

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS



EXECUTIVE DIRECTOR
Darrel D. Spinks

Texas State Board of Examiners of Psychologists

MINUTES

November 10, 2016

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Lou Ann Todd Mock, Ph.D., Vice Chair
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John R. Huffman, J.D.
Southlake

Leslie D. Rosenstein, Ph.D.
Dallas

The Texas State Board of Examiners of Psychologists met in Austin, Texas on November 10, 2016. The following Board members were in attendance: Tim Branaman, Ph.D., Chair; Jeffrey Baker, Ph.D.; Donna L. Black, M.A.; Jo Ann Campbell, M.S.; Carlos Chacón; Angela A. Downes, J.D.; John R. Huffman, J.D.; Lou Ann Todd Mock, Ph.D., Vice-Chair; and Leslie Rosenstein, Ph.D. Also in attendance were Darrel Spinks, Executive Director; and Brian Creath, Deputy Executive Director.

Thursday, November 10, 2016

1. The meeting was called to order at 9:00 a.m. by Dr. Branaman.
2. The Board moved into Item II, Public Comments - no comments.
3. The Board moved into Item III, Minutes.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE MINUTES OF THE AUGUST 18, 2016 BOARD MEETING. THE VOTE WAS APPROVED UNANIMOUSLY.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE CERTIFIED AGENDA. THE VOTE WAS APPROVED UNANIMOUSLY.

333 Guadalupe, Suite 2-450, Austin, Texas 78701
(Administration) 512-305-7700 (Enforcement) 512-305-7709 (TDD) 1-800-735-2989
(Fax) 512-305-7701 <http://www.tsbep.texas.gov>

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4. The Board moved into Item IV, Chair's Report - Dr. Branaman.
 - A. Mr. Spinks updated the Board regarding the Sunset process.
 - i. Review of staff report:
 - a. The report has consumed a lot of office and personnel time, however the gathering stage is complete.
 - b. Preparation of response for the December 8th and 9th Sunset testimony. Agency staff will have 10 minutes to give their presentation and the public will have 3 minutes to comment. Dr. Branaman will be out of state, so Dr. Mock will represent the Board at the hearing. The staff report sets out four main issues: elimination of the oral exam; elimination of the year of post-doctoral supervision; consolidation; and the lack of a practice definition.
 - c. Mr. Spinks discussed the proposed agency response he prepared with the Board. This proposed response covered the oral exam issue; the post-doctoral year of supervision issue, the recommendation effectively eliminating the agency's Enforcement Committee, the future of provisional license holders, the consolidation issue, and the proposed solution for addressing the lack of a practice definition.

AFTER MUCH DISCUSSION A MOTION WAS MADE BY MR. CHACÓN AND SECONDED BY MS. DOWNES TO APPROVE THE RESPONSE RECOMMENDATION WITH CHANGES. THE VOTE WAS APPROVED UNANIMOUSLY.

The Board recessed for a break at 10:33 a.m.

The Board reconvened at 10:47 a.m.

- ii. Discussion and Approval of Suggested Changes to Section 501.003, Occupations Code:
 - a. The Board reviewed all public comments submitted, together with additional suggestions from the ad hoc committee and agency staff.

- b. Changes were made to the advisory recommendations regarding the definition of psychology.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE RECOMMENDATIONS WITH CHANGES. THE VOTE WAS APPROVED UNANIMOUSLY.

- 5. The Board moved into Item VIII, Compliance Committee - Ms. Black.

- A. Request for Early Release from Practice Monitor Requirement - Richard Boone, Ph.D.

- i. Mr. Jason Danowsky attorney for Richard Boone, Ph.D. submitted a petition for relief of the agreed order of eligibility to the Board.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. CAMPBELL TO APPROVE THE EARLY RELEASE FROM THE AGREED ORDER. THE MOTION CARRIED WITH MS. DOWNES AND MR. CHACÓN OPPOSING THE VOTE AND DR. BAKER AND DR. ROSENSTEIN ABSTAINING FROM THE VOTE.

- 6. The Board moved into Item IV, Chair's Report - Dr. Branaman.

- A. The Board decided to support the PsyPact Compact and address this in our response to the Sunset staff report.

A MOTION WAS MADE BY DR. BAKER AND SECONDED BY MR. CHACÓN TO ENDORSE THE PSYPACT AND INCLUDE IT IN OUR RESPONSE TO SUNSET. THE VOTE WAS APPROVED UNANIMOUSLY.

- B. Dr. Baker updated the Board on items discussed at the ASPPB meeting held in Baltimore, MD.

- i. ASPPB is updating their strategic plan, which will include an analysis of where there is a shortage of psychologists.
- ii. Talked about the anti-regulatory climate. A lot of threat to regulatory Boards. Canada is having the same issues.
- iii. Mr. Spinks spoke about the Serafine case and the effect it has had on Texas and the work being done on the practice definition.
- iv. EPPP Competency exam expected around 2019. ASPPB will probably look for states to pilot this program.

- v. Sharon Lightfoot from the Missouri Board was recently voted as the new president.
 - C. Mr. Spinks discussed the Model Act and Rules Committee.
 - i. Review of all rules was completed in August or September 2016.
 - D. Dr. Branaman stated that the ASPPB Mid-year meeting will be held in Memphis, TN in April 2017.
7. The Board moved into Item V, Executive Director's Report - Mr. Spinks.
- A. Mr. Spinks discussed operational issues:
 - i. Shared database updates, no issues. We did have a meeting with Micropact to narrow down issues that other agencies might have and also establish a way for applicants to track their application status.
 - ii. No issues or updates on the NPDB reporting, HB 300 reporting or the fingerprint criminal history reporting.
 - iii. Memorandum of Understanding between the Board and Texas Health and Human Services Commission that is statutorily required.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. DOWNES TO APPROVE THE MEMORANDUM OF UNDERSTANDING. THE VOTE WAS APPROVED UNANIMOUSLY.

- B. The Board reviewed Newsletter Article:
 - i. New Lower Fee for Applicants Applying Through the ASPPB Plus System.

A MOTION WAS MADE BY MS. BLACK AND SECONDED BY MR. CHACÓN TO APPROVE THE NEWSLETTER ARTICLE. THE VOTE WAS APPROVED UNANIMOUSLY.

- C. No policies were presented for adoption or change.

- D. The Board reviewed the Amicus Curae brief filed by FTC in *Teladoc, Inc. v. Texas Medical Board*. The Medical Board has dropped their appeal.
 - E. The Board reviewed the OAG Opinion No. KP-0115 regarding Deference to Agency Interpretations of Statutes.
 - F. Mr. Spinks updated the Board regarding the 2016 Biennial Legislative Communications Conference.
8. The Board moved in Item VI, Rules Committee - Dr. Branaman.

A. The Board reviewed the Proposed Rule(s):

- i. 463.11, Licensed Psychologist.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE PROPOSED AMENDMENT. THE VOTE WAS APPROVED UNANIMOUSLY.

- ii. 469.13, Non-Compliance with Continuing Education Requirements.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE PROPOSED REPEAL. THE VOTE WAS APPROVED UNANIMOUSLY.

- iii. 471.1, Notification of Renewal.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE PROPOSED REPEAL. THE VOTE WAS APPROVED UNANIMOUSLY.

- iv. 471.1, Notification of Renewal.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY DR. ROSENSTEIN TO APPROVE THE NEW BOARD RULE. THE VOTE WAS APPROVED UNANIMOUSLY.

B. The Board reviewed the Adopted Rule(s):

- i. 461.11, Professional Development.

A MOTION WAS MADE BY MS. BLACK AND SECONDED BY DR. MOCK TO APPROVE THE ADOPTED AMENDMENT. THE VOTE WAS APPROVED UNANIMOUSLY.

- ii. 463.11, Licensed Psychologist.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE ADOPTED AMENDMENT. THE VOTE WAS APPROVED UNANIMOUSLY.

iii. 465.38, Psychological Services for Public Schools.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE ADOPTED AMENDMENT. THE VOTE WAS APPROVED UNANIMOUSLY.

iv. 471.5, Updated Information Requirements.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE ADOPTED AMENDMENT. THE VOTE WAS APPROVED UNANIMOUSLY.

9. The Board moved into Item VII, Enforcement Committee - Dr. Baker and Ms. Black.

A. Ms. Barber presented dismissals for Board ratification:

i. 16.168

A MOTION WAS MADE BY MS. BLACK AND SECONDED BY DR. MOCK TO APPROVE THE DISMISSAL. THE VOTE CARRIED WITH DR. BAKER, MS. CAMPBELL AND MR. CHACÓN RECUSED FROM VOTING.

ii. 17-004;

iii. 16-223;

iv. 16-201;

v. 16-188;

vi. 16-175;

vii. 16-224;

viii. 16-205;

ix. 16-171;

x. 16-227;

xi. 17-028;

- xii. 16-224;
- xiii.16-244;
- xiv. 16-125;
- xv. 16-186;
- xvi. 16-221;
- xvii.16-220; and
- xviii.16-219

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE DISMISSALS. THE VOTE WAS APPROVED UNANIMOUSLY.

- B. Ms. Barber reviewed the Status Report.
- C. Ms. Barber discussed the Projected Time Schedule.
- D. February 2017 ISC attendees will be Mr. Chacón, Dr. Mock and Dr. Rosenstein.
- E. May 2017 ISC attendees will be Dr. Mock, Ms. Black and Ms. Downes.
- F. August 2017 ISC attendees will be Dr. Baker, Ms. Campbell and Mr. Huffman.
- G. November 2017 ISC attendees will be Dr. Branaman, Ms. Campbell and Mr. Chacón.
- H. Mr. Spinks presented the Agreed Orders for the Board's approval:
 - i. The Board reviewed Agreed Order No. 2016-00012-10184, in the matter of Mary Vella Cunningham, Ph.D.

A MOTION WAS MADE BY MR. CHACÓN AND SECONDED BY MS. CAMPBELL TO APPROVE THE AGREED ORDER. THE VOTE WAS APPROVED UNANIMOUSLY.

- ii. The Board reviewed Agreed Order No. 2017-00024-9875, in the matter of George C. Manning, M.S.

A MOTION WAS MADE BY MS. BLACK AND SECONDED BY MR. CHACÓN TO APPROVE THE AGREED ORDER. THE VOTE WAS APPROVED UNANIMOUSLY.

iii. The Board reviewed Agreed Order No. 2016-00202-10607, in the matter of Virginia Shannon Burkett, Ph.D.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MS. BLACK TO APPROVE THE AGREED ORDER. THE VOTE CARRIED WITH DR. BRANAMAN, MS. DOWNES, AND MS. CAMPBELL RECUSED FROM VOTING.

iv. The Board reviewed Agreed Order No. 2011-00191-418 and 11-135-2462, in the matter of Raymond F. Finn, Ph.D.

A MOTION WAS MADE BY MR. CHACÓN AND SECONDED BY MS. BLACK TO APPROVE THE AGREED ORDER. THE VOTE CARRIED WITH DR. BRANAMAN, MS. CAMPBELL, MS. DOWNES, AND MR. HUFFMAN RECUSED FROM VOTING.

v. The Board reviewed Agreed Order No. 2016-00189-4017, in the matter of David Boniface Hensley, Ph.D.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE AGREED ORDER. THE VOTE WAS APPROVED UNANIMOUSLY.

vi. The Board reviewed Agreed Order No. 2016-00191-10753, in the matter of Mary Elizabeth Marin, Ph.D.

A MOTION WAS MADE BY DR. MOCK AND SECONDED BY MR. CHACÓN TO APPROVE THE AGREED ORDER. THE VOTE CARRIED WITH DR. BRANAMAN, MS. CAMPBELL AND MS. DOWNES RECUSED FROM VOTING.

vii. The Board reviewed Agreed Order No. 2016-00100-5894, in the matter of Nilsa S. Colon Ortiz, Ph.D.

A MOTION WAS MADE BY MR. CHACÓN AND SECONDED BY MS. BLACK TO APPROVE THE AGREED ORDER. THE VOTE WAS APPROVED UNANIMOUSLY.

viii. The Board reviewed Agreed Order No. 2016-00241-14312, in the matter of Ernest Michael Valenzuela, III, Psy.D.

A MOTION WAS MADE BY MS. BLACK AND SECONDED BY DR. MOCK TO APPROVE THE AGREED ORDER. THE VOTE CARRIED WITH MS. CAMPBELL AND DR. ROSENSTEIN RECUSED FROM VOTING.

I. The Board reviewed the cumulative disciplinary data and charts.

10. The Board moved into Items IX, Legal Matters/General Counsel Report.

- A. Mr. Spinks updated the Board regarding Cause No. 03-130-00077-CV TX State Bd. Of Marriage and Family Therapists, et al v. Texas Medical Association, et al, 3rd COA, Austin, Texas. Oral arguments were heard in the Texas Supreme Court. Mr. Spinks expressed hope that the Supreme Court will reverse the lower court.

- 11. The Board moved into Item X, Legislative Committee - Ms. Downes - no items to discuss.

- 12. The Board moved into Item XI, Budget Committee - Dr. Branaman.
 - A. Mr. Spinks reviewed the 4th Quarter Performance Measures.

 - B. Mr. Spinks reviewed the Year-To-Date financials.

 - C. Mr. Spinks stated that the agency received the approval letter to transfer \$30,000 of unexpended monies from FY 2016 to FY 2017.

 - D. Mr. Spinks reviewed the written testimony submitted at the August 23rd LBB Joint Budget Hearing.

 - E. Mr. Spinks sent out an email requesting letters of support from our associations.

- 13. The Board moved into Item XII, Written Examination Committee - Dr. Mock. - no items to discuss.

- 14. The Board moved into Item XIII, Oral Examination Committee - Drs. Rosenstein and Baker - no items to discuss.

- 15. The Board moved into Item XIV, Technology Committee - Mr. Chacón.
 - A. Mr. Chacón reviewed the online renewal statistics.

- 16. The Board moved into Item XV, Applications Committee - Dr. Rosenstein - no items to discuss.

- 17. The Board moved into Item XVI, Personnel Committee - Ms. Campbell.
 - A. Mr. Spinks reviewed the State Auditor report regarding Executive Compensation at State Agencies.

 - B. Ms. Kelly Espeseth is the new Renewal Coordinator.

 - C. General Counsel and Enforcement Assistant are vacant.

18. The Board moved into Item XVII, Customer Service Committee - Mr. Huffman - no items to discuss.
19. The Board moved into Item XVIII, Future Issues and Other Requested Agenda Items - no items to discuss.
20. The Board moved into Item XIX, Executive Session, pursuant to Tex. Gov't Code Ann. §551.071; §501.402 and 22 Tex. Admin. Code, Pt. 21, §469.6 at 12:32 p.m.
21. The Board returned from Executive Session at 12:44 p.m.
22. The Board moved into Item XX, Action on matters considered in Executive Session - no items to discuss.
23. The meeting was adjourned at 12:44 p.m. by Dr. Branaman.