

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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State of California
Department of Consumer Affairs
Gray Davis, Governor



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
June 21, 2002
Sacramento, California

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

Board President Luella Grangaard called the meeting to order at 1:05 p.m. Executive Officer Gretchen Kjose called the roll.

Board Members Present

Luella Grangaard, President
Cynthia Burt
Margaret Cunningham
Roberta Murphy
Suzanne Sampson

Board Member Absent With Excused Absence

Hugh Smith
Christine Wietlisbach

Staff Present

Gretchen Kjose, Executive Officer
Laura Freedman Eidson, Legal Counsel
Jeff Hanson, Licensing Coordinator

B. Presidents Remarks

Ms. Grangaard welcomed the audience and indicated that she would allow public comments during each agenda item as appropriate. She also thanked the Regulatory Committee members for their diligence and hard work in developing regulations that will implement the Occupational Therapy Practice Act.

C. Approval of the April 19, 2002 Board Meeting Minutes

The Board reviewed the April 19, 2002 Board meeting minutes.

- ◆ Roberta Murphy moved to approve the April 19, 2002 Board meeting minutes.
- ◆ Cynthia Burt seconded the motion.
- ◆ The motion carried unanimously.

D. Executive Officer's Report

Ms. Kjose reported that the Board's first annual report had been sent to the Department of Consumer Affairs (DCA) advising them that the Board had met five times over the past year, developed a strategic plan and a web page, proposed regulations pertaining to citations and fines and ethical standards of practice, and had several legislative proposals pending.

Ms. Kjose advised that she had spoken to the Occupational Therapy Association of California's Bay Area chapter on April 26, 2002 regarding licensure and certification. She said that Hugh Smith and Cindy Burt had attended DCA's board member orientation sessions in April and May. Ms. Burt commented that the session was quite informative, not only in describing what the various divisions in DCA are responsible for, but also in giving her the opportunity to interact with other board's members and hear about issues that are both similar and unique to each board.

Ms. Kjose mentioned that as of June 10th, 26 enforcement cases had been opened as the result of consumer complaints or receipt of criminal conviction information from the Department of Justice. Of those, 19 had been resolved and 7 were pending additional information. She stated that the Board has authority under its Practice Act to deny licensure or certification to an applicant who has done any act which, if done by a licensee, would be grounds for suspension or revocation of a license.

She announced that as of today's meeting, 1,900 applications were in various stages of completion and 677 occupational therapists (OT) and 72 occupational therapy assistants (OTA) had been licensed or certified. She stated that the Board had projected receiving at least 2,100 applications by the end of June 30th but had actually received over 2,600.

Ms. Kjose reported that the comment period on the Board's citation and fine regulations ended on April 29, 2002, that no comments were received, that the file had been signed by DCA's director, and would be sent to the Office of Administrative Law (OAL) on June 24, 2002. She noted that OAL has 30 working days to either approve or reject the regulations. She advised that regulations on Ethical Standards of Practice were published by OAL on June 21, 2002, had been added to the Board's web site, and that the public hearing would be held August 6, 2002.

Roberta Murphy asked for an explanation of the enforcement process and when the Board would actually get involved in enforcement cases. Ms. Kjose explained that the Board has authority to deny a license if the applicant has been convicted of a crime substantially related to the license or if the applicant has done any act, which if done by a licensee, would be grounds for suspension or revocation of the license. She explained the appeal process and the point at which Board members would become involved.

Ms. Kjose stated that Penal Code section 11164, known as the Child Abuse and Neglect Reporting Act, requires health care licensees to report suspected instances of child abuse and neglect. She indicated that staff would begin notifying licensees of this requirement when issuing licenses.

Ms. Kjose explained that the National Board for Certification in Occupational Therapy (NBCOT) owns the trademark OTR and reported that NBCOT had asked the California Attorney General for an opinion as to whether an occupational therapist could use the initials OTR in California if they do not get licensed here. The OT Practice Act precludes anyone from practicing occupational therapy or representing that they are licensed to practice if they are not licensed by this Board. NBCOT contends that so long as the person does not practice occupational therapy, they should be allowed to use the initials OTR if they are

certified by NBCOT. Ms. Kjose said she would report again on this issue when the Attorney General's response is received.

E. Budget Report

Ms. Kjose gave an overview of the Board's fund condition, stating that \$88,000 had been received in licensing fees to date. She reminded the Board that \$232,000 must be repaid to the State's General Fund by June 30th and stated that the fund condition would support this payment.

F. Committee Reports

- 1. Regulatory Committee on Feeding or Swallowing Assessment, Evaluation or Intervention**
- 2. Regulatory Committee on Continued Competency and Supervision Requirements**

Feeding or Swallowing Assessment, Evaluation or Intervention

Ms. Burt reported that the Committee had received numerous comments on its draft language and said she would highlight the main points that were addressed at today's meeting. First, the word "feeding" would be deleted because feeding is considered an entry-level skill. She indicated that the regulations would address advanced skills such as "instrumental evaluations", clinical assessment of medically complex and fragile populations, intervention techniques involving the oral phase of medically complex and fragile clients, specialty procedures used in research, videofluoroscopic swallow studies and the role of the OT in those studies, and the clinical and educational background needed to participate in those studies.

She said the Committee would be researching whether the OT Practice Act authorizes occupational therapists to perform fiberoptic endoscopic evaluations and what the therapists' role should be. She stated that ultrasonography, manometry and manofluorography had been identified as procedures used in research and indicated the Committee would try to determine whether OTs perform these procedures outside the research arena. She also stated that electromyography, cervical auscultation and deep pharyngeal stimulation had been removed from the draft language.

She noted that the regulations would define "fragile, complex clients" throughout the life span and that focus would be placed on selecting the proper intervention techniques based on instrumental evaluations. She welcomed comments from the audience and indicated that the Committee would continue to work on the regulations in the months to come.

Continued Competency and Supervision Requirements

Ms. Murphy stated that the Committee reviewed draft regulatory language on continued competency requirements and determined the types of professional development activities that would be acceptable. She noted that each activity would have to be quantifiable and measurable; would have to have been sponsored by the American Occupational Therapy Association, the Occupational Therapy Association of California, or coursework completed through any approved or accredited degree program (other than the qualifying degree program); or an activity that contributed directly to one's professional knowledge and was directly related to the practice of occupational therapy. She indicated that the Committee would continue to work on these regulations at its next meeting.

Ms. Murphy reported that the Committee had a lengthy discussion on supervision requirements focusing on the amount and type of supervision required for occupational therapy assistants. She said the OT

Practice Act requires appropriate supervision that includes at least weekly review of all aspects of OTA practice. She advised that the Committee would be further defining appropriate supervision, expanding on what is required in the weekly contact, and defining the role of the OTA in supervising students, among other things. She also stated that the Committee would continue to research what other states require in terms of supervision of OTAs, students, and aides.

G. Legislation

1. SB1402 (Occupational Therapy Association of California, Hand Therapy, Physical Agent Modalities, Feeding and Swallowing Assessment, Evaluation or Intervention)
3. SB 2021 (DCA – Omnibus Bill)
4. SB 2025 (Board of Occupational Therapy, Disciplinary Provisions)
5. SB 2059 (Public Disclosure)
6. SB 1379 (Speech-Language Pathologists: Endoscopies)

Ms. Kjose gave an overview of several pieces of legislation that impact the Board. She reported that SB 1402 was passed by the Senate Committees and the Assembly Business and Professions Committee and would be heard by the Assembly Health and Assembly Appropriations Committees during the week of June 28th. Amendments were introduced on June 11, 2002 that would change the definition of hand therapy and make hand therapy, the use of physical agent modalities, and swallowing assessment, evaluation or intervention advanced practices requiring demonstration of educational and training competencies to be established by the Board. She noted that the word “feeding” had been removed as part of swallowing assessment because feeding is considered an entry level skill. She advised that the provisions on advanced practices would take effect January 1, 2004 or on the date regulations were adopted, whichever came first.

She said that SB 2021 was passed by the Senate Committees and the Assembly Business and Professions Committee and would be heard by the Assembly Health and Assembly Appropriations Committees during the week of June 28th. She noted that this bill would clarify the requirements for those seeking limited permits and make other technical, non-substantive changes to the OT Practice Act.

Ms. Kjose advised that the Board’s disciplinary provisions were originally carried in SB 2025, authored by the Senate Business and Profession Committee as an urgency bill. However, she explained that an error had been made showing that this legislation would result in a significant fiscal impact to the Board. As a result, the Board’s provisions were amended out of the bill. She said that staff had been able to explain to the Committee that the Board had funds budgeted for enforcement activities and that these provisions would not have an additional fiscal impact. Therefore, the language was amended into another urgency bill, SB 1244, during the week of June 21st.

She reported that SB 2059 would require all boards within DCA to adopt regulations establishing policies regarding disclosure of information regarding its licensees to the public and noted that it had been passed by the Assembly Business and Professions Committee and would be heard by the Assembly Health and Assembly Appropriations Committees during the week of June 28th.

Ms. Kjose said that the Board is following SB 1379 because it contains provisions regarding the use of flexible fiberoptic nasendoscopic instruments by speech language pathologists and audiologists. The California Medical Association was successful in adding amendments that would place restrictions on this practice, requiring the procedure to be done under the supervision of a physician/surgeon and only in

acute care settings. She noted that Ms. Freedman Eidson would be researching whether or not the Board needs similar legislation before OTs would be allowed to engage in this type of practice.

Ms. Grangaard thank the Occupational Therapy Association of California for sponsoring SB 1402 and working so hard to improve the OT Practice Act.

H. Review and Approval of the 2002 Strategic Plan

Ms. Kjose explained that since the last Board meeting, an Action Plan had been developed and added to the Strategic Plan and that a Communications Plan would be devised by the end of July. She also noted that, if adopted by the Board today, the Strategic Plan would be presented to the DCA by July 1, 2002.

- ◆ **Cindy Burt moved to approve the Strategic Plan.**
- ◆ **Suzanne Sampson seconded the motion.**
- ◆ **The motion carried unanimously.**

I. Schedule of Future Meetings

Ms. Kjose indicated that the Board had tentatively scheduled its next meeting for September 26-27, 2002, in Los Angeles but that Hugh Smith had a conflict with those dates. September 20-21, 2002 were the dates selected for the next meeting.

Ms. Grangaard asked the Board members if there were topics they would like to include on the next agenda. Ms. Murphy commented that the Board should begin to consider the different scenarios it will be faced with when a master's degree is required for entry into the profession in 2005.

J. Public Comment Session

Chuck Strauch, director of the Occupational Therapy Association of California, invited the Board to write articles for their monthly newsletter.

K. Adjournment

The meeting adjourned at 2:10 p.m.