

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

BOARD OF PROFESSIONAL COUNSELORS
JANUARY 21-22, 2016
MINUTES OF MEETING

By authority of AS 08.01.070(2) and AS 08.95.020, and in compliance with the provisions of AS 44.62, Article 6; a scheduled meeting of the Board of Professional Counselors was held in Anchorage, Alaska, at 550 W. 7th Avenue.

Thursday, January 21, 2016

Call to Order/Roll Call 9:34 A.M.

Board members present, forming a quorum of the Board, were:

Anne Brainerd, Licensed Professional Counselor, Chair
Stephanie Johnson, Licensed Professional Counselor
Lyn Tashea, Licensed Professional Counselor
Lillian Mitchell, Public Member

Excused – Debra Hamilton, Licensed Professional Counselor

Present from the Division of Corporations, Business, and Professional Licensing at various times were:

Sonia Lipker, Probations Monitor/ Investigator
Brian Howes, Investigator
Renee Hoffard, Licensing Examiner

Ethics Reports

There were no ethics violations to report.

Agenda Item 1 Review Agenda

The Board reviewed the agenda:

On a motion duly made by Lyn Tashea, seconded by Stephanie Johnson, and passed unanimously, it was

RESOLVED to accept the agenda as amended:

Correct Date page 1 to September 24.

Agenda item # 11 New Business; Addition “F” Impaired Professionals Program.

The Board chose to discuss Agenda Item 11 “F” Impaired Professionals Program
Chair Brainerd brought up the idea of implementing an Impaired Professionals Program as a way for the board to work proactively with licensees that are in situations that could result in disciplinary actions if left unchecked. Florida and Louisiana are two states that currently have this type of program; Renee was tasked to gather more information about the programs from those states. The board felt that the program has potential to work within Alaska but needed more information.

Agenda Item 3 CACREP Liaison

- A. Dr. Valerie Gifford, Dr. Sue Renes and Heather Dall from University of Alaska, Fairbanks called into the meeting to give the board a status update on their progress with the CACREP accreditation process. UAF has reconvened for the semester and the staff is working on the self-study requirement. The goal is to submit the self-study June 30, 2016. This involves evaluating the scope and sequence of the curriculum. The syllabi is being moved toward 2016 CACREP standards. The board asked if the faculty was going to be impacted by the current fiscal state and was reassured that the university is in full support of the program’s efforts regarding CACREP. There are certain requirements regarding ratio of core faculty to students that will need to be considered; the current solution is that core faculty may be required to teach more classes. The program was able to add an instructor this year. The faculty does want to be mindful of any changes to TRICARE. LPC’s are allowed to practice independently under TRICARE until 2021. The faculty is committed to keeping the students informed of changes that may impact them. Stephanie Johnson asked if there would be any changes to the residence requirements as the program moves toward CACREP accreditation. Dr. Gifford assured the board that she was not aware of any changes that would need to be made; CACREP currently accredits programs that are completely based online. The faculty is working hard to maintain the commitment the program has to distance students. Renee will continue to have this agenda item on future meeting agendas.

Agenda Item 4 Investigator Report

Investigator Lipker met with the Board and gave the Investigations Report. As of September 3, 2015 through December 31, 2015 there were 18 matters opened and 16 closed. A total of 5 matters remain ongoing and under review. The Board has 1 probationer at this time; that individual is in compliance and is currently on track to complete probation before the next scheduled board meeting.

Chair Brainerd thanked Investigator Lipker for her hard work and the board appreciated the speed at which matters are reviewed. Investigator Lipker exited the meeting.

Agenda Item 5 Division Update

Division Director Janey Hovenden and Administrative Assistant Martha Hewlett joined the meeting telephonically to provide the division update and financial report.

Martha explained that the board would be reviewing the FY15 end of year report and the 1st quarter report for FY16. She informed the board that the reports would be different due to the State’s transfer from ACCESS to IRIS, the new accounting system. She then proceeded to review the financial reports with the board; due to the increased fees, the board is in position to reduce the current deficit before the next renewal cycle and fee analysis.

Director Hovenden explained that with the current fiscal situation of the State, the board would be expected to adhere to the Governor's travel freeze. The situation is still being evaluated and more changes may come later on. At this time the Division has been granted a waiver for board travel; this does entail additional scrutiny to travel. One requirement may be that any in-person meetings must have a summary of achievements completed at the end of the meeting which would state the purpose and end result of the meeting; which would justify the meeting taking place.

Chair Brainerd stated that due to the program being receipt supported the board feels that the travel restrictions could hamper the board's commitment to public safety and access to educational opportunities at national conventions. Travel to conferences keeps the board aware of issues that are affecting licensees nationwide and could provide the State of Alaska Board information which would allow the Board to be proactive in proposed regulations rather than having to be reactive in emergency type situations. Director Hovenden stated the Governor's office is aware the Division is receipt funded but the Division is expected to adhere to the travel restrictions. Renee was asked to keep the Board informed of any changes to the travel policies as soon as possible.

Agenda Item 6 Conference Reports

A. Alaska Counseling Association – Liaison Lyn Tashea

At this time there has still been no response from AkCA regarding requests from the board for AkCA to attend a meeting either in person or telephonically. The board has invited AkCA to board meetings via email and postal mail multiple times over the past year with no results. Lyn will continue to reach out to the Board of AkCA in an attempt to work in collaboration with them on statute changes the program will need in the future.

B. AASCB Annual Conference – Anne Marie Brainerd and Renee Hoffard

Renee thanked the board for voting to send her to the AASCB annual conference; she found a wealth of information and made several contacts in other states. One session Renee attended was the administrator's forum the first day of the conference; each state that attended was asked to tell everyone one thing that their program was proud of from the past year and one thing their program is having problems with. Renee shared that the new database which allows for faster processing of application and faster turnaround times as what the program is proud of over the past year. The item the program is having trouble with is the defunct state organization, AkCA; the organization is needed to help the program get legislation introduced and passed. Many of the state's present considered their program's problem to be supervision – supervisor's not being trained correctly or at all and supervisees not submitting required documents.

Renee also attended a break-out session led by ACA's Erin Shifflett regarding the top 10 complaints ACA receives from licensees and applicants. The number one complaint is communication; there are countless complaints that when licensees and applicants attempt to contact their states licensing program they never get a response. Renee feels this is not a concern with Alaska due to the Division's policies and her supervisor's expectations. Renee has 48 hours to respond to email or voice messages and has had no problem meeting those requirements.

Chair Brainerd expressed her impression of key speaker Dale Atkinson, an attorney who has represented numerous licensing programs. His key point was to remind boards they are here to ensure safe practices and ultimately for public protection – the boards are not Professional Counselors on a board, they are board members with knowledge of counseling. He discussed the use of "shall vs. may" when drafting regulations, "shall" makes the regulation mandatory. The board needs to be mindful of the appearance of conflict of interest; emails should never be sent to work email addresses as that makes all work emails at risk of being "discoverable" in the event of litigation. One item he discussed was revocation; is revocation permanent or can licenses be

reinstated. His recommendation is that when possible boards should suspend licenses as it gives them oversight on any continued activity such as counselors engaging in life coaching.

Chair Brainerd mentioned that some states have board newsletters that keep licensee informed as to what the board is working on; the board's website is kept current and at this time meeting minutes are sufficient to keep the public notified. Florida currently charges each licensee \$5.00; that money is placed into a fund to pay for commercials and media use for the program to advertise.

On the subject of distance counseling, some states have a "Foreign Practitioner" license which distance counseling falls under. Organizations such as the Red Cross are permitted to provide emergency services without being licensed in the state where the emergency is located. States with distance counseling provisions should encourage licensees to ensure any problems with technology are addressed in their informed consent statements. Specialty training in distance counseling is available and recommended for licensees.

On a motion duly made by Stephanie Johnson, seconded by Lillian Mitchell, and passed unanimously, it was

RESOLVED to break for lunch:

Off the record at 12:05 pm

Back on the record at 1:33 pm

Board Member Debra Hamilton joined the meeting at the return from lunch. She had no ethics to report.

Agenda Item 7 Old Business

A: Review of meeting minutes:

On a motion duly made by Debra Hamilton, seconded by Stephanie Johnson, and passed unanimously, it was

RESOLVED that the Board September 2015 meeting minutes as amended.

Renee to provide corrected minutes for signature Friday, January 22, 2016.

B: Update for the Mental Health Board Summit:

Renee informed the board that there has not been an update; the Psychology Board that is organizing the summit is scheduled to meet January 28-29, 2016. She will ask the examiner for that program for an update upon their return to the office. She will notify the board once she receives the update.

C: Legislative Contact:

Debra and Lyn are drafting a letter to be sent to various representatives; the letter will be sent to Anne for approval before being mailed to representatives.

Agenda Item 8 Public Comments

There was no public comment.

Agenda Item 9 Application Review

The Board reviewed 9 applications for licensure, 7 applications to be a Board Approved Supervisor, 1 continuing education provider's approval request, 5 requests for Alternate Supervision Plans, and 1 reinstatement.

On a motion by Stephanie Johnson, seconded by Lyn Tashea, and approved unanimously it was

RESOLVED to approve the following list of applications with the stipulation that the information in the applicants' files will take precedence over the information in the minutes:

PROFESSIONAL COUNSELOR – EXAM

- **Brandenburg, Bryan**
- **Dunavant, Katherine L.**
- **Holmes, Bonnie**
- **Mixon, Jessica**
- **Powell, Susan – Stephanie Johnson Recused**

PROFESSIONAL COUNSELOR – CRED

- **Brooks, Nicole**
- **Rolsky, Stacey**
- **Thompson, Hillary**
- **Weller, Jessica**

PROFESSIONAL COUNSELOR SUPERVISOR

- **Casurella, Jennifer**
- **Cook, Spencer – Stephanie Johnson Recused**
- **Droby, Ray – Stephanie Johnson Recused**
- **Holladay, Thais A. – Lyn Tashea Recused**
- **Jenkins, Nicole**
- **Powell, Pyper A.**
- **Tracy, Nicole**

ALTERNATE SUPERVISION PLANS

- **Bell, Rebecca – Debra Hamilton Recused**
- **Bray, Joe M.**
- **Curry, Tamika**
- **McKay, Edward**
- **Nelson, Danielle**

CONTINUING EDUCATION PROVIDER APPROVAL

- **MatSu Health & Services – Eileen Davey**

REINSTATEMENTS

- **Hayes-Cook, Jessica**

The Board tasked Renee to check with Operations Manager Sara Chambers about an Impaired Professionals Program; would such a program fall under regulations or would it require a statute? Renee was also tasked with seeking guidance from Sara with 12 AAC 62.360.

Florida and Louisiana currently have Impaired Professional Programs; Renee was tasked with emailing those states for more information regarding the programs.

On a motion duly made by Lillian Mitchell, seconded by Debra Hamilton, and passed unanimously, it was

RESOLVED to adjourn until 9:00 am, Friday, January 22.

Off the record at 4:32 pm

Friday January 22, 2016

Call to Order/Roll Call 8:58 A.M.

Board members present, forming a quorum of the Board, were:

Anne Brainerd, Licensed Professional Counselor, Chair
Stephanie Johnson, Licensed Professional Counselor
Lyn Tashea, Licensed Professional Counselor
Debra Hamilton, Licensed Professional Counselor
Lillian Mitchell, Public Member

Present from the Division of Corporations, Business, and Professional Licensing:

Renee Hoffard, Licensing Examiner
Brian Howes, Investigator
Angela Birt, Chief Investigator
Renee Ward-Law, DOL

Public present at times: Lynne Kelsey, Donna Meyers

The Board continued with the agenda as written.

Agenda Item 10 Correspondence

The Board reviewed a letter from Alaska Rural Behavioral Health Training Academy regarding their recent name change. The board determined that the letter should be discussed in Agenda Item 11 New Business; Section A, Future Regulations Projects.

Agenda Item 11 New Business

A: Future Regulations Projects:

The name change for Alaska Training Cooperative requires a change to 12 ACC 62.320(o). The board asked Renee to check with the Division's regulation specialist to determine if the board could change the

regulation; removing the list that is currently there and amending it to read “as maintained by the board” or something to that effect. The board also would like to know if the scope of practice that the board voted to adopt can be added under Article 4 General Provisions by adding a section to that regulation. Chair Brainerd will draft regulations and forward them to Renee for distribution to the rest of the board members.

The Board would like clarification from the regulations specialist on two items:

1. What needs to be statute and why?
2. What needs to be regulation and why?

B: Distance Counseling - The board tabled further discussion on distance counseling pending information from the division regarding statute/regulations projects.

C: Annual Report: The board tabled review of the annual report until the April Meeting.

D: Review of new licensee packet: The board reviewed the packet of information that is sent to all licensees when they are licensed. Due to anticipated regulations and statute changes that could affect the information provided, Chair Brainerd will work with Renee to update the packet that is sent out.

E: Reciprocity:

Renee was tasked with emailing Mary Alice Olsen, the executive administrator for the Louisiana Board of Professional Counselors for information on the guidelines LA used when forming the reciprocity agreement they use with states that meet or exceed their requirements for licensure.

Break at 10:54 am

Return at 11:06 am

Agenda Item 12 **License Action Review**

Chair Brainerd stated for the record that the individual, Ms. Lynne Kelsey, had waived her right to executive session and the license action review will remain on the record.

Lynne Kelsey, Donna Meyers, Investigator Brian Howes, Chief Investigator Angela Birt and DOL representative Renee Ward-Law joined the meeting to discuss Ms. Kelsey’s appeal of revocation by default that the board voted on at the September 2015 meeting.

Ms. Kelsey did have an interview with Investigator Howes and provided documentation of her responsiveness to Colorado and the individual that filed the complaint against her. The board informed Ms. Kelsey and Ms. Meyers that they had not reviewed the documentation as directed by the Division as the documents were considered ex parte communication. The board and Ms. Meyers agreed to take a break to allow the board time to review all of the documentation.

Break at 11:17 am

Return from break at 1:25 pm

The board reviewed numerous documents that were submitted on the behalf and Ms. Kelsey and has decided to reconsider the revocation of her license. Chair Brainerd stated that the board as a whole fully stands behind the decision to revoke Ms. Kelsey’s license by default. The Board feels that the Division Investigative staff went above and beyond to contact Ms. Kelsey and the lack of response from her led to the revocation. Chair Brainerd then expressed that the board is willing to work with Ms. Kelsey to reinstate the license rehabilitatively. The Board recommends that Ms. Kelsey provide completion

certificates for 12 hours of continuing education in Ethics and legalities of working with children of divorce within 90 days. Per 08.01.074(8) the Board can impose civil fines not to exceed \$5,000.00 per charge, the Board recommends a fine of \$1500 per charge for a total of \$3,000 and Ms. Kelsey will be placed on probation for two years.

Chair Brainerd stated that each of the Board members would address Ms. Kelsey individually to express their view.

Debra Hamilton stated that the matter could have been resolved in a more timely matter; she also felt that the division did their due diligence in reaching Ms. Kelsey. She felt that Ms. Kelsey did not take responsibility for an on-going issue that has taken more than two years to be resolved; causing costs to trickle down to all licensees with the licensing base.

Lyn Tashea stated that she found it unsettling that Ms. Kelsey did not take more accountability and responsibility for her lack of action. She stated that in the numerous documents the board reviewed she did not see any documentation regarding Ms. Kelsey not receiving voice messages and emails that were sent from the Investigators.

Stephanie Johnson stated that the matter brought up questions about accountability and professionalism but that she wants to give Ms. Kelsey a chance to continue working as a Licensed Professional Counselor.

Lillian Mitchell stated that she also agreed with the decisions of the board; she wants Ms. Kelsey to have her license reinstated and for Ms. Kelsey to be back to work in a timely manner.

Chair Brainerd stated that in Centralized Regulation, 12 AAC 02.900 – licensee shall maintain valid mailing addresses on file with the division at all times.

Chair Brainerd asked if the terms were amenable to Ms. Kelsey and her attorney.

Ms. Meyers stated that she was not in a position to agree to anything; and asked the Board for a break to discuss the terms with Ms. Kelsey.

The Board agreed, off the record for break at 1:40 pm

Back on the record at 1:49 pm; the board will continue with the agenda while Ms. Kelsey deliberates with her attorney in an effort to complete the agenda in a timely manner.

Agenda Item 13 Board Business

A. Task List

1. Renee – email Jun and Sara regarding statutes and regulations clarification.
2. Renee – email LA about reciprocity and Impaired Professionals Program.
3. Renee – check with Sara about Impaired Professional Program after receiving information from LA.
4. Renee and Anne – work on updating new licensee information packet.
5. Renee – follow up on travel to NBCC symposium for D. Hamilton and S. Johnson.
6. Anne – drafting regulations for tele mental health/distance counseling, Renee will distribute to the board for review.
7. Renee – double check about the authority to charge for CEU approval.
8. Renee – check with Sara about scope of practice – statute or regulation
9. Anne – draft regulation regarding CEU approval authority
10. Lyn and Debra – continue to draft letter to legislators and contacting them regarding needed changes.

B. Sign Wall Certificates-Wall certificates were signed

C. Schedule future meetings- The Board confirmed the following tentative meeting dates for the upcoming year.

1. April 28-29, 2016 Anchorage
2. July 21-22, 2016 Anchorage
3. October 13-14, 2016 Anchorage

D. Sign Meeting Minutes -

Chair Brainerd signed Final Minutes for September 2015.

F. Training/conferences –

Debra Hamilton and Stephanie Johnson are scheduled to attend the NBCC annual symposium; this year it is scheduled to be in Reston, VA during May. Due to the current travel freeze in place for the State of Alaska, Renee will notify the board as soon as possible regarding travel for this conference.

At this time the Board concluded all scheduled Board business.

The Board recognized public member Lillian Mitchell; Lillian's term expires March 1, 2016 and the Board will have a vacant position at that time. The Board presented her with a certificate of appreciation for the time and dedication she has given to the Board over the eight years she has served as a board member.

On break at 2:07

Back on record at 2:18

Ms. Meyers addressed the board, thanking them for giving herself and Ms. Kelsey time to discuss the terms the board had presented. Ms. Kelsey addressed the board, thanking them for addressing this and expressed her appreciation for the board reconsidering the license action against her license. She apologized that the documentation she provided did not show her to be taking responsibility for the situation that resulted in the license action. She is fully aware that it is her responsibility to ensure the division can reach her via postal mail at any time; if she is going to be out of town for an extended period of time she must make arrangements for her mail to reach her in case of any urgent matters. She stated she had no intention of appearing to be avoiding the investigators or the division.

Ms. Meyers stated that this has been very difficult for Ms. Kelsey; she has not been able to work in her chosen profession since the license action. Due to this, some of the terms the board recommended for the consent agreement are not possible for her; she would like the board to consider alternative terms. On the 12 CEU's, she can complete those providing she can take courses online. She feels it would be difficult to find enough face to face trainings to satisfy the requirement; and she would like 180 days to complete the CEU's. The fine will be very difficult for her to pay as she has been without a substantial portion of her income for several months now. She would like a substantial portion of the fine to be suspended; she can pay \$500 within 90 days with the remainder suspended on the condition of her meeting the terms of her probation. Should the board determine she needs to pay a greater portion of the fines than \$500, she would need more than 90 days to pay the fine. They would like to see \$2000 of the fine suspended.

Chair Brainerd responded; the CEU's can be done online, this is an accepted practice for CEU's for renewal. The courses need to be preapproved. Chair Brainerd suggested that 180 days was too long, she recommended 120 days for completion of the CEU's. The Board agreed with 120 days; Ms. Kelsey and Ms. Meyers agreed that Ms. Kelsey could complete the 12 CEU's within 120 days.

The board felt that staying \$1000 of each fine was excessive; the board agreed to stay \$500 for each charge, making the total due \$2000. The board is aware that this is a significant amount considering Ms. Kelsey was unable to work for several months but feels it is an appropriate fine. Debra Hamilton asked Ms. Kelsey what amount of time she would need to pay the total fine of \$2000 with the understanding that if Ms. Kelsey does not meet the terms of her probation she will have to pay the additional \$1000 that is being suspended. Ms. Kelsey stated she could pay the \$2000 fine within 180 days.

Ms. Meyers asked if the terms of probation would be the standard conditions of probation or would there be special conditions in this situation. Chair Brainerd stated that she highly recommended that Ms. Kelsey learn the statutes and regulations; any complaints would render the consent agreement void.

Ms. Kelsey expressed concern that if the individual that filed the initial complaint continued to file complaints against her in a vendetta fashion, this could void the consent agreement. The board and the investigators assured her this was not the case; only founded complaints will result in the consent agreement being voided; not frivolous complaints. She would still be given due process for any complaint received; no action would be taken without the complaint being investigated fully.

Lyn Tashea stated that if Ms. Kelsey becomes aware of a situation that causes her concern, she should contact the division for guidance and information. Ms. Kelsey asked if there was anything else she would need to do to other than keeping her mailing address current. Renee stated that Ms. Kelsey could email her notice of change of address and she would be happy to put a note in her file that would be available to the division. Ms. Kelsey asked if there was a form for changing email addresses as well; Renee informed her that email address are optional for licensees at this time. The centralized statute and regulations states that licensees will be communicated with via postal mail; but should Ms. Kelsey want to update her email address all she would need to do is send Renee the correct email or call her and it will be noted in her file.

Ms. Meyers asked if there would be a lapse in license once the revocation is lifted because Ms. Kelsey submitted her renewal in a timely manner and it was received by the Division before the program expiration date. Renee Ward-Law stated that the renewal application is considered to be on hold until the revocation is suspended. Once the revocation is lifted; the renewal will be processed per division policy. The renewal is outside of the scope of this board. Ms. Meyers stated that she wanted to check because Renee is the licensing examiner for the program. Renee explained that she has the renewal and has reviewed it but is awaiting the determination of the board regarding the revocation being suspended. Investigator Howes stated that because the board would be voting on the terms of the consent agreement,

the agreement would not have to be presented to the entire board. One board member, typically the board chair could sign the agreement. He feels that the agreement could be completed and signed by the end of the week of January 29.

The board reviewed the terms as agreed upon before the official motion was made to ensure the terms were outlined correctly.

Upon a motion made by Lyn Tashea, and seconded by Stephanie Johnson, and approved unanimously, it was

RESOLVED to rescind Lynn Kelsey's revocation of licensure based upon her entering into a consent agreement with the board with the following terms.

- 1. Completion of 12 CUE's for Ethics and the legalities of working with children and families of divorce to be completed within 120 days. This requirement is above and beyond the 40 hours of CEU's required for renewal of licensure.**
- 2. Civil fine of \$1500 per count with \$500 per count suspended for a total fine of \$2000 due within 180 days.**
- 3. Probation for a period of two years.**
- 4. Public reprimand and report to the National Practitioner's database.**

The Board did a roll call vote:

Debra Hamilton – Yes

Lyn Tashea – Yes

Stephanie Johnson – Yes

Lillian Mitchell – Yes

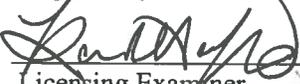
Anne Brainerd - Abstained

Upon a motion made by Debra Hamilton, and seconded by Lillian Mitchell, and approved unanimously, it was

RESOLVED to adjourn.

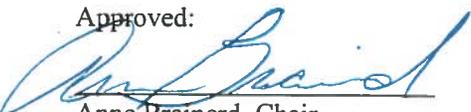
Meeting adjourned at 2:33 p.m.

Respectfully submitted:



Licensing Examiner

Approved:



Anne Brainerd, Chair
Board of Professional Counselors

Date: 4-29-2016