

**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**

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State of California  
Department of Consumer Affairs  
Arnold Schwarzenegger, Governor



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**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**

**BOARD MEETING MINUTES**

**August 27, 2004**

**Sacramento, California**

**Los Angeles, California**

**Rancho Mirage, California**

**Board Members Present**

Luella Grangaard, President

Cynthia Burt, Vice President

Roberta Murphy, Secretary

Margaret Cunningham

Christine Wietlisbach

**Board Member Absent with Excused Absence**

Hugh Smith

**Staff Present**

Gretchen Kjose, Executive Officer

Norine Marks, Legal Counsel

Janet Yagi, Associate Governmental Program Analyst

Lindsey Fields, Student Assistant

**A. Call to Order, Roll Call, Establishment of a Quorum**

Gretchen Kjose called the meeting to order at 9:22 a.m. and called the roll. A quorum of the Board was present.

**B. Introductions**

Ms. Kjose introduced the staff present and asked whether members of the public were present at any of the teleconference locations. No one from the public was in attendance.

**C. Executive Officer's Report**

**Legislation:** Ms. Kjose reported that Senate Bill 1913 (SB 1913), which includes clean-up legislation that will repeal Occupational Therapy Practice Act section 2540.14(c), the provision that references "board approved" re-entry programs designed for practitioners who have not engaged in practice for five years and specify that occupational therapists have authority to perform iontophoresis and phonophoresis is under review by the Assembly Appropriations Committee. SB 136, which extends the date of the Board's sunset review to July 1, 2007, is also under review by the Assembly Appropriations Committee.

**Regulations:** Ms. Kjose reported that the Board's continued competency and disciplinary guideline regulations are still under review by the Department of Consumer Affairs (DCA). She noted that with the current Administration is scrutinizing all fiscal impact statements to make sure that fiscal impact to businesses is fully explained and justified. She advised that the supervision and limited permit regulations have been signed by DCA and are under review by the State and Consumer Services Agency.

Ms. Kjose indicated that the Board's renewal fee reduction regulations are under review by DCA. She said that DCA's budget office recommended that the rulemaking file be updated to include the Month 13 Fund Condition Report (published in late July) that is the most accurate reflection of revenues and expenditures for 2003/04. She noted that the rulemaking file was updated on August 10<sup>th</sup> and the 15-day comment period ended August 25<sup>th</sup>. However, she stated that the Board's budget analyst has advised that the fund condition remains high even with the proposed reductions and the Department of Finance may recommend further reductions.

**Complaint Disclosure Information:** Ms. Kjose announced that DCA has finalized model complaint disclosure regulations that will be available for the Board's consideration at its November 2004 meeting.

**Other Informational Items:** Ms. Kjose advised that the California Performance Review Task Force has completed its work and published its report that can be accessed on the Governor's web site. She noted that the task force has recommended that all health care boards be consolidated under one department, but said that until more definitive information is available, boards within DCA would continue to operate as they have in the past.

She also said she would be meeting with the Department of Education's (DOE) Special Education Director on September 1, 2004, to discuss laws and regulations that govern the practice of occupational therapists in school-based settings. Roberta Murphy indicated that she would attend the meeting as well.

#### **D. Review and Approval of Proposed Regulations to Amend Title 16, Division 39, California Code of Regulations, Section 4154 – Post Professional Education and Training**

Ms. Kjose gave an overview of Title 16, California Code of Regulations section 4154 that requires an occupational therapist (OT) in the process of completing post professional training hours for certification in an advanced practice, to work under the supervision of an occupational therapist already certified in the area, a physical therapist, a physician and surgeon, or a speech pathologist with expertise in dysphagia (for dysphagia only certification only). Ms. Kjose indicated that because OTs do not normally work under supervision, regulations are needed that clarify the type, amount, and nature of supervision required. She advised that at its July 2004 meeting the Advanced Practice Regulatory Committee suggested that supervision should be framed more as a mentoring process appropriate for the skill level of the therapist, that there should be some documentation of the training that takes place, and that the supervisor need not be on site at all time. She stated that based on the Committee's recommendation, draft language was prepared for the Board's consideration.

The Board discussed whether a form should be developed that would be completed by the supervisor and OT that identified the supervisor and OT by name, the date supervision would begin and end, a plan for the supervision process, etc. Following discussion, the Board agreed that settings for gaining hours of experience vary too much to be able to devise a form that would cover each situation. They felt it should be left up to the supervisor to determine the level, amount and type of supervision required based on the OT's knowledge, skills, abilities, and client needs. The Board asked that proposed section 4154(c)(3) be deleted, which would have required the supervisor to follow the progress of each client. The Board felt this provision would be unenforceable because it would not have jurisdiction over a supervisor who was not a licensee of the Board.

- ◆ **Roberta Murphy moved to adopt the proposed amendments with the change to section 4154(c)(3) provided that no comments are received during the public comment period or at the public hearing that oppose or recommend changes. If such comments are received, they will be returned to the board for appropriate action.**
- ◆ **Cynthia Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

#### **E. Review and Approval of Proposed Regulations to Adopt Title 16, California Code of Regulations, Section 4124, Persons Exempt from Requirements**

Ms. Kjose gave an overview of Occupational Therapy Practice Act (OTPA) section 2570.4(d) that allows occupational therapists (OTs) licensed in other jurisdictions with licensing standards equivalent to California's to work in California for up to 45 days in a calendar year, as long as they work in association with an OT licensed by this Board. She advised that at its April 2004 and July 2004 meetings, the Board's Regulatory Committee discussed whether OTs working in California but licensed in another jurisdiction should have to notify the Board that they are doing so and identify the licensee with whom they are associated. Questions were raised as to what "in association with" means and whether an OT working part-time could work longer than 45 days. Another issue considered was the fact that an OT could potentially work 45 days at the end of one year and 45 days at the beginning of the next, resulting in a substantial period of time they could practice in California without being licensed here. In addition, the Committee discussed whether other states could be considered to have standards equivalent to California's if criminal background checks were not required as a prerequisite to licensure.

She advised that at its July 2004 meeting, draft regulatory language was presented to the Regulatory Committee that would have required OTs to notify the Board that they were working in California, provide identifying information and the name of the employer and the OT with whom they would be associated. However, Ms. Kjose stated that subsequently, legal counsel advised that, as written, OTPA section 2570.4(d) does not give the Board authority to require such information and that if the Board wants to pursue such a requirement, it would need to change the statute. Ms. Kjose summarized the proposed regulatory language as follows: The language would define "calendar year" as being a single calendar year, "day" as being any portion of a day, and would specify that to be considered as having licensing requirements "as stringent" as the Board's, the State in which the OT is licensed must have must have the same education and training requirements and a criminal records check must have been a condition of licensure.

- ◆ **Luella Grangaard moved to adopt the proposed regulations as written provided that no comments are received during the public comment period or at the public hearing that oppose or recommend changes. If such comments are received, they will be referred to the Board for appropriate action.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

#### **F. Public Comment Session**

There were no members of the public in attendance.

#### **G. Adjournment**

The teleconference adjourned at 10:15 a.m.