



## BOARD MEETING MINUTES

**Wednesday, October 24, 2018 and Thursday, October 25, 2018**

### Board Member(s) Present

Richard Bookwalter – President  
Sharon Pavlovich – Vice President  
Laura Hayth – Secretary  
Denise Miller  
Beata Morcos

### Board Staff Present

Heather Martin, Executive Officer  
Jeff Hanson, Enforcement Manager  
Jody Quesada, Analyst  
Reza Pejuhesh, Legal Counsel

**Wednesday, October 24, 2018**

**10:00 am - Board Meeting**

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

The meeting was called to order at 10:10 a.m., roll was called, a quorum was established.

2. President's Remarks – Informational only; no Board Action to be taken.

President Richard Bookwalter mentioned that on September 29<sup>th</sup> he was invited to attend the Psychiatric Occupational Therapy Action Coalition (POTAC) Steering committee meeting at Kaiser Santa Clara. Mr. Bookwalter reported that the meeting was very informative regarding mental health and it further interested him because it took place at Kaiser Santa Clara, Northern California Kaiser's only locked psychiatric unit. He also found out there would be a second locked psychiatric unit opening at the Kaiser in Union City. Mr. Bookwalter reported that San Jose State University's Occupational Therapy program celebrated their 75<sup>th</sup> anniversary. The program held a symposium where Shawn Phipps and Heather Kitching were two of the honored guests. Mr. Bookwalter stated that it was exciting to celebrate one of the original 3 Occupational Therapy (OT) programs in California along with other alumni.

3. Board Member Remarks – Informational only; no Board Action to be taken.

Vice President Sharon Pavlovich reported that the Occupational Therapy Association of California (OTAC) conference was kicking off Thursday and would continue through the weekend with presentations by the Board of Occupational Therapy (BOT) as well as by Ms. Pavlovich and her fellow team mates from the OT department at Loma Linda University.

4. Public Comment session for items not on the agenda.

There were no members of the public present.

- 5. Review and vote on approval of the May 31-June 1, 2018, Board meeting minutes.

Secretary Laura Hayth pointed out a typo on page 3 of the minutes.

- Jeff Ferro moved to accept the minutes with amendments.
- Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- 6. Review and vote on approval of the June 20, 2018, Special Teleconference Board meeting minutes.

- Laura Hayth moved to accept the minutes.
- Sharon Pavlovich seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- 7. Review and vote on approval of the August 23-24, 2018, Board meeting minutes.

President Bookwalter asked that language under Agenda Item 3 be expanded to reflect that the Board’s President, Vice President and Executive Officer would be giving the presentation at the OTAC conference. Clarification was also needed on page 14, Agenda Item 21, regarding who made the motion and who seconded the motion. The item was tabled so staff could listen to the recording of the meeting and determine who made the motion.

\*On day two of the meeting staff clarified that Denise Miller made the motion and Beata Morcos seconded the motion to approve the meeting minutes.

- Denise Miller moved to accept the minutes with amendments.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

8. Review and vote on approval of the September 5, 2018, Special Teleconference Board meeting minutes.
  - Beata Morcos moved to accept the minutes.
  - Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

\*President Bookwalter informed the Board members that Agenda Item 11, Legislative Items for a Future Meeting would be held over to day 2 of the meeting to accommodate potential guests from the public.

9. Discussion and possible action on updated Board Administrative Manual.

Executive Officer Heather Martin reported that there had been many iterations of the Board Administrative manual from previous meetings but that any changes resulting from future meetings would be presented in track change format per the request of the Board members.

Discussion ensued regarding Board members earning per diem for meeting preparation, review of enforcement cases and other duties.

A few corrections and edits were also made to the ‘per diem’ section on pages 22-23. President Bookwalter requested that “in advance” be removed from page 23 and that language from page 3 of the Board of Psychology’s per diem language be included.

Denise Miller asked that an online, fillable pdf with an electronic signature capability be developed for the Board members to track their per diem activities.

- Denise Miller moved to accept the suggested wording offered from page 3 of the Board of Psychology’s Per Diem policy to be included in the BOT’s Administrative manual.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

- Denise Miller moved to strike the words “in advance” from page 23 of the BOT’s Administrative manual.
- Sharon Pavlovich seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

10. Report on legislation impacting the practice of occupational therapy or the Board:

Executive Officer Heather Martin reported that eight of the included bills had been approved and signed and the final two were dead. Ms. Martin stated that OTAC intended to be in attendance on day 2 of the Board meeting to discuss AB 2221.

- a) Assembly Bill (AB) 1659 (Low), Healing arts boards: inactive licenses.

Mr. Bookwalter asked Board staff to add a discussion on reducing the inactive fee to a future meeting because the Board only raised the monetary amount to be in compliance with the law, which has now changed.

Ms. Martin stated that Board staff would draft language and provide different scenarios of a reduced inactive renewal fee and bring it to the next Board meeting.

- b) AB 2138 (Chiu and Low), Licensing boards: denial of application: criminal conviction.

Ms. Martin reported that this bill will affect the language used in regulation, forms, applications and any other disciplinary documents used by the Board and that these changes would need to be completed by the effective date of July 1, 2020. Ms. Martin

stated that the Department of Consumer Affairs (DCA) is trying to develop language, to encourage consistency with suggested changes for all the Boards and Bureaus.

Mr. Bookwalter asked if the Board should begin making changes now or wait for DCA to start.

Board Legal Counsel Reza Pejuhesh advised the Board to begin identifying the changes that will need to be made posthaste and that he would be working closely with the Board and Board staff to ensure consistency and the use of standard language.

Ms. Martin added that due to the timeline of Regulations, the Board is already behind in meeting the July 2020 effective date. Ms. Martin suggested that there will need to be a teleconference meeting to discuss the proposed changes to the current regulations resulting from AB 2138.

c) AB 2221 (Bloom), Occupational Therapy Practice Act.

Ms. Martin added that the language regarding supervision ratio of OT to OTA needs to be tightened up to give prescriptive criteria.

The Board members agreed.

Mr. Bookwalter suggested that a Practice committee be formed to discuss the workplace OT to OTA ratio and other practice related issues that surface.

Denise Miller and Sharon Pavlovich volunteered to serve on the committee.

d) AB 2386 (Rubio), Services credentialing: services credential with a specialization in occupational therapy or physical therapy services.

Sabrina McCarley of OTAC reported that OTAC continues to work with stakeholders and will have a QR code survey that pertains to school credentialing available at conference. Ms. McCarley stated that a new bill will be introduced during the next legislative session.

e) AB 2483 (Voepel), Indemnification of public officers and employees: antitrust awards.

f) AB 2958 (Quirk), State bodies: meetings: teleconference

Mr. Bookwalter asked that Legal Counsel Reza Pejuhesh clarify AB 2958 at the next meeting as it pertains to the words “alternative, optional method”, a quorum at the primary physical location, and whether a Board member can call in from an out of state location if a quorum is present at the primary physical location.

Mr. Pejuhesh clarified that the new method would not apply to a teleconference Board meeting because the Board is not an Advisory body but that it would apply to the teleconference meetings of the Board’s committees.

- g) Senate Bill (SB) 695 (Sara), Professions and vocations: applications and renewals: individual tax identification number
- h) SB 1348 (Pan), Postsecondary education: allied health professional clinical programs: reporting.

Ms. Martin stated that this bill is specific to the schools and their reporting requirements.

Mr. Bookwalter recalled that during a Legislative and Regulatory Affairs committee meeting, Ada Boone Hoerl recommended support for this bill because it would require private schools adhere to the same reporting requirements already in place for public schools.

- i) SB 1448 (Hill), Healing arts licensees: probation status: disclosure.

Ms. Martin stated that this bill requires licensees from Boards, not yet including CBOT, to report to their patients that they are on probation.

Jeff Ferro said that he felt that the Board should discuss this bill as public protection is the Board's highest priority, especially considering the passing of AB 2138.

Ms. Pavlovich agreed.

Ms. Martin informed the Board that this would require legislation.

- j) SB 1480 (Hill), Professions and vocations.

Ms. Martin stated that it lowers the number of meetings required.

11. Legislative Items for Future Meeting. The Board may discuss other items of legislation in sufficient detail to determine whether such items should be on a future Board meeting agenda.

Ms. Miller asked that any legislation pertaining to elder care or other healthcare related legislation be sought out and brought before the Board.

Ms. Pavlovich asked Mr. Wilmarth about an upcoming change in Medicare's perceived need and reimbursement within skilled nursing facilities (SNFs). Ms. McCarley confirmed that there is a lot going on with the Patient Driven Payment Model that will go in to effect October 1, 2019, and will affect the Medicare Part A reimbursement system for SNFs. Ms. McCarley stated that this is a change to the reimbursement model, not the practice model.

12. Discussion of repeal of Business and Professions Code section 901, and resulting need to repeal sections 4116, 4117, 4118, and 4119, and modify section 4170 of the Board's regulations (Title 16 of the California Code of Regulations).

Legal Counsel Reza Pejuhesh clarified that the memo he drafted was informational and not legal advice thus it did not fall under the category of attorney/client privilege.

Mr. Pejuhesh pointed out the sections that needed to be repealed and the modification needed in section 4170.

President Bookwalter directed Board staff and legal to make the needed changes on behalf of the Board.

13. Discussion and consideration of the Board’s ability to accept the surrender of a license.

Legal Counsel Reza Pejuhesh asked the Board members if they wished to waive the invoked attorney/client privilege on the memo dated August 21, 2018.

- Laura Hayth moved to waive the attorney/client privilege for the memo dated August 21, 2018.
- Jeff Ferro seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

The Board members discussed the memo and how it pertains to voluntary and disciplinary surrenders.

Denise Miller stated that she was not in favor of voluntary surrender because it would create a loophole in which a licensee that was being investigated by the California Board could “voluntarily surrender” short of being formally disciplined and move on to the next state which could possibly issue them a license and put the public at risk. Ms. Miller stated that she was also against a “disciplinary surrender” because there are Disciplinary Guidelines put in place to protect the public and licensees being disciplined should have to comply and not be allowed to surrender because they don’t want to complete the discipline handed down by the Board.

President Bookwalter stated that for him the solution to the “disciplinary surrender” is to limit probation and not have an ‘endless probation’ situation. Vice President Pavlovich and Ms. Miller agreed.

Jeff Ferro offered the idea of reciprocity between state Licensing Boards showing that a licensee on probation in California working in another state would satisfactorily comply with California’s probation term and this could help rid the problem of ‘endless probation’.

The Board members thanked Mr. Pejuhesh for his helpful memo that was both educational and informative.

President Bookwalter asked to move Agenda Items 14–16 to the 2<sup>nd</sup> day of the meeting because Jeff Ferro would be leaving and it would be beneficial to have him participate in Closed Session.

14. Discussion and possible action on moving the Board’s office.

**\*Addressed on October 25, 2019**

Ms. Martin gave an overview of the current lease, rent, savings, budget, safety issues and the Board’s lack of room to fill the vacant but authorized positions.

The Board members asked questions regarding square footage, cost, tenant improvements offered, safety of Board staff and how the proposed location compared to the Board’s current location.

Ms. Martin informed the Board that there was another location under consideration, however, when current staff was polled they divulged that they would seek employment elsewhere do to the increased commute time. Ms. Martin informed the Board that the other prospective location would mean an extended commute for them when they came to town for Board business.

The Board members overwhelmingly agreed that the safety of Board staff and the ability to have room to fulfill staffing needs was of utmost importance and they supported the decision to move as well as the real estate choice.

- Sharon Pavlovich moved to support the move of the Board’s office.
- Jeff Ferro seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

15. Selection of 2019 meeting dates. **\*Addressed on October 25, 2019**

The Board members agreed that the first meeting of 2019 would be held on February 7-8, 2019 in Southern California and that the second meeting would be held on May 9-10 in the Bay area. The remaining meetings would be decided by ‘Doodle’ poll.



16. Selection of Strategic Planning date(s). **\*Addressed on October 25, 2019**

The Board members asked that the Strategic Planning date(s) be added to the February agenda.

**CLOSED SESSION**

**The Board entered in to Closed Session at 12:09 p.m.**

**RECONVENE IN OPEN SESSION**

**The Board meeting reconvened at 1:25 p.m.**

17. Recess for the day.

**The Board meeting adjourned at 1:26 p.m.**

**Thursday, October 25, 2018**  
**9:30 am - Board Meeting**

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

The meeting was called to order at 9:35 a.m., roll was called, a quorum was established. Denise Miller arrived at 9:40 a.m.

19. President's Remarks – Informational only; no Board Action to be taken.

President Bookwalter outlined the Agenda Item order for the day and offered the opportunity for the two members of the public to introduce themselves at will during Agenda Item 20.

20. Public Comment session for items not on the agenda.

Chuck Wilmarth, Director, Health Policy and State Affairs, AOTA introduced himself.

Sabrena McCarley, Chair for Advocacy and Government Affairs, OTAC introduced herself.

President Bookwalter informed Mr. Wilmarth and Ms. McCarley that this would be the time to address any item that was not on the agenda.

Mr. Wilmarth stated the AB 2221 will become effective January 1, 2019, and he wanted to take the time to address implementation of the law and the things that the Board should consider. Mr. Wilmarth asked that Advanced Practice (AP) forms be updated where they reference "post professional education" and requested FAQs be updated as well. He also requested the Board review the continuing competence regulations and consider possible revisions to the definition, update the FAQs regarding supervision and aides. Mr. Wilmarth added that he looked forward to having a conversation about the Board's AP requirements and the impact of the updated accreditation standards.

Ms. McCarley reported that OTAC is receiving a lot of questions regarding AP and whether students will be able to count some of their required fieldwork experience toward the AP application process.

President Bookwalter recalled that the idea of approving AP for students that graduated under the new ACOTE guidelines had been introduced at a past Legislative and Regulatory affairs by Luella Grangaard.

Executive Officer Heather Martin suggested that students ask their schools if they have approved courses as several universities have requested and received AP approval for some of their academic courses. Ms. Martin commented that historically the reason that AP became an issue in California was because there was not a national minimum education standard, however, with the updated accreditation standards, it would be appropriate for the Board to revisit.

Mr. Bookwalter stated that the Board should revisit the ACOTE standards of today and how the language pertains to AP.

Denise Miller thanked the Associations for their hard work on the Advanced Practice language.

Mr. Wilmarth reported that the Athletic Trainers will be back with a new bill to create licensure for themselves.

Jeff Ferro asked that in the future if the Associations thought they were going to be successful with a piece of legislation to please have a clear idea of what they expect from the Board so the Board can be prepared to discuss, negotiate and collaborate.

Mr. Bookwalter asked Mr. Wilmarth what he thought about the approach of 'sunsetting' the AP approval process.

Mr. Wilmarth stated that he thought a phased approach would be best because AOTA has found that some folks like the extra approval process.

Mr. Wilmarth outlined his idea of a path forward as:

- Implementing the deletion of the words "post professional" to make things easier on new graduates.
- Look at what's currently on the books in terms of the number of required hours and whether it can be lessened.
- Look in to legislation to sunset the AP requirement.

Jeff Ferro expressed that he felt having approvals for 'specialty' services is important for consumers. Mr. Ferro stated that it was his opinion that the Board should continue to differentiate some of these skills and create recognition for the skills.

Ms. Hayth appreciation Mr. Ferro's point. Mr. Bookwalter wondered aloud if it's a subject for regulation or a certification process outside of regulation.

Mr. Wilmarth stated that he looks forward to working with the Board on this subject.

21. Report on action taken, if any, following the annual evaluation of the Board's Executive Officer conducted during the Board's closed session on October 24, 2018.

President Bookwalter stated that he met with Executive Officer Heather Martin to present the findings from her Annual evaluation and reported that he reached out to Karen Nelson, Assistant Deputy Director, Board and Bureau Relations to report the Board's desire to have Ms. Martin continue as the Executive Officer of the Board.

The Board members expressed their appreciation of Ms. Martin's hard work and dedication.

22. Discussion and possible action on making appointments to the Board's committees.

President Bookwalter reviewed the fact that Denise Miller and Sharon Pavlovich volunteered to serve on the Practice committee and he asked that all Board members continue to look out for good candidates that would be willing to work with the Practice committee.

23. Executive Officer's Report.

Executive Officer Heather Martin reviewed her included report.

a) Operational and budget reports.

Ms. Martin reported that there are currently two vacancies and that the 2017-18 Month 12 revenue/expenditure information is provided.

b) BreEZe updates.

Ms. Martin reported that there has been a \$2 increase in the application fee to cover the cost of the National Practitioner Databank query fee and that Board staff has begun requiring a separate transaction to pay the Application fee before they are allowed to begin the Initial application to ensure payment is received. Ms. Martin requested that the Board approve removal of the paper application from the website to further encourage applications be submitted through the BreEZe system. Ms. Martin informed the Board that individuals who prefer a paper application can call Board staff and request.

- Denise Miller moved to remove the paper application from the website and have applicants request a paper copy of the application if needed.
- Beata Morcos seconded the motion.

**Public Comment**

Mr. Wilmarth and Ms. McCarley stated that it made sense to them.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

c) Presentation of licensing and enforcement data.

Ms. Martin reviewed the included Enforcement data. Ms. Martin stated that the number of cases currently at the Attorney General's office is the highest ever. Mr. Bookwalter asked for a bar graph that would display trends regarding the number of cases referred to the Attorney General's office and Division of Investigation.

Ms. Martin stated that she would develop a three-year report and bring it to a future meeting. Ms. Martin also agreed to bring a list of the types of cases that fall into the category of 'unprofessional conduct' as presented in the citation and fine log.

d) Future agenda Items.

Ms. Martin asked if there were any additional 'Future Agenda Items' that Board members would like to see on a future agenda besides what is outlined in her report.

Ms. Martin asked that the Board delegate AB 2138 to the Administrative committee.

- Jeff Ferro moved to advance AB 2138 to the Administrative committee to ensure that the Board's Disciplinary Guidelines match the new law under AB 2138.
- Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

e) Other informational items.

Mr. Bookwalter asked for detail regarding the method for the surrenders that were mentioned in Ms. Martin's report.

Ms. Martin stated that the surrenders pertained to probationers that had multiple violations resulting in the probationer being transmitted to the Attorney General's office and that these cases can result in a Stipulated Settlement that the Executive Officer has authority to sign.

24. Discussion and consideration of whether the clinical/internship experience completed as part of a Doctor of Occupational Therapy (OTD) degree program is considered "practice" and further discussion regarding the OTD programs in California which are not accredited by the Accreditation Council on Occupational Therapy Education.

President Bookwalter reviewed the included documents. Mr. Bookwalter stated that the issue at hand is that Board staff has noticed several non-accredited Doctoral programs in California are assigning internships and doctoral projects to students that do not hold a California license to practice.

Ms. Martin reminded the Board members that there are no accredited Doctoral programs in California. Ms. Martin asked the Board members whether they thought it

should be considered unlicensed practiced when a graduate with a Master's degree passes the National exam, starts a Doctoral program and does not apply for California licensure until after their 1 year residency/fellowship/internship.

### **Public Comment**

Mr. Wilmarth stated that it was possible that the Practice Act had not kept up with the times and that some of the language could be considered archaic. Mr. Wilmarth suggested that the Board have a discussion with the Director of Accreditation at AOTA to gather information and explain what Board staff is seeing.

Mr. Bookwalter stated his concern that a Master's program could be accredited and the Doctoral program from the same school was not and he wondered if there was a pathway for the Doctoral students to be supervised through their Master's program. Mr. Bookwalter stated that it was not the Board's intent to prevent students from gaining an education but to ensure that someone is protecting the consumer and watching over the unlicensed students. Mr. Bookwalter reminded the Board that changing a regulation would take 18-24 months, thus something should be worked out before then.

Mr. Wilmarth urged the Board to reevaluate how the word Accreditation is interpreted.

The Board agreed that Ms. Martin should reach out to ACOTE regarding the accreditation process and report back to the Board so that a letter to the schools can be drafted.

### 25. Suggested agenda items for a future meeting.

Ms. Martin asked the Board whether they would like the topic of students whom fail the NBCOT exam multiple times to be added to a future agenda?

The Board elected to place it on a future agenda.

### **Public Comment**

Mr. Wilmarth asked that the Board place on a future agenda AOTA's new evidence-based online skills assessment known as 'AOTA Benchmark' that would be available in the future to members and nonmembers.

Ms. Miller asked that License Portability be brought to a future meeting.

### 26. Election of Officers.

- Jeff Ferro moved to keep the existing slate of Board Officers if they chose to accept.
- Beata Morcos seconded the motion.

Richard Bookwalter accepted the position of Board President.  
Sharon Pavlovich accepted the position of Board Vice President.  
Laura Hayth accepted the position of Board Secretary.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

Adjournment.

The Board meeting adjourned at 12:31 p.m.