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State of California
Department of Consumer Affairs
Gray Davis, Governor

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
July 14, 2003
El Segundo, California

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

Vice President Christine Wietlisbach called the Board meeting to order at 3:30 p.m. and Secretary Roberta Murphy called the roll.

Board Members Present
Christine Wietlisbach
Roberta Murphy
Cynthia Burt
Margaret Cunningham
Hugh Smith

Board Member Absent With Excused Absence
Luella Grangaard, President

Board Member Absent With Unexcused Absence
Suzanne Sampson

Staff Present
Gretchen Kjose, Executive Officer
Norine Marks, Legal Counsel
Janet Yagi, Associate Governmental Program Analyst

B. President's Remarks

Christine Wietlisbach opened the meeting by informing members and attendees that she would be filling in for President Luella Grangaard. Ms. Grangaard had prepared a report that Ms. Wietlisbach summarized. She announced that Ms. Grangaard attended the National Board for Certification in Occupational Therapy (NBCOT) meeting held in April 2003, in Louisville, Kentucky where she had an opportunity to discuss the Board's proposed regulations on continuing competency, supervision and advanced practices with other state regulators. She noted that there was considerable variability throughout the states as to the education required to perform certain services and that California's standards appeared to be higher.

Ms. Wietlisbach reported that Ms. Grangaard also participated on an ad hoc committee appointed by the American Occupational Therapy Association (AOTA) to address perceived encroachment of other health care professions on occupational therapy's (OT) scope of practice. The Committee reported its findings

to the Representative Assembly (RA) at AOTA's Annual Conference held in Washington DC in June 2003 which Gretchen Kjose and Roberta Murphy also attended. At the conference, the RA considered and accepted Ms. Grangaard's Motion that occupational therapy education be reflective of current practice, with modifications. The modified Motion requested that the RA charge the Accreditation Council for Occupational Therapy Education (ACOTE) to use the practice framework in the revision of ACOTE standards and to include the model definition of occupational therapy. An additional Motion was presented, requesting the RA to charge AOTA with putting all professional documents into alignment. Lastly, Ms. Grangaard's report indicated that a survey was conducted regarding public awareness of OT and it revealed only 1% of the population is aware of what OT is.

C. Approval of the March 15, 2003, Board Meeting Minutes

The Board reviewed the March 15, 2003 meeting minutes.

- **Roberta Murphy moved to approve the March 15, 2003, Board meeting minutes.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

D. Executive Officer's Report

Ms. Kjose reported that Board member Cindy Burt worked on NBCOT's Examination Development Committee that met in conjunction with the annual conference in Louisville. In May, Ms. Burt also attended the Item Writer's Institute on San Marco Island in Florida and Ms. Kjose asked Ms. Burt to provide an overview. Ms. Burt stated that the examination development committee meets four times annually. Once each year, the Item Writer's Institute is held where OTs and occupational therapy assistants (OTAs) from all over the country meet to write items for the examination. The committee then submits the items for inclusion into the certification examination and four or five examinations are given on a rotational basis. Ms. Burt further mentioned that NBCOT is the only allied health profession that has met the most stringent requirements for national and international certification.

Ms. Kjose reported that the Citizen Advocacy Center was hosting a conference, "Demonstrating Continuing Professional Competence," on July 17-18, 2003, in San Francisco. She noted, however, that due to the State's financial crisis, boards and bureaus had been asked to curtail all discretionary expenses. She advised that Board members were welcome to attend at their own cost.

Ms. Kjose gave an update on the Board's budget and provided an updated fund condition for the Board members. She noted that there were approximately 8,200 license/certificate holders and that license and renewal fees for fiscal year (FY) 2002/03 totaled $1,218,414. She said that the Board had repaid $458,915 of the $610,000 it owed to the General Fund, which included two payments, plus interest. She also stated that, in FY 2003/04, the Governor proposed to borrow $640,000 from the Board's fund to help balance the State's budget. She explained that, even with this loan, the Board's fund condition for FY 2003/04 should be sufficient to support its mandated responsibilities.

Ms. Kjose reported that a budget change proposal (BCP) had been submitted to the Department of Consumer Affairs' (DCA) budget office, seeking additional funding ($64,000) for the Board's enforcement program. She advised that, when the budget was originally prepared, $84,500 was appropriated for Attorney General costs but no money was appropriated for investigative costs, the Office

of Administrative Hearings or expert witnesses. She said that if DCA approved the BCP, it would be sent to the Department of Finance for review and, hopefully, approval. If it was not approved, the Board would have to redirect money from other line items to cover its enforcement costs.

Ms. Kjose announced that, as of July 7, 2003, 309 complaints had been opened as the result of consumer complaints or receipt of criminal conviction information from the Department of Justice. She pointed out that complaints had been received alleging fraudulent billing practices and sexual misconduct. Of the 309 complaints, 293 had been resolved, 16 were pending additional information, nine applications had been denied, six licenses had been issued on probation, one accusation and two statements of issues (SOI) had been served, and two SOIs were pending at the Attorney General's Office.

She noted that, as of July 7, 2003, 6,955 OTs and 1,248 OTAs had been licensed or certified, 150 limited permits had been issued, and approximately 500 applications were in varying stages of completion.

Ms. Kjose updated the Board on Senate Bill 1077 (SB 1077) (Figueroa)), which contains the Board's clean up language for section 2570.4(d) of the OT Practice Act. She reminded the Board that this provision was intended for traveling therapists licensed in other jurisdictions to practice in California for up to 45 calendar days annually without getting licensed, however, current language allows anyone who had passed the examination to practice for 45 days each year without obtaining a license. She advised that the bill was making its way through various committees in the legislature. She also reported that Assembly Bill 1388 (AB 1388) (Kehoe) had been introduced to regulate the massage therapy and bodywork profession and said that the staff would continue to follow the progress of this bill.

Ms. Kjose stated that the Board had been asked to participate on the Older Californian Driver Safety Task Force, a task force convened in 2000 to develop a strategic framework of state-level recommendations to prevent traffic-related injuries/deaths among older Californians. She said that the California Highway Patrol was spearheading the initiative and was responsible for coordinating its implementation. One such recommendation was to improve the ability of health care and service providers in assessing traffic safety risk and, she stated that OTs are in a unique position to identify, minimize, or correct impairments that may interfere with safety in a traffic environment. She said the task force is expected to be operational for at least two years and that once the final report is released, the Board will be able to assess its role in educating practitioners of the responsibilities they may be assigned.

Ms. Kjose stated the Board's Program Technician position, vacated in January 2003, was abolished on June 30, 2003, as the result of Executive Order D-71-03, leaving the Board with five staff positions.

Finally, Ms. Kjose reported that the Board's Ethical Standards of Practice regulations were resubmitted to the Office of Administrative Law (OAL) on June 16, 2003 and that OAL had 30 working days to review and either approve or reject them.

E. Practice Committee Report

Ms. Janet Jabri, Practice Committee Chair, provided an overview of the areas of discussion at the meeting held earlier in the day as follows:

- Wound Care – Ms. Jabri stated that the Committee had requested research and consultation from legal counsel regarding wound care and sharp debridement as to whether they were within the general scope of practice of an OT.

- Kinesiotaping - The Committee determined that kinesiotaping was within the general scope of practice of an OT, provided the OT had been trained in and was competent to provide this technique.

- Iontophoresis and Phonophoresis – Ms. Jabri stated the Committee concurred that these techniques were considered modalities requiring advanced practice certification. The Committee had, however, requested research and consultation from legal counsel regarding the application of medication by an OT under the specific direction of a physician and whether or not it would be within an OTs scope of practice.

- Biofeedback – Ms. Jabri reported the Committee determined that biofeedback fell within the general scope of practice when used for general therapy. Biofeedback could, however, be used in conjunction with specific modalities and, when used in that manner, it would be considered an advanced practice, requiring certification.

- Are OTAs allowed to work as independent contractors?
  Ms. Jabri advised the Committee felt OTAs working as independent contractors was an issue for employers and employees, not the Board. The Board would have jurisdiction if the OTA was not working under the supervision of an OT or if an OT was supervising more OTAs than the law allows. The Committee recommended that staff contact the Departments of Education and Health Services, and private registries to determine whether supervision requirements are being adhered to.
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- May OTAs supervise rehabilitation aides?
  Ms. Jabri advised that questions had been raised as to whether OTAs could legally supervise rehabilitation aides providing client related tasks. She indicated that it appears OTAs have been supervising aides in skilled nursing facilities during weekends when OTs were not on duty. Ms. Jabri stated the law says that aides, providing client related services, must be supervised by OTs, and this language applies to rehabilitation aides as well. The Committee asked staff to research the scope of the problem and what impact it has had on OTAs. She noted that if the Board determines that OTAs should be allowed to supervise aides in these types of situations, a legislative change would be needed.

- May aides document treatment in the medical record?
  Ms. Jabri reported that the Committee felt aides could document treatment performed under the supervision of an OT. However, she noted that it was primarily the OTs responsibility to document any client-related services provided by an aide.

- **Cynthia Burt moved to accept the report and recommendations of the Practice Committee.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

F. Regulatory Committee Report

Ms. Burt reported that the Committee reviewed all comments received during the public comment period for the advanced practice regulations and presented the following recommended modifications:

- Modify the definition of "videofluoroscopic swallowing study" or "videofloroscopy" in section 4150(h)(2) to read, "…This procedure may also be known as…" in lieu of, "This procedure is also known as…"
- Section 4151(b) would include that a maximum of 8 contact hours and 60 hours of supervised on the job training, clinical internship or affiliation, which may be paid or voluntary, completed under section 4152 would be credited towards the requirements of this section.
- Section 4153(b)(2) would include that supervision could be provided by an occupational therapist who had met the requirements for advanced practice in swallowing, a speech language pathologist with expertise in swallowing, or a physician or surgeon.
- Section 4154(4)(C) would include the words "and clinical" to read, "Information that shows the course and clinical instructor's qualifications to teach the content being taught…"

Ms. Murphy raised a concern regarding certified hand therapists (CHT) moving to California from other states after the mandated January 1, 2004, effective date of the advanced practice regulations and wondered whether sufficient time was provided for them to take the necessary coursework to become an advanced practitioner. Ms. Kjose noted the regulations provide a 6-month window of opportunity from the date the regulations are adopted for CHT's to submit their certification from HTCC without having to demonstrate completion of the education and training requirements. However, subsequent to the 6-month window, the new requirements of the regulations would need to be met.

A member of the audience asked whether instructors coming from schools outside of California to provide advanced practice coursework would be subject to meeting the requirements. Ms. Kjose stated that since the OT Practice Act is both a practice and title act, anyone using the title of OT would have to get licensed in this state regardless of whether they were practicing or simply teaching. Do to the time constraints faced by the Board in adopting advanced practice regulations, the Board agreed to go forward with the regulations as proposed but to continue discussion on these two issues at future meetings.

G. Review and Approval of Modified Text Regarding Proposed Regulations to Adopt Title 16, division 39, California Code of Regulations Sections 4150; 4151 – Hand Therapy; 4152 – Physical Agent Modalities; 4153 – Swallowing Assessment, Evaluation, or Intervention; 4154 – Post Professional Education and Training; and 4155 – Advanced Practice Certification

Following the discussion under agenda item F, the Board voted at follows:

- **Cindy Burt moved to accept the Committee's recommendations and delegate authority to the Executive Office to make the recommended changes, publish the modified text for a 15-day comment period, and adopt the regulations if no adverse comments specific to the modifications were received.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

H. Review and Approval of Modified Text Regarding Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations, Sections 4160 – Definitions; 4161 – Continuing Competency; 4162 – Completion and Reporting Requirements; 4163 – Exemption from Continued Competency Requirements; 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

Ms. Wietlisbach explained that at its meeting on September 21, 2002, the Board adopted proposed regulations on continuing competency and supervision requirements. During the public comment period that followed, several comments were received that added clarity and consistency to the proposed regulations and the suggested changes were incorporated for the Board's consideration.

Ms. Kjose presented the following proposed modifications to the continuing competency regulations:

- Section 4160 was modified to include a definition of "continuing competency" and "professional development unit"; "professional development" was revised to "professional development activity" with an explanation of what that means in lieu of what it is "defined as"; and occupational therapy assistants were included in the definition of Level II occupational therapy students.
- For clarification purposes, the title of Section 4161 was modified to read "Continuing Competency" in lieu of "Continuing Competency – Professional Development."
- Section 4161(a) was modified to state that practitioners shall submit evidence of meeting continuing competency requirements in lieu of submitting "proof of continuing competency."
- Section 4161(c)(2) was modified to allow practitioners to receive three PDUs in lieu of 1 PDU for structured mentoring with an individual skilled in a particular area. This change would make the requirement consistent with NBCOT's.
- For clarity purposes, section 4161(c)(5) was modified to read, "Publication of an article in a non-peer reviewed publication. Each article equals five (5) PDUs" in lieu of, "Writing articles for non-peer reviewed publication. For each article the practitioner may receive 5 PDUs."
- For clarity purposes, section 4161(c)(6) was modified to read, "Publication of an article in peer-reviewed professional publication. Each article equals 10 PDUs" in lieu of, "Writing articles in peer-reviewed professional publication. For each article the practitioner may receive 10 PDUs."
- Section 4161(c) (8) was revised by deleting "state, or national" to allow credit for presentations at all workshops, seminars and conferences and adding "first time" presentations to ensure credit is not given multiple times for the same presentation.
- For consistency purposes, section 4162(c) was modified by replacing the phrase "renewal cycle" with "renewal period."
- For clarity, section 4163(a)(3)(A) was modified to read, "Total physical and/or mental disability for one year or more during the renewal period and the <u>in</u>ability to work during this period has been verified by a licensed physician <u>or</u> surgeon…"

During the course of discussion, it was agreed that the following additional modifications would be made to the regulations:

- Include a definition for "continuing education unit" within Section 4160.
- Section 4161(a) would be modified to state that effective January 1, 2005, practitioners renewing a license or certificate would be required to submit evidence of meeting continuing competency requirements during the preceding renewal period.
- Section 4161(c) 2, 4, and 8 would be modified to read that the practitioner "will" receive applicable

PDUs in lieu of "may" receive…

- **Cindy Burt moved to adopt the proposed modifications and delegate authority to the Executive Office to make the recommended changes, publish the modified text for a 15-day comment period, and adopt the regulations if no adverse comments specific to the modifications were received.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

Ms. Kjose presented the following modifications to the proposed regulations on supervision:

- In section 4180, the definitions for "Level I student" and "Level II student" were revised to be more in alignment with AOTA's.
- For clarity purposes, section 4182(b) was modified by deleting, "…which shall not be wholly delegated…"
- For consistency purposes, section 4183(b) was revised to state, "All documented client-related services by the limited permit holder or student shall be reviewed and cosigned…"
- For clarity purposes regarding who is required to demonstrate competency, section 4184(b) was modified to state that "The aide has demonstrated competence in the task, routine and process."

Ms. Kjose queried whether the delegation of tasks to aides should include physical agent modalities. It was agreed that such delegation could occur provided all the criteria set forth in section 4184(b) were met. Therefore, proposed section 4184(c)(4) was deleted.

- **Cynthia Burt moved to accept the proposed regulatory language for supervision with the modifications presented and delegate to the Executive Officer the authority to publish the modifications and adopt said regulations after the 15-day comment period if no adverse comments are received.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

I. Schedule of Future Meetings

The Board agreed there would not be a meeting in September unless further modifications were required to the Board's proposed regulations. Ms. Kjose noted that the next meeting was scheduled to be held in the San Francisco area on November 14, 2003. However, she advised that, if the State budget had not been signed by then, the Board would be unable to enter into a contract for hotel space. In that event, the meeting would be held at DCA's headquarters in Sacramento.

J. Public Comment Session

Members of the audience participated throughout the course of the meeting. There were no other public comments under this agenda item.

K. Adjournment

The meeting adjourned at 4:56 p.m.