Updates from the Board Office

The Board has continued to work on improving efficiency with office administrative tasks. Ms. Brenda Biwer has contributed stability to our office and its functioning. We are continually focused on updating digitally-based office functions and welcome ideas that licensees may have that could contribute to this process. Our office functions are limited by financial constraints and the office especially welcomes ideas that have minimal costs.

The Psychology Licensure Universal System (PLUS) is an online application system for individuals applying for licensure in ND and several other states. Within the next several years, there will be a growing number of states moving to this application system.

ASPPB CREDENTIALS BANK—MEETING MOBILITY NEEDS

We are excited to announce that our ASPPB Credentials Bank is free for students and trainees! The longer you wait to bank credentials, obtain attestations and locate documentation the harder it gets. The ASPPB Credentials Bank is an excellent way to efficiently store and maintain all your vital professional information and offers:

- 24/7 electronic access to your record
- Credentials are primary source verified, electronically stored and ready to use for licensure applications, job applications, insurance verifications, etc.
- Reduced EPPP Score Transfer Fees
- Head start on the application for other ASPPB Mobility Program services (i.e. Certificate of Professional Qualification, Psychology Licensure Universal System).
Information about Continuing Education

With the new year of license renewals just behind us, most licensees/registrants have made good use of the Continuing Education approval processes. While this makes the end-of-year review process smooth for the clerical work of the board members reviewing, most important is the confidence it provides those renewing – to know that sufficient CEU’s were earned that are recognized BEFORE submitting them to the board. Each year, there are some licensee/registrants that do not have their requirements met. At one time or another (such during preparation for oral exams!), we have all read the Century Code making it clear that NDSBPE cannot issue a license/registration renewal unless the requirements are met. When renewal materials reveal inadequate CEU’s – the applicant cannot practice until the requirements are satisfied by determination of the board. This can be delayed by paperwork, verifications, and do not forget that it must await the next scheduled meeting of the board.

Programs submitted for review must be clearly relevant to psychology, which includes behavior analysis. We are working on an updated version of the application form that can help make this issue clearer. In any case, it is better to request review early and often.

Remember that only a maximum of 20 out of the 40 minimum units can be in Category 4 (correspondence or online courses, tapes, or independent readings). Webinars in which there is clear interaction between the participants and presenters/instructors may be considered a Category 1 or 2 program by the review of the board, but should not necessarily be assumed. Further clarification in this area is being developed to aid renewal applicants in determining best choices in learning opportunities.

CE Partnership with the Board

As the workload for the Board continues to expand with increased breadth and depth of duties, an avenue to increase efficiency is the appointment of qualified volunteers in roles to aid board members. This has been initiated with a group of four volunteers to help with the review of details involved in licensee and registrant applications. There are many details that have to be reviewed, assessed, investigated, and evaluated to assure the requirements have been met. The volunteers were able to receive Continuing Education units for training related to the processes and eligible to earn further units for board work tasks. While we have satisfactory volunteers at this time, we anticipate seeking additional volunteers again in the near future.

Board Website & Reminders

WEBSITE

We are continually working to make the website more useful and helpful for links and FAQ information. You are encouraged to frequent our website to see new updates. We are hoping to provide current, relevant information for public, licensees, applicants for licensure, as well as those supervising psychology residents. Please let the office know if there is an area of information that would be helpful for us to include.

REMINDERS

Licensees providing supervision to psychology residents are now required to have 3 continuing education/competency hours in the area of supervision. Be sure that you will have your hours completed within the 2 year reporting cycle beginning November 1 and ending October 31st.

Remember your 3 hours of ethics CE as well!!
Hot Topics: Expert Testimony from a Revoked Licensee

Submitted by Dale Atkinson, JD, Atkinson & Atkinson, LLC

The interplay between criminal and administrative proceedings can create difficult balances when a regulatory board investigates an administrative complaint that also implicates criminal wrongdoing. Constitutional and state laws provide due process protections to a person accused of and criminally prosecuted for alleged violations of the criminal code. Because administrative investigations implicate different rights of the accused, board should be cautious and coordinate criminal investigations with law enforcement. At times, the licensure status of a psychologist may be made relevant in a criminal proceeding as well. Consider the following.

In June, 2006, a defendant was criminally convicted of attempted robbery and kidnapping to commit robbery (petitioner). That conviction was affirmed on appeal in state court. Thereafter, the petitioner filed a habeas corpus petition in Federal District claiming ineffective defense counsel based in part on an alleged failure by the defense attorney to investigate the administrative history of a court appointed psychologist who provided expert testimony on behalf of the state in the criminal proceedings. A habeas corpus proceeding is a mechanism for those in custody or incarcerated to allege that such custody is in violation of the Constitution, applicable laws, or treaties of the United States. As one of his defenses to the criminal prosecution, the petitioner pleaded not guilty by reason of insanity. The court appointed two psychologists to examine the petitioner and file a report with the court. Testifying at trial, the two psychologists arrived at different conclusions as to the petitioner's state of mind. One psychologist (A) agreed with the defense team that the petitioner was in a psychotic state and was legally insane at the time of the offense. The other psychologist (B) testified that the petitioner was sane when he committed the crimes. A third psychologist (C) testified on behalf of the defendant providing opinions that the petitioner was in a psychotic state of mind at the time of the offenses.

As part of his petition, the petitioner argued that at the time of his testimony in the criminal trial, psychologist B was under administrative investigation by the California Board of Psychology for accusations of gross negligence. He further alleged that at the time of the criminal trial, psychologist B was subject to a proposed 25 page decision to revoke his license. Petitioner's criminal conviction occurred on June 26, 2009 and the trial on his insanity defense commenced on June 29, 2009. On June 30, 2009, the jury found the petitioner to have been sane at the time of the offenses. On June 13, 2009, the California administrative law judge opinion proposed revocation of psychologist B's license. This recommendation was adopted by the Board on August 24, 2009 (effective September 23, 2009). Thus, the court was presented with the issue of whether the administrative proceedings against psychologist B were relevant to the habeas corpus proceedings and, if so, was such prejudicial to the petitioner in the trial leading to his criminal convictions.

After addressing the standard of review, the court examined the merits of the claims of the petitioner. The petitioner claimed ineffective counsel prejudiced him and violated his rights under the 6th and 14th Amendments of the United States Constitution. The 6th Amendment provides criminal defendants with a right to counsel and, by implication, necessitates that such counsel provide effective representation. The 14th Amendment applies due process protections, inclusive of the right to counsel, to the state proceedings.

After an extensive analysis of the elements necessary to substantiate violations of the 6th Amendment right to counsel, the District Court noted that psychologist B engaged in serious professional misconduct that resulted in the loss of his license and that such a result could have affected the credibility of his testimony at the criminal trial. Indeed, the original accusations in the administrative complaint involved sexual relations with a severely mentally disabled patient. However, the ALJ found and the Board affirmed that such charges were successfully defended by psychologist B and the licensure revocation was premised upon engaging in inappropriate multiple relationships.

The District Court held that the state appellate court that affirmed the criminal conviction heard arguments related to the licensure revocation, yet affirmed the convictions. Applying the appropriate deference, the District Court held that the failure of counsel to investigate the licensure status of psychologist B did not prejudice the petitioner and that the outcome of the trial would not have been any different, as held by the state appellate court. The District Court noted that psychologist B's conduct did not have the "devastating impeachment power" suggested by the petitioner. It further opined that psychologist B did not lose his license based upon being "improperly trained or educated or that he was shown to render inaccurate or improper diagnosis." Under the standard of review, the District Court held that the affirmation of the convictions by the state appellate court was not unreasonable and that petitioner's claim of ineffective counsel was without merit. Accordingly, the convictions were upheld.

The licensure status of an expert witness is relevant to the credibility of the witness. However, according to the case outlined above, loss of licensure is not an automatic reversal of a criminal convictions and that prejudice must be established.


Mr. Atkinson is a founding partner of Atkinson & Atkinson, LLC, represents associations in all matters relating to their operations as not for profit corporations, including regulatory activities, education and accreditation, disciplinary actions, model legislation and applications, and all phases of the development and administration of licensure examination programs, licensure transfer programs, licensure credentials verification and storage.
Welcome to our new licensees

In 2013, NDSBPE licensed 12 new licensed psychologists, 9 licensed applied behavior analysts, and 3 registered applied behavior analysts. Please welcome the following:

Psychologists:
Dr. Jeri A. Azure
Dr. Lea J. Berntson
Dr. Justin J. Boseck
Dr. Christine Boulton-Olson
Dr. Nicole Cross-Hillman
Dr. Stephanie L. Freed
Dr. Stacey L. Hunt
Dr. Joel T. Kirchner
Dr. Robyn L. Maley
Dr. Brian K. Moe
Dr. Jay R. Phillips
Dr. Desiree J. Zielke

New LABA’s:
Joel Bakken
Christine Deaver
Chelsea Evenstad
Crystal Henderson
Rebecca Kendall
Peter Myxter
Ron Peck
Blake Peterson
Angela Rortvedt
Teresa Schober
Lois Ternes
Cathy Waters
Gabriel Waters

New RABA’s:
Rick Blair
Jesse Daniels
Luke England
Brandon Germain
Barbara Peterson
Steven Summers

Info on Renewals
For 2014, NDSBPE renewed 235 licensed psychologists, 13 licensed applied behavior analysts, and 5 registered applied behavior analysts.

In addition, NDSBPE has already licensed 10 new psychologists at time of newsletter publication since January 1, 2014!

Discipline Reports
In 2013, NDSBPE was required to report the following disciplinary actions to the National Data Bank:
NONE