



BOARD MEETING MINUTES

Teleconference Meeting Held Via WebEx

November 6, 2020

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Lynna Do – Board Member
Jeff Ferro – Board Member
Denise Miller – Secretary
Beata Morcos – Board Member

Board Staff Present

Heather Martin – Executive Officer
Jeff Hanson – Staff Services Manager I
Jody Quesada – Associate Analyst
Helen Geoffroy – Attorney III

Friday, November 6, 2020

9:00 am - Board Meeting

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

The meeting was called to order at 9:00 a.m., roll was called, a quorum was established.

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

President Bookwalter welcomed the Board members, Board staff, and distinguished guests. Mr. Bookwalter thanked the Department of Consumer Affairs' Solid team for moderating the WebEx and offered them the floor to give WebEx participation instructions.

President Bookwalter congratulated Denise Miller on her acceptance into the American Occupational Therapy Association's Roster of Fellows. The Roster of Fellows recognizes occupational therapists who through their knowledge, expertise, leadership, advocacy, and/or guidance have made a significant contribution over time to the profession with a measured impact on consumers of occupational therapy services and/or members of the Association. Recipients of this award use the designation FAOTA.

Mr. Bookwalter stated that he participated in several sessions of the National Board for Certification in Occupational Therapy's (NBCOT) State Regulatory Virtual Leadership Forum and found the session on Ethics to be a great presentation.

Mr. Bookwalter also reported that he, Vice President Pavlovich and Executive Officer Heather Martin presented at the Occupational Therapy Association of California's (OTAC) virtual annual conference in October. In addition, he and Ms. Martin participated in several OT Licensure Compact Advisory Group meetings.

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

Vice President Pavlovich congratulated Denise Miller on her achievement and reported that she presented her dissertation on Occupational Therapy clinicians and the challenges with transitioning to academia at the University of New Mexico's Mentoring conference and she will be published in their November 15th journal.

Denise Miller congratulated Ms. Pavlovich on the publication of her dissertation. Ms. Miller thanked all for their congratulations and thanked Executive Officer Heather Martin for taking time to present information to her Leadership Management class at Stanbridge University.

Beata Morcos and Jeff Ferro extended their congratulations to Ms. Pavlovich and Ms. Miller as well as their thanks to Ms. Martin for her continuous effort.

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

Chuck Wilmarth, Vice President, Health Policy and State Affairs for AOTA introduced himself and congratulated Ms. Pavlovich and Ms. Miller on their recent achievements.

Ciara Cox, faculty member at Samuel Merritt University in Oakland introduced herself and stated that her Advanced Leadership class was in attendance for the Board meeting. Ms. Cox congratulated Ms. Pavlovich and Ms. Miller.

Marine Hassan introduced herself as a student at Dominican University in San Raphael and the author of the 'public comment' letter written to the Board; she asked if she could read it aloud.

The Board gave Ms. Hassan permission.

Ms. Hassan read her letter that referenced how Covid-19 had made it difficult to find fieldwork placements for students and had displaced many others from existing placements. Failing to complete the fieldwork requirements made those students unable to sit for the NBCOT exam and begin their career in occupational therapy. Ms. Hassan stated that a chang.org petition had over 7,000 supporters and highlighted the importance of being able to take standardized board exams closer to the end of academic coursework, even if unable to complete their fieldwork. Ms. Hassan asked that the Board advocate for the alteration of NBCOT exam prerequisites which would help students that were unable to complete their Level II fieldwork requirement due to Covid-19.

President Bookwalter thanked Ms. Hassan for her comments and informed her that the Board was unable to address her public comment during the meeting but asked

her to clarify what she believed the Board's role was in this situation so the Board could decide whether to place this item on a future agenda.

Ms. Hassan stated that it was suggested that she encourage the Board to alter occupational therapy licensing laws to create jobs for entry level students. She said that if the Board was not the right contact, she was willing to keep looking.

Vice President Pavlovich thanked Ms. Hassan and encouraged her to reach out to Accreditation Council for Occupational Therapy Education (ACOTE) because they create the educational standards that the Board adheres to. Ms. Pavlovich also thanked Ms. Hassan for her great example of advocacy and representation of students. Ms. Pavlovich asked that the topic be placed on a future agenda.

President Bookwalter stated that the topic would be placed on a future agenda and he wanted to express his heartfelt concern for the impacted students.

Bryant Edwards, President of OTAC introduced himself, stated his appreciation for the dialogue and congratulated Ms. Pavlovich and Ms. Miller.

Kate Hayner, Chair of the Occupational Therapy program at Samuel Merritt University and co-teacher of the Advanced Leadership program at the university introduced herself and congratulated Ms. Pavlovich and Ms. Miller and thanked the Board for the opportunity for her to participate.

- Denise Miller moved to add Ms. Hassan's concern a future agenda.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter:	Yes
Sharon Pavlovich:	Yes
Lynna Do:	Yes
Jeff Ferro:	Yes
Denise Miller:	Yes
Beata Morcos:	Yes

The motion carried.

5. Presentation of the final *Occupational Therapy Licensure Compact* by Dan Logsdon, Director, National Center for Interstate Compacts, The Council of State Governments.

Mr. Logsdon gave an overview of the OT Compact team and the OT compact Development process that began in July 2019 and was finalized by the OT Licensure

Compact Advisory group in October 2020. Mr. Logsdon stated that at the time of this meeting the Advisory group was immersed in ongoing stakeholder engagement.

A fact sheet was provided and included highlights of the OT Compact, such as:

- It is a Constitutionally authorized contract between states.
- Authorizes in-person practice and telehealth/tele practice based on valid, unrestricted home state license in other compact member states.
- Will take effect when 10 states have enacted authorizing legislation; this requires legislation to be introduced and passed in each state for each state to become a member.
- The goal is for the legislation to be introduced in states in the 2020 and 2021 legislative sessions.
- Will allow licensed OTs and OTAs to practice in all states that join the compact; known as 'member states.'
- The compact will have no impact on scope of practice and state OT Practice Acts will not be affected. Licensees must follow the scope of practice of the state in which they are practicing.

Mr. Logsdon clarified that no California Boards have joined a licensure Compact, but interest has increased due to Covid-19 and telehealth.

Mr. Logsdon agreed to review the Licensure Compact language section by section and answer questions from the Board members.

6. Review and discussion of the final Occupational Therapy Licensure Compact.

The Board proceeded to review and discuss the included *Occupational Therapy Licensure Compact*.

Concerns and questions raised by the Board members were as follows:

Vice President Pavlovich stated that it was problematic for her that line 65 of **Section 2. Definitions** incorrectly used the word "assist" which should be replaced with "contribute" in reference to OTAs delivering occupational therapy services.

Mr. Logsdon apologized and stated that definitions will be further addressed in the Rules section.

President Bookwalter referred to **Section 2. Definitions, subsection B** and asked for clarification on why denial of licensure from a state is not included in the definition of Adverse Action.

Mr. Logsdon stated that denial of licensure is not seen as an adverse action against a license, however, it is a piece of data that is captured in the Licensure Compact Data System and is a component that states can review.

Denise Miller asked for clarification on the fees that will be required for Licensure Compact participation in **Section 3. State Participation in the Compact.**

Mr. Logsdon stated that there would be three fees required: a fee for the home state, a fee for the Compact Commission and a fee for each of the Compact Commission States in which a licensee wishes to practice. The Compact Commission would collect the Compact Commission fee and the Compact Commission State fee.

Ms. Miller expressed her concern regarding increased costs that licensees would incur to be able to participate in a Licensure Compact because those fees would be in addition to license renewals and Association(s) fees that licensees already pay.

Ms. Pavlovich asked for clarification on **Section 4. Compact Privilege, subsection D** and if this language was referring to OTA supervision at the place of employment.

Mr. Logsdon said that the details were still being worked out in Rules but generally, OTAs would require supervision in accordance with that state's current statutes and regulations.

Mr. Bookwalter referred to his and Ms. Martin's participation on the Compact Advisory Group and their concern that background checks are not required in all states. Mr. Bookwalter commented that he is relieved to see that a background check has been instituted for Compact participation. He also noted that the 2-year look back would capture most actionable license violations, since most states renew licenses every 1-2 years and would address violations older than 2 years during the renewal process.

Jeff Ferro inquired about **Section 7. Adverse Actions** and the Board's experience with a tolled practitioner be prohibited from joining the Compact.

Mr. Logsdon stated that a licensee that wishes to participate in the Compact must have an unencumbered license.

Executive Officer Heather Martin stated that because the Board recently added 'Surrender' language to the Disciplinary Guidelines, that all future tolled probationers would have an opportunity to obtain an unencumbered license two years after a license was surrendered. She clarified that this would not pertain to practitioners currently on probation.

Ms. Martin asked about **Section 7. Adverse Actions, subsection B2, line 239** and an earlier concern of hers that subpoenas wouldn't necessarily cross state lines. Ms. Martin inquired if some of the other Compacts established the authority by rule that subpoenas would cross state lines.

Mr. Logsdon responded that the subpoena issue would be further clarified by the Compact Commission in Rules.

In reference to Section **8. Establishment of the Occupational Therapy Compact Commission**, Mr. Bookwalter asked if the Compact language regarding public meetings would supersede any state requirements for public meetings.

Mr. Logsdon agreed that the Compact language would supersede state requirements.

Ms. Miller asked Mr. Logsdon if he anticipated the Compact would come to fruition?

Mr. Logsdon stated his opinion that if not for the on-going pandemic and adverse impact to state's legislative bodies meeting minimally, the 10-state requirement would have been met by the summer of 2022, due in part to how well the profession is represented and regulated. He expressed his hope for an early to mid-2023 start date but ultimately it would take 9-10 months following the addition of the 10th state.

The Board members thanked Dan Logsdon for his availability and willingness to answer their questions. Mr. Logsdon agreed to stay and address any public comments.

Beata Morcos asked what the next step would be if it is determined that the Board is interested.

President Bookwalter commented that speaking to the process would be helpful.

Ms. Martin stated that under Agenda Item 5, page 2 of the second handout there is an overview of the process in case the Board members and/or public wanted an overview.

Public Comment

Chuck Wilmarth, Vice President, Health Policy and State Affairs for the American Occupational Therapy Association (AOTA) encouraged California to take the Licensure Compact on when ready. Mr. Wilmarth asked Mr. Bryant Edwards to speak on behalf of the California association. Mr. Edwards, President of the OTAC was no longer on the call.

President Bookwalter referred to Ms. Morcos' question about what is expected of the Board and asked for a pulse of the Board.

Ms. Miller confirmed her understanding of the Licensure Compact and requested specifics about the path that other licensing boards under the Department of Consumer Affairs took and why they moved forward with their own Compact.

Vice President Pavlovich said that she wanted to hear from OTAC regarding their position at a future meeting so that meaningful conversations can be had between the Board and the Associations.

Lynna Do requested more information since other Compacts have not made it through the legislature in California and stated that she would appreciate the reasoning behind that.

Ms. Martin offered to provide legislative bills and reach out to the Senate staff that provided the analysis for the bills/hearings that didn't make it forward.

- Sharon Pavlovich moved to have the Licensure Compact placed on a future agenda.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter:	Yes
Sharon Pavlovich:	Yes
Lynna Do:	Yes
Jeff Ferro:	Yes
Denise Miller:	Yes
Beata Morcos:	Yes

The motion carried.

7. Update from the Department of Consumer Affairs (DCA) Executive Staff: Carrie Holmes, Deputy Director, Board and Bureau Relations, on DCA Staffing, Waivers, and other Activities.

Ms. Holmes introduced herself as relatively new to the Department of Consumer Affairs but that she has always been passionate about consumer protection and she was happy to be at DCA. Ms. Holmes stated that most recently she was the Legislative Director for Senator Jim Bell.

Ms. Holmes reported that Director Kimberly Kirchmeyer was able to get her team in place and she would now be able to devote her time to her top priorities. Ms. Holmes mentioned that one of those priorities was improving the timelines and transparency of Regulation packages and an online tracking system (Cherwell) had been implemented to track and streamline legislative package review.

Ms. Holmes stated that another priority of Director Kirchmeyer is Board Member appointments and although she did not have any current updates for CBOT, filling current and upcoming vacancies is a priority.

Ms. Holmes reported on the DCA response to the Covid-19 pandemic which included temporarily closing offices to the public, the implementation of telework and enforcing social distancing to ensure the health and safety of the employees and visitors. DCA

issued 77 waivers needed to maintain a license workforce as of the date of the meeting and they welcome feedback and ideas regarding current and new waivers.

President Bookwalter thanked Ms. Holmes and DCA for all their hard work and guidance to implement important changes during the pandemic.

President Bookwalter asked if Board Member term extensions beyond the one-year grace period have been implemented because without an extension or re-appointment of Members that CBOT would not have a quorum at the next meeting.

Ms. Holmes stated that DCA and the appointing authorities are aware of the position of the Board and encouraged the Board to not worry.

Ms. Miller asked if the expiration date continued to be December 2020 or had that changed.

Ms. Holmes said that she would send clarification to the Board.

Ms. Miller also asked if there was a date that in-person meetings would reconvene.

Ms. Holmes stated that it is currently impossible to know but that it was safe to say virtual meetings would last at least through the end of the State of Emergency.

Public Comment

There was no public comment.

8. Review and vote on approval of the August 13, 2020, teleconference Board meeting.

Discussion regarding the attendance of Vice President Sharon Pavlovich and Jeff Ferro and the fact that they were in attendance during the August 13, 2020, Board meeting following Closed Session. Board staff agreed to update the 'Board Members Present' section on Page 1 of the minutes and to notate that they joined following Closed Session.

- Jeff Ferro moved to accept the minutes with the proposed edits.
- Lynna Do seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter:	Yes
Sharon Pavlovich:	Yes
Lynna Do:	Yes
Jeff Ferro:	Yes
Denise Miller:	Yes
Beata Morcos:	Yes

The motion carried.

9. Review and discussion on use of a 'date certain' when issuing a Board Decision in response to a licensee's petition to early terminate or modify terms of probation.

Executive Officer Heather Martin and DCA Attorney Helen Geoffroy stated that it had recently come to their attention that they would need to seek clarification from the Board regarding future use of the term 'date certain' when it pertains to Petitions for Early Termination or Modification of Probation.

Ms. Martin and Ms. Geoffroy explained that when the Board prescribed a specific timeframe for an early termination or modification of probation, the Board would need to decide if they would like to incorporate all or some of the probation terms from the original order and if so, prescriptive language must be included in their Decision. If direction was not given to the Board's attorney, the original probation terms that conflict with the date certain would be nullified.

Mr. Bookwalter expected that probation and all probation terms and conditions would continue through a prescribed date and if the licensee was not in compliance the effective date would be extended.

Ms. Geoffroy asked what the Board members what they would like to do on future cases.

Vice President Sharon Pavlovich stated her preference to handle situations on a case by case basis.

President Bookwalter asked Ms. Geoffroy to supply a guideline that can be used in future Closed Sessions when the Board is considering Petitions to Early Terminate Probation or Petitions for Modification of Probation Terms.

The Board members all agreed that they would like Attorney Helen Geoffroy to provide these guidelines

Ms. Geoffroy agreed to create a guideline for the Board members to use when considering these types of petitions.

Public Comment

There was no public comment.

10. Review and discussion of *Term 5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice*, in the Board's Disciplinary Guidelines, and the phrase "Unless by Board order."

Executive Officer Heather Martin stated that the reason for Agenda item 10 is that during a recent conversation with a DCA attorney she was asked for clarification of the meaning of "Unless by Board order" and she was unable to provide the origin or

an example. The attorney agreed and suggested Ms. Martin seek input and direction from the Board on whether that language was needed in the Board's Disciplinary Guidelines.

President Bookwalter could not recall why that language was used nor could he think of a situation in which the language would be needed. Mr. Bookwalter stated his preference was to remove the language.

Vice President Pavlovich agreed.

Attorney Helen Geoffroy stated that it is redundant.

Jeff Ferro, Lynna Do and Denise Miller agreed. Beata Morcos said that she could go either way.

- Richard Bookwalter moved to strike the language "Unless by Board order" from *Term 5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice* from the Board's Disciplinary Guidelines.
- Sharon Pavlovich seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter:	Yes
Sharon Pavlovich:	Yes
Lynna Do:	Yes
Jeff Ferro:	Yes
Denise Miller:	Yes
Beata Morcos:	Yes

The motion carried.

11. Discussion and consideration of proposed amendments to California Code of Regulations, Title 16, Division 39, Section 4147, Disciplinary Guidelines (depending upon outcome of discussion of Agenda Item 10, above).

Executive Officer Heather Martin explained that, due to the uncertainty of the Board's direction in Agenda Item 10, since the Board directed the language to be removed, in order to update the Disciplinary Guidelines in the current rulemaking package, the Board would need to make a motion to authorize that change.

- Richard Bookwalter moved to strike the language "Unless by Board order" from *Term 5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice* from the Board's Disciplinary Guidelines and update the document currently in the rulemaking process.
- Lynna Do seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Lynna Do: Yes
Jeff Ferro: Yes
Denise Miller: Yes
Beata Morcos: Yes

The motion carried.

12. Executive Officer's Report.
 - a. Operational and budget reports.

Ms. Martin reported that two positions were recently filled: A Legal Desk analyst in Enforcement and a Licensing Technician. She also advised that effective July 1, 2020, through the budget change proposal (BCP) process, the Board was authorized 2.5 additional positions in Licensing; 1.5 positions was funded July 1 and 1.0 additional position funded January 1, 2021. The additional positions were authorized to respond to the increase in applications and projected increase in applications due to several new OT and OTA educational programs.

Ms. Martin reviewed the included fiscal month three revenue and expenditure reports and a current fund condition.

- b. Update on legislation.

Ms. Martin reviewed the included 2020 Legislative information.

President Bookwalter asked if the Board would need new regulations as a result of the passage of *AB 2113, Low. Refugees, asylees, and special immigrant visa holders: professional licensing: initial licensure process.*

Ms. Martin stated that she believed new regulations were not needed because DCA added a modifier in BreZE that gives those applicants expedited review if they answer yes to the question

Mr. Bookwalter questioned the impact that *SB 878 (Jones) Department of Consumer Affairs: license: application: processing timeframes* will have on Board staff.

Ms. Martin replied that staff was currently required to report processing timeframe statistics to DCA on a quarterly and annual basis, thus the impact to staff would be minimal.

c. Presentation of licensing and enforcement data.

Regarding Licensing statistics, Beata Morcos asked why the number of received applications did not match the number of approved applications.

Ms. Martin explained that when an application for licensure is submitted, staff reviews it no later than 30 days from submission; if all required documentation has been submitted, the applicant will receive a “Congratulations” email that day advising them their application has been approved. If all documentation has not been submitted, the applicant is emailed a deficiency letter, advising them of what additional documents are required. She added that the number of applications received, and the number approved in a given period will rarely match. Ms. Martin also explained that once approved, the applicant has 60 days in which to pay for the initial license.

d. Future agenda Items.

Ms. Martin asked the Board if they wished to submit ideas for future agendas.

The Board responded with the following future agenda items:

- Staff to reach out to the schools and identify the number of students that have not been able to complete their fieldwork due to the Covid-19 pandemic.
- Staff to reach out to potential Committee members before the February meeting.
- Staff to reach out to AOTA and ask if there are or will be updates to the ACOTE guidelines and/or any other Spring announcements and if so request that an AOTA representative come and share with the Board.
- Ms. Miller asked staff to find information pertaining to the increase of the number of newly opened and potential OTA programs in CA. She suggested Chuck Wilmarth be asked to share his knowledge on this subject and that this topic could be added to any future meeting agenda.
- Ms. Miller asked that the Disaster Preparedness committee be reenacted and that this subject could be added to any future meeting.
- Staff to provide an update on the Workforce study and AB 2105 report regarding apprenticeship and alternative models.
- Although Ms. Hassan was directed to reach out to ACOTE regarding her fieldwork concerns, Mr. Bookwalter and Ms. Pavlovich asked that the inability of students to complete Level 2 fieldwork requirements during the pandemic be added to a future agenda.
- Ms. Pavlovich asked that an item where the Board discusses and generates ideas on how to include students and harness their excitement to participate in Board business be placed on a future agenda.

e. Other informational items.

Ms. Martin thanked Ms. Pavlovich for putting her in touch with Aaron Moesser, Academic Fieldwork Coordinator for Loma Linda University's master's in occupational therapy program. Mr. Moesser agreed to assist Ms. Martin in increasing the Board's social media outreach regarding the Limited Permit waiver issued by DCA's Director in response to the pandemic.

Ms. Martin went on to thank Aaron for his kindness and his willingness to assist the Board.

13. Selection of 2021 Board Meeting dates.

The dates selected for 2021 Board meetings are:

February 25 – 26
May 20 – 21
August 19 – 20
October 21
November 4 – 5

14. Election of 2021 Officers.

Following nominations, Board discussion and a show of interest, the Board put forth Sharon Pavlovich for President, Jeff Ferro for Vice President and Beata Morcos for Secretary. All parties accepted.

- Lynna Do moved to elect Sharon Pavlovich for President, Jeff Ferro for Vice President and Beata Morcos for Secretary.
- Denise Miller seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Lynna Do: Yes
Jeff Ferro: Yes
Denise Miller: Yes
Beata Morcos: Yes

The motion carried.

CONVENE CLOSED SESSION

- The Board will meet in closed session pursuant to Government Code Section 11126(c)(3) to deliberate and vote on disciplinary matters.

- The Board will meet in closed session pursuant to Government Code Section 11126(a)(1) to discuss evaluation of performance of executive officer.

The Board convened in Closed Session at 3:09 p.m.

Deliberation and voting on disciplinary matters concluded at 3:45 p.m. Board members then continued their evaluation of the Executive Officer.

RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 4:14 p.m.

The meeting adjourned at 4:14 p.m.