

MINUTES OF THE MEETING FOR THE NEVADA STATE BOARD OF ATHLETIC TRAINERS (NSBAT)

DATE: **July 26, 2019**

LOCATIONS:

University of Nevada Reno
1664 N. Virginia Street
System Computing Services
Room #47
Reno, Nevada 89557

University of Nevada Las Vegas
4505 S. Maryland Parkway
System Computing Services
Room #306
Las Vegas, Nevada 89154

1. Meeting called to order by NSBAT Chairman, Jeremy Haas at 1:03PM.

Board Members Present: Chairman Jeremy Haas, Vice Chair Tedd Girouard, and Board Member Keoni Kins.

Staff Present: Sarah Bradley, Senior Deputy Attorney General; Nikki Rossetta, Intern to Senior Deputy Attorney General; and Michelle Cothrun, Board Executive Secretary.

Public Members Present: Eric Ingram.

2. Public comment. Eric Ingram will save his comments for later on the agenda. No further public comment.

3. Review and approve Board meeting minutes of February 22, 2019, March 15, 2019, and June 21, 2019. (For possible action) Michelle Cothrun apologizes to the Board for sending the meeting minutes last minute. She realizes that the Board requested at a previous Board meeting that the minutes be sent as soon as they are drafted. Michelle asks the Board if they would prefer the minutes of the meeting to be more of a brief overview or a more robust and detailed account of the meeting. Tedd Girouard states that the more robust and detailed the better. For example, when Steve McCauley was at the previous Board meeting, the need to review old meeting minutes to see what a previous Board had done was brought up. There are things that come up from ten (10) years ago and no one will remember. Jeremy Haas concurs and likes the detail. He mentions that before Michelle came on board, Stacey Whittaker's meeting minutes were detailed and would note which Board member made which comment. He adds that the meetings are conversational and reviewing the minutes afterwards provides context. Keoni Kins is in agreement as well.

Tedd states that he has read and reviewed the meeting minutes and did not see any issues. He asks if either Jeremy or Keoni saw any issues and neither of them did. Tedd Girouard motions to approve the Board meeting minutes of February 22, 2019, March 15, 2019 and June 21, 2019. Keoni Kins seconds the motion and it passes unanimously.

4. Update on disciplinary action reports and investigations of unlicensed activity. (Discussion) Michelle Cothrun informs the Board that she has received an anonymous letter sent to the PO Box. She has not forwarded it yet to Sarah Bradley to review and advise on how to handle the matter. Michelle then

asks Sarah how to handle complaints of unlicensed activity, working outside of the scope of practice, athletic trainers from California providing services at games or other complaints. Michelle scanned the anonymous letter and forwarded it to Jeremy Haas to review. Sarah states that a letter of complaint should only be forwarded to the person that would be doing the investigating. Sarah outlines the correct steps for handling a complaint: receive the complaint, log it, assign it a number, and forward it to the person handling complaints. The Board at the moment does not have an investigator. It is important to inform the Board that there are pending investigations and to let them know what the Board office is receiving but to keep the details confidential. Now that Jeremy has seen this complaint, he will not be able to vote on the matter if it were to come before the Board. The Board would want to hear the details of a complaint for the first time at the hearing. If the Board would be voting for dismissal, the names and all other details would never become public. Jeremy asks since he has seen the complaint, what are the Board's options? The complaint is regarding an event that begins today and goes on for the next week. The letter alleges that unlicensed persons are acting as athletic trainers. Is there a quick action process?

Sarah then pulls up the Board's chapter regarding unlicensed activity. She starts by saying that unlicensed activity is difficult because it is usually after the fact. Someone has to engage in the unlicensed practice for the Board to have jurisdiction. Normally the Board cannot stop the activity before it starts. The Board can send letters, for example, ahead of an athletic event as a reminder that all persons providing athletic training services need to be licensed by the Board of Nevada, as an educative measure. The Board has limited ability to sanction over unlicensed activity because the parties involved are not licensees. However, if the unlicensed activity occurs over time, the Board can pursue an injunction in District Court and even criminal prosecution. There are more serious remedies to try if it is a repeated offense.

Jeremy explains that the person who wrote the anonymous letter was able to send a complaint ahead of the event is because the athletic event in question is an annual event and they historically do not employ athletic trainers. They now bring their own staff that is trained in EMT basics, massage therapy or other treatments. It is unknown if the staff are acting like athletic trainers. The anonymous person has also done some investigation and gave the name of the company that provides the services. This situation has gone on for years and is a concern.

Tedd Girouard asks if one of the Board members could investigate it this weekend to see for themselves what is going on. Sarah says it is best if only one goes to investigate to prevent the rest of the Board members from predetermining. She reads the statute, NRS 640B.300(3) and it provides authority to seek an injunction but there is no mention of imposing a small fine, as with some other Boards. She notes that any Board member can file a complaint, in addition to any member of the public. She advises to document what you saw and what evidence you have to support the complaint. Sarah adds that going to District Court to seek an injunction is expensive and the process is involved.

Jeremy brings out that it is a California company, so they have been skirting around licensure for years. Tedd adds that the Board does need to act in some way to protect the public but first needs to confirm that unlicensed activity is occurring. Sarah explains that whoever is able to attend to investigate should provide as much documentation as possible. Michelle says the event is in Las Vegas. Once the complaint is filed, the evidence will be presented to the full Board to decide whether to file for an injunction. It would be interesting to get an injunction against a California company coming to Nevada; however, the Board should have the authority to stop unlicensed activity in Nevada, even if the company resides somewhere else. Tedd asks if the Board could get an injunction as soon as Monday but Sarah says that it not possible. The injunction would be for next year's event.

Sarah outlines the process for filing for an injunction: prepare a complaint, file it with District Court, serve the complaint, and allow time for the company to respond. They may reply that the Board has no authority over them since they reside in California. The Board should have authority once the company sends staff to work in Nevada. A California company cannot violate the law in Nevada. The process for an injunction can take a few months. The Board can get a Court order in place and if the company does it

again next year, they would be violating the Court order. Sarah adds that the Board may also want to add other options for enforcement of unlicensed activity. For instance, some Boards can issue a citation with a fine. These intermediate options are less expensive and easier to enforce than going to Court for an injunction.

Jeremy states that the staff involved are EMT's for the most part. The question is not whether the EMT's can work at an athletic event but rather are they identifying themselves as EMT's or athletic trainers. Tedd asks are they practicing as an athletic trainer, performing the typical athletic trainer job? Evaluating a knee injury and returning an athlete to play is not an EMT function. Jeremy states that an EMT stabilizes and transports. Keoni Kins adds his concern is if they are using other licensed or regulated providers, it may fall under another Boards' purview. Sarah agrees that other Boards may be involved that require licensure in Nevada, such as massage that was mentioned earlier. Jeremy corrects his previous statement. The services mentioned are first aid, CPR and EMT basics. Tedd volunteers to attend the event and investigate but would that mean that neither he nor Jeremy could vote on the matter if it would appear before the Board? Sarah explains that the standard that would prevent a Board member from voting if they are preconceived. But she would like to review the anonymous letter and the statute on conflicts with the Board members. Tedd asks if the injunction would be against a person or the company. Sarah states that the injunction is usually against a person, but it could also be against a company.

Keoni asks if there are any State regulations that require these tournaments to hire an athletic trainer. The more challenging the Board makes it to use athletic trainers, the less likely these tournaments will hire athletic trainers. The Board discusses the possible danger to the public and the profession. Tedd adds his concern that if the Board does nothing, there are other companies that have skirted the issue of using licensed athletic trainers for years and will continue. An injunction against this company may set a precedent and send a message to other companies. Jeremy describes pictures on this company's Instagram account that show services other than first aid, but he does not see name tags. Tedd will attend the event, submit the complaint form that is on the Board's website along with any evidence to substantiate his claims, and he will submit it all to Michelle, who can then forward it to Sarah to review. An action item will need to be added to the next Board meeting that the Board may file for injunctive relief pursuant to 640B. No further discussion.

5. Licensed Athletic Trainer, Eric Ingram requests the Board consider not charging him the \$150.00 license reinstatement fee. (For possible action) Jeremy Haas welcomes Eric Ingram to the meeting and states that Eric has been in contact with Michelle Cothrun through email with concerns regarding the late fee he was charged. Jeremy asks Eric to state his case. Eric says that he has been a certified member for 30 years and has never been inactive. He adds that he moved both his home and his office this year. He just received the reminder card a week ago which was forwarded through the postal service. He relies on the reminder card and from a business standpoint, it always comes on time. This time it being late is no one's fault. Michelle was kind enough to send him an email on Sunday at 8:39pm but that was not helpful. Eric states that he had already shut down his computer and was ready to call it a night. First thing in the morning, he went online to pay. Michelle then emails him to let him know that he was late so he would be in inactive status until he paid the \$150 late fee. He states that he was late, and it is not Michelle's fault. He restates his good track record and adds that a late fee of \$150, which is equal to the renewal fee, is exorbitant. He asks for the Board's dispensation, to waive the \$150 fee, reinstate his license and allow him to take a mulligan for this one offense.

Jeremy starts by saying that the Board sympathizes with Eric regarding the \$150 fee. It is set by the Board's statute and there is nothing the Board can do about that. The Board has recently discussed adding grace periods, but the precedent has been set and cannot be overruled. It is the professional responsibility of the licensees to meet the renewal deadlines, which never change.

Tedd Girouard adds that several other licensees that have missed the renewal deadline by one day and they have had to pay, including himself. Jeremy states that the Universities have run into problems with

meeting the deadline due to their internal procedures and have had to pay the fee for every athletic trainer on their staff. Jeremy and Tedd discuss the concern of upsetting other athletic trainers that have had to pay the fee in the past. Keoni Kins agrees that is his main concern. He states that the Board just approved meeting minutes which state that were nine (9) licensees who paid the fee last year. He thinks this issue is something the Board has recently discussed and should continue to discuss. Jeremy concludes to Eric that the Board's statutes are written in such a way that there is no grace period.

Eric says that the Federal Government has a two (2) day grace period if taxes are due on a Sunday. He also brings out the amount of revenue generated by the active members who pay the renewal fee. The revenue generated by his late fee pales in comparison to the number of inactive licensees, who do not generate revenue for the Board. He feels he is being unjustly punished. The Board states that the potential revenue generated by inactive licensees is irrelevant. As long as they are not acting as athletic trainers, they do not need to be licensed. The renewal date and the fee for missing the deadline have never changed.

Eric chooses not to pay the additional \$150 and to have his license expire. He asks if the \$154.79 will be refunded. Sarah advises the Board that NAC 640B.060 states that "The Board will charge and collect the following fees" and lists the fees out. "A fee charged and collected pursuant to this section: (a) Must accompany the application; and (b) Is not refundable." However, in this case, the renewal has not been completed. In fairness, the partial payment can be refunded. Jeremy asks Eric if he will be working or identifying himself as an athletic trainer. Eric explains that he is dual-credentialed and has been running his business, Sierra Bodyworks, for twenty-two (22) years. His not being licensed as an athletic trainer will not alter the way he practices manual therapy.

Jeremy motions to deny Eric Ingram's request that the Board consider not charging him the \$150.00 license reinstatement fee. Tedd Girouard seconds the motion and it passes unanimously. Eric thanks the Board for their time and leaves the meeting.

6. Review of consumer complaints pending. The Board will review recommendations received from its investigating board member on the matter listed below. The Board may vote to dismiss the complaint or move forward to discipline before the Board. (For possible action)

A. Complaint #18-0901 Jeremy Haas asks Sarah Bradley to advise the Board since he was the investigator on this matter. Sarah begins by explaining that there was a complaint filed and it was investigated by Jeremy. Jeremy does have a recommendation regarding the disposition of the complaint. The process would be to present a summary of the complaint and have the Board vote to either dismiss the complaint or not based on the recommendation, which is to dismiss in this case. Sarah states the vote should not happen today because there is a quorum issue. There are five (5) Board members and a quorum of three (3) is present. However, Jeremy would need to recuse himself from voting, leaving just two (2) members to vote.

Normally, the athletic trainer's name and place of employment are kept confidential. In this case, there may be a conflict with the two (2) remaining Board members in attendance today. It would be best to wait until the entire Board can review this particular complaint, but it is not clear how long that would take. The law does allow the quorum to be reduced if there is a conflict. Sarah wants to inform Tedd and Keoni of some details so they may make the determination under the Ethics law. She is concerned about having them voting on the complaint without realizing they may have a conflict. Sarah will email them individually to have that discussion to be sure they are not put in a position where someone could challenge their vote because it is believed to be not ethical. The complainant will not be happy with delaying the vote, but Sarah wants to be sure this is handled correctly. She will also reach out to the Nevada Commission on Ethics to get better guidance. There is no further discussion and no action will be taken at this time.

7. Report from Executive Secretary, Michelle Cothrun. (Discussion) Michelle Cothrun informs the Board she attended the Executive Branch Audit Committee (EBAC) meeting where the second report from the Audit was presented. She, along with other Boards' Executive Directors, misunderstood the requirement to keep the report confidential. The report was to be kept confidential from the public but not from the Boards themselves. She will forward the report for all the Board members to review. Other agenda items will be addressed at the next Board meeting. There is no further discussion.

8. Report from Senior Deputy Attorney General, Sarah Bradley. (Discussion) Sarah Bradley informs the Board that usually in October, the Attorney General's office has Boards and Commissions training. She will inform the Board to see if there are any members that are interested in attending. She also states there have been a couple of laws that have passed so she will reach out to Michelle with a summary. The first is regarding citizenship, which is no longer a requirement for licensure. There are also changes regarding public records requests where the Board would need to create a confidential records list. Finally, the Board will need to add new regulations for the process for someone with a criminal history to petition the Board to have their criminal history reviewed, before they apply to a school program for instance, to find out if their criminal history would prevent their licensure. Tedd Girouard adds that there was much interest in this topic at the BOC Regulatory Conference in Omaha, especially when a person with a criminal history considers investing in their career by attending a master's program. Sarah states that the Board needs to think about the list of crimes that could completely bar licensure or which could be allowable if the sentencing was completed. All Board members agree that this is an important topic to consider at the next meeting. There is no further discussion.

9. Future agenda items. (Discussion)

- A. Grace period for renewals and new grad students applying for licensure.
- B. Adding a link to the Board's website for licensees to update their addresses.
- C. Any additional items from the last Board meetings that are outstanding.

10. Discussion, possible decision on date of next meeting. (For possible action) Jeremy Haas suggests waiting to set the date of the next meeting until after the Public Workshop regarding dry needling regulations, which is being held right after this meeting at 2:00PM. There is no action taken.

11. Public comment. There is no public comment.

12. Jeremy Haas adjourns the meeting at 1:56PM.