



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY BOARD MEETING MINUTES

**Wednesday July 28, 2010
Thursday, July 29, 2010**

Board Members Present

Mary Evert, President
Linda Florey
Nancy Michel
Bobbi Jean Tanberg
Julia Tsai

Board Staff Present

Heather Martin, Executive Officer
Norine Marks, Legal Counsel
Jeff Hanson, Analyst

1. Call to order, roll call, establishment of a quorum.

Linda Florey was sworn in as the Board's newest member prior to the meeting being called to order. Ms. Florey has experience in mental health and healthcare administration and has been appointed to serve on the Board's Practice Committee.

At 9:08 President Evert called the meeting to order. Secretary Tanberg called the roll. A quorum of the Board was established.

2. President's remarks.

Ms. Evert reported that on Tuesday, July 27, 2010, she and the other Board members attended training provided by the Department of Consumers Affairs (DCA). Topics covered included, among other things, on improving enforcement and governance processes.

Ms. Evert stated she and Ms. Martin would work together to review the Board 'Best Practices' handouts and update and revise the Board Member Administrative Manual.

Ms. Evert presented several articles from professional publications and reported that, for example, after reviewing an article on re-entry guidelines, the Board might want to discuss and review the licensing requirements for practitioners re-entering the profession, to determine if changes are needed to ensure public safety. Ms. Evert provided copies to Ms. Martin and asked that they be shared with the other Board members.

3. Board member updates/activities.

Bobbi Tanberg, Julia Tsai, and Linda Florey also attended the DCA training held on Tuesday, July 27, 2010. Ms Tanberg indicated it was encouraging to hear DCA is exploring the use of technologies, like web-casting meetings, to enhance public access.

She also commented that it would be helpful to become familiar with day-to-day operations in the office.

Ms. Florey indicated the training also touched on developing professional competencies, something the Board might want to explore and develop in the future.

Julia Tsai indicated that she had visited the CBOT Facebook page and was happy that staff has made efforts to communicate and seek input from the profession and public using current technologies.

Ms. Tanberg and Nancy Michel reported the Education and Enforcement Committees did not meet since the last Board meeting, however, plans are in the works to hold both meetings in the future.

4. Approval of the March 11, 2010, Board meeting minutes.

- ❖ Nancy Michel moved to accept the March 11, 2010, Board Meeting Minutes with minor punctuation and grammatical edits.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously

5. Update from the Division of Investigation – *Daryl Walker, Acting Chief*

Daryl Walker, Chief of the Division of Investigation (DOI), who was appointed Chief since publication of the meeting agenda, provided an overview of the law enforcement and investigative services provided by DOI. DOI provides services to the 40 Boards, Bureaus, Commissions, and Programs under the purview of DCA.

Chief Walker remarked that in times of fiscal constraints, we need to evaluate what is nice to have vs. what we need to have and then prioritize accordingly. He then reported significant improvements in the processing times of investigations that had been referred to their office.

Chief Walker cited that as of June 30, 2010, there were no investigations older than 3 years, only 4 cases that were 2 to 3 years old and 60 cases that were 1 to 2 years old. Chief Walker reported that DOI's target goal is to have all investigations completed within 6 months of receiving a request for service.

Board members had a few questions regarding DOI services and then thanked Chief Walker for coming.

6. Director's Report - *Representative from Department of Consumer Affairs* **A. Enforcement Reform: Consumer Protection Enforcement Initiative (CPEI)**

Brian Stiger, Director of the Department of Consumer Affairs, briefed Board Members on the CPEI that is designed to improve the processing times for investigations and disciplinary action cases. The focus of the plan is to reduce the average processing time for disciplinary action cases from 3 years to 18 months. A component of the CPEI includes

funding and position authority for 140+ new positions, including 2.5 positions to help CBOT accomplish this goal. The CPEI also includes provisions for administrative improvements, Information Technology improvements, and legislative changes to bolster a Board's authority and streamline the administrative discipline process.

Director Stiger reported the Department has been gathering data for licensing and enforcement performance reporting. The purpose is to provide the public with monthly statistics to promote transparency and accountability regarding the performance of the various Boards and Bureaus under the Department.

B. SB 1441 - Uniform Standards (SB 1441) Regarding Substance Abusing Healing Arts licensees

Director Stiger asked the Board to consider and incorporate the Uniform Standards Regarding Substance Abusing Healing Arts licensees into regulation. The standards were developed by a committee comprised of the Director, Executive Officers of Healing Arts Boards, and the public, in accordance with SB 1441.

Director Stiger reported Senate Bill 1111 failed in policy committee. The bill was designed to give Executive Officers additional tools and authority to investigate and prosecute cases in a more swift and efficient manner.

C. Federal Healthcare Reform

Director Stiger referenced a June 23, 2010, memo sent to all Executive Officers regarding Federal Healthcare Reform and the impact to DCA. Due to the numerous provisions of the Patient Protection and Affordable Care Act (PPACA), only some were highlighted. Director Stiger pointed out that healing arts boards should review their current licensing processes to ensure they are efficient and consider how their particular healthcare workforce will need to grow to meet the demand of those newly insured and accessing services; he also noted that the healing arts boards need to be pro-active and ensure that their practitioners are equipped to meet the needs of the increased patient pool.

D. Other Items of Interest

Director Stiger also reported that web-casting is available at the DCA Hearing room, and encouraged all boards to utilize web-casting for their meetings.

Ms. Michel suggested that the CBOT do what the Board of Behavioral Sciences is doing, which is prohibit licensees on probation from teaching continuing education courses.

{Note: Due to the schedule of the regulatory hearings, item 17 was taken out of order.}

17. Regulations Update

A. Title 16, Division 39, CCR Section 4100 - Definitions

B. Title 16, Division 39, CCR Section 4120 - Renewal of a license

C. Title 16, Division 39, CCR Section 4175 - Minimum Standards for Infection Control.

D. Title 16, Division 39, CCR Section 4180 – Definitions

Ms. Martin referenced the Regulation Update report in the agenda materials. The Board members had no questions regarding the report.

The Board took a break at 10:25 and reconvened at 10:33.

**10:30 a.m. – Regulatory Hearing, or as soon as practicable thereafter
Amendment to Title 16, California Code of Regulations (CCR), to amend Section 4141, Assessment of Administrative Fines, Section 4144, Notification to Other Boards and Agencies, and add section 4145, Public Disclosure; Record Retention.**

The proposed amendment to the regulation: Increases the amount the Board can fine an individual for a class “A” violation; realigns the minimum and maximum fine amounts for class “B” and “C” violations consistent with the proposed increase for class “A” violations; establishes that the Board will notify other licensing agencies when a practitioner is issued a class A, B, or C citation, and establishes a public disclosure requirement and record retention schedule.

At 10:33 the hearing convened and Ms. Evert read a statement regarding the proposed amendments. The Board did not receive any written comments during the comment period. The Board did not receive any comment from the public at the hearing. At 10:38 the hearing adjourned.

7. Consideration and adoption of proposed regulatory language to amend CCR Section 4141, Assessment of Administrative Fines, Section 4144, Notification to Other Boards and Agencies, and add section 4145, Public Disclosure; Record Retention.

For consideration with respect to the proposed changes, Ms. Martin presented a modified version of the proposed text that is designed to enhance clarity of the language originally noticed. The modifications affect Sections 4141 and 4145.

- ❖ Nancy Michel moved to approve the modified text recommended by the Executive Officer and notice it for a 15-day comment period.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously

Second Motion:

- ❖ Nancy Michel moved to delegate the authority to the Executive Officer to adopt the modified text if no negative comment is received and to make any necessary, non-substantive, technical changes.
- ❖ Linda Florey seconded the motion.
- ❖ The motion passed unanimously.

**10:45 a.m. – Regulatory Hearing, or as soon as practicable thereafter
Amendment to Title 16, California Code of Regulations, to renumber and amend Section 4147, Disciplinary Guidelines, and add section 4148, Required Actions Against Registered Sex Offenders.**

The proposed regulatory amendment updates standard and optional terms for individuals placed on probation by the Board and incorporates uniform standards for substance abusing healing arts licensees that were developed pursuant to SB 1441. Section 4148 proposes new language that establishes the Board would deny an applicant licensure and revoke the license of a practitioner that had been convicted of a crime which required registration as a sex offender pursuant to Penal Code 290.

At 10:46 the hearing convened and Ms. Evert read a statement regarding the proposed amendments. The Board did not receive any written comments during the comment period. The Board did not receive any comment from the public at the hearing. At 10:51 the hearing adjourned.

8. Consideration and adoption of proposed regulatory language to renumber and amend CCR Section 4144 to section 4147, Disciplinary Guidelines, and add section 4148, Required Actions Against Registered Sex Offenders.

For consideration of the proposed changes, Ms. Martin presented a modified version of the proposed text that is designed to enhance clarity of the language originally noticed, and includes striking the proposed new section 4148.

Board members reviewed the modified language for content and consistency. Several additional edits were made to the modified language presented.

- ❖ Bobbi Jean Tanberg moved to approve the modified text recommended by the Executive Officer, with recent edits, and notice it for a 15-day comment period.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously

Second Motion:

- ❖ Nancy Michel moved to delegate the authority to the Executive Officer to adopt the modified text if no negative comment is received and to make any necessary, non-substantive, technical changes.
- ❖ Linda Florey seconded the motion.
- ❖ The motion passed unanimously.

9. Consideration and adoption of proposed regulatory language to amend CCR Section 4123, Limited Permit, and add section 4125, Representation.

Written comments from the Occupational Therapy Association of California (OTAC) and American Occupational Therapy Association (AOTA) regarding the proposed language in Section 4125 were provided to the Board for their consideration.

After review of the written comments, Board members sought clarification from Board staff whether the proposed regulation was meant to enforce trademark rights of the National Board for Certification in Occupational Therapy (NBCOT). Ms. Martin reported that it is not the intent of the proposed language to regulate or monitor the use of NBCOT's trademarked designations "OTR" and "COTA."

The intent of the language is to be clear that, unless holding a license issued by this board, individuals are prohibited from using the initials “OTR” or “COTA” in California; unless holding a license issued by this board, individuals are prohibited from representing themselves as an occupational therapist and occupational therapy assistant in California. Regardless of whether a practitioner is registered with NBCOT or not, the minimum standard for representation in this state, is licensure. {Emphasis added.}

Ms. Tanberg remarked that the proposed language does a better job at protecting consumers. She elaborated that, with so many ways for practitioners to represent themselves, this language will be more clear to the public who is licensed.

- ❖ Nancy Michel moved to adopt the modified text as presented.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

Second Motion:

- ❖ Nancy Michel moved to delegate the authority to the Executive Officer to make any necessary, non-substantive, technical changes.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously.

At 12:05 the Board recessed for lunch. At 1:05 the Board returned to open session.

10. Consideration and adoption of proposed regulatory language to amend CCR Sections 4150, Definitions; 4151, Hand Therapy; 4152.1, Use of Topical Medications; 4153, Swallowing Assessment, Evaluation or Intervention; 4154, Post Professional Education and Training; and 4155, Application for Approval in Advanced Practice Areas.

The Board received comments seeking clarification of the meaning of “business” within Section 4154(b)(3). The intent of the proposed regulation is to identify and prohibit relationships that could interfere with professional judgment and objectivity necessary for effective advanced practice training supervision. In an effort to clarify that “business” would not be construed as applying to “employment” the Board noticed modified text to satisfy the concerns expressed.

Discussion ensued whether coursework taken within a degree program could be applied toward the requirement. Ms. Martin clarified that Board staff had been advised to consider coursework that was taken in addition to core requirements of a qualifying degree program.

- ❖ Nancy Michel moved adopt the modified text with the edit specified above.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

Second Motion:

- ❖ Nancy Michel moved to delegate the authority to the Executive Officer to adopt the modified text if no negative comment is received and to make any necessary, non-substantive, technical changes.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously.

Ms. Evert indicated that the Practice Committee might be assigned to research and consult with educational institutions whether they have augmented their programs with courses considered 'advanced practice'.

Staff shared that several occupational therapists had submitted the new applications posted on the website, despite the fact that the regulations had not yet been approved. Ms. Tanberg suggested that a 'draft' watermark be added to the application so that it would not be completed and submitted. Ms. Martin concurred and said the 'draft' advanced practice applications posted on the regulations page of the website would be noted as such.

11. Discussion and consideration of amending Title 16, CCR Section 4100, Definitions, and Section 4101, Delegation of Certain Functions, adding Section 4144, Definitions, adding Section 4145, Examination for Competency, adding Section 4146, Other Actions Constituting Unprofessional Conduct, adding Section 4147.5, Revocation for Sexual Contact, and adding Section 4148, Required Actions Against Registered Sex Offenders.

This initial draft language was prepared by staff for the purpose of streamlining and enhancing the administrative and enforcement functions, including additional authority by the Executive Officer. Specifically, the increased authority would allow the Executive Officer Board approve a settlement agreement for revocation or surrender of license or approve an interim license suspension.

Also, the definitions of incompetence, negligence, gross negligence and substantially related crimes were deleted from Section 4100 and added to new proposed Section 4146.

Discussion regarding Section 4148 resulted in the title being changed from "Examination for Competency" to 'Mental or Physical Fitness for Licensure Examination.'

Discussion ensued regarding newly proposed Section 4149.1, Revocation for Sexual Contact. The purpose of Section 4149.1, is to require a license be revoked (prohibiting an order that the revocation be stayed) if the licensee engaged in sexual contact with a patient or has been convicted of specified sex crimes. The Board directed staff to incorporate the definition of 'sexual contact' rather than referring to Penal Code Section 729 (c), as presented in proposed language.

Discussion ensued regarding the breadth of Penal Code 290, which requires sex offender registration. Several Board members expressed concern that minor offenses might be

included within that section that might not be appropriate for automatic disqualification of an applicant or revocation of a license. Thus, the Board requested that Section 4149.2 not be approved at this time and that additional research be conducted by the Enforcement Committee and/or staff and the item be brought back at a future Board meeting.

- ❖ Nancy Michel moved to approve the draft language, with the renaming of the title of Section 4145 and deleting Section 4149.2.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously

12. Discussion and consideration of amending Title 16, Division 39, California of Regulations, Section 4161, Continuing Competency.

The initial draft language was prepared by staff and originally introduced at the March 11, 2010 meeting. However, due to time constraints at that meeting the Board was not able to act on the item. The initial draft proposed language is to clarify and simplify continuing competency requirements.

Ada Boone Hoerl, licensed occupational therapy assistant (OTA) and OTA Program Director at Sacramento City College, advised the Board that since students are educated for entry-level competence, they are encouraged to become lifelong learners. Thus, Ms. Hoerl suggested the Board consider deleting the exemption for the first renewal after issuance of a license or consider incentives for licensees who complete professional development units when not required. Ms. Hoerl offered to work with the Board to implement such a change. Other public comment provided by Lynne Beadles and Karen Polastri advocated to continue accepting coursework in areas of leadership and stress management.

The Board delegated this item to the Practice Committee for further work and public input.

13. Discussion and consideration of adding Title 16, Division 39, California Code of Regulations, Section 4170, Ethical Standards of Practice.

The initial draft language prepared by staff would incorporate the American Occupational Therapy Association's *Occupational Therapy Code of Ethics and Ethics Standards (2010)* into Section, 4170, Ethical Standards of Practice. Ms. Evert commented that this was the most comprehensive language she had seen.

- ❖ Nancy Michel moved to approve the language for noticing with no hearing scheduled unless requested.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously.

14. Discussion and consideration of adding Title 16, Division 39, California Code of Regulations, Section 4171, Notification to Consumers.

The initial draft language was prepared by staff and would require occupational therapy practitioners to provide notice to each client of his or her name, license type, and that such license is issued and regulated by the Board, consistent with existing law.

Ms. Tanberg expressed concern regarding compliance with the name tag component of the language if an employer already had an established format that was not compliant.

After further discussion, Board members decided to revisit the issue on Thursday, July 29, 2010.

15. Discussion and consideration of amending Title 16, Division 39, California Code of Regulations, Section 4180, Definitions and adding Section 4187, Supervision Plan for an Occupational Therapist.

The initial draft language was developed by an ad hoc committee considering occupational therapy assistants functioning in administrative and leadership roles. The proposed language would define 'clinical supervision' and require occupational therapy assistants serving in administrative roles to enter into a supervision plan with a licensed occupational therapist to provide clinical supervision of the occupational therapist(s).

- ❖ Bobbi Jean Tanberg moved to approve the language for noticing with no hearing scheduled unless requested.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

16. Discussion and consideration of amending Title 16, Division 39, CCR, to amend Section 4123 to establish requirements for a retired license and renumber Section 4123 to Section 4125.

The initial draft language would establish requirements for a licensee to request a retired status license. There was no further discussion.

- ❖ Bobbi Jean Tanberg moved to approve the language for noticing with no hearing scheduled unless requested.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

19. Consideration of policy to allow the Board to hear a contested case when an individual has been denied a license based upon allegations that he or she has practiced without a license for a period of more than one year and the individual appeals for an Administrative Procedures Act hearing.

- ❖ Nancy Michel moved to adopt the policy with a minor grammatical edit.
- ❖ Julie Tsai seconded the motion.
- ❖ The motion passed unanimously.

25. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on Disciplinary Decisions

At 4:03 on Wednesday, July 28, 2010, the Board deliberated on two disciplinary decisions in Closed Session.

26. Return to Open Session.

At 4:22 on Wednesday July 28, 2010, the Board returned to Open Session.

Adjournment.

The meeting adjourned at 4:25 on Wednesday, July 28, 2010.

MEETING HELD THURSDAY, JULY 29, 2010

1. Call to order, roll call, establishment of a quorum.

On Thursday, July 29, 2010, at 9:05, President Evert called the meeting to order. Secretary Tanberg called the roll. A quorum of the Board was established.

The Board immediately went into Closed Session to deliberate on a Disciplinary Decision.

25. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on Disciplinary Decisions

At 9:09 on Thursday, July 29, 2010, the Board deliberated on one disciplinary decision.

26. Return to Open Session.

At 9:24 on Thursday, July 29, 2010, the Board returned to Open Session.

18. Legislation Update.

A. Review Assembly Bills (AB) 1310, 1542, 2385, 2466, and Senate Bills (SB) 294, 999, 1111, 1282, and discussion of Board's position(s).

AB 1310

- ❖ Nancy Michel moved to add the California Board of Occupational Therapy to the list of boards subject to the reporting requirements.
- ❖ Linda Florey seconded the motion.
- ❖ The motion passed unanimously

AB 1542

Ms. Martin will monitor this legislation.

AB 2385

Ms. Martin is to bring the legislation back to the November 4, 2010, meeting for further discussion.

AB 2466

- ❖ Nancy Michel moved for the Board to oppose the bill that would require legislative review of all regulatory actions submitted to the Secretary of State.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously

SB 294

The Board was neutral on the language requiring review by the Joint Committee on Boards, Commissions, and Consumer Protection and extending the Board's sunset date from January 1, 2013, to January 1, 2014.

SB 999

The Board took no position.

SB 1111

No position was necessary as the bill failed in the policy committee.

SB 1282

The Board took no position.

B. Consideration of Legislative Proposals for 2011 legislative session:

1) Amend Business and Professions Code (BPC) Section 146, Violations of specified authorization statutes as infractions; Punishment.

- ❖ Julia Tsai moved to approve the language and direct Board staff to find an author to include the Board in BPC Section 146, by adding BPC 2570.3 to section 146.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously

2) Amend BPC Section 149, Notice to cease advertising in telephone directory; Contest and hearing; Disconnection of service.

- ❖ Nancy Michel moved to approve the language and direct Board staff to find an author to add the Board in BPC 149.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

3) Amend BPC Section 2570.2, Definitions.

Ms. Tanberg acknowledged that the legislative proposal more accurately defines “who we are” as occupational therapists.

Ms. Florey stated that the proposal “adds clarity to the current language, which only addresses clinicians, and doesn’t address all roles” in occupational therapy.

- ❖ Nancy Michel moved to approve the language as presented and direct Board staff to find an author to modify the definitions listed in BPC 2570.2.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously

4) Amend BPC Section 2570.3, Licensing requirement.

- ❖ Nancy Michel moved to approve the language as presented, but with clarifying edits, to require approval of post-professional education course providers and their post-professional courses and direct Board staff to find an author to amend BPC 2570.3.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

Second Motion:

- ❖ Nancy Michel moved to authorize Ms. Martin and Ms. Marks to make any necessary, non-substantive, technical changes to meet legislative proposal submission requirements.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

5) Amend BPC Section 2570.16, Fees.

The Board discussed requiring a fee to query the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank to be submitted by applicants and to establish fees for approval of post-professional education course providers and courses.

- ❖ Bobbi Jean Tanberg moved to approve the language to charge a fee to query the federal data banks and to establish minimum and maximum fees to be paid by providers and minimum and maximum fees to be paid for the courses they submit for approval by the Board, and directed Board staff to find an author to amend BPC 2570.16.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously

6) Amend BPC Section 2570.17, Retired status.

This language was not presented and will be presented at a future meeting.

7) Amend BPC Section 2570.18, Representation.

The Board discussed amending Section 2570.18 regarding the various ways occupational therapists and occupational therapy assistants can represent themselves and how doctoral degrees may be represented.

- ❖ Nancy Michel moved to approve the language as presented and direct Board staff to find an author to amend BPC 2570.18.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously.

8) Amend BPC Section 2290.5, Telemedicine informed consent, and establish BPC Section 2572, Standards of practice for telemedicine by occupational therapists.

The Board discussed amending Section 2290.5 to add occupational therapists and occupational therapy assistants to those health care practitioners authorized to provide telemedicine and adding a new section regarding practice standards.

A review of public comments provided regarding the language and various other edits were made to the language presented.

- ❖ Bobbi Jean Tanberg moved to approve the language as amended, and direct Board staff find an author to amend BPC 2290.5 and add a new BPC 2572.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

9) New BPC section requiring registration of occupational therapy aides.

This language was not presented.

10) New BPC section regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.

The Board discussed adding a new BPC Section 2290.5 to provide limited liability for occupational therapists and occupational therapy assistance providing services in specified instances and the necessity of ensuring the practitioner is licensed.

- ❖ Julia Tsai moved to approve the language, with amendments, and direct Board staff to find an author to add the new BPC Section 2290.5.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

11) New BPC section regarding mandatory reporting of employees who are terminated or suspended for cause, as specified, and consequences for failure to report.

The legislative proposal would require mandatory reporting of employees who are terminated or suspended for six specific acts and consequences for their employer's failure to report said terminations or suspensions to the Board.

Ms. Michel questioned whether there was immunity from liability for employers who report as required; employer liability was discussed further.

- ❖ Nancy Michel moved to approve the language as presented, with delegation to Executive Officer to add language to provide employers immunity from liability for reporting, and direct Board staff to find an author for the language.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously.

The Board requested Ms. Martin work with Ms. Marks on the employer liability portion of the language prior to submission of the legislative proposal.

12) New BPC section requiring application and fee for providers of post-professional (advanced practice) education courses and the courses they offer and biennial renewal, thereafter.

This legislative proposal was presented as Agenda Items 18(b)(4) and (5).

C. Any other bills of interest to the Board.

No other bills were discussed.

14. Discussion and consideration of adding Title 16, Division 39, California Code of Regulations, Section 4171, Notification to Consumers.

After further discussion, the Board decided to bring the matter back to the November 4, 2010 meeting. Ms. Martin and Ms. Michel were tasked with finding a compromise or solution.

20. Executive Officer's report.

A. Revenue and expenditure information.

Ms. Martin referenced Board meeting materials, including preliminary year-end expenditure and revenue information. Ms. Martin noted that in fiscal year (FY) 2009/10, the Board received \$900k in revenue and spent nearly \$995k, which makes annual revenue and expenditures nearly equal, which is the Board's goal. Ms. Martin presented a fund condition document with historical information dating back to FY 2002/03 and future projections through FY 2013/14. Ms. Martin noted that, due to the recent \$2m loan to the General Fund (GF), it was projected that the Board will run out of money by FY 2011/12. However, existing law requires the Board be repaid the GF loan money before the funds run out or licensing fees are raised.

B. Enforcement Improvement Plan, Uniform Standards Implementation Progress Report.

Ms. Martin presented two reports recently submitted to DCA: the 2010 Enforcement Improvement Plan (updated May 2010) and the status report on implementation of the Uniform Standards for Substance Abusing licensees. Board members had no questions.

C. Report on background checks for licensees.

Ms. Martin reported that the comparison of licensee records against the information on records with the Department of Justice had finally been completed and only 160 people needed to be re-fingerprinted. All licensees were sent notification of the requirement that they must submit evidence of being fingerprinted as a condition of their license renewal; several licensees have already complied. Ms. Martin indicated that she expected compliance and anticipated very little, if any, push back from those licensees affected.

D. Report on reporting of actions to and querying of federal data banks.

Ms. Martin reported that Board staff had reported all past and current disciplinary actions to the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank and the Board was now compliant with federal reporting requirements. Board members had no questions.

E. Personnel updates.

Ms. Martin reported that two limited term positions were hired to help address the Board's complaint backlog and that early next year the Board would be able to see the progress made. For example, the number of pending complaints should go down significantly, as well as the age of the oldest complaints. Board members had no questions.

F. Other informational items.

Ms. Martin referenced meeting materials, which included an email from the Board of Behavioral Sciences (BBS); the email lists recent actions taken by BBS, including citations issued, Accusations filed, Decisions that went into effect, etc. Ms. Martin asked the Board whether they would like to similarly report this information to the Interested Parties. After further discussion, it was decided that this information would not be sent to those on the Board's Interested Parties list.

Ms. Martin referenced the Licensing Data reported to DCA with a detailed breakdown in data for FY 2008/09 and FY 2009/10.

Ms. Martin referenced the monthly Enforcement Report submitted to DCA each month. Ms. Martin pointed out that while time frames from receipt to close is still higher than we would like to see, the number of pending complaints has been greatly reduced. For example, in March there were 278 pending complaints and by June 30th, there were only 191 pending complaints.

Ms. Martin referenced the report entitled: *Contract Compliance and Performance audit of the Department of Consumer Affairs contract with Maximus, Inc. for the Health Professionals Diversion Program*. Ms. Martin noted that while the Board doesn't have a Diversion Program, or contract with Maximus, it is important to be aware of the audit findings and use these to help Enforcement staff make sure that our current tester is compliant with our contract and meeting all requirements.

21. Enforcement data and reports.

Ms. Martin referenced the standard enforcement reports in the agenda materials. The Board Members had no questions.

22. Strategic Planning Session.

Ms. Evert pointed out that the Board's Strategic Plan could be separated into three primary areas: Enforcement (protection of the public), Practice (what the licensees are doing, what laws are needed to govern/guide them), and Communications (educating the public, educating licensees, etc.). After further discussion, it was decided that the area of Operations should also be added. It was further discussed that Board members and staff should be responsible for the following areas:

Nancy Michel, Enforcement
Linda Florey, Practice
Bobbi Jean Tanberg, Communication
Heather Martin, Operations

Ms. Evert and Ms. Martin will work together on the Strategic Plan and bring back suggested priorities and proposed amendments to a future meeting.

23. Discussion and consideration of future agenda items:

No new agenda items were identified. Items that are being brought back to the Board have been identified under the appropriate agenda items.

24. Public comment session for items not on the agenda.

The Board did not receive any public comments regarding this agenda item.

25. Select 2011 Board Meeting dates.

The Board selected the following dates and locations for meetings in 2011:

| <u>Date</u> | <u>Location</u> |
|-------------------|-----------------|
| March 2, 3, 2011 | Sacramento |
| June 16, 2011 | San Francisco |
| September 8, 2011 | Los Angeles |
| December 1, 2011 | San Diego |

26. Election of Officers of the Board.

The Board discussed current roles and whether anyone had an interest in assuming a new role.

Mary Evert, President
Bobbi Jean Tanberg, Vice President
Nancy Michel, Secretary

- ❖ Julia Tsai moved to elect the officers as noted above.
- ❖ Linda Florey seconded the motion.
- ❖ The motion passed unanimously

27. Adjournment.

The meeting adjourned at 12:20 on Thursday, July 29, 2010.