



Examining Board of Psychology

Message from the Chair: Shari Roberts

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The examining board of psychology has been very busy during the last 6 months. There have been several changes at the state level in addition to the changes coming for the profession. Please see the article inside about upcoming workshops entitled “**Opioids: Prescribing and Monitoring**” to implement the Engrossed Substitute House Bill 1427 which deals with the opioid crisis. . Please consider attending any of the workshops listed in the article and contributing to the discussion. There is also an article about Duty to Warn and how it may impact your practice.

The EBOP has several near term goals which we plan to focus on in 2018.

- Examining how the changes to the EPPP will impact licensure in Washington State
- Engaging lively discussions around possible participation in PSYCPACT
- Evaluating our current CE requirements to see if they need to be altered.
- Exploring whether the RCW should include more guidance about disclosure statements and informed consent

Thank you for making the time to read the newsletter. Many hours go into writing this short communication.

Shari Roberts,
EBOP Chair
Public Member

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2018 Board Meeting Dates

January 26

March 16

May 18

July 20

September 14

November 16

Washington State Supreme Court: Mental Health Care Providers Have a Duty to Warn the “Foreseeable” Victims of Potentially Dangerous Outpatients

Jack Bucknell, Assistant Attorney General and Elizabeth Unterbrink, Attorney General’s Office Law Clerk, Seattle University

Jan DeMeerleer murdered his ex-girlfriend, Rebecca Schiering, and her nine-year old son, Philip, and attempted to murder Schiering's older son, Brian Winkler. After the attack, DeMeerleer committed suicide. DeMeerleer had been an outpatient of psychiatrist Dr. Howard Ashby for nine years leading up to the attack, during which time he expressed suicidal and homicidal ideations, was noncompliant with his medication regimen, and at times unstable, but never named Schiering or her children as potential victims.

Beverly Volk, Ms. Schiering’s mother, filed a medical negligence claim against Ashby and his clinic (Ashby), alleging they failed to follow the accepted standard of care for providing mental health/psychiatric services in Washington. Ashby denied violating any standard of care and argued the attack was not, as a matter of law, foreseeable without an actual threat of violence against the Schiering family. Ashby claimed immunity under RCW 71.05.120, and argued that he had no duty to warn Schiering because DeMeerleer never communicated an “actual threat of physical violence against a reasonably identifiable victim or victims.” (quoting RCW 71.05.120(2)). The trial court accepted Ashby’s legal arguments and granted judgment for him without a trial. Ms. Volk eventually appealed to the State Supreme Court.

The Supreme Court reversed the trial court. In making its decision, the Court weighed psychotherapists’ ability to “control” outpatients; the public interest in safety from violent assaults; the difficulty in assessing mental health dangerousness; the goal of placing patients in the least restrictive treatment environment; the social importance of maintaining patient-provider confidentiality; legal precedent (most notably *Petersen v. State*, 100 Wn.2d 412 (1983)); and reaching a “balanced” outcome. With these considerations in mind, the Court determined: (1) Ashby had a special relationship with DeMeerleer because they had a definite, established, and continuing treatment relationship; and (2) Because of the special relationship between Ashby and DeMeerleer, Ashby had a duty to take reasonable precautions to protect *anyone* who might foreseeably be endangered by the DeMeerleer’s condition. The Court sent the case back to the trial court for a trial on the medical negligence claim.

The Court acknowledged that, “mental health professionals face an incredibly difficult task in ascertaining whether a patient will act violently.” *Volk v. DeMeerleer*, 187 Wn.2d at 273. The acknowledgment is, perhaps, of little comfort when mental health care providers nonetheless have a duty to take “reasonable precautions” to protect against “foreseeable” danger, a less certain standard when compared to a duty to warn when there is an actual threat of violence against a reasonably identifiable victim.

¹ *Volk v. DeMeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016). All facts are taken from the Washington State Supreme Court’s opinion.

² Nothing in this case overview should be considered legal advice. Any opinions and analysis are the authors and are not the opinions or analysis of the Attorney General’s Office or the Attorney General.

³ Ms. Volk also filed other claims against Ashby, but they are not relevant to this overview.



Opioids: Prescribing and Monitoring

Implementing Engrossed Substitute House Bill 1427

An ongoing problem with prescription opioids includes the state of Washington. This prompted two recent actions. The first happened in October 2016 when Governor Inslee signed [Executive Order 16-09](#). In that order, he characterizing opioid use disorder as “a devastating and life-threatening medical condition.” He also called for actions to reduce opioid misuse and abuse.

The second action happened during the 2017 legislative session. The legislature considered several bills to address the issue of opioid use disorder. Ultimately, the legislature passed [Engrossed Substitute House Bill \(ESHB\) 1427](#) and the governor signed it into law.

As part of the implementation of 1427, the board will participate in a series of seven workshops held around the state.

The schedule of workshops are:

- September 20, 2017, in the Tumwater area
- October 19, 2017, in the Spokane area
- November 15, 2017, in the Yakima area
- December 12, 2017, in the Kent area
- January 8, 2018, in the Vancouver area
- February—TBD
- March 14, 2018, in the Tumwater area



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Important Points of Executive Order 16-09:

- **Applying safe prescribing practices;**
- **Giving more consideration to non-opioid choices to manage pain;**
- **Increasing access to medication-assisted treatment; and**
- **Increasing the use of Washington’s Prescription Monitoring Program (PMP).**

Opioids: Prescribing and Monitoring

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Objectives for these workshops

For the boards and commissions, representatives from the five boards and commissions (see sidebar) will form a workgroup to create prescribing rules, much as they did in 2011 for the chronic non-cancer pain rules. This workgroup's key aims are to:

- **Generate a boilerplate** set of prescribing rules;
- Create uniform recommendations on revising existing pain management rules;
- Forward the boilerplate rules to each board and commission to adopt under their own authority; and
- Coordinate education and outreach campaigns. For the PMP reporting and metrics:
- Establish an overdose notification message for providers;
- Determine the information and metrics to be provided to facilities, groups, and the Washington State Hospital Association;
- Create formats and metrics for prescriber feedback reports; and
- Develop communication and technical assistance.

The deadline for the boards and commissions to adopt their rules is January 1, 2019. The PMP plans to complete its work during this same time.

The seven workshop meetings are open public meetings. The public is welcome to attend and will have an opportunity to give comments.

Effects of ESHB 1427:

- Expanding access to PMP data to government, including personnel within the Department of Health (department), the Health Care Authority, and local health offices.
- Sharing PMP data with health care facilities and groups of at least five prescribers.
- Allowing hospitals to receive PMP data through their continuous quality improvement programs.

- Directing the department to develop an overdose-event notification letter to be sent to prescribers when these events occur.
- Creating a feedback reporting mechanism for providers of their prescribing practices in comparison to others in similar practice specialties.
- And finally, it directs the five identified boards and commissions to create prescribing rules for using opioids for acute, sub-acute and perioperative pain (which may include making changes to the existing chronic non-cancer pain rules):

The boards and commissions must consider the revised Agency Medical Directors Group and Centers for Disease Control guidelines; and consult with their professions' associations, the Department of Health, and the University of Washington.

Five Identified Boards and Commissions

- ◇ Board of Osteopathic Medicine and Surgery;
- ◇ Dental Quality Assurance Commission;
- ◇ Medical Quality Assurance Commission;
- ◇ Nursing Care Quality Assurance Commission; and
- ◇ Podiatric Medical Board.

FYI on effects of ESHB 1427

The new law also establishes opioid treatment programs and facilitates treatment of "opioid use disorder". To read the full bill text, go to:

<http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1427-S.SL.pdf>

New Member Spotlight

U. James Chaney, MPA. MA. BA., Executive Director

U. James Chaney, MPA, MA, BA retired after 29 years of military service. Originally from Florida, he has served in ten countries and eight states. After military retirement, he moved to Colorado working within the Veterans Administration, on a governor appointed commission, and in local community service. His professional experience is in nursing, behavioral health counseling, and healthcare and public administration. After two years in Colorado, he decided to return to Washington where he now serves as the Executive Director for Behavior Health Professions. He is currently pursuing another graduate degree in Psychology as a means to seek community service opportunities after state employment.

Christopher Gerard, Assistant Attorney General

Christopher Gerard has been appointed as an Assistant Attorney General (AAG) since July 26, 2017. Previous to this appointment, Christopher worked as a staff attorney with the Washington State Department of Health managing a caseload of disciplinary cases for various disciplinary authorities including the Pharmacy Quality Assurance Commission, Board of Optometry, Board of Nursing Home Administrators, and various Secretary regulated professions. While at the Department of Health, Christopher also assisted the Department with Public Records Act compliance and subpoena responses. Christopher graduated with a law degree from the University of Cambridge, England, and a Masters in Law (LL.M.) from the University of Washington.

Examining Board of Psychology Disciplinary

Psychologists

Active Licensed Psychologists - 2,996

Complaints Received - 233

Investigated - 81

Closed after investigation - 73

Legal Action Taken - 26

Summary Action - 3

The number of cases resulting in action taken by the board varies slightly depending on the nature of the complaints received. There has not been a significant change from previous biennium.

When there is an immediate danger to public safety, the board may summarily (immediately) suspend a respondent's license. The board summarily suspended one psychologist.

When a licensee is prohibited from practicing in another state because of unprofessional conduct, there is a mandatory summary suspension of the credential in Washington.

How to avoid a complaint: Communicate and document all communication and treatment provided or recommended. These actions alone may not prevent a complaint being filed but will assist the board when evaluating whether a violation of law has occurred. Know your law. Laws can be located on our [website](#).

Board Staff Contact Information

Department of Health
PO BOX 47852
Olympia, WA 98504-7852

[Kim-Boi Shadduck](#), Program manager

[Erin Obenland](#), Disciplinary case manager

Customer Service 360-236-4700
www.doh.wa.gov

[Board Website](#)

The board is made up of seven psychologists and two public members. Members attend regular meetings, scheduled for one day on a Friday every six to eight weeks. Members are appointed by the governor for five-year terms. If you are interested in applying to be a part of the board, please complete an application on

the governor's website at <http://www.governor.wa.gov/boards/application/application.asp> or contact Kim-Boi Shadduck at

KimBoi.Shadduck@doh.wa.gov with questions.



It is the purpose of the board established in [RCW 18.83.050](#) to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensure, continuing education, consistent standards of practice, continuing competency mechanisms, and discipline.

Renew Your Credential Online

Psychologists who are within 60 days of their license expiration date, are able to renew their active status licenses, registrations or certifications online.

To renew online, you must register with Secure Access Washington and sign-in to the Department of Health Online Services. Go to the [Secure Access Washington \(SAW\) website](#). Here is a link to [online renewal frequently asked questions](#).

If you're having problems with the Department of Health Online Services site, [contact our Customer Service Office by email](#) or by telephone at 360-236-4700.

Reader Input

The board is looking for reader input.

If you want to read about something specific, [please let us know](#).

