

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
September 22, 2002
Marina Del Rey, California

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

Board President Luella Grangaard called the meeting to order at 9:02 a.m. Secretary Christine Wietlisbach called the roll.

Board Members Present

Luella Grangaard, President
Cynthia Burt
Margaret Cunningham
Roberta Murphy
Hugh Smith

Board Member Absent With Unexcused Absence

Suzanne Sampson

Staff Present

Gretchen Kjose, Executive Officer
Laura Freedman Eidson, Legal Counsel

B. Presidents Remarks

Ms. Grangaard welcomed the audience and indicated that she would allow public comments during each agenda item as appropriate. She announced that the Board would sponsor a booth at the upcoming Occupational Therapy Association of California (OTAC) annual conference and that she had been invited to attend the National Board for Certification in Occupational Therapy (NBCOT) Board meeting which would be held in conjunction with the OTAC conference.

C. Approval of the June 21, 2002 Board Meeting Minutes

The Board reviewed the June 21, 2002 Board meeting minutes.

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

D. Executive Officer's Report

Executive officer Gretchen Kjose reported that the Board received notification from the Accreditation Council for Occupational Therapy Education (ACOTE) that the occupational therapy assistant program at Western Institute of Science and Health, Rohnert Park voluntarily withdrew its accreditation effective January 1, 2002, and that the program at Western Career College, San Leandro had been placed on inactive status, effective August 2, 2002. She stated that a program may remain on inactive status for a period of three years and that students who successfully completed either of these programs while accreditation was in effect, even if it was not in effect the entire time, would be considered graduates of an ACOTE accredited program.

Ms. Kjose said she spoke to the Occupational Therapy Association of California's (OTAC) Mountain Valley Chapter in Sacramento on September 18th and would be speaking to another Chapter in Chico on October 4th.

She reiterated that Board would be an exhibitor at the October OTAC conference in San Diego and that OTAC had arranged for a private vendor to be in attendance to provide Live Scan fingerprint services so that attendees could complete an application for licensure/certification at the conference and give it to Board staff.

Ms. Kjose reminded Board members that the Department of Consumer Affairs' (DCA) Board Relations office would hold one more Board member orientation session in Los Angeles on October 16, 2002 and a legislative workshop on Wednesday, November 20th, from 9:30 a.m. to 3:30 p.m. at the State Capitol.

She announced that a California Task Force on Older Adults and Traffic Safety, spearheaded by the California Highway Patrol, had been convened in 2000 to develop a strategic framework of state-level recommendations to prevent traffic related injuries/deaths among older Californians. She said that one of the goals identified thus far was to mobilize and equip health care professionals to provide effective risk assessment, education and intervention and commented that occupational therapy practitioners were among those listed as professionals who would play important roles in this endeavor. She indicated that once the final report was available, the Board would be able to assess its role in educating practitioners of the responsibilities they might be assigned.

Ms. Kjose advised that DCA would be co-sponsoring a conference with the Citizen Advocacy Center from November 13-15, 2002 in San Francisco and she urged Board members to attend if possible.

She reported that 91 complaints had been opened thus far as result of consumer complaints or receipt of criminal conviction information from the Department of Justice. 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.

Ms. Kjose advised that Senate Bills 1244, 1402, and 2021 had been enrolled and sent to the Governor for signature and that Senate Bill 1379, the Speech-Language Pathology and Audiology Board's bill on the use of fiberoptic endoscopes was also on the Governor's desk for signature.

She reported that 2,188 occupational therapists (OTs) and 280 occupational therapy assistants (OTAs) had been licensed or certified so far and commented that, in August, she sent a letter to California facilities reminding them that all OTs and OTAs must be licensed by January 1, 2003.

Ms. Kjose informed the Board that OT practitioners must report suspected incidents of child abuse and neglect, and elder or dependent adult abuse and that the mandatory reporting requirements were sent with to practitioners with their initial license/certificate and available on the Board's web site.

She advised that office technician Paula Pimentel resigned effective October 8th to return to her former position and that a freeze exemption request had to be approved by DCA, the State and Consumer Services Agency and the Department of Finance before her position could be filled.

She also noted that the Board's citation and fine regulations took effect September 6, 2002, that the regulations on Ethical Standards of Practice had been sent to DCA's director for review and that license verification was now available on the Board's web site.

E. Regulatory Committee Reports

- 1. Regulatory Committee on Feeding or Swallowing Assessment, Evaluation or Intervention; Hand Therapy; Physical Agent Modalities**
- 2. Regulatory Committee on Continued Competency and Supervision Requirements**

Feeding or Swallowing Assessment, Evaluation or Intervention

Cynthia Burt reported that the Committee met the previous day to continue work on draft regulations regarding swallowing assessment, evaluation or intervention. She indicated that assessment of swallowing in the oral, pharyngeal, and esophageal phases and instrumental evaluation are considered to be advanced practices. She also advised that the Committee would not be addressing interventions at this time other than to require that if a practitioner is using interventions with dysphagia clients, they must be competent to do so in accordance with ethical standards of practice.

She stated that the Committee discussed and would continue to discuss whether advanced training in instrumental evaluation should automatically be included in these regulations when the majority of practitioners doing assessments and evaluations in dysphagia do not perform instrumental evaluations. She advised that videofluoroscopic studies and fiberoptic endoscopies were the two instrumental evaluations identified as requiring advanced training and commented that current law prohibits an occupational therapist from actually passing the endoscope. She concluded by saying that the Committee will be discussing what the advanced training requirements will be and how the practitioner's skill level will be assessed. She mentioned that suggestions had been made to consider having clinical facilities be part of the process and that OTAC might play a role as well.

Ms. Burt noted that development of regulations on hand therapy and physical agent modalities would commence if and when Senate Bill 1402 was chaptered.

Continued Competency and Supervision Requirements

Continued Competency - Roberta Murphy reported that discussion items on continuing competency included whether supervision of Level I students completing fieldwork requirements should count as a professional development credit, the mentoring relationship, authoring articles and making presentations

and the amount of professional development credit that should be given for each, among other things. She said the Committee determined that the nature of Level I fieldwork is such that supervision of it would not warrant professional development credit. She further noted that the Committee changed the words “informal apprenticeship” to “structured mentoring” and assigned units of credit for being a mentor as well as being mentored. She commented that the Committee felt that when practitioners are using their expertise to write articles or make presentations, they should receive professional development credit but when they are simply engaged in their normal employment, professional development credits would not be appropriate. She advised that regulatory language had been added to include the type of documentation practitioners should keep as proof of participation in professional development activities.

Supervision Requirements – Ms. Murphy reported that the most recent discussion focused on the requirement that entries made to the medical record by limited permit holders, students and aides be cosigned by the supervising OT, and the use of aides.

Patricia Nagaishi commented that OTAs, limited permit holders, students and aides frequently make entries on documents that aren’t considered to be the “medical record” but they are entries that should be reviewed and cosigned by the supervising OT. The Board agreed, and after discussion, proposed amending the language from “medical record” to “all documented client related services.”

Ms. Murphy noted that the proposed regulations specify that aides cannot use physical agent modalities (PAMS). There was much discussion on the impact this provision would have on facilities that allow aides to apply heat and ice packs when under the direct supervision of an OT. However, the Board determined that since the use PAMS by OTs is advanced practice requiring post professional education and training, they should not be delegated to unlicensed personnel. The question was raised as to whether OTAs would be allowed to use PAMS. Ms. Grangaard commented that, in her opinion, since the OTA is under the direct supervision of the OT, the OT is ultimately responsible for all OT services provided and for determining when it is appropriate to delegate OT services to the OTA, including the use of PAMS. Ms. Freedman-Eidson stated that the regulations are currently silent on this topic but that she would research the issue and provide input at the next Board meeting.

F. Review and Approval of Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations Sections 4160, Definitions; Continued Competency – Professional Development; 4162, Completion and Reporting Requirements; and 4163, Exemption from Continued Competency Requirements

Following the discussion of continuing competency under agenda item E, the Board took up this agenda item. Legal counsel, Laura Freedman-Eidson explained the regulatory process and advised that there would be a 45-day comment period and a public hearing affording members of the public and profession the opportunity to comment on these regulations. She advised that the Board was obligated to respond to all comments and that if the proposed text was modified, there would be an additional 15-day public comment period.

- ◆ **Roberta Murphy moved to approve the proposed regulations with the amendments suggested under Agenda Item E regarding credit given for writing articles, being a presenter, and the type of documentation required.**
- ◆ **Hugh Smith seconded the motion.**
- ◆ **The motion carried unanimously.**

G. Review and Approval of Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations Sections 4180, Definitions; 4181, Supervision Parameters; 4182, Treatments Performed by Occupational Therapy Assistants; 4183, Treatments Performed by Occupational Therapy Limited Permit Holders and Students; and 4184, Delegation of Tasks to Aides

Following the discussion under Agenda Item E the Board considered this agenda item.

- ◆ **Roberta Murphy moved to approve the proposed regulations with the amendment suggested under Agenda Item E referencing all client related services.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

H. Review and Approval of Proposed Regulations to Amend Title 16, Division 39, California Code of Regulations Section 4130, Fees

Ms. Kjose explained that Senate Bill 2021, if chaptered, would give the Board authority to collect an application fee of \$50 and that this regulatory action would be needed to implement the law. She also noted that the initial license and certification fees that applied before June 30, 2002 could now be repealed.

- ◆ **Cynthia Burt moved to approve the proposed regulation to amend Section 4130 contingent upon Senate Bill 2021 becoming law.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

Following the vote, Ms. Freedman-Eidson suggested that the Board delegate to the executive officer authority to amend the regulations at the end of the public comment period if there were no adverse comments, and to make technical, non-substantive changes that may be required by the Office of Administrative Law.

- ◆ **Hugh Smith moved to delegate to the executive officer authority to amend the regulations at the end of the public comment period if there were no adverse comments, and to make technical, non-substantive changes that may be required by the Office of Administrative Law.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

I. Discussion of Regulations to Implement Senate Bills 1244 and 2021 if Chaptered

- 1. Disciplinary Guidelines**
- 2. Limited Permits**

Ms. Kjose reported that Senate Bill 1244, if signed by the Governor, would give the Board authority to take disciplinary action against applicants and licensees who violate the Practice Act or other laws substantially related to the occupational therapy profession. She gave an overview of the disciplinary process, advised that licensees and applicants for licensure were entitled to “due process” under the law, and explained the role the Board would play. She said the Board would have the ability to suspend, revoke, or place on probation, the license or certificate of a person found to have engaged in unprofessional conduct but, in order to be consistent and fair in determining the appropriate penalty for

similar offenses, the Board must set forth, in regulation, disciplinary guidelines that specify minimum and maximum penalties for particular violations.

The Board reviewed sample disciplinary guidelines from another board within the DCA and asked that staff prepare draft regulatory language for consideration at the next Board meeting.

Ms. Kjose advised that, if signed by the Governor, Senate Bill 2021 would allow a person who had completed the education and fieldwork requirements for licensure and who was waiting to take the first available examination or waiting for the results of the examination to apply for a limited permit. She noted that if the person failed to qualify for the first announced examination or failed the examination, the limited permit would be cancelled.

She explained that when this legislation was introduced, the National Board for Certification in Occupational Therapy was giving the examination four times annually. However, in February 2003, the examination would be available continuously at exam sites throughout the nation. She said that because of this, the Board needed to develop regulations that would define the “first available” examination.

After discussion, during which members of the audience commented that recent graduates needed time to gain experience and study for the examination, and in light of the fact that the examination had been given four times annually in the past, the Board determined that a four month timeframe from the date of graduation would be appropriate to apply for and take the national examination. The Board also felt that the limited permit fee of \$100 should be applied to the initial license fee for those successful in passing the first examination.

The Board asked that staff develop draft regulatory language for consideration at the next Board meeting.

J. Discussion of Enforcement Process; Complaint Disclosure Policy

Ms. Kjose continued her previous discussion of the enforcement process by stating that the Board’s primary responsibility was to protect consumers by enforcing the provisions of the Occupational Therapy Practice Act. She explained that the disciplinary process is governed by the Administrative Procedure Act.

Ms. Kjose stated that when a complaint is received against a licensee, a case is opened and staff determines whether the complaint appears to have merit, is a violation of law, whether it can be investigated in-house or whether it must be sent to the DCA’s Division of Investigation. She noted that the investigative and disciplinary process takes several months, even years to complete, during which, the Board is frequently contacted by complainants, employers, law enforcement personnel, attorneys, and consumers, and others interested in the status of the case. For that reason she said it is important to establish a complaint disclosure policy to assist consumers in making informed decisions when hiring a licensee, while at the same time protecting the rights of the licensee until it is determined whether they did or did not violate the law.

Ms. Grangaard commented that at times the public is quick to complain about health care professionals for not very good reasons, i.e., they don’t like the therapist, etc., and she cautioned the Board about disclosing those types of complaints. Ms. Kjose explained that those types of complaints would not constitute violations of the Practice Act and would not be reportable. However, she noted there will come a time when several complaints surface against one individual that are all pending at the same time and that is why it is important to have a complaint disclosure policy.

Ms. Kjose noted that the DCA had developed recommended minimum standards for complaint disclosure which were provided for today's discussion. She also advised that many boards have a policy that complaints are not disclosed until they are referred to the Attorney General's Office or until the actual legal charging document is filed, becoming a matter of public record.

Following discussion, the Board asked that staff begin developing complaint disclosure regulations using the DCA minimum standards as a model.

K. Discussion of Proposed Resolution Requiring Education to be Reflective of Current Practice

Ms. Grangaard led this discussion by saying that when the licensing law was being drafted in 1999, it became apparent that there was much variability in occupational therapy education between individual schools. She reported that she, several others and OTAC had sponsored a resolution asking the American Occupational Therapy Association (AOTA) to charge ACOTE with the task of looking at essentials in education and being more prescriptive in requiring education to be reflective of current practice. She said this resolution was defeated but its importance resurfaced during the past year when Senate Bill 1402 was being drafted. She stated that, from a consumer protection standpoint, education should be reflective of current practice and she asked the Board if it would support reopening this issue with AOTA. She noted that the OT members on the Board could introduce a motion or resolution to AOTA's Representative Assembly and that the Board could be a supporter.

Ms. Murphy advised that ACOTE is separate and independent from AOTA and that the issue should probably be raised with the Council on Post Secondary Accreditation (COPA) rather than AOTA. She also said that AOTA's Commission on Education (COE) has an Essentials Review Committee (ERC) that convenes every few years with the broad community of interest to develop essentials in education and that the ERC might be the best vehicle for this request.

Ms. Freedman-Eidson advised that the Board could determine the best method for its message at a later date, but that the first step was to determine whether the Board wanted to take a position on the educational requirements.

- ◆ **Roberta Murphy moved that the California Board of Occupational Therapy initiate a strong recommendation to AOTA that occupational therapy education be developed to include baseline content and standards of education that are reflective of current practice.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

L. Schedule of Future Meetings

The date for the last meeting in 2002 was confirmed as December 13, 2002 in Sacramento.

M. Public Comment Session

There were no public comments during the public comment session.

N. Adjournment

Ms. Grangaard announced that the regulatory committee responsible for developing ethical standards of practice, continuing competency and supervision regulations would be disbanded at this time since the work had been completed. She thanked Ms. Murphy and Mr. Collins for their excellent contributions and asked them to be available for the public hearing process to lend their expertise.

The meeting adjourned at 12:00 p.m.