Board Members

Maryann Santos de Barona, Ph.D.
Chairperson
James J. Cox, Ed.D.
Vice-Chairperson
Joseph C. Donaldson
Secretary
Wil R. Counts, Ph.D.
Miki Paul, Ph.D.
Byron N. Rimm
Michael J. Rohrbaugh, Ph.D.
David P. Yandell, Ph.D.
Vacant – Public Member

State of Arizona
Board of Psychologist Examiners

1400 West Washington, Suite 235
Phoenix, Arizona 85007

Phone: (602) 542-8162 Fax: (602) 542-8279
www.psychboard.az.gov info@psychboard.az.gov

Staff

Maxine McCarthy
Executive Director

Marcus E. Harvey
Deputy Director

David S. Shapiro
Investigator

Shari S. Courtnay
Administrative
Assistant

REGULAR SESSION MINUTES

Friday, February 4, 2005

1400 West Washington
Basement Conference Room, #B-1
Phoenix, AZ 85007

1. CALL TO ORDER

The regular session of the Arizona State Board of Psychologist Examiners was called to order by Chairperson Santos de Barona at 8:30 a.m. on Friday, February 4, 2005. No Executive Sessions were held.

2. ROLL CALL

Board Members Present
Maryann Santos de Barona, Ph.D. - Chairperson
James J. Cox, Ed.D. - Vice-Chairperson
Joseph C. Donaldson - Secretary
Gary D. Lovejoy, Ph.D.
Miki Paul, Ph.D.
Byron N. Rimm

Board Members Absent[1]
Wil R. Counts, Ph.D.
Michael J. Rohrbaugh, Ph.D.

Staff Present
Maxine McCarthy, Executive Director
Marcus Harvey, Deputy Director
David Shapiro, Investigator
Shari Courtnay, Administrative Assistant

Attorney General's Office
Nancy J. Beck, J.D.
Assistant Attorney General

Solicitor General's Office[2]
Victoria Mangiapane, J.D.
Assistant Attorney General

3. REMARKS/ANNOUNCEMENTS

Dr. Santos de Barona introduced Gary Lovejoy, Ph.D. as a returning new Board member and welcomed him to the Board. Dr. Lovejoy replaced Dr. David Yandell.

She also recognized the service of David Yandell, Ph.D. whose term as a Board member had expired. Various current and former Board members also made remarks in appreciation of Dr. Yandell, after which Dr. Santos de Barona presented him a plaque.

[1] There was currently a vacancy on the Board for a public member position.
[2] Ms. Mangiapane was present only for Item No. 6.

Finally, Dr. Santos de Barona announced that documentation was available for licensees who wished to receive continuing education credit for attending Board meetings. She also stated that anyone was welcome to complete a Board meeting assessment survey.

4. APPROVAL OF MINUTES

- **Regular Session – December 3, 2004**

A motion was made by Dr. Cox, seconded by Mr. Rimm, and carried (3-0-3), with Drs. Paul and Lovejoy and Mr. Donaldson abstaining from the vote, to approve the December 3, 2004 Regular Session minutes, with one correction.

- **Executive Session – December 3, 2004**

A motion was made by Dr. Cox, seconded by Mr. Rimm, and carried (3-0-3), with Drs. Paul and Lovejoy and Mr. Donaldson abstaining from the vote, to approve the December 3, 2004 Executive Session minutes.

- **Conference Call Regular Session – January 7, 2005**

A motion was then made by Dr. Cox, seconded by Dr. Paul, and carried (5-0-1), with Dr. Lovejoy abstaining from the vote, to approve the January 7, 2005 Conference Call Regular Session minutes.

5. CALL TO THE PUBLIC

Chairperson Santos de Barona gave the public the opportunity to address the Board at this time but no one wished to speak.

6. DISCUSSION/DECISION – STATUS UPDATE AND ACTION REGARDING:

- **Marilyn Kieffer-Andrews, Ph.D. – No. 03-39**

Dr. Santos de Barona stated that the Board had previously voted to refer this complaint to formal hearing in February 2004. This item was back on the agenda to determine whether the Board wished to rescind the referral to formal hearing and invite the licensee to an informal interview. Victoria Mangiapane, J.D., of the Solicitor General's Office was present to give legal advice to the Board and explained the Board's options in this case. A court reporter was present and the transcript shall serve as the official record of the proceeding. Howard Snyder, J.D., attorney for the complainants, addressed the Board regarding this complaint. Board members then proceeded to deliberate. A motion was made by Dr. Lovejoy, seconded by Dr. Cox, and carried (4-2), with Mr. Rimm and Mr. Donaldson voting no, to rescind the referral to formal hearing. Dr. Cox then made a motion, seconded by Mr. Donaldson, and unanimously carried (6-0), to invite Dr. Kieffer-Andrews to an informal interview to address allegations that she may have violated A.R.S. § 32-2061(A)(13)(o), (u), (e), (h), and (v).

- **Frank Powers, Ph.D. – No. 03-40**

Dr. Santos de Barona explained that this complaint was also referred to a formal hearing in February 2004 and was back on the agenda to determine whether the Board wished to rescind the referral to formal hearing and invite the licensee to an informal interview. Ms. Mangiapane, J.D., of the Solicitor General's Office was present to give legal advice to the Board and explained the Board's options in this case. A court reporter was present and the transcript shall serve as the official record of the proceeding. After some discussion, Dr. Cox made a motion, seconded by Dr. Paul, and carried (5-1), with Mr. Rimm voting no, to rescind the referral to formal hearing. Dr. Cox then made a motion, seconded by Mr. Donaldson, and unanimously carried (6-0), to invite Dr. Powers to an informal interview to address allegations that he may have violated A.R.S. § 32-2061(A)(13)(o), (u), (e), (h), and (v).

Ms. Beck stated that the Solicitor General's Office provides advice to a variety of agencies, some of which differs from the Board's processes. She clarified for the Board that the informal interview

notice used by the Board explains that the Board's informal interview process does not include the calling of witnesses.

7. CONTINUATION OF INFORMAL INTERVIEW – DAVID E. POOL, Psy.D. – No. 04-27

Dr. Santos de Barona explained that it was the time and place for the continuation of the informal interview of David Pool, Psy.D. Dr. Lovejoy explained that he had read the materials and previous discussions in this case and was prepared to participate. Dr. Pool was present with his attorney Larry Cohen, J.D., who introduced themselves, as did Board members and Staff. Ms. Beck was also present as legal counsel for the Board. Dr. Pool was sworn in by the court reporter, whose transcript shall serve as the official record of the proceedings. Mr. Cohen and Dr. Pool each made a statement to the Board. Ms. Beck indicated that Dr. Pool and Mr. Cohen had been provided with the draft findings of fact and conclusions of law as well as the model terms of probation. Mr. Cohen then left the Board meeting and Dr. Pool indicated that he wished to proceed with the Informal Interview.

Board members then proceeded to deliberate regarding modifications to the draft findings of fact. Dr. Cox made a motion, seconded by Dr. Paul and unanimously carried (6-0), to adopt the draft findings of fact as modified by the discussion. A motion was made by Dr. Paul, seconded by Dr. Cox, and unanimously carried (6-0), to adopt the draft conclusions of law. Board members then proceeded to discuss the terms of a disciplinary order. Dr. Lovejoy made a motion which failed for lack of a second, to require that Dr. Pool complete graduate level coursework in psycho-diagnostics, especially neuro-psychology, within 18 months. After further discussion, Dr. Cox, made a motion, seconded by Mr. Donaldson, and unanimously carried (6-0), to place Dr. Pool on probation to require the completion of six hours of graduate level coursework in psycho-diagnostics, especially neuro-psychology, with a grade of B or better, by May 30, 2006. Dr. Lovejoy made a motion, seconded by Dr. Cox, and unanimously carried (6-0), to place Dr. Pool on probation for four years, with practice supervision and other modifications determined by the Board.

8. CASE DISCUSSION/DECISION

a) <u>Brian Yee, Ph.D. – No. 04-39</u>

Dr. Lovejoy stated that he had a collegial referral relationship with Dr. Yee and had served on committees with him but did not feel that would bias his participation. He further indicated that he had reviewed the audio recording of the Board's previous discussion of this case. Dr. Yee's attorney, Mark Harrison, J.D., made a statement to the Board. Mr. Shapiro summarized the allegations for the Board after which Board members proceeded to deliberate. Dr. Lovejoy made a motion, seconded by Dr. Paul and unanimously carried (6-0), to dismiss the case because it was without merit.

b) <u>David Jecmen, Ph.D. – No. 04-46</u>

Mr. Shapiro summarized the allegations for the Board. Board members reviewed a written statement provided by Dr. Jecmen who was unable to attend the Board meeting. Dr. Lovejoy stated that he has a collegial and referral relationship with Dr. Jecmen but did not feel that would bias his participation. Board members proceeded to deliberate, after which a motion was made by Dr. Lovejoy and seconded by Mr. Donaldson, which failed (2-4), to dismiss the complaint. It was the consensus of the Board to continue this case and give to notice Dr. Jecmen of the Board's additional concerns.

c) <u>Lydia Garrett, Ph.D. – No. 04-48</u>

Mr. Shapiro summarized the allegations and Board members proceeded to deliberate. A motion was made by Dr. Cox, seconded by Dr. Lovejoy, and unanimously carried (6-0), to invite Dr. Garrett to an informal interview to address allegations that she may have violated A.R.S. §§ 32-2061(A)(13)(h), (k), (o) and (cc) as well as 13-3620(A) which relates to mandatory reporting of child abuse and 25-403(H), 12-2293(C) and §164.524(b)(2)(A)(B) of the HIPAA Regulations which relate to the provision of records by a health care provider.

9. DISCUSSION/DECISION REGARDING NON-COMPLIANCE WITH BOARD ORDER No. 04-11 AND REQUEST TO SURRENDER LICENSE – WALTER FIDLER, Ph.D.

Dr. Santos de Barona reminded the Board that Dr. Walter Fidler was disciplined by the Board on November 8, 2004, suspending his license for 364 days. During this time he was not to practice psychology or hold himself out as permitted to practice psychology in Arizona. She explained that the Board's investigator visited both of Dr. Fidler's office location and took pictures showing that he had not removed the signs from his psychology practice. Ms. McCarthy informed the Board that on January 6, 2005, the Board notified Dr. Fidler that he was in violation of the Board's order that he provide monthly compliance certificates to the Board. Dr. Fidler wrote to the Board in a letter dated January 7, 2005 that he had decided to voluntarily relinquish his license to practice psychology. Ms. Beck answered Board members' legal questions regarding surrender of license under a disciplinary order versus revocation of licensure.

Board members proceeded to deliberate and Dr. Lovejoy made a motion, seconded by Dr. Paul, and unanimously carried (6-0), to offer Dr. Fidler a consent agreement to revocation of his license, in lieu of a formal hearing. If Dr. Fidler declined to accept the consent agreement, the Board would conduct a formal hearing, which would proceed whether he was present or not. It was the consensus of the Board to also send Dr. Fidler a title letter to stop using the initials C.A.A.P.S. with his name alongside or beneath them, to indicate that he might be providing services that might be construed as psychological in nature.

10. DISCUSSION/DECISION REGARDING CORRESPONDENCE DATED JANUARY 24, 2005 FROM JOHN KENT, Ph.D.

Board members proceeded to discuss the issue of whether the Board had jurisdiction in regard to the allegations presented in correspondence from Dr. John Kent. After some discussion, Dr. Lovejoy made a motion, which died for lack of a second, to open an investigation of whether Dr. Jeff Golde may have committed unprofessional conduct and to refer the complaint to the Complaint Screening Committee. After further discussion, Mr. Rimm seconded Dr. Lovejoy's motion to open a complaint which failed, (3-3), with Drs. Paul and Cox and Mr. Donaldson voting no. Mr. Rimm then made a motion which was seconded by Dr. Lovejoy, to find that the Board has jurisdiction. The motion failed, (3-3), with Drs. Paul and Cox and Mr. Donaldson voting no. Thus, by default, the Board took no action.

11. COUNSEL REPORTS

- **Litigation – Discussion/Decision Regarding:**

Ms. Beck gave some of the history of the following cases and update Board members as to their current status:

- **<u>Board v. McDonald – 1CA – CV02 – 0518</u>** – Ms. Beck reminded the Board that on May 17, 2001, it issued a disciplinary order of probation and censure against Dr. McDonald. Dr. McDonald appealed the decision and the Superior Court vacated the Board's Order. The Board appealed to the Court of Appeals. The Court reversed the portion of the judgment that vacated the Board's Order and remanded to the trial court for entry of an Order remanding the case to the Board. The trial court has remanded the matter back to the Board for further proceedings.

- **<u>Kalas v. Board – CV2004-0200</u>** – Ms. Beck reminded the Board that this is a federal civil rights lawsuit regarding a letter of concern. It was now in the U.S. District Court for the district of Arizona, she noted, and there would be oral argument on the Board's motion to dismiss the case later in the month. In the meantime, the court had ordered the parties to brief a particular issue, which Ms. Beck reported that she would be doing shortly.

- **<u>Stapert v. Board – LC2003-00640-001DT</u>** – Ms. Beck reminded the Board that it had declined to accept Dr. Stapert's motion for rehearing or review because it was not timely filed with the Board. Dr. Stapert appealed to the Superior Court and was not successful. Ms. Beck reported that she gave oral argument in the Court of Appeals recently and the decision would be coming out in the ordinary course.

- **House Bill 2397 – Amendment to Medical Records Law** – Ms. Beck reported that the Arizona medical records laws were changed last year with HB2397. She stated this this bill conforms Arizona to HIPAA in some respects, but not all and she explained various changes. She then answered Board members questions and provided some clarifications.

- **Guidelines for Standard and Optional Terms of Probation** – Ms. Beck provided copies to the Board of the new Guidelines for Standard Terms and Optional Terms of Probation. She explained that in order to achieve consistency in the terms of probation orders, she and Board Staff had researched previous Board orders and those of other state psychology boards and other Arizona regulatory boards, and developed this model for use in future disciplinary orders.

  Ms. Beck also explained to the Board members the difference between a licensee's defense to allegations of unprofessional conduct versus mitigating factors. She also explained how the Board's decisions, while they may create a certain public expectation, do not create legal precedent.

12. EXECUTIVE DIRECTOR'S REPORT

- **Financial –** Ms. McCarthy reported that at the end of December, which was halfway though Fiscal Year 2005, the Board had spent only 43% of it's appropriated funds. Her comparison of this with December FY2004, showed that the Board was at 43% then as well showing that the Board was being very consistently conservative in its spending patterns.

  Ms. McCarthy then stated that regarding the Board's budget request for 2006 and 2007, she had received recommendations from the budget analysts at the Legislature and the Governor's Office and that the numbers were fairly close to what the Board had requested, especially the Legislative recommendation. Ms. McCarthy reported that the Board's budget hearing was scheduled for February 22 and that she would know by the April Board meeting where the appropriation stood.

  Finally, Ms. McCarthy reported that all the renewal packets were stuffed in the envelopes and were ready to be mailed on March 1st, so the revenue would start coming in shortly after that date.

13. LICENSING REPORT

- **New Licenses Issued** – Mr. Harvey reported that the Board had licensed the following 14 psychologists since the December 3, 2004 meeting, two of them by credential:

3684	Cathy Shehorn, Ph.D.	3691	Neil Stafford, Psy.D.
3685	Douglas Albrecht, Ph.D.	3692	Darci Bartosh, Psy.D.
3686	Nicole Yuan, Ph.D.	3693	Anne Mauricio, Ph.D.
3687	Nicole Aviles-Galberth, Ph.D.	3694	Roxane Thorstad, Psy.D.
3688	Adrianne Gallucci-Breithaupt, Psy.D.	3695	Scott Quimby, Ph.D.
3689	Debra Stibick, Ph.D.	3696	Lisa Watt, Ph.D.
3690	Jennifer Wethe, Ph.D.	3697	Erin Spiers, Psy.D.

  Mr. Harvey reported that the Board had issued 73 new licenses this year, which compared to 78 issued by this time last year. This was an average of about six newly licensed psychologists per month.

- **EPPP Results** – Mr. Harvey then reported that the following six applicants passed the Examination for Professional Practice in Psychology (EPPP) in November and December, with one failing:

Pass	Fail
Darci Bartosh, Psy.D.	Aamer Khan, Psy.D.
Anne Mauricio, Ph.D.	
Neil Stafford, Psy.D.	
Debra Stibick, Ph.D.	
Roxane Thorstad, Psy.D.	
Nicole Yuan, Ph.D.	

Mr. Harvey further reported that for the year 2004, 54 applicants had been approved by the Board to take the EPPP, 32 had passed the exam, three failed, and 19 had not yet taken the exam. This amounted, he stated, to a pass rate of 91%, which compared to 97% the previous year.

- **New Applications** – Finally, Mr. Harvey that the Board had received a total of 97 license applications in 2004, which compared to 85 received the previous year.

14. DISCUSSION/DECISION REGARDING APPLICATIONS

Dr. Paul, who had recently replaced Dr. Cox as Chairperson of the Applications Review Committee, thanked Dr. Lovejoy for being willing to serve on this very time consuming committee and Mr. Harvey for his invaluable assistance.

➢ REQUEST FOR EXAMINATION

Dr. Paul made a motion, seconded by Dr. Lovejoy, and unanimously carried (6-0), that the following applicants, having met the requirements of A.R.S. § 32-2071 and A.A.C. R4-26-203, be approved to sit for the Examination for Professional Practice in Psychology, and for licensure upon receipt of a passing score on the Examination, and payment of the pro-rated original license fee:

- **Jason Baker, Ph.D.**
- **Cynthia Monheim, Ph.D.**

➢ REQUESTS FOR LICENSURE

After some discussion of the applicant's background, Dr. Paul made a motion, seconded by Dr. Lovejoy, and unanimously carried (6-0), that **Michael Worsley, Psy.D.**, having met the requirements of A.R.S. § 32-2071.01(A), be approved for licensure upon payment of the pro-rated original license fee.

Dr. Paul then informed the Board of the background of **Telford Moore, Ph.D.**, an applicant for licensure. Following some discussion, Dr. Paul made a motion, seconded by Dr. Lovejoy, and unanimously carried (6-0), that Dr. Moore's application be denied on the grounds that he had failed to demonstrate to the Board's satisfaction that he had met the requirements of A.R.S. § 32-2071.01 (A):

(3) Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter; and

(4) Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.

Dr. Lovejoy then stated that he would like to see the Board discuss a future licensure statute revision to allow individuals who have been placed on probation and have remediated to qualify for licensure.

Dr. Lovejoy then informed the Board of the background of **Sandra Trisdale, Ph.D.**, a former licensee of the Board who was re-applying for licensure. A motion was made by Dr. Lovejoy, seconded by Dr. Paul and unanimously carried (6-0), that Dr. Trisdale's application be denied on the grounds that she had failed to demonstrate to the Board's satisfaction that she had met the requirements of A.R.S. § 32-2071.01 (A):

(3) Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter; and

(4) Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.

- **RATIFICATION OF LICENSE ISSUED BY CREDENTIAL**

Dr. Paul then made a motion, seconded by Dr. Lovejoy, and unanimously carried (6-0), to ratify the issuance of licensure by credential **Lisa Watt, Ph.D.**, who had met the requirements of A.R.S. § 32-2071.01(B) by means of the Certificate of Professional Qualification in Psychology.

Finally, Dr. Paul announced that the following applications remained ongoing:

David Davidson-Methot, Ph.D.
Elizabeth Sikora, Ph.D.
Patti Taylor, Ed.D.

15. REPORT ON ATTENDANCE AT ASPPB MEETING IN ATLANTA ON OCTOBER 20-23, 2004

This item was tabled to a future meeting.

16. DISCUSSION/DECISION REGARDING SELECTION OF DELEGATE TO ATTEND ASPPB'S MIDWINTER MEETING IN PORTLAND, OREGON ON APRIL 7-10, 2005

Ms. McCarthy informed the Board that there was money available to send two Board members the ASPPB's Midwinter Meeting. Dr. Cox indicated that he would like to attend.

17. ADJOURNMENT

There being no further business to come before the Board, a motion was made by Dr. Lovejoy, seconded by Dr. Paul, and unanimously carried (6-0), to adjourn the meeting at 3:23 p.m.

Prepared by:

Marcus Harvey
Deputy Director

Respectfully submitted,

/s/ Joseph C. Donaldson
Secretary