

**THE VIRGINIA BOARD OF SOCIAL WORK
MINUTES
Friday, December 5, 2014**

The Virginia Board of Social Work ("Board") meeting convened at 10:11 a.m. on Friday, December 5, 2014 at the Department of Health Professions, 9960 Mayland Drive, Richmond, Virginia. Jennifer Blosser, Chair called the meeting to order.

BOARD MEMBERS PRESENT: Jennifer Blosser
Maria Eugenia del Villar
Yvonne Haynes
Dolores Paulson
Nettie Simon-Owens
Bernadette Winters
Kristi Wooten

BOARD MEMBERS ABSENT: John Salay
Joseph Walsh

DHP STAFF PRESENT: Catherine Chappell, Executive Director
Sarah Georgen, Licensing Manager
Jaime Hoyle, DHP Chief Deputy Director
Charlotte Lenart, Licensing Specialist
Elaine Yeatts, Senior Policy Analyst

BOARD COUNSEL: James Rutkowski, Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With seven members of the Board present, a quorum was established.

MISSION STATEMENT: Ms. Blosser read the mission statement of the Department of Health Professions, which was also the mission statement of the Board.

ORDERING OF AGENDA: Ms. Chappell requested that the agenda be amended to reflect that Ms. Hoyle would present the Director's Report in Dr. Brown's absence. The agenda was accepted as amended.

PUBLIC COMMENT: Joseph Lynch, Virginia Society for Clinical Social Work provided public comment (attachment no. 1).

APPROVAL OF MINUTES: Upon a motion by Dr. Simon-Owens, which was properly seconded by Dr. Winters, the meeting minutes from April 25, 2014 were approved as written.

**CHIEF DEPUTY DIRECTOR'S
REPORT:**

Ms. Hoyle provided an update on agency activities which included the recent elimination of DHP's in-house human resources department. She indicated that the Department of Human Resources Management had assumed the human resources responsibilities for DHP. Additionally, Ms. Hoyle reported on DHP's participation in the Governor's task force to address the rise in substance abuse in Virginia. She reported that the next meeting would be held on December 16, 2014 with the goal to provide recommendations for possible legislative action at the General Assembly in 2015.

**REGULATORY/LEGISLATIVE
UPDATE:**

Ms. Yeatts offered an update on regulatory action in process for the Board. She anticipated that the Board would consider comment and adopt final regulations at the February 2015 meeting.

Ms. Yeatts presented Guidance Document 140-1 for review by the Board. She noted that the Board may want to consider adding language on unlicensed practice should the Board adopt the new guidance documents that she would be presenting.

Ms. Yeatts presented a recommendation from staff to the Board to revise Guidance Document 140-2 to clarify language relating to misdemeanor convictions. Upon a motion by Ms. Wooten, properly seconded by Ms. Haynes, the Board revised the document.

Ms. Yeatts presented staff suggested revisions of Guidance Document 140-4.2 regarding possible disciplinary action for non-compliance with continuing education requirements. Upon a motion by Dr. Simon-Owens, and properly seconded by Ms. Wooten, the Board revised the document accordingly. Dr. Simon-Owens asked staff to report the outcomes of the 2015 continuing education audit under the revised guidance document when available.

Ms. Yeatts presented a proposed guidance document regarding the disposition of disciplinary cases involving practice under an expired license for board consideration. Upon a motion by Dr. Paulson, which was properly seconded by Ms. Haynes the Board adopted the guidance document, with one member opposing (Ms. Wooten).

Ms. Yeatts presented a proposed guidance document regarding the disposition of applicant cases involving practice without a license.

Upon a motion by Dr. Simon-Owens, and duly seconded by Ms. Wooten, the Board accepted the amended document. Amendment was made to require those individuals who practiced without a license longer than five years to attend an informal conference. Further, the document was amended to require payment of a monetary penalty equal to the renewal fee(s) for the number of years of unlicensed practice rounded up to the next renewal date, for those individuals practicing without a license less than five years.

With respect to Guidance Document 140-1, the Board amended the document to allow the use of a Confidential Consent Agreement for specific unlicensed practice in accordance with the newly adopted guidance documents.

**EXECUTIVE DIRECTOR'S
REPORT:**

Ms. Chappell referenced her report which was included in the Board meeting packet, but offered updates since the report was written. She advised that two board members were unexpectedly absent but that sufficient quorum existed in order for the Board to render decisions.

She provided an overview of changes since the Board last met in April 2014, including changes in administration at DHP, board counsel, and staffing. She welcomed the new board members and gave each board member a lapel pin to signify their participation on the Board. She presented a letter from former board chairperson, Susan Horne-Quatannens.

Ms. Chappell noted that she was schedule to speak at Catholic University, in conjunction with the Greater Washington Society for Clinical Social Work, as well as, to VSCSW Chapters in Roanoke, Tidewater, and Richmond in the next six months.

With respect to staffing, Ms. Chappell advised that she planned to announce the name of the new deputy, who would be joining the three behavioral sciences boards, in the next few days. She thanked Ms. Georgen for her leadership in managing the disciplinary cases for the three boards over the past three months in the interim.

**DISCIPLINE/SPECIAL
CONFERENCE COMMITTEE
REPORT:**

Ms. Georgen noted that the discipline report was included in the Board meeting packet for reference.

LICENSURE ACTIVITY:

Ms. Georgen noted that her licensure activity report was included in the Board meeting packet as well. She commented that applicant satisfaction survey results had increased to 92% in the last quarter. The board members expressed their appreciation to her for her leadership of the day-to-day board operations and her excellent work in facilitate the meeting that day.

**BOARD OF HEALTH
PROFESSIONS REPORT:**

Ms. Haynes noted that her report was included in the Board meeting packet.

**ASWB NEW BOARD MEMBER
TRAINING REPORT:**

Ms. Chappell noted that Mr. Salay's report was included in the Board meeting packet. She encouraged other board members who had not yet participated in an ASWB training to consider attending one of the three training events in 2015. Dr. Winters planned to attend the training in March 2015. The ASWB provided full funding for board member travel for their training opportunities.

ASWB ANNUAL MEETING:

Ms. Blosser noted that her report was included in the Board meeting packet. She had represented the Board at the ASWB Annual Meeting in Boise, Idaho. The ASWB provided full funding for Ms. Blosser travel and participation in the annual meeting.

NEW BUSINESS:

The Board agreed to meet for the quarterly Board meetings on February 20, 2015; April 24, 2015; July 24, 2015; and October 23, 2015.

The Board reviewed the Committee assignments for the 2015 calendar. Dr. Winters agreed to remain as the chair of the Regulatory Legislative Committee and Dr. Paulson asked to be added to that committee. Ms. Blosser stated that she would be able to remain on the Special Conference Committee. Ms. Blosser appointed Ms. Haynes as the chair of the Special Conference Committee. All other assignments remained unchanged.

EXECUTIVE SESSION:

Dr. Paulson moved that the Board of Social Work convene in closed meeting pursuant to §2.2-3711(A) (7) and (27) of the Code of Virginia in order to consider recommended decisions from the Credentials Informal Conference Committee. She further moved that Catherine Chappell, James Rutkowski, and Sarah Georgen attend the closed meeting because their presence in the closed meeting was deemed necessary and they would aid the Board in its consideration of the matters. The motion was seconded and carried.

RECONVENE:

Dr. Paulson moved that pursuant to §2.2-3712 of the Code of Virginia, that the Board heard, discussed, or considered only those public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act and only such public business matters as identified in the original motion. The Committee agreed unanimously.

Jennifer Assenza. The Informal Conference Committee concluded that Jennifer Assenza, L.C.S.W. Applicant, failed to satisfy the requirements of 18VAC140-20-50(A)(2) of the regulations which govern the practice of social work, and recommended that her application for licensure by examination be denied.

Mary Davis. The Informal Conference Committee concluded that Mary Davis, L.C.S.W. Applicant, failed to satisfy the requirements of 18VAC140-20-50(B), 18VAC140-20-10, 18VAC140-20-50 and 18VAC140-20-49 of the regulations which govern the practice of social work, and recommended that her application for licensure by examination be denied.

Susan Dever. The Informal Conference Committee concluded that Susan Dever, L.C.S.W. Applicant, violated § 54.1-3706 of the Code of Virginia and 18VAC140-20-160(8) of the regulations which govern the practice of social work and failed to satisfy the requirements of 18VAC140-20-45(4), and recommended that her application for licensure by examination be denied.

Belinda Greene. The Informal Conference Committee concluded that Belinda Greene, L.C.S.W. Applicant, failed to satisfy the requirements of 18VAC140-20-50(A), 18VAC140-20-50(A)(2)(a) and 18VAC140-20-50(A)(2) of the regulations which govern the practice of social work, and recommended that her application for licensure by examination be denied.

Edward Tungol. The Informal Conference Committee concluded that Edward Tungol, L.C.S.W. Applicant, failed to satisfy the requirements of 18VAC140-20-50(B)(1) of the regulations which govern the practice of social work, and recommended that his application for licensure by examination be denied.

Ms. Wooten moved to accept the Informal Conference Committee recommendations as presented. The motion was properly seconded and carried.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 12:34 p.m.

Jennifer Blosser, Chair

Catherine Chappell, Executive Director

Date

Date



Virginia Society for Clinical Social Work

Joseph G. Lynch LCSW, CSOTP

December 5, 2014

Public Comment to the Virginia Board of Social Work

1. Proposed Regulation to Increase fees and shift to annual renewal:

The VSCSW understands that the VBSW proposed change in regulations to increase fees is primarily in response to the board complying with the Code of Virginia §54.1-113. The proposal to change to an annual renewal makes sense in terms of managing cash flow for the operation of the board's activities.

In reviewing the "Agency Background Document" regarding the proposed regulatory changes it is clear that there were two factors that impacted the expenses of the board.

- The first was the Northrop-Grumman contract through the Virginia Information Technology Agency that has caused IT cost to go from \$850,000 in FY2005 to 4.4 million in FY 2012.
- The second was the Budget Bill of 2010 that allowed \$11,818 that was collected by the VBSW as licensing fees to be transferred to the General Fund of the Commonwealth.

Neither of these two expenses was under the control of the VBSW.

I am particularly disturbed by the transfer of licensing fee monies to the General Fund. To me this amounts to a "back-door" taxation on licensed health care providers. §54.1-2400 specifically states that health regulatory boards have authority to "levy and collect fees that are sufficient to cover all expenses for the administration and operation" of the boards. Those licensing fee dollars are dedicated money for the purpose of the board operations. I strongly encourage the VBSW to voice to the Governor the board's opposition to the transferring of these dedicated monies to the general fund.

Another aspect of the proposed regulation that I found very disturbing has to do with the process. By my calculations the time from the filing of the "Notice of Intended Regulatory Action (NORIA)" by the VBSW (April 16, 2010) to the approval by the Governor was **1668 days**. As a former member and chair of the VBSW I can't recall any VBSW proposed regulation taking that amount of time to get to this point in the regulatory process. Most of that delay occurred due to Governor McDonnell not taking any action on the proposed regulation while he was in office. I find it very unfortunate that the attempt by the VBSW to comply with 54.1-133 and be fiscally responsible was delayed for such a long time.

2. Public comments that were submitted to the VBSW for the July 18, 2014 board meeting that was canceled.

1. Attached is public comment concerning the part of the VBSW regulations that require:

18VAC140-20-50. Experience requirements for a licensed clinical social worker. A.2.

b. Supervisees shall average no less than 15 hours per 40 hours of work experience in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

Newly graduated MSW's who are employed at entry level positions and are using that experience towards their LCSW supervised experience may have very little control over the number of hours of "face-to-face" client contact they are assigned to provide to clients for each 40 hours of work. The employer is most likely making that determination. It seems that if the MSW submits all of the 40 hours of work experience during a two year period they are unlikely to meet the standard of "no less than 15 hours per 40 hours".

In my written comments I present an example of a way an MSW applicant can submit only those 40 hours of work experience segments that have no less than 15 hours of face-to-face client contact. I believe they would be in compliance with the VBSW regulations to not submit weeks that had less than 15 hours of face-to-face client contact.

Given the report from the "Healthcare Workforce Data Center" that notes that nearly 30% of the LCSW workforce is expected to retire in the next 10 years it seems important for the VBSW to encourage MSW's to fill out their applications in such a manner as I have described so they will get through the application process more quickly.

3. June 26, 2014 letter to VBSW Chair Susan Horne-Quatannens:

I wanted to bring to the boards attention that when the opportunity occurs to conduct periodic review of the boards regulations as require by §2.2-4017 that the board consider two areas of the regulations that causes confusion.

- The first area is that the regulations actually use 5 different terms for "experience." When the opportunity presents itself it would be helpful for the board to assign one term for "experience" and use that term consistently in the regulations.
- The second area is "in the delivery of clinical social work services". It appears that the regulations are inferring that "clinical social work services" has two components:
 - The first component is "face-to-face" client contact hours.
 - The second component is "ancillary services"

These two components must total 3000 hours. The regulations state that the face-to-face component must have a "minimum of 1,380 hours". The "remaining" 1620 hours are spent delivering "ancillary services" that are "...supporting the delivery of clinical social work services" (18VAC140-20-50. Experience requirements for a licensed clinical social worker. A.2.b)

The problem arises in the wording and definitions. The regulations have definitions for "clinical social work services" and for "ancillary services" as noted below:

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Ancillary services" are not included in the definition of "Clinical social work services". For that matter "face-to-face client contact" is also not included in the definition of Clinical social work services. In one part of the regulations "ancillary services" are "supporting the delivery of clinical social work services" so they are therefore not actually clinical social work services. In another part of the regulations the applicant needs "a minimum of 3000 hours ...in the delivery of clinical social work services". But if it is not clearly defined in the regulations that the 3000 hours include two components "face-to-face" client contact and "ancillary services"

then it leaves the applicant to infer and draw conclusions as to what the regulations mean. It would just be helpful for the Board to make the definitions very clear about the two components of clinical social work services.

4. Should the VBSW have any regulations about LCSW's creating a "Professional Will"?

In Charlottesville VA in 2014 there was a licensed mental health provider who committed suicide. This death brought attention to concerns about mental health practitioners creating a "Professional Will." It is a fact that all LCSW's at some point in time will die. If the LCSW is in active practice when they die then the question arises "Did they prepare a "Professional Will" to deal with the issues that arise for their clients at the time of the professional's death?"

I began to explore this issue a bit and found professional literature that strongly recommended that each mental health provider develop a professional will and provides information on what areas need to be addressed and some gave sample Professional Will forms.

I found some state regulatory boards have developed regulations around the issue of a mental health provider being required to take steps that will address issues of client records, confidentiality, and client's being referred to other mental health providers for care in the event of a provider's death.

I brought with me a packet of materials for the board about this topic. The VSCSW recommends to the VBSW that they consider a study (perhaps in collaboration with the Boards of Psychology and Counseling) to explore if there is any need for the development of regulations dealing with licensed mental health providers taking steps to prepare for their clients' needs upon the provider's death.



VSCSW, 10106-C Palace Way
Henrico VA 23238

December 5, 2014

**All LCSW's, LCP's and LPC's will die.
We don't know when but we do know that death is a foreseeable outcome**

When we know that an outcome is foreseeable and that it may have harmful consequences to our clients then part of our professional fiduciary duty is to take steps to mitigate the harm to our clients. Our death is a foreseeable outcome for each of us. There are several "harms" that can happen to our clients:

- Clinical issues are not being treated
- New issues of dealing with loss, sense of abandonment and confusion about what next steps to take to deal with treatment.
- What will happen to my records?
- Who do I contact with any questions I have about my records or treatment?

The professional literature has noted this issue and made suggestions that a responsible action to take is to develop a "Professional Will" (See Frederick Reamer "Eye on Ethics" August 2013 and American Psychological Association "Professional Will: A Responsible Thing To Do, February 2003, Vol 34, No. 2).

Reamer notes that this issue is addressed in the NASW Code of Ethics as follows:

"Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death" (standard 1.15).

Also several states have enacted legislation or administrative regulations that address the issues that arise when there is the death of a therapist. For example Florida regulations state:

64B19-19.004 Disposition of Records Upon Termination or Relocation of Psychological Practice.

(1) "When a licensed psychologist terminates practice or relocates practice and is no longer available to service users in the practice area, the licensed psychologist shall provide notice of such termination or relocation of practice...."

(2) "The executor, administrator, personal representative or survivor of a deceased licensed psychologist shall ensure the retention of psychological records in existence upon the death of the psychologist for a period of at least two (2) years and two (2) months from the date of the licensed psychologist's death...."

Specific Authority 456.058, 490.004(4) FS. Law Implemented 456.058 FS. History—New 8-12-90, Formerly 21U-22.004, Amended 6-14-94, Formerly 61F13-22.004, 59AA-19.004, Amended 9-18-97.

The Oregon Board of Psychologist Examiners, Administrative Rules Chapter 858 state:

858-010-0060 Psychological Records

(3) Oregon licensees shall name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacity of the licensee or if the licensee is inactive or has resigned and the former client is unable to locate the licensee.

(4) A "qualified person" under this rule means an active or semi-active Oregon licensed psychologist.

The Oregon Board provides:

- *Quality Person Designation Form*
- *Guidelines for preparing your Professional Will*
- *A sample professional will*
- *PRID Executor Checklist*

The New York Office of the Professions published "When Practice ceases-Temporarily or Permanently" that highlights regulatory requirements concerning:

- Patient Confidentiality
- Patient/client Records
- Confidentiality and the Transfer of Records
- Patient/client Abandonment

RECOMMENDATION:

The VSCSW ask that the Virginia Board of Social Work (possibly in collaboration with the Board of Counseling and Board of Psychology) consider a study to explore the need to develop regulations addressing the need to protect Virginia citizens by requiring Licensed Behavioral Health Professionals to develop a 'Professional Will.'

(SEE ATTACHMENTS FOR REFERENCE)