselors. The motion passed unanimously.

Dr. Davis moved, seconded by Mr. Wright, to deny Tamara Schmidt's application. The motion passed unanimously.

7. Report from the Chair

A. Appointment of member to the Personnel Subcommittee

Dr. Davis moved, seconded by Mr. LeGendre, to appoint Mr. Wright to the Personnel Subcommittee. The motion passed unanimously.

8. Report from the Treasurer

A. Monthly financial report

Mr. LeGendre provided the monthly treasurer's report.

B. Budget update

Ms. Rinaudo provided an update regarding the progress of the Board's FY06-07 budget request through the legislative process.

9. Report from Executive Director and/or staff.

A. General Agency Operations

No report.

B. Acceptance of work experience acquired as behavioral health technician

Ms. Rinaudo reported regarding the credentialing committees' recommendations regarding whether to accept supervised work experience acquired by unlicensed behavioral health technicians after July 1, 2004.

Mr. Hofmann and Ms. Stambaugh appeared in person and addressed the Board in opposition to accepting such work experience.

A phone meeting will be scheduled to discuss the issue in detail.

C. Sanctions for professionals who failed to disclose criminal history on previous applications/renewals

Ms. Rinaudo reported that the Counseling Credentialing Committee, the Marriage and Family Therapy Credentialing Committee and the Substance Abuse Credentialing Committee recommended that the Board issue a letter of concern in cases where the professional failed to appropriately disclose criminal history on past certification and renewal applications where the disclosure of such information likely would not have affected the professional's eligibility for certification or renewal. The Social Work Credentialing Committee recommended that the Board take no action in such cases.

Following discussion, Ms. Lee moved, seconded by Mr. Wright, to issue a letter of concern in such cases. The motion passed unanimously.

D. Legislative update

Ms. Rinaudo reported regarding SB1130, which has been amended to include an exemption for all persons who do not provide psychotherapy.

10. Committee Reports.

A. Rules Subcommittee report

Ms. Rinaudo reported regarding the Rules Subcommittee's consideration of additional rule changes before June 30, 2005. Proposed changes will be on the Board's website for public comment through May 1, 2005.

B. Counseling Curriculum Review Subcommittee report

Ms. Rinaudo reported regarding proposed counseling curriculum changes. Proposed changes will be on the Board's website for public comment through May 1, 2005.

11. National and regional trends and news regarding the profession(s)

None

12. Future agenda items

None

13. Call for public comment

None

14. Establishment of future meeting date(s)

The next meeting is scheduled for April 1, 2005, at 8:30 a.m. in room B-2.

15. Adjournment

Dr. Davis moved, seconded by Mr. Wright, to adjourn. The motion passed unanimously and the meeting was adjourned at 1:34 p.m.

Steve LeGendre
Secretary/Treasurer

Date