

**TENNESSEE BOARD OF EXAMINERS IN PSYCHOLOGY
MEETING MINUTES**

DATE: June 10, 2021

TIME: 9:00 a.m., CDT

LOCATION: Health Related Boards
665 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS PRESENT: Susan Douglas, PhD, Chair
Todd Moore, PhD
Rebecca Joslin Staab, Ed.D., PhD.
H.R. Anderson, SPE
Peter Beddow, PhD
Deborah Carter, PhD.
J. Dale Alden, PhD.

BOARD MEMBERS ABSENT: Connie Mazza, SPE., Vice-Chair
Mark Fleming, PhD
Jennifer Winfree, Consumer Member

STAFF PRESENT: Diana Hunley, Board Director
Lisa Williams, Board Administrator
Paetria Morgan, Senior General Counsel
Jessica Turner, Associate General Counsel

The meeting was called to order at 9:07 a.m. A roll call was conducted and a quorum was present. The administrative staff introduced themselves.

Election of Officer

On September 10, 2020, a motion was made by Ms. Mazza for Susan Douglas to be chair. Ms. Morgan stated that it would be prudent for Dr. Douglas to be present to accept the nomination. The election of chair was tabled at that time until a response could be received from Dr. Douglas. The nomination has been brought forward and Dr. Douglas accepted the nomination. A motion for Susan Douglas to be chair was made by Dr. Alden and seconded by Dr. Moore. The motion carried. The meeting was turned over to Dr. Douglas, Board Chair.

Review/Approve Minutes

Upon review of the March 18, 2021 minutes, Dr. Moore made a motion, seconded by Mr. Anderson, to approve the minutes. A vote was taken and the motion carried.

Investigative Reports

Ms. Lori Leonard, Disciplinary Coordinator with the Office of Investigations, presented the complaint reports for the year 2021. Investigations for psychologists has received and opened ten new complaints. One complaint was regarding substance abuse, one for sexual misconduct, four for unprofessional conduct, one for lapsed license, one for prescribing to friends or family and two were outside of the investigative scope. Investigations has closed a total of eleven complaints regarding psychologists. Two of the complaints were sent to the office of general counsel for formal discipline, seven were closed with no action and two were closed with a letter of warning. Letters of warning and letters of concern are not reportable to the national practitioner data bank and therefore they are not considered formal discipline. Currently there are twenty-two open complaints being investigated or reviewed. Investigations for psychological examiners has received three complaints. One complaint was regarding unlicensed practice, one regarding unprofessional conduct and one complaint was outside of the investigative scope. No complaints have been closed so far this year and there are seven complaints open being reviewed and or investigated at this time. Investigations has received no new complaints regarding psychological assistants. The summary of currently monitored practitioners was presented. Currently investigations is monitoring one unlicensed practitioner, two under reprimand, two under probation, two under suspension and one under revocation.

Financial Fee Reduction Report

Matt McSpadden, Fiscal Manager for the Division of Health Licensure and Regulation stated the a fee reduction was presented to the board at the March 18, 2021 meeting because of the excess cumulative carryover balance that the board currently carries. The board requested to have the report re-examined with the passage of the PSYPACT agreement through legislation this year. The numbers have been re-figured to include the fiscal impact of that agreement with the fee reduction scenarios. He reminded the board of the fiscal mid-year report presented at the March meeting which was based on the end of fiscal year 2020. The numbers that have been included in the reserve reduction and being presented today will include the projected numbers for fiscal year 2021 which will be closing at the end of this month. Cumulative projected carryover for fiscal year 2021 is \$1,312,976. The projected net is about \$120,000 for 2021. He reviewed the carryover balances from previous years. The target reserve balance is going to be two times the three-year average of board expenditures. The target reserve balance currently stands at \$422,924. The current carryover balance has steadily increased over the past ten years. The carryover is significantly over where the legislature would like the carryover balance to be. The goal is to bring revenue and expenditures as close together as possible so that the net drops down to zero once the target balance has been reached. The board will have to be run in the red for a number of years to achieve the target balance. At the appropriate time, the fees will be looked at to re-do the fees and bring them back to a more neutral structure. It may take a number of years to get to that point. For the reserve reduction, the reserve balance projected fiscal 2021 close \$1,312,976 with a target balance of \$422,924. The current reduction needed is \$890,000. He reviewed current fees for renewal applications as well as initial applications. A reduction of \$8,400 was included in the nets to reflect the PSYPACT compact. He presented three different scenarios to reduce the carryover balance. Dr. Moore sought clarification by stating that whichever option was chosen and if fees or costs change for the board in two or three years, is it safe to assume that another adjustment

could happen? The board is not locked into the fee reduction plan for five or six or seven years. There is always going to be an auditing process and that fees can be modified if unexpected things happen? Mr. McSpadden affirmed the statement and stated that one of the reasons for a carryover balance for unexpected things that can happen. The options are only taking the board down to the suggested target carryover level. That gives the board two years' worth. If you had zero revenue for two years, the board would still be operational. Rules changes do take a fair amount of time. If something were enacted today, it would probably take upwards of a year if it was just a rule change. It is the job of the fiscal office to continually monitor the carryover balance year to year to make sure that the board is operating in a self-sufficient way as needed or in this case as the board is trying to responsibly spin down the carryover balance. Dr. Moore asked in terms of unexpected costs, is that usually around legal kinds of issues? Are there certain cases that take more time and more money and is that the most likely unexpected costs? Mr. McSpadden stated that he was not certain, but from what he has seen he can imagine that what Dr. Moore described would be one of the most unexpected and everything else tends to run pretty steady. Ms. Morgan stated that legal and investigations are two of your variable costs that can really change the whole dynamic of a fiscal year. Dr. Beddow asked once the surplus is spent down, would fees then go up again? Mr. McSpadden replied yes and stated the fees would have to be looked at to be increased. He presented a neutral fee structure and stated that a neutral fee structure would be based on more current years at the time of consideration. Ms. Morgan stated from a public relations standpoint, if you decided to go forward with this; you would see a huge drop and then another huge increase in another in however many years based on which scenario you pick. This is something that the board would need to make sure that the licensees were aware of the changes. This can be pretty jarring if say six years from now you go from the \$15 option back up to \$275. That could leave the public wondering why. The public would need to know through organizations like TPA (Tennessee Psychological Association) who would get the word out that this reduction if the board decides to go forward with it would only be temporary and would eventually go back up to something similar to what they are used to seeing and this may be something the board wants to consider. Patrick Powell, Legislative Affairs Department of Health, he would encourage stake holder participation involvement as much as possible from a practical standpoint. The legislature does enjoy seeing fee reductions, but they don't like seeing fee hikes. Of course, this is a problem. There is no real perfect way to do it, because if you have to spin down you are going to be in the red and you are going to have to go in front of self-sufficiency and things of that sort. It needs to be a plan that whatever you chose to do, it known that you are doing this with the intent to normalize later on. He encouraged with as calculated and conservative an approach as possible. It may even be worth doing a smaller fee reduction now and then if needed a second fee reduction in the future. Those are things to consider and again he encouraged stake holder involvement and a definitive plan long term on whatever you do just so that the legislature knows that this is not haphazard. The legislature gets really jarred with fee hikes and if you do go aggressive, obviously that's going to turn around for a fee hike in the relatively near future. Ms. Morgan asked Mr. Powell to explain self-sufficiency for the benefit of the board. Mr. Powell stated that each board is required to be self-sufficient. That's where you get put between a rock and a hard place. They don't like to see huge reserves; but at the same time if you are even one dollar in the red, you are not self-sufficient under the statute. If you are in the red for two years consecutively, you are called in front of the joint government operations for self-sufficiency review. Dr. Pam Auble, TPA liaison, stated that she would bring this up before members of TPA and poll their thoughts. Mr. McSpadden stated that the self-sufficiency hearing will happen every two years if the board does

go with the most modest and long proposal which is a deficiency of over eight years and it could possibly extend out to twelve to fifteen years which would mean going before government operations seven or eight times over the next decade or more. Dr. Moore suggested that the reduction of the initial application fee be considered strongly. Dr. Auble addressed this issue also and the need by the initial applicant for less costs. Mr. McSpadden stated that the most aggressive action needs to be taken in regard to renewal fees where more of the fees come from. Ms. Morgan asked if the board has the option of selecting a scenario that does not put them in the red, but that reduces the fees? What are the consequences if they chose that scenario? Mr. McSpadden stated if they don't go in the red, the balance will continue to grow. Dr. Moore stated that if we don't get the carryover balance down, the legislature can remove the balance. Mr. Powell stated that the legislature has taken the reserves in times of financial crisis. He spoke of certain projects that can be used to burn down the reserves of all the Health Related Boards, but stated that those are fairly limited. There has been discussion about greatly flexibility on how to use the reserves. The legislature wants the most well managed financial aspects as possible. They want that perfect ratio where the board is bringing in just barely more than you're spending. Obviously, that's difficult to do with unknown legal and other factors. Alicia Grice, Fiscal Director, stated concerning consequences with not having a fee reduction that when this board is up for sunset review that the legislature will be looking at a carry forward balance and will question it strongly. She informed the board that they can move forward with a proposal today and those numbers can be changed until they go before government operations. You could go forward with a proposal today and consult your constituents and if you need to make any adjustments, that can be done and this will allow the board to go ahead and get the ball rolling on the process. Ms. Moran pointed out that the board just had a sunset review and it will not have another sunset review for another six years. Mr. Powell confirmed that Ms. Grice was correct and government operations did look at the carryover balance and do want it addressed, but the board does have a little bit of time as it will be 2026 before the board is back up for review again. Dr. Douglas asked Ms. Morgan about making changes along the way. Ms. Morgan stated that it has to be approved by ten or more people on its way to government operations and every time a change is made it has to be approved all over again and this can cause delays in the process. She stated it would be better to have exactly what the board wants in the packet that is drafted by OGC and waiting until September is better than all the delays that can occur by making changes after the packet has been prepared and begun the approval process and would time for stake holder input. Mr. McSpadden stated that it would be the recommendation from the fiscal office to decide today to do this and have it on the record. Mr. Anderson pointed out that over the next ten years there will be fewer psychological examiners renewing their license and this could affect the fees. Mr. McSpadden assured the board that the fiscal office does monitor the fiscal situation of the board and as they see expenditures and revenue coming down, they will take appropriate action to make sure the board is self-sufficient and also not accumulating such large balances. Dr. Moore suggested to wait and make a more definitive decision in September after more information has been gathered including from the constituents. Dr. Auble stated that she could also reach out to the other local associations as a source of input and discussion as well. Dr. Douglas stated that she felt the board needs more information before the board can move forward with a decision and the decision will be reviewed at the September board meeting after more data is gathered.

Office of General Counsel

Ms. Morgan, Office of General Counsel, stated in reference to litigation matters that there are no consent orders, no agreed orders, there are four open cases in OGC currently and no appeals in chancery court. She reminded the board of the conflict-of-interest policies. The bill in reference to the Art Therapy Bill did pass and it is now Public Chapter 160. The bill that covered the psychology interjurisdictional compact act also passed and is Public Chapter 352. There was a bill in reference to extending the psychology board for six years and it also passed. The board did have that sunset hearing and it is Public Chapter 71. The continuing education rules have a pending effective date of July 6, 2021. The rules are pending because they have to go before government operations review on June 16 and they do have the ability to stay the rules for seventy-five days which is why the rules are pending. The telepsychology rules have been filed. The notice of rulemaking hearing has been filed with the secretary of state office. The board is scheduled to have a rulemaking hearing on those rules at the September 9, 2021 meeting. The government operations committee stayed the Applied Behavior Analysts cultural diversity rules for seventy-five days and that an example of them staying the effective date. Those rules will not go into effect on the original effective date. The ABA committee will have to go before government operations with the additional information they are requesting.

Administrative Report

Lisa Williams stated there are currently 1,463 licensed Psychologists, 309 licensed Psychological Examiners/Senior Psychological Examiners and 65 licensed Certified Psychological Assistants. There are currently 19 Psychologists applications in process, 15 newly licensed and 163 renewals. There were 3 retired, 6 expired and 1 reinstated retired license and 1 reinstated expired license. There are currently 0 Psychological Examiners/Senior Psychological Examiners applications in process and 34 renewals. There is 1 retired, 1 expired and 1 reinstated retired license. There is currently 0 Certified Psychological Assistant application in process, 0 newly licensed, 8 renewed, 1 retired, 1 expired and 0 reinstated licenses. Ms. Williams reminded the Board members to sign their per diem and travel claims. She also stated the next scheduled Board Meeting is September 9, 2021 and the dates scheduled for 2021 is December 2, 2021. She thanked Dr. Alden and Mr. Anderson as backup for the government operations meeting on June 16, 2021. Currently there is one file review board consultant. Her term has ended and can be replaced at any time leaving the board with no file review board consultant. She asked for a replacement or replacements for the file review board consultant. She informed the board that the Applied Behavior Analyst Committee did not have quorum at their last meeting and there will be no LBA lists for ratification at this meeting. She asked and was informed that no one from the board attended the virtual ASPPB meeting.

Discuss and Ratify/Deny Newly Licensed and Reinstated Psychologists

Newly Licensed

Dr. Moore made a motion, seconded by Mr. Anderson to ratify the following newly licensed Psychologists:

Psychologists

Adams Robert William
Arnett James E
Bogle Brandon Coy
Di Biase Mario
Lindsey Shamiria Victoria
Loveless Ansley Taylor C
Mulderink Thomas D
Murdock Michele

O'Flaherty Lauren Michelle
Palma Steven Michael
Parker Judit
Pursell Kathryn Buck
Stewart Angela C
Vanmaaren Victoria
Westhoven Venette Cochiolo

A roll call vote was conducted and all were in favor. The motion carried.

Dr. Moore made a motion, seconded by Dr. Carter to ratify the following reinstated licensee:

Reinstated Licensee

Davis Jeffrey Thomas
Nies Kristie J

Stair Clovis E

A roll call vote was conducted and all were in favor. The motion carried.

Legislation

Patrick Powell, Legislative Affairs Department of Health, presented summaries concerning eleven different public chapters.

Public Chapter 37

This act prohibits agencies subject to sunset review from promulgating rules or adopting policies to exempt members solely by virtue of their status as members.
This act took effect March 23, 2021.

Public Chapter 71

This act extends the board of psychology to June 30, 2026.
The act took effect March 29, 2021.

Public Chapter 153

This act creates a new definition of “store-and-forward telemedicine services” to include the use of asynchronous computer-based communications between the healthcare provider and the patient for the purpose of diagnoses, consultation, or treatment of a patient at a distant site where there may be no in-person exchange.
This act took effect April 13, 2021.

Public Chapter 160

This act creates the Tennessee Professional Art Therapy Advisory Committee, comprised under the Tennessee Board of Examiners in Psychology. The committee will license certified professional art therapists and will consist of three members appointed by the Governor. This chapter will take effect July 1, 2022, with the process of appointing members to the committee taking effect April 20, 2021.

Public Chapter 291

This act requires the attorney general and reporter to not approve an emergency rule if the emergency rule does not meet the statutory criteria for adoption of the rule.

This act took effect July 1, 2021.

Public Chapter 328

This act requires that starting December 1, 2023, state agencies submit a report of their effective rules to the chairs of the government operations committee every eight (8) years. The report is required to include a brief description of the department's operations that each chapter affects, as well as each rule and its administrative history, which would include the original promulgated date and the dates the rule was last amended, if applicable. Additionally, the report would include a determination of each rule on whether it adheres to current state or federal law or court rulings, should be amended or repealed, reviewed further, or continue in effect without amendment. Lastly, if there are any intentionally false statements in the report, the government operations committee would have the ability to vote to request the general assembly to remove a rule or suspend the department's rulemaking authority for any reasonable period of time.

This act took effect July 1, 2021.

Public Chapter 352

This act enacts the Psychology Interjurisdictional Compact Act to allow for tele-psychological practice across state lines as well as temporary, in-person, face-to-face services into a state in which the psychologist is not licensed to practice psychology, and to facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history. In doing so, this act authorizes the Board of Examiners in Psychology to issue temporary, in-person, face-to-face psychology service licenses for 30 calendar days within a year in a state in where a psychologist is not licensed to practice psychology.

This act took effect May 11, 2021.

Public Chapter 357

This act authorizes an exception to existing telehealth requirements governing healthcare providers in Tennessee. In doing so, it allows individuals licensed in another state to practice

telehealth in Tennessee while providing healthcare services on a volunteer basis through a free clinic.

This act took effect May 11, 2021.

Public Chapter 453

This act requires public or private entities or businesses that operate a building open to the general public to post signage regarding public restroom access in certain situations. Specifically, this applies to entities or businesses that have restroom policies allowing either biological sex to use any public restroom within their building. The act includes requirements for language, size, location, and even color for the signage. The act excludes unisex, single occupant restrooms or family restrooms intended for use by either sex.

This act took effect July 1, 2021.

Public Chapter 531

This act limits an agency's authority to promulgate rules without a public hearing. There are exceptions to the public hearing requirement. These exceptions include emergency rules, rules that are nonsubstantive modifications to existing rules (like clerical updates), rules that repeal existing rule, or rules that eliminate or reduce a fee described by an existing rule.

This act took effect July 1, 2021.

Public Chapter 532

This act authorizes the joint government operations committee to stay an agency's rule from going into effect for a period of time not to exceed ninety (90) days. If the government operations committee determines that subsequent stays are necessary, then the joint committee may issue consecutive stays, each for an additional ninety (90) day period, so long as such stays do not extend beyond the fifth legislative day of the year following the year in which the rule is filed with the secretary of state. The initial stay may be done by either the house or senate government operations committee, but subsequent stays must be by agreement by the committees of both chambers. A stay is effective when the respective committee files written notice with the secretary of state, and the respective committee shall specify the length of effectiveness of the stay.

This act took effect May 25, 2021.

Petition for Order of Compliance

Ms. Morgan stated that Laura Catherine Hacker is petitioning for an order of compliance. Ms. Hacker entered into a consent order with this board on June 14, 2012. The June 2012 consent order suspended her license for two years followed by a period of five years on probation. On June 11, 2015 this board issued an order of compliance which lifted the suspension from her license and then at that point the five-year probationary period began. That happened on June 11, 2015 so that five years has passed and now she is coming before you requesting that you lift the probation and restriction off of her license. An affidavit from Ms. Lori Leonard, Disciplinary Coordinator, certified that Ms. Hacker is compliant with everything. She is here today to petition for this order of compliance. Ms. Hacker spoke to the board stating that she felt her experiences

make her an even stronger therapist, person and educator. She has had the support of TCAF (Tennessee Colleague Assistance Foundation) all along. She has been strongly encouraged to apply for licensure as a psychologist which is her training. Dr. Moore asked going forward what she has in place concerning boundary issues to assist her with seeking guidance, consultation and support should any other boundary type situations arise? Ms. Hacker stated that there is always ethical and professional issues around boundaries with clients. She continually seeks counsel when needed from TCAF and is in close contact with them. She also has trusted peers and a supervisor, David Mathis, that she consults with regularly and her own recovery program that she follows. Mr. Anderson sought clarification of her current license. She stated she is a psychological examiner currently. Ms. Morgan stated that the office of general counsel supports granting her the petition based on the affidavit from Lori Leonard as well as the compliance letters from TCAF. Ms. Morgan provided a proposed order in the event the board chooses to lift the probation from her license. Dr. Douglas called for a motion for the order granting her petition for an order of compliance. Dr. Moore made the motion to approve the order granting the petition, seconded by Dr. Staab. A vote was taken and the motion carried.

Tennessee Psychological Association

Dr. Pam Auble, TPA representative, gave an update on PsyPact. She presented a document from PsyPact informing the administrative staff what is needed to make PsyPact happen. The staffing impact and implementation is a description of what the impact of what PsyPact is going to be for the administrative staff in terms of administering it. The second document provided concerns a meeting from the director of practice. Each state has a director of practice and there is a meeting once a month all across the country including APA (American Psychological Association) representatives. There was a question-and-answer session with the PsyPact people in the last meeting which Dr. Auble attended. Denise Davis, director of practice, is retiring and TPA has voted Dr. Auble to replace Dr. Davis as director of practice. She did a summary of the questions and answers that she thought the board would be interested in or that relate to the administrative staff. She touched on several topics discussed at the question-and-answer session. She stated that each state gets a commissioner that represents that state in overall in PsyPact. That is something the board is going to have to do is pick a commissioner to represent TN as a PsyPact state. The commissioner can be a variety of things. It could be a licensing board member, it could be one of the board members, it could be another psychologist that the board of examiners appoints to do this. It even could be the administrator of the licensing board. She stated that it sounded like from their discussion that having a psychologist in the position as commissioner would actually be helpful because there's going to be issues of ethics and intricacies of psychological practice

Tennessee Colleague Assistance Foundation

Brian Wind, TCAF Executive Director, stated that the foundation has begun to see a little bit of an increase in call volume as the pandemic has evolved. Currently TCAF has two active contracts and one case that was recently closed. There are four administrative inquiries going on and two cases involving pre-advocacy. They continue to use their digital monitoring platform which has worked quite well. Their two active contracts have been very compliant with what they have been asked to do. TCAF continue to stay in touch with and maintain the support of TPA. TCAF has stayed within and under budget for various different reasons along the way of their grant contract.

He expressed their gratefulness to the board of examiners in psychology for the ongoing collaboration and support.

CE Policy

Ms. Morgan reminded the board of Dr. Auble's recommendation to put a CE Policy in place for the transition of the overlapping audit cycles of the old CE rules and the New CE Rules. She suggested to the board if they chose to adopt the policy to stay the adoption of the policy until the rules go into effect. Dr. Douglas called for a motion to adopt the overlapping CE policy. A motion to adopt was made by Mr. Anderson, seconded by Dr. Staab. A vote was taken and the motion carried. Dr. Douglas called for a stay of the adoption until the rules go into effect. Dr. Moore made a motion to stay the adoption until the new rules go into effect, seconded by Dr. Staab. A vote was taken and the motion carried.

Discuss other Board Business

Ms. Morgan stated that she is no longer the board's advisory attorney. She expressed her appreciation in getting to know the board and working with them. She formally introduced Jessica Turner as the board's new advisory attorney. Ms. Turner told a little about herself and expressed her excitement to work with the board.

Ms. Williams introduced Diana Hunley as the new director for the psychology board. Ms. Hunley spoke of her experience and her excitement to be a part of this board and to lend her assistance in any way that she can.

With no other Board business to discuss Mr. Anderson made a motion, seconded by Dr. Moore to adjourn at 11:00 a.m. A vote was taken and all were in favor. The motion carried.

Ratified by the Board of Examiners in Psychology on this the 9th day of September, 2021.