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Dr. Sheldon Jacobs, *Member*
Dr. John Nixon, *Member*

MEETING MINUTES
FRIDAY, FEBRUARY 16, 2024 at 9:00AM

Teleconference Location

Nevada Board of Examiners
For Marriage & Family Therapists and Clinical Professional Counselors
7324 W. Cheyenne Avenue, Suite 10
Las Vegas, NV 89129

Please Note: The Board may (a) address agenda items out of sequence to accommodate persons appearing before the Board or to aid the efficiency or effectiveness of the meeting; (b) combine agenda items for consideration by the public body; and (c) pull or remove items from the agenda at any time. The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. (NRS 241.020, NRS 241.030).

Action by the Board on any item may be to approve, deny, amend, or table

The Public Hearing is being held prior to the conclusion of the scheduled Board Meeting.

1. Call to Order, Roll Call, Confirmation of Quorum. Meeting called to order at 9:03 AM.
 - Board members present: Steve Nicholas, Sara Pelton, Marta Wilson, Jenny Stepp, Sheldon Jacobs, Lauri Perdue, Jennifer Ross, Hal Taylor, John Nixon
 - Staff present: Joelle McNutt, Stephanie Steinhiser, Senior Deputy Attorney General Henna Rasul, Deputy Attorney General Chricy Harris
 - Members of the public: Terry Johnson, Anais Laurent, Roberta Vande Voort, Tracy Manning, Emily Lewis, Amanda Henderson, Delores Glenn-Lewis, Emilia Grissette, Jessica Goicoechea-Parise, Kimber Last, Laura Payan, Michael Arreygue, Ramona Beasley, Lidia Karina Gamarra-Hoff, Dianna Payan, Yvonne Hart, Arion Robinson, Kaitlyn O'Hara, Cara Elliott, Grettel Beltran, Jaime Clemens, Amanda Boe

Public comment is welcomed by the Board. Persons wishing to provide public comments remotely may access the meeting by telephone at (253) 215-8782 or through the electronic link posted on the agenda. Public comment will be limited to three (3) minutes per person and comments based on viewpoint will not be restricted. A public comment time will be available prior to any action items on the agenda and on any matter not specifically included on the agenda prior to adjournment of the meeting. At the discretion of the President, additional public comment may be heard when that item is reached. The President may allow additional time to be given a speaker as time allows and at his/her sole discretion. (NRS 241.020, NRS 241.030) Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the Board may refuse to consider public comment. (NRS 233B.126)

2. Public Comment

No vote may be taken upon a matter raised during a period devoted to public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

- No public comment.

3. Disciplinary hearing on Complaint and Notice of Hearing in the Matter of Dianna Payan, Case No. NV20CPC003. This agenda item may include review and consideration of a consent decree (For possible action)

- Steve: I'd like to call this matter forward and do we have our state representative, Ms. Henna Rasul and counsel for the respondent?
- Henna: I'm here.
- Terry Johnson: I'm here on behalf of the respondent, Dianna Payan.
- Steve: Thank you, sir. Is our respondent here today with us, Mr. Johnson?
- Terry Johnson: I believe she is connected.
- Steve: I have Board counsel, Ms. Chricy Harris here, correct?
- Chricy: Yes.
- Steve: Are there any preliminary matters, Mr. Johnson and Ms. Rasul, that need to be addressed first?
- Henna: None that I am aware of.
- Terry Johnson: I'm not aware of any at this time.
- Steve: Ms. Rasul, would you please begin with your opening statement.
- Henna: Thank you, Chairman. Chairman and members of the Board I, Henna Rasul, Senior Deputy Attorney General represent the state of Nevada in this matter and the state has filed a complaint to discipline Ms. Dianna Payan regarding her clinical professional counselor intern license. Ms. Payan held a clinical professional counselor intern license in the state of Nevada at all times relevant to the complaint. As such, she was charged with certain serious responsibilities as specified in both the Clinical Professional Counselors Act and its corresponding regulations. The evidence will show that Ms. Payan failed to meet these responsibilities by making and filing a CPS or Child Protective Report that contained confidential information that was extraneous to the health and welfare of the children of her client. More specifically, the evidence will show that the information provided was biased and discriminatory based on the client's race and lifestyle choices. Consequently, Ms. Payan's failure has caused the potential for harm to her client and has compromised public health and safety. The state has filed a complaint alleging that grounds of disciplinary action exist apart

from any other compliance with the clinical professional counselor standards of conduct by Dianna Payan. The first allegation as alleged in the complaint states that Ms. Payan committed unethical practices contrary to the interest of the public. The second allegation indicates that Ms. Payan engaged in unprofessional conduct. The third allegation states that Ms. Payan shall not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, social, economic, health or marital status, political belief, diagnoses or physical disability or on the basis of any preference or personal characteristic condition or status of a person. The fourth allegation states that Ms. Payan violated ethics standards 1.1 of the AAMFT Code of Ethics. Ms. Payan was given proper notice of this hearing. She and her attorney were sent the complainant notice of hearing via certified and regular mail on January 19th, 2024, and both certificates of service were received and signed for. At this time, I would like to submit exhibits one through eleven if there are no objections from opposing counsel.

- Terry Johnson: There will be objections and I thought we would have those items identified as they were called forward, but there will be objections to some of the exhibits contained here, particularly with regards to Exhibit Three, to the degree it contains hearsay testimony, if not hearsay upon hearsay. There will also be an objection to Exhibit Ten in that it contains information that is beyond the scope of this hearing, which centers on allegations occurring in I believe July of 2020. And this is information beyond the scope of that time period. Those are our objections at this time.
- Steve: It's hard for me to support or decline evidence if I don't know what it is. So, I would like to be able for the board to hear the evidence before we object to it. Is that reasonable?
- Chricy: Exhibit Three is the informal complaint dated July 22, 2020. Exhibit Ten is the CPC six-month internship reports from primary supervisor dated September 15, 2020, and March 16, 2021. Those are the two evidence exhibits that are right now in dispute as to whether or not they should be admitted. My recommendation is at the time that the petitioner launches her case in chief, as she moves to have them admitted, we'll then address those admissibility issues then because it is intended that she should at least establish a foundation and then we can allow those parties to address those arguments there. At least with Exhibits 1, 2, 4 through 9 and 11, the parties are in agreement to admit those exhibits into evidence.
- Steve: It is confirmed and said evidence can be admitted.
- Joelle: Exhibits have been sent.
- Chricy: We're still in opening statements for the petitioner. I just need to confirm that after the Board members have confirmed receipt of the permissible exhibits right now, I believe the petitioner just needs to finish her opening statement and we can move on to respondent.
- Henna: No, nothing further.
- Steve: Mr. Johnson, this is your opportunity for an opening statement.
- Terry Johnson: Thank you. Good morning, Mr. Chairman, members of the board, my name is Terry Johnson for your record here on behalf of the respondent Diana Payan. And briefly I'll state that what the evidence will show is that Ms. Payan in the course of exercising her responsibilities and duties complied with her legal and professional obligations under the laws of this state, particularly in her capacity as a mandatory reporter. And that at all times she acted in good faith, something the legislature has conferred upon persons who report. And the evidence will demonstrate that as we

go forward through this proceeding here today. So, we look forward to this hearing and this opportunity to discuss and resolve this matter with you. And if this is the time that we are to offer exhibits for your consideration, we move for the adoption of exhibits A through F as has been previously submitted.

- Chricy: Petitioner, are there any objections?
- Henna: Yes, objections would be to exhibit A as there's no indication of what cases this email, or document refers to. And for the same reasons that Mr. Johnson has objected to my exhibit 10, I'm objecting to exhibit E as it is outside the scope of the complaint period.
- Chricy: Just to confirm for the record, you have no objections to exhibit B, C, D and F?
- Henna: Correct.
- Steve: They are so permitted B, C, D and F exhibits.
- Terry Johnson: That concludes my statements. Thank you, Mr. Chairman.
- HEARING PROCEEDS.
- Henna: Members of the Board, thank you for your time today. I would like to state that there is sufficient evidence to establish that Ms. Payan is in violation of NRS 641A.030, NAC 641A.243 NAC 641A.247 and NAC 641A.252. I would like to emphasize that this is not about Ms. Payan submitting a CPS report. It is about Ms. Payan's disclosure of information that was subjective, assumptive, inferential, and harmful to her client. Consequently, I asked the Board to find Ms. Payan guilty of counts one through four as specified in the Complaint and Second Notice of Hearing, and this would be by a preponderance of the evidence. Further, I ask that the Board take the following actions against Ms. Payan. One, recovery of attorney's fees and costs in the amount of \$6,629.06 in attorney's fees as of yesterday, plus attorney's fees and court reporter costs accrued today pursuant to NRS 622.400, attorney's fees at the rate of \$157.04 cents per hour. The fine and the attorney's fees would become due within one year of this order if there is a fine assessed as well. Report any actions taken by the Board to the NPDB reporting bank and any national data bank that is required by law. Ms. Payan must complete 20 hours of Board approved continuing education with 10 hours of ethics and 10 hours in cultural competence within six months, the 20 hours of continuing education cannot be used towards continuing education already required for continued licensure as a clinical professional counselor intern by the Board. Respondent must undergo detailed supervision with an emphasis towards additional remediation around cultural competence within 30 days of the order. Respondent must submit to the Board a detailed supervision plan that emphasizes remediation and cultural competence, and the terms of this order would become effective today. Thank you.
- Steve: Mr. Johnson, would you like to offer a closing statement?
- Terry Johnson: Yes. Thank you, Mr. Chairman, members of the Board for your time and attention to this matter this afternoon. I did want to touch on a couple of items that came up by the Board members to make sure that the record is clear on that. One was in regard to the copy of the actual CPS report, and I just want to point out for the record that in exhibit D, Ms. Payan did state that she stated, "I do not have a copy of the actual CPS report." There was also some clarification sought by a Board member about whether the client filed the CPS report with Ms. Payan. And again, I would

refer you to Exhibit D where Ms. Payan states, "I asked the client to make the filing with me." There's not a representation that Ms. Payan is saying that the client and she filed the CPS referral. And then there were some questions about time and how long was she an intern?

And so, per the official records of the Board, it's my understanding that she was an intern licensed March 5, 2020, and you heard testimony from Ms. Vande Voort that she began working at First Med June 12, 2020, I believe, with a contract that was effective June 1st. Now with regards to the evidence, our position is that the evidence does not merit a finding against Ms. Payan in this matter. As I was discussing with the investigator, upon conclusion of the investigation, there would be a determination of substantial evidence to sustain the alleged violation. And so, what we have a lot of here is what somebody said, that somebody said, that somebody said was written in a report. And I also wanted to talk about that, the topic of evidence that's been discussed throughout, at least throughout the latter comments. I just want to emphasize that the evidence initially giving rise to the abuse or suspicion of abuse or neglect started with the client's admitted use of a controlled substance as "a black mother who uses marijuana recreationally". In Ms. Payan's notes, she also makes reference to the reports she received of the children being present when the client was consuming marijuana. Now I understand the sentiment about whether marijuana is legal or illegal. The referral form that Ms. Payan completed makes no distinction between a legal controlled substance or an illegal controlled substance. Number one, it just asks about controlled substances. And number two, federal law still prohibits use or possession of marijuana. There are people sitting in jail today because of the use or possession of marijuana having been prosecuted under federal law. So, I want to touch on the two major issues in the complaint about the extraneous reporting and the discriminatory reporting, but I do want to emphasize that Ms. Payan at the outset perceived, rightfully so, a mandatory duty to report for her suspicions. And I would remind the members of the Board that there is criminal culpability for mandatory reporters who do not report information as required by law. What the legislature has said as well is that mandatory reporters like her and everybody similarly situated, they are entitled when they're making these CPS referrals by law, they're entitled to a presumption of good faith.

Ms. Payan acted with good faith if she missed the mark, okay, if she was overzealous in her concern for the client and the client's children, but you should not find and throw the book at her on violations and fine violations. Alternatively, you can see that the presumption of good faith applies here more than probably any other instance. And the legislature recognized the need to protect these mandatory reporters is that they apparently anticipated that this was an imperfect science, an imperfect business. That's why they conferred that legal presumption of good faith essentially saying give them the benefit of the doubt because from a public policy standpoint, you want, if they're going to err, let them err on reporting, let them err on over-reporting and we can sort out in the investigation process what is there and should not be there and what have you. But if you look at what happened and the facts that we've talked about today as demonstrations of her good faith, she consulted with her primary supervisor, and she's caught in the middle of all of this. It was an interesting conversation for me as an attorney outside of this arena to witness between all of the professionals. But there she is in the middle, she consulted with her primary supervisor. She brought this matter to her. You heard testimony from the primary supervisor about her understanding that it had been brought to others. And there seemed to be even more so a disconnect between the administrative and the professional sides of the house. And keep in mind as well, Ms. Payan was one month on the job as an extern, one month, one full month on the job when this arose acting in the best that she could with the knowledge and experience that she had at that time. And so, I think she is entitled to a presumption of good faith. And so, I think it would be unfair under these facts to find adverse to her. I think the evidence supports the position that she took. I think she acted in good faith and the evidence indicates that she acted in good faith, and

she's entitled to the presumption of such that the legislature intended like everybody else here, she got into this business because she wanted to heal and not hurt persons. And you should find that her good faith should prevail here. Thank you again.

- Steve: Mr. Johnson. I appreciate your time and both attorneys are incredibly professional and well-spoken that will end our opportunity for any argument or questioning moving forward. This is our opportunity here in a few moments to consider evidence and then based on what we decide, if we have found that, it is more likely than not, any of the allegations were proven or not proven, that will determine whether or not we move toward a further discussion on the penalty phase.
- Chricy: So, the first discussion is on the factual allegations of the complaint paragraphs one through six.
- Steve: I believe that (1) Dianna Payan was a dually licensed clinical professional counselor intern in state Nevada at all times relevant to this complaint. I also see that (2) the respondent was licensed as a clinical professional counselor intern on March 5th, 2020, and (3) an informal complaint was received by the Board on or about July 22, 2020. I also believe that it's straightforward that (4) it is alleged that on or about June 18, 2020, the respondent began a therapeutic relationship with a client at First Med Health and Wellness where she was employed as a provider. Are there any other thoughts or discussion about that, that those are factual allegations? I'd actually like to offer one more consideration of discussion. Count five specifically states that the respondent made a referral to child protective Services out of concern for the client's children. And perhaps that brings into question, was it indeed for the client's children or was it bias?
- Hal: In regard to five, I'm questioning "out the out of concern for the client's children" as that's related to other issues which will come up later.
- Motion that allegations of fact one through four have been established by the evidence presented to the Board: 1st Hal, 2nd Sheldon; No abstentions; Motion approved unanimously.
- Steve: My concern about allegation five is actually the end of the sentence out of concern for the client's children. Because the children were never documented in the evidence. The children were never part of a client's system, and they were actually never part of what we saw as a client consideration. I'm under the impression that the CPS report contained information that, at face value might be about environmental safety or protection, but it was using information that I don't think met reasonable suspicion as much as it meant suspicion. I believe it's biased. Board members thoughts?
- John: As you said, Steve, it would be easier if we actually had possession of the CPS report itself. So, we're going on accusations and innuendo, et cetera. That's why I have to go back to the idea of presumption of good intent barring evidence to the contrary. And that's where I have not seen the evidence for.
- Jennifer: I appreciate what you're saying Dr. Nixon, and I'm thinking about this good faith and I'm thinking about beneficence versus non-maleficence. And so clearly anytime we make a CPS report, we hope that we're doing so from a place of wanting to protect and also the manner in which this report happened. I wonder about the level of consideration for how to engage with beneficence while also minimizing harm. And what I'm not hearing is kind of anything on the side of how was harm mitigated?

- John: Okay. As in harm to the client?
- Jennifer: Yes, harm to the client. I apologize, I think I'm getting lost in allegation six more so than five as I'm talking about this because I don't dispute necessarily the decision, I am very much concerned about the volume of information that was provided. That seems really unnecessary to the report on things such as the client's sexual practices. I can save that argument for number six.
- Hal: There are a number of victims in this case, and I think in this case the mother was not particularly well taken care of. The very experienced intern was not particularly given good guidance and we honestly do not know whether or not the children in this case were put at risk or not. I have certainly represented a number of people. In fact, I think I may be covered in the statute as being required to report to CPS and to make the decision not to do that can be professionally very challenging and very scary. Part of the reason I asked earlier, was a more experienced person put on this case was because I'm not sure that this intern would've come to the same conclusions six months down the line with more guidance, with more training. On the other hand, she might have, on the other hand, she might be right. On the other hand, these children might be at risk. That's why we are sending it off to another agency at this point. I do believe that, at best, this respondent was getting contradictory guidance during this process. I think she felt that what had come out in the discussions with the mother led to the conclusion that there might be some possible harm. I have significant questions about why they were going into some of these issues. On the other hand, I'm not a treating therapist. Maybe these were necessary questions to be asked and maybe we got honest answers from the mother and maybe because of the honest answers by the mother, they have to be reported. That's not our job. But I'm just saying I have a real problem here with the fact the system not supporting the inexperienced intern and, in many ways, probably not supporting the mother. But certainly, with regards to the harm of the children, we don't have a lot of evidence that in fact was happening. We might have people who have a different moral standard and who would see these things differently.
- Steve: Hal used a phrase about somebody's moral thoughts, and judgements. In professional counseling and the mental health profession, we all go through rigorous graduate programs and then seek long-term consistent supervision so that we know the intersection of our values, biases and how to not project them onto the client system. So, while I look at allegation five, and I can be comfortable enough granting that as fact that the CPS report was made out of concern for the client's children, I'm comfortable approving that one. But then when it comes to allegation number six, I think that unfortunately it does demonstrate lack of training. But no matter lack of however poorly trained or errantly trained somebody is when they're at the level of professional interaction with vulnerable populations and they get harmed, then that's what we can't look past.
- Jenny: You said exactly what I'm thinking. That I don't know the mindset of Ms. Payan here and I, in good faith collaboration with our profession, believe that she believed that she made this out of concern for the client's children. And so, I could move on five when we get to six, I do have some different thoughts because it is our job to know how our morals do affect our decision making, which therefore affects a client and a client's children.
- Motion that allegation of fact number five has been proven: 1st John, 2nd Lauri: No abstentions; Motion approved unanimously.
- Steve: The client alleges the information provided was biased and discriminatory based on their race and lifestyle choices. I don't believe that an allegation of racial discrimination has been proven. I do believe that bias based on lifestyle choices has been proven. If we reflect on Ms. Payan's notes

that she took, and we can only surmise that what she wrote in those notes was then contributing information for her CPS report. Her notes read to be incredibly biased on her belief system that strange men or whatever adult consenting behaviors constitute risky behavior and therefore by extension that risky behavior is potentially harmful or neglectful. Those biases, in my opinion, are very clear in Ms. Payan's own notes that she wrote. I am very uncomfortable just looking past that because again, everybody that reaches the post-graduate internship level has worked very hard, has tested, has demonstrated or at least is supposed to, and is supposed to be receiving consistent, rigorous supervision and continual training. If all of that was happening, and this still happened, as demonstrated in her own notes about these projections of her values as if they should be her client's values, that is very problematic for me.

- Marta: I don't see the evidence of any racial discrimination. However, I do have concerns about other information that was disclosed most likely in the CPS report.
- Steve: I think it's also worth noting, and while it is Ms. Payan's right to not provide testimony, she didn't provide testimony and we were not given the opportunity to ask these questions. Therefore, we are assuming about her assumptions and that's difficult. We did get to ask her supervisor directly. And it seemed like her supervisor echoed those sentiments of these broad-brush risky behaviors, substance use behaviors as if they were abuse and not use and if as if adult consenting reasonable decisions were unreasonable. And so, we're in a position now to justify those or not. I understand that Ms. Laurent certainly thinks that there was racial discrimination, and if I was in her position, I probably would too. But as far as the fact finding, I don't see that there's factual finding in the notes or any of the exhibits, but the clear bias of lifestyle decisions, that one is clear to me.
- Jenny: I'm thinking back to graduate school and these three words: document, document, document, especially when there is something so charged and so important as a CPS report and because we don't have the original report to go off of what we have is member of the public, a client, who came and put herself on the line to come and express hurt and pain. I am considering that. I keep thinking about the clarity and conviction in which our complainant came today and spoke to us, and she conveyed some things that really do matter to me along with the idea that we are here to protect the public. We have specific training in mental health, diagnosis, counseling skills and cultural competency. We look at our own individual biases and morals and ethics. That's why I brought up an ethical decision-making model because these things are messy. Although there is good faith here for us as mandated reporters, our ethics hold us to a higher standard. We have a complainant that came, bared her soul, talked about things that were very uncomfortable that went into a report. I do think that we have proven that there was some bias here, perhaps on your moral beliefs around lifestyle.
- Sara: I'm trying to remember the timeframe of when this Board adopted extra continuing education requirements for cultural competency. I believe it was after 2020, after the protests were involved, but likely after this situation occurred too. Of course, our interns are expected to examine biases, know their ethical codes, and look at these considerations. They did not know that this is something that our state board really wants to emphasize. They did not know that yet.
- Marta: I believe in the MFT and CPC academic standards, some type of cultural coursework is mandatory to pass the academic review. So, there has been some type of training in cultural issues.
- Steve: This intern was young in career, but still at that position where we are supposed to be at a place where we already know better. We are at a practitioner level and that is a standard of care. Do not project, do not hurt and try our darnedest to meet the client where they are and help them

with all things considered. To get our own biases out of the way and feel with accurate empathy, what the client's situation is. I haven't heard examples of that, not only being prioritized, but being in play.

- Jennifer: I find myself really stuck because I'm thinking about your words, what it was like to be just a few months into my internship license, my own role as a primary and secondary supervisor. I think about the ways in which I coach my interns when they're consulting about making a CPS report. I'm thinking about this ongoing argument/conflict conversation about what social workers might expect from us versus what therapists can and will say. I'm really feeling for Ms. Payan in having essentially the equivalent of 13 minutes a week with her supervisor in a two-hour group with nine interns and being able to get the guidance in this. I am stuck in that place of how heartbreaking it is to see that lack of support and now we're in this situation and yes, there were mistakes. To what degree do we hold interns responsible?
- Steve: To what point do we hold an intern accountable for something done in internship? I think there's a direct connection to holding the responsible supervisors accountable for these as well because out of reputable programs and reputable supervision relationships, especially early in a career, it is just reinforced: ask questions, seek consultation, pause, do not make inferential leaps prior to slowing down, asking questions. Having an ethical decision-making model is so fundamental in our programs and in our training. I'm sad for Ms. Payan as well. I have a feeling that she wasn't mentored very consistently or diligently. Dr. Ross brought up some math, a two-hour once a week supervision with nine people that equates to less than 15 minutes per head.
- Chrissy: I just want to clarify for the Board that as far as your finding, I don't see that there's a parsing out option. So just be mindful of that. It's not and/or it's and.
- Steve: Allegation six says the report contained. That has been proven that the report contained confidential information that was extraneous to the health and welfare of the children. It also says that the client alleges. I do support that has been proven that the client alleged that the information provided was biased and discriminatory based on race and lifestyle. So, I do believe that it's been proven that the client indeed alleged that. It specifically reads as just an allegation; has it been proven more likely than not. I do believe that's been proven that the report contained information that was extraneous. I do believe that it has been found true that the client alleged that it was biased and discriminatory based on race and lifestyle.
- Hal: I can live with six once we're clear that this is simply saying this is what the client's allegations are.
- Marta: I can live with that too.
- John: I still have a problem with that. At least the first part of it.
- Jennifer: As I read exhibit three, which is the informal complaint that was sent to the Board dated July 21, 2020, the contents of that echo what is written in the progress note that served the basis of the CPS report. Those two things in conjunction indicate to me that it is more likely than not that there was information included in that report that was extraneous to the health and welfare of the children, specifically regarding the client's sexual preferences.
- Motion that allegation of fact number six has been proven: 1st Steve, 2nd Jennifer: Sara and John oppose; Motion passed.

- Chricy: The next move is to review and discuss counts one through four of the complaint. You could determine together or each count separately.
- Steve: I believe that Ms. Payan committed unethical practice contrary to the interest of her client, therefore the public as determined by the Board in allegations of fact one through six.
- Jenny: I agree.
- Lauri: I agree.
- John: I am unsettled on allegation number six.
- Sara: I agree with John.
- Motion that alleged violation of law number one has been proven: 1st Lauri, 2nd Sheldon: Sara and John oppose; Motion passed.
- Steve: Count two is the respondent is subject to discipline pursuant to NRS 641A.230 for unprofessional conduct.
- John: Count two is a lower threshold because you can commit unprofessional conduct but be ethical about it. I do think that we need to specify the unprofessional conduct on which the grounds that we would be endorsing this charge.
- Steve: It seems to me, in my opinion, that unprofessional conduct and unethical practice are the same. It was the use of extraneous information that I believe was biased against lifestyle and that demonstrated unethical practice and demonstrated unprofessional conduct when she went forth and committed that to documentation.
- Hal: I think the unprofessional conduct and unethical conduct covers the things that we are concerned about and that we can address in a positive way in terms of continuing education.
- Sara: I am going to say no to the unprofessional conduct because the primary supervisor was in agreement with the report.
- Hal: NAC641A.258, #1 says any violation of this chapter or chapter 641A of NRS by a marriage and family therapist, clinical professional counselor or intern constitutes unprofessional conduct and subjects the marriage and family therapist, clinical professional counselor or intern to disciplinary action by the Board. That is pretty broad language.
- John: I do have concern that this is the big paintbrush still in number in count two.
- Jennifer: I think I'm with John on this one. I'm also taking into consideration that with the power dynamic at play with a primary supervisor, if she was acting upon advisement of somebody in a position of power telling her that that was what needed to be done, then her conduct as an intern I think was in line with what we would expect from an intern to be compliant with direction from a supervisor.

- Marta: This is so pain wrenching in my heart right now because it could have gone the opposite direction. I think for me, regardless of the advisory direction, which is another issue in my head, a person is still responsible for their own action at the bottom line of it all.
- Motion that alleged violation of law number two has been proven: 1st Hal, 2nd Marta: Sara, John, Jennifer and Sheldon oppose; Motion passed.
- Steve: Allegation three. this conduct violated NAC 641A.247 subsection four, which states that a marriage and family therapist, clinical professional counselor or intern shall not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, social economic health or marital status, political beliefs, diagnosis or physical disability or on the basis of any preferences or personal characteristics, condition or status of a person. Count three asked us to find out did Ms. Payan essentially violate the regs that we have written about bias, therefore discrimination based on personal beliefs.
- John: I would say that this is general in nature and when you look at some of her case notes, there is a strong interference that can be seen as potentially discriminatory.
- Jenny: The fourth note in particular doesn't seem to be helpful or moving the clinical treatment forward.
- Steve: I believe that an inferential leap and what has been phrased as suspicion is indeed a discriminatory opinion about somebody's very legal lifestyle choices that, for example, people smoke and drink in their houses in front of their kids probably quite regularly and I do not believe that one should suspect that translates to a neglectful or harmful environment and that was what the chosen case notes were to quote those lifestyle decisions that are very legal and there was nothing documenting actual harm. It was an inferential leap and the person who was on the receiving end of that, Ms. Laurent, was then harmed with that. And so, I do believe that those inferential leaps meet the level of discrimination based on the client's personal preferences. There was no reason to concur that translated to harm. The primary supervisor, Dr. Hart, who when asked, stated she relied on her 30 years of history as if it applied to this single person and that by itself is an absolute label onto somebody else based upon their previous experiences. I can't come up with a better working definition for bias and discrimination. Marta Wilson commented previously that it is still the licensed intern's responsibility to lead her license. It is her name on that license, otherwise she would just be a subset of Dr. Hart's license and she's not, they're connected with some liability, but it is still the intern's obligation to seek continual growth and awareness. So, my personal thought is this does meet the threshold of discrimination based on lifestyle preference and belief.
- John: I'm actually agreeing with Steve on this particular point. I think it is personal preference. It is a very broad thing, but we do have jurisdiction over bias against personal preference and certainly our social justice and multicultural training endorses that about really being very rigorous in terms of our own self-examination of biases. So, I think that there is a case for that particular thing, and it also again gives us a door for some non-punitive but supportive training direction in terms of remediation along the lines of addressing personal biases and documentation.
- Motion that alleged violation of law number three has been proven with regard to discrimination against personal preferences: 1st John, 2nd Lauri; No abstentions; Motion approved unanimously.

- Steve: We move to count four. This conduct violated NAC 641A.252 subsection four, the code of ethics adopted by reference: AAMFT Code of Ethics of the American Association for Marriage and Family Therapy, AAMFT Code of Ethics. Standard 1.1 is non-discrimination marriage and family therapists provide professional assistance to persons without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, sexual orientation, gender identity or relationship status. This happened before we had adopted the ACA Code of Ethics regulations for CPCs. So, it seems to me that our CPCs and MFTs at the time of this incident fell under these code of ethics descriptions which are embodied in what we just described in count three.
- Jenny: I'm going in depth here of that final note. It was, so it says dated July 8, 2020, at the very bottom of it and then it was electronically signed, July 31, 2020, and how EHRs work, it might have been started and then I don't know how much editing took place between the date of the session and then the end of the month in which it was signed. That's concerning me because did it get flavored? I'm making a judgment call here, but the session happened, I don't know what was notated because it wasn't electronically signed yet. A CPS report was made. Someone showed up at the complainant's house to investigate the report and then the note was signed after all was said and done. That is problematic to me because I wonder if that's why this note feels different too. So now looking at the dates of this, it feels like maybe the note got influenced later and now I'm wondering if that's a really good account of what took place in the session or not. I bring this all up to say it does appear that this count, I do think that it looks like there's some bias here and that the code was violated here after some more of the interactions took place. I am concerned about the date of when the note was signed to when the session took place.
- Jennifer: I think it's absolutely worth noting that this note was signed three weeks after a CPS worker showed up at the doorstep of this client.
- Jenny: I'm going to say that this would violate based on relationship status.
- Steve: I agree that the language that would be applicable here. Relationship status.
- Motion that alleged violation of law number four has been proven with regard to discrimination against relationship status: 1st Jenny, 2nd Sheldon; No abstentions; Motion approved unanimously.
- Chrissy: It would be my recommendation now that counsel for the petitioner reiterate the recommended discipline.
- Henna: I ask that the Board take the following actions against Ms. Payan. One, recovery of attorney's fees and costs in the amount of \$6,629.06 in attorney's fees as of yesterday, plus attorney's fees and court reporter costs accrued today pursuant to NRS 622.400, attorney's fees at the rate of \$157.04 cents per hour. The fine and the attorney's fees would become to do within one year of this order if there is a fine assessed as well. Report any actions taken by the Board to the NPDB reporting bank and any national data bank that is required by law. Ms. Payan must complete 20 hours of Board approved continuing education with 10 hours of ethics and 10 hours in cultural competence within six months, the 20 hours of continuing education cannot be used towards continuing education already required for continued licensure as a clinical professional counselor intern by the Board. Respondent must undergo detailed supervision with an emphasis towards additional remediation around cultural competence within 30 days of the order. Respondent must submit to the Board a detailed supervision plan that emphasizes remediation and cultural competence, and the terms of this order would become effective today.

- Steve: Mr. Johnson, do you have any thoughts?
- Terry Johnson: When you hear thousands upon thousands of dollars in costs and fees that are being imposed, consider other mitigating factors and see what we can do to put this young person on a successful path, not a canceled career path, overly strapped with financial obligations and with her likely future earning ability potentially impacted by the outcome of this proceeding. So, give her an opportunity to succeed. With regards to any costs that you would impose, I would ask that you give her at least two years to satisfy any financial obligations you impose, but she tried to do the right thing. Please understand that and please understand and consider the circumstances in totality that informed her decision and her actions, and we appreciate again your attention to and hearing of this matter this afternoon. Thank you.
- Steve: I am thoughtful about Mr. Johnson's comments and quite a few of the Board member's comments about how we believe in growth and in renewal and in advancement and becoming amazing practitioners in our state. I want to propose considering potentially eliminating the administrative fees. I like Mr. Johnson's consideration of expanding it to two years for full repayment for the legal fees if we can make that work and then really creating an improvement plan of continuing education articulated supervision for professional development.
- Henna: I would also suggest incorporating into the decision a payment plan that she can enter into with the Board.
- Steve: I think that would be thoughtful and probably helpful if we could eliminate the administrative fines and then extend a payment plan potential for a two-year repayment of the legal fees. And then personally, I agree with 20 continuing education units that are specifically addressing cultural competency and ethical decision making. And then I do agree that it's appropriate to have a newly articulated supervision plan with those continuing education considerations.
- Sheldon: Whatever we can eliminate in terms of the fees, or the fines are concerned, I think that that will be significant and having a payment plan would be helpful. I like the two-year idea as well. I also like the idea of some training focused on ethical decision making. I think cultural competency is important, but I think that some of the missteps appear to be more than just cultural considerations.
- Chricy: When we talk about wiggle room of attorney's fees, it's the Board assuming its own attorney's fees, so the Board is still going to receive an invoice. It's just you're determining how much the respondent must pay you back.
- Sara: I'm always in support of continuing education so I'm in support of the 20 hours including ethical decision making. I'd also be in support of eliminating the administrative fine and giving two years with the payment plan. How much longer is supervision?
- Steve: Ms. Rasul, I believe your recommendation was 10 CEUs in ethics and 10 CEUs in cultural competency. Is that correct?
- Henna: Yes, and I forgot to add that that would be within six months or prior to her submitting documentation for full licensure.

- Steve: What if we cut the legal fees down to \$2,000 and what if we mandated the 20 hours of CEUs, 10 in ethics, 10 in cultural competency and we gave a two-year payment plan for \$2,000 or whatever our number would come up with.
 - Sara: As the former treasurer, I'm concerned that it would change our budget too. There will be a financial impact.
 - John: I don't want to add to more hours of CEUs, but I think probably within the ethics I would just advise it would be good that you would include documentation because there's a side to ethical practice in terms of finding that right balance between too much information, too little information and the implications of injecting the perceptions of your own opinion or perspectives into it.
 - Jennifer: If we're recommending kind of a tightened-up period of supervision with a clearly articulated supervision plan but is this going to go on for a month and then hammer out the CEUs and move on. I guess I'm just looking at how long of a period does Ms. Payan really gets to be supported in supervision as she moves through this period of learning?
 - Lauri: We can absorb the attorney's fees. Does the supervision assignment change?
 - Steve: I don't think that is within our purview at this juncture.
 - Joelle: Ms. Payan currently has 2,585 total accumulated hours to date, and she needs to pass her national licensing exam.
 - Hal: I think \$2000.00 is a little light.
 - Jenny: I would be more comfortable with \$3000.00 for the fine because the Board will be absorbing more of the fee, and this was a really lengthy and tedious process and so I would suggest \$3000.00 and then the two-year period and I would say six months for the 20 CEUs. I highly recommend the documentation, not just because it would go a long way with clinical effectiveness, but also because it could also help you to have better documentation, and that was something that your supervisor had mentioned was lacking. So, I would just strongly suggest whether that is mandated or not. Seek it if you want to continue in this profession.
 - Lauri: I say we split the difference at \$2500.00.
 - Motion to approve the recommended disciplinary action subject to the following amendments: remove the administrative fine, \$2,500.00 in recoupment of attorney's fees and court reporters costs to be paid over a period of two years, 20 CEUs completed, 10 of which specific to ethics, inclusive of clinical documentation, 10 of which related to cultural competence, clearly articulated supervision plan and remediation: 1st Jennifer, 2nd Lauri; No abstentions; Motion approved unanimously.
4. Disciplinary hearing on Complaint and Notice of Hearing in the Matter of Bianca McCall, Case No. NV23MFT004. This agenda item may include review and consideration of a consent decree (For possible action)
- Joelle: I do believe that we have consideration of a consent decree that was signed by Ms. McCall.
 - Marta: I will be recusing myself from this case.

- Joelle: Sheldon will also be recusing.
- Chricy: This is a settlement agreement. I will read through all portions and if there are no questions, then we would need a motion to approve.
- Steve: I would love to hear any discussion that you might have.
- Motion to approve the consent decree as written: 1st Jennifer, 2nd Jenny; No abstentions; Motion approved unanimously.

PUBLIC HEARING – LCB File R125-23

5. Introduction – Open Public Hearing

- Joelle: This is the opening and introduction of our Public Hearing to remove regulations that were outlined in the Governor’s Executive Order 2023-003.

The purpose of the hearing is to receive comments from all interested parties regarding the adoption of regulations that pertain to LCB File No. R125-23, Chapter 641A of the Nevada Administrative Code.

The proposed regulation includes the following and other matters properly relating thereto:

- NAC 641A.055 – removes that communications to the Board must include an email address and the person’s name.
- NAC 641A.095 paragraph 1 – removes the restriction of how many times an applicant can attempt to take their national licensing exam in a 12-month period.
- NAC 641A.095 paragraph 2, subsection (a) – removes that a person must take the national licensing exam within one year of being notified of eligibility.
- NAC 641A.095 paragraph 2, subsection (b) – removes that a person must retake the national licensing exam within one year after failing the examination and that their license is deemed lapsed.
- NAC 641A.126 paragraph 3, subsection (a) – removes that a provider of continuing education must transmit to the Board the title of the course or program within thirty (30) days.
- NAC 641A.126 paragraph 3, subsection (b) – removes that a provider of continuing education must transmit to the Board the name of the instructor of the course or program within thirty (30) days.
- NAC 641A.126 paragraph 3, subsection (c) – removes that a provider of continuing education must transmit to the Board the date, time and location of the course or program within thirty (30) days.

- NAC 641A.126 paragraph 3, subsection (d) – removes that a provider of continuing education must transmit to the Board the names and total number of attendees who were issued certificates.
- NAC 641A.126 paragraph 3, subsection (e) – removes that a provider of continuing education must transmit to the Board the number of hours available for credit for attending the Board to the course or program.
- NAC 641A.126 paragraph 3, subsection (f), number (1) – removes that a provider of continuing education must transmit to the Board the registration number assigned by the Board to the course or program.
- NAC 641A.126 paragraph 3, subsection (f), number (2) – removes that a provider of continuing education must transmit to the Board the registration number assigned by the Board to the approved provider of continuing education.
- NAC 641A.129, paragraph 1 – removes that an approved provider of continuing education must keep records of the course or program for three years.
- NAC 641A.129, paragraph 1, subsection (a) – removes that an approved provider of continuing education must keep records of the course or program for three years including each attendee of the course or program.
- NAC 641A.129, paragraph 1, subsection (b) – removes that an approved provider of continuing education must keep records of the course or program for three years including the number of hours available for credit for attending the course or program.

Public comment is welcomed by the Board. Persons wishing to provide public comments remotely may access the meeting by telephone at (253) 215-8782 or through the electronic link posted on the agenda. Public comment will be limited to three (3) minutes per person and comments based on viewpoint will not be restricted. A public comment time will be available prior to any action items on the agenda and on any matter not specifically included on the agenda prior to adjournment of the meeting. At the discretion of the President, additional public comment may be heard when that item is reached. The President may allow additional time to be given a speaker as time allows and at his/her sole discretion. (NRS 241.020, NRS 241.030) Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the Board may refuse to consider public comment. (NRS 233B.126)

6. Open Public Comments: Proposed Regulations

No vote may be taken upon a matter raised during a period devoted to public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

- No public comment at hearing
- Joelle: No written comments received.

7. Close Public Comments: Proposed Regulations

8. LCB File No R125-23 - Consideration of Public Comments (for possible action)

- Motion to approve proposed language included in LCB File No R125-23: 1st Lauri, 2nd John; No abstentions; Motion approved unanimously.

9. Discussion, recommendation, and possible action regarding review and approval of minutes from the January 19, 2024, meeting (For possible action)

- Motion to approve minutes from January 19th meeting: 1st Lauri, 2nd Jennifer; No abstentions; Motion approved unanimously.

10. Discussion regarding future agenda items and possible future meeting dates

- Steve: We are looking at April 19, 2024.
- Joelle: That is correct. That is potentially a disciplinary hearing so please make sure you clear your schedules.

11. Board member comments

- Steve: I'm honored to work with you and for you. Thank you everyone for your energy and dedication.
- Jenny: I will say something that was brought up today about the backlog and it's taken time to get through these complaints. I think we are doing a good job and getting through what was there.
- Lauri: Being a public member, I want to commend all of you for digging so deep into the details to make sure that it was thoughtful, it was thorough, it was logical and made sense. I was very impressed with the amount of detail that you all went through.
- John: I would say that the real commendations for catching up on the backlog go to our office staff working with Henna. We had such a big backlog and they got this going and went through those, processed them and it was just in such a standstill for such a long time that it really is thanks to Joelle, Stephanie and Henna for the work that you do. Prior to that, for Hal who was just taking it upon himself to get things rolling while the office was still in the state of transition.

12. Public comment

No vote may be taken upon a matter raised during a period devoted to public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

- No public comment.

13. Adjournment

- The meeting adjourned at 4:30 PM.