

Louisiana Behavior Analyst Board
4334 S. Sherwood Forest Blvd., Suite C-150, Baton Rouge, LA 70816

BOARD MEETING MINUTES: July 28, 2021
(Approved August 25, 2021)

The meeting of the Louisiana Behavior Analyst Board (Board) was noticed and called to order by Board Chair, Courtney Wright, at 9:03 a.m. on Wednesday, July 28, 2021 at 4334 S. Sherwood Forest Blvd., Suite C-150, Baton Rouge, Louisiana. Present were Board Members: Courtney Wright, Lloyd Boudloche, Jr., Angela Murray, Renee Cole, Alfred Tuminello and Joseph Tuminello, III, Compliance Officer Justin Owens and Executive Director Rhonda Boe. Renee Cole was absent.

A motion was made by Angela Murray to approve the agenda for the July 28, 2021 meeting. None opposed and the motion passed.

Pursuant to LSA R.S. 42:6.1(4), Ms. Wright opened Executive Session at 9:04 a.m. for credential file reviews and other matters.

Board member, Calvin Cryer, arrived at 9:07 a.m. Board counsel, Alicia Wheeler, arrived at 9:35 a.m.

Ms. Wheeler explained to the board the guidelines and criteria necessary for granting and/or denying the Petition for Reconsideration scheduled to begin at 10:15 a.m. Alfred Tuminello would need to abstain. The board may grant the Petition for Reconsideration on the following grounds:

1. The decision or order is clearly contrary to the law and evidence;
2. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;
3. There is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or
4. There is other good ground for further consideration of the issues and the evidence in the public interest.

Ms. Wright closed Executive Session at 10:13 a.m. for a short break.

The following individuals entered the board room at approximately 10:14 a.m. Dr. Carolyn Barahona and her attorney of record, Ashley Heilprin, James Raines, Michele Gaudin, Gary Ethridge, Aubree Volton, Renee Lopardi, Daniel Shipp, and Amanda Gibbs. (Spelling may not be accurate due to legibility of handwriting)

Ms. Wright called to order open meeting at 10:20 a.m.

In accordance with the previously established guidelines sent to all parties, Respondent's attorney would have 15 minutes to present on the Petition for Reconsideration. Board prosecuting attorney would then have 15 minutes to present. This would be followed by board questions for either.

Ms. Heilprin began with a brief review of the case history beginning with respondent's self-reporting, Summary Suspension, the two-day hearing, Proposed Findings of Facts and Conclusions of Law submitted by both parties and the Order upholding the summary suspension which prompted the filing of the Petition for Reconsideration. The Petition for Reconsideration asked the board to consider the

findings were contrary to the evidence presented; that an expert witness opined that the treatment interventions utilized were supported by the evidence and science in this profession and that respondent did not have sufficient time to obtain this expert witness before the hearing and therefore the expert witness report should be considered new evidence. Ms. Heilprin referred the board to her memorandum in support of the Petition which the board was allowed to view prior to today's review.

Ms. Heilprin's time limit expired at 10:36 a.m. but she was allowed to finish her statement and stopped at 10:38 a.m.

Mr. Raines begin his presentation as board prosecuting attorney at 10:40 a.m. He stated the purpose of this review was to establish if the information presented meets the required criteria. He stated the argument that the Order was contrary to the evidence presented and there exists new evidence, i.e. the expert witness, was not proven to meet the criteria for reconsideration. Mr. Raines presented the timeline in which a continuance of the Summary Suspension hearing was granted when requested by respondent and a Consent Agreement was signed with a new date agreed upon by the respondent. Mr. Raines stated there was time to obtain an expert witness. He also stated nothing presented was contrary to the evidence the board heard in the two-day hearing from the numerous testimonies. He also referred the board to his Opposition to the Petition for Reconsideration which the board was allowed to view prior to today's review.

Mr. Raines completed his presentation at 10:49 a.m.

Board Chair, Courtney Wright, advised Dr. Barahona under 42:17 A (1) she had the right to have the discussion and deliberation held in open meeting and that said discussion and deliberation would be subject to public records. Ms. Wright stated Dr. Barahona had previously decided to exercise this right and for the record was asked if this was still her intention to which she responded yes.

The board began questions at 10:50 a.m.

Dr. Boudloche asked respondent why all evidence was not presented at the hearing. Ms. Heilprin responded it was not feasible in the amount of time before the hearing as GSAC report was not received until 6 days prior to the hearing date. Dr. Boudloche also stated the expert report focused on 5 areas specific to DL but there were multiple clients and issues and no treatment records from other clients were reviewed. He also added the board heard testimony unlike the expert witness. Ms. Heilprin stated in her recollection the expert witness did review the testimony.

Dr. Barahona stated she was not informed multiple clients would be included in the hearing and had not prepared for testimony in reference to any clients besides DL. Her self-report which initiated the Summary Suspension only pertained to DL. Ms. Wright stated the order upholding the summary suspension only pertained to DL.

Mr. Raines stated the expert report is not newly discovered but merely cumulative based on documents provided to him, post-trial and added the suspension order focused on DL (J.Doe) but was not singular and further the defense presented documents on other clients at the hearing. Mr. Raines also stated the expert report states what was reviewed and the transcript is not mentioned. Ms. Heilprin said it may have been an omission.

Dr. Boudloche stated he raised the question in the hearing pertaining to Finding 11 where respondent stated a functional analysis was not done in DL's case and now asked what modalities were used. Dr. Barahona stated indirect, descriptive, observation, interviews, and ABC data were used.

Dr. Barahona stated she saw new faces and asked if the board could introduce themselves. She asked Dr. Joseph Tuminello if he was related to board member Alfred Tuminello to which he replied yes. Ms. Boe stated Dr. Tuminello was the newest consumer board member appointed by the Governor.

Ms. Heilprin referred to exhibits in response to the modalities and asked if anyone needed to review. Ms. Murray reviewed again the data sheets, SIB tracking, graphs, etc. and the board began discussing what was in the expert report. Ms. Boe reminded the board they were not there to review the contents of the report but to decide if the report met the criteria of new evidence.

Ms. Heilprin stated all the criteria for granting the reconsideration were met and Mr. Raines stated nothing presented met the criteria. Alicia Wheeler addressed the board by stating this review was to consider if any evidence presented to them today that met the criteria previously read would change the outcome of the June 6/7 hearing. Ms. Heilprin stated the findings of fact and conclusions of law were contrary to the evidence presented as outlined in her petition. Ms. Wheeler stated the board had reviewed all documents prior to the meeting and will make that determination.

Dr. Boudloche motioned for a call to question vote. Ms. Wright seconded the motion. None opposed, A. Tuminello abstained and the motion carried.

The call to question vote, conducted by board chair Courtney Wright, resulted in the following on each of the 4 criteria established to grant a Petition for Reconsideration:

1. The decision or order is clearly contrary to the law and evidence.
Wright – No; Cryer – No; Boudloche – No; Murray – No; J. Tuminello – No.
2. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing.
Wright – No; Cryer – No; Boudloche – No; Murray – No; J. Tuminello – No.
3. There is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter.
Wright – No; Cryer – No; Boudloche – No; Murray – No; J. Tuminello – No.
4. There is other good ground for further consideration of the issues and the evidence in the public interest.
Wright – No; Cryer – No; Boudloche – No; Murray – No; J. Tuminello – No.

Ms. Wright made a motion to deny the Petition for Reconsideration. Dr. Boudoche seconded the motion. None opposed, A. Tuminello abstained and the motion was denied.

Mr. Raines stated he petitioned the board to assess reasonable costs for the hearing and any judicial review pursuant to LA. R.S. 37:312 (C) to respondent. Ms. Wright made a motion to table assessment of costs until final hearing/determination. Ms. Murray seconded the motion. None opposed, A. Tuminello abstained and the motion passed.

The review ended at 11:22 a.m. and the meeting was recessed for a break. All guests left the board room.

Pursuant to LSA R.S. 42:6.1(4), Ms. Wright opened Executive Session at 11:51 a.m. for continuation of credential file reviews and other matters.

Dr. Boudloche made a motion to move the agenda out of order and review the first Discussion Item, which was Clarification on LBAB's regulation of individuals who are are not licensed, certified or

registered interacting w/clients while not performing/billing for ABA services. None opposed and the motion passed.

Ms. Wright closed Executive Session at 12:08 p.m.

Ms. Wright called to order public hour at 12:11 p.m.

Janice Huber, Dr. Grant Gautreaux and Angie Lanoux were present for public hour.

Ms. Huber brought up that she was displeased with the statement for the discussion item. She questioned if she was expected to register every person who interacts with her clients. She stated on outings and as part of their treatment plan the client may need to interact with a cashier, librarian, Santa Claus, etc. It was brought up the Kentwood delivery person may high five a child in the hall. Ms. Boe stated the word "yet" could have been inserted before licensed, certified or registered as it was meant to address what these individuals are allowed to do before receiving licensure, certification and/or registration. Ms. Boe said these other people interacting with clients sound like tools for the treatment plan and are not actually providing services in the treatment plan.

Ms. Boe stated the reply from the board office when asked what is allowed as training for line technicians who are hired but not yet registered has always been they can observe but not provide hands-on services. These individuals have not cleared background checks and/or received registration from the board so they should not be providing any ABA services. Dr. Gautreaux stated that the board does not have jurisdiction over the pre-hiring process at clinics and this statement could be viewed as overreach of authority by the legislature. One of the questions discussed was whether a potential line technician going through the hiring process could have contact with clients while not providing ABA services and not for billable hours. A board member said seeing how an individual interacts with clients and if they would be an appropriate fit could be beneficial. It was noted no laws or boards regulate the clinics that provide ABA services. Another question from the public was regarding volunteers who help on field trips, with naps, etc. and are they exempt from registration.

Board prosecuting attorney, Jim Raines, said while he understands the reason for wanting to see how a person interacts with clients and the need for volunteers, a LBA needs to question themselves as to how this looks from the perspective of the public or a legislator. Some questions for the hiring process and volunteers are: Does it look like ABA? Does the individual think they are performing ABA services? Do you have informed consent from the parent/guardian? Do you have background checks on individuals taking clients to the bathroom and/or changing diapers? What insurance covers non-employees? Is it compliant with HIPAA laws?

After thorough discussion, no formal motion or opinion was offered or entertained with regard to changing the current understanding by the Board and its Executive Staff that unless licensed, certified and/or registered an individual cannot implement ABA services directly with a client, including telehealth services, unless they qualify for the current student exemption.

Pursuant to LSA R.S. 42:6.1(4), Ms. Wright opened Executive Session at 1:15 p.m. for continuation of credential file reviews and other matters.

Ms. Wright closed Executive Session at 2:15 p.m.

Ms. Wright called to order continuation of public hour at 2:16 p.m.

Dr. Boudloche made a motion to approve the minutes for the May and June, 2021 meetings. None opposed and the motion passed.

The following was reported regarding the credential file reviews:

Licensure Applicants 7.21/A, 7.21/B, 7.21/C, 7.21/D, 7.21/E, 7.21/F, 7.21/G, 7.21H, and 7.21/I were reviewed and approved for licensure.

Certificant Applicants 7.21/J, 7.21/K and 7.21/L were reviewed and approved for certification.

Ms. Boe brought up a technical glitch at LSP causing significant delays in receiving CBC results. She stated some licensure applicants only needed these results to be issued the Jurisprudence Exam. Dr. Boudloche made a motion that until this issue is resolved, Jurisprudence Exams can be issued if only waiting for CBC results. None opposed and the motion passed.

The status of other applicants reviewed are contained in the attached report by Compliance Officer Justin Owens.

Finance Committee:

Mr. A. Tuminello made a motion to approve the July LSBEP invoice if no apparent discrepancies are noted. None opposed and the motion passed.

The Reconciliations for June were reviewed and discussed. Dr. Boudloche made a motion to approve the Checking and Savings Reconciliations for June. None opposed and the motion passed. The board reviewed the Balance Sheet, General Ledger, Monthly Profit and Loss and Profit & Loss Budget vs. Actual for June. Ms. Wright made a motion to approve the full financials for June with no apparent discrepancies note. None opposed and the motion passed.

Long Range Planning:

The board will work on these items throughout the year.

An inquiry was made by Brandy Firkins to see if the board has made a decision on BCAP Certification. The board asked Ms. Boe to invite someone from the organization to give a presentation at the next meeting,

Discussion Items:

The first item was previously discussed earlier in the meeting.

The board reviewed a dual relationship question from a LBA who has a RLT with a child requiring services. This center is the closest within an hour drive and the parent is working and unable to provide the transportation. The child has been denied other places because of age. The question is would it be possible for the child to receive services due to the lack of local services? The board discussed and requested more information be supplied such as documentation to prove it is the only clinic within an hour's drive and letters of denial from other clinics and/or excessive wait times.

A. Tuminello left the meeting at 3:03 p.m.

Ms. Boe reported the software is working better and RLT certificates are being placed in digital wallets in one or two days without the LBA having to wait for mail delivery. Steps are being made towards accepting applications online through Certemy in the near future.

Executive Director's Report:

Ms. Boe reported all her items had been covered.

Ms. Wright adjourned the meeting at 3:10 p.m.