



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
December 10, 2004
San Francisco, California

Board Members Present

Luella Grangaard, President
Cynthia Burt, Vice President
Roberta Murphy, Secretary
Margaret Cunningham
Hugh Smith
Christine Wietlisbach

Staff Present

Jeff Hanson, Staff Services Analyst
Norine Marks, Legal Counsel

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

President Luella Grangaard called the meeting to order at 10:30 a.m. and called the roll. A quorum of the Board was present.

B. President's Remarks

Ms. Grangaard recognized Board Members Cindy Burt and Roberta Murphy for their outstanding contribution to the Board over the past three years. She announced that today's meeting would be their last unless they were re-appointed by the Governor by the end of the year. Ms. Grangaard thanked both for the tremendous job they did in helping staff license over 6,500 practitioners in 2002 and 2003 and for their leadership in developing the Board's regulations.

C. Approval of the July 19, 2004 Board Meeting Minutes and the August 27, 2004 Board Meeting Teleconference Minutes

The Board reviewed and approved the July 19, 2004 and August 27, 2004 Board Meeting Minutes.

- ◆ Roberta Murphy moved to approve the minutes of the July 19, 2004 Board Meeting.
- ◆ Margaret Cunningham seconded the motion.
- ◆ The motion carried unanimously.

- ◆ **Christine Wietlisbach moved to approve the minutes of the August 27, 2004 Board Meeting.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

D. Executive Officer's Report

Jeff Hanson reported that Senate Bill 1913 (SB 1913) would become law January 1, 2005, repealing OTPA section 2540.14(c), the provision that referenced "board approved" re-entry programs designed for practitioners who had not engaged in practice for five years and granting specific authority to OTs to perform iontophoresis and phonophoresis. He advised that SB 136 was chaptered in September, taking effect immediately, extending the Board's sunset review to July 1, 2007.

Mr. Hanson indicated that the Board's supervision and disciplinary guideline regulations were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State. He noted that the supervision regulations would take effect on November 26, 2004 and the disciplinary guidelines would become effective December 22, 2004.

He advised that the Board's fee reduction regulations were withdrawn on November 23, 2004 because the proposed rate was not enough to reduce the Board's fund condition to an acceptable level. He also said that the limited permit regulations were sent to OAL on November 3, 2004 for final review.

Mr. Hanson gave a personnel update and also briefed the Board on the number of licenses, certificates and advanced practice certifications that had been issued. He also noted that the Board is seeking larger office space and is working with the Department of General Services and DCA's facilities management staff to locate space within the same complex at 444 North Third Street.

Finally, Mr. Hanson reported that Samuel Merritt College would be offering a graduate level, eleven-month hand therapy course in the near future.

E. Advanced Practice Regulatory Committee Report

1. Review and Approval of Proposed Regulations to Amend Title 16, Division 39, California Code of Regulations Sections 4154, Post Professional Education and Training and 4155, Advanced Practice Certification

Ms. Burt, Chair of the Advanced Practice Regulatory Committee, explained the need for several changes to California Code of Regulations sections 4154 and 4155. She noted that Section 4154(a)(4) requires providers of advanced practice education to be "pre-approved" by the Board. However, there are providers offering excellent courses in advanced practices, both in state and out-of-state, that may not be aware of the Board's requirements nor is the Board aware of all the providers offering such courses. To remedy this situation proposed amendments to section 4154 would authorize the Board to continue to approve providers but would also make provisions for coursework that meets the subject matter requirements even though the provider had not received prior Board approval. In addition, section 4155(b)(4) requires applicants to submit the resume or credentials of the instructor teaching an advanced practice course. The Committee felt that since this information is included in the provider's application, it

should not be part of the applicant's portfolio. Finally, she noted that section 4155(c)(1) is outdated and should be repealed.

Ms. Burt summarized the proposed changes as follows:

- Under section 4154(a)(4), the word "pre-approved" was changed to "approved.
 - Under sections 4154(a)(4)(C) and (a)(5)(B), the words "and clinical" were deleted.
 - Under section 4155(b), subsection (4) was deleted.
 - Section 4155(c) and (c)(1) were deleted.
- ◆ **Cynthia Burt moved to adopt the proposed amendments and set them for a 15-day comment period.**
 - ◆ **Christine Wietlisbach seconded the motion.**
 - ◆ **The motion carried unanimously.**

Ms. Burt also reported that the Committee discussed the fact that many practitioners appear confused as to what constitutes advanced practice and what does not. The Committee thought it would be helpful to develop a policy statement that could be put on the web site that would assist occupational therapists in how to determine what is advanced as opposed to what is entry level occupational therapy.

- ◆ **Cynthia Burt made a motion recommending that the Advanced Practice Review Committee develop a policy statement on advanced practice for the web clarifying what constitutes advanced practice.**
- ◆ **Roberta Murphy seconded the motion.**
- ◆ **The motion carried unanimously.**

Ms. Grangaard asked that the minutes reflect that the Advanced Practice Review Committee would be clarifying in the application instructions how practitioners can determine if instructors of non-approved courses meet the credential requirements.

F. Regulatory Committee Report

1. Review and Approval of Modified Text to Proposed California Code of Regulations, Section 4161, Continuing Competency

Roberta Murphy reported that that the Regulatory Committee met earlier today to discuss the Board's continuing competency regulations and the fact that the proposed effective date of the regulations needed to be changed from January 1, 2005 to January 1, 2006.

Legal counsel Norine Marks noted that the proposed change had already been noticed for the required 15-day comment period and that no comments had been received.

- ◆ **Cindy Burt moved to adopt the modified text changing the effective date to January 6, 2006.**
- ◆ **Luella Grangaard seconded the motion.**
- ◆ **The motion carried unanimously.**

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

Jonathan Buttle, Department of Consumer Affairs' budget analyst, advised that a fee reduction is needed, in accordance with Business and Professions Code section 128.5, because the Board's fund condition exceeds the 24-month reserve ceiling. He noted that the Board's fund condition is high because of reduced spending and revenues that have exceeded expectations. He also advised that as currently proposed in the existing rulemaking file, reducing renewal and delinquent fees from \$150/\$75 annually to \$75/\$37.50 will still not be enough to get the fund condition down to an acceptable, stable level. He recommended that the fees be set at \$120/\$60 bi-annually and that renewal fees be waived for fiscal year 2005/06.

A discussion followed regarding the advantages and disadvantages of having bi-annual versus annual renewal requirements and the complications involved in making a change. Jeff Hanson noted that many licensees move without notifying the Board of their current address and that since the Post Office generally keeps forwarding orders for up to a year, having annual renewal requirements helps the Board locate individuals who have moved. Ms. Marks commented that the statute provides for an annual renewal. Ms. Burt reminded the Board that the proposed continued competency regulations would require a certain amount of continuing education to be completed annually rather than bi-annually so they would have to be modified once again if the renewal cycle is changed. Following the discussion, the Board asked Mr. Buttle to continue to work with Ms. Kjose in analyzing the benefits of bi-annual renewal vs. annual renewal and the appropriate fee structure.

- ◆ **Cynthia Burt moved to authorize Ms. Kjose to continue to investigate the best scenario for reducing fees and the appropriate level at which they should be set and, if appropriate, notice the proposed changes for hearing.**
- ◆ **Hugh Smith seconded the motion.**
- ◆ **The motion carried unanimously.**

H. Report from Advanced Practice Review Committee

Ms. Grangaard reported that the Committee met in September, at which time they revised the advanced practice application form, simplifying it to include a check off and tally sheets for each course as well as sample learning statements.

She also stated that the Committee wants to acknowledge that the hand therapy certification issued by the Board is in no way equivalent to being certified by the Hand Therapy Certification Commission as a Certified Hand Therapist (CHT). The certification issued by the Board means that the individual has demonstrated entry level competency in hand therapy whereas certification by the HTCC signifies that the practitioner is a highly skilled hand therapist. This information will soon be included on the Board's web site. Members of the audience requested that the Board look into changing the initials it uses to signify hand therapy certification from HTC to something not so similar to CHT. Ms. Grangaard asked staff to look into other ways to signify certification in hand therapy.

Ms. Grangaard reported that the Committee has been active in contacting providers of advanced practice education asking them to apply to the Board to become an approved provider.

I. Public Hearing on Title 16, Division 39, California Code of Regulations Proposed Section 4124 - Persons Exempt from Requirements and Section 4154 – Post Professional Education and Training

The Board held a public hearing to take testimony on the above noted proposed regulations. There were no public comments on section 4124.

- ◆ **Cynthia Burt moved to adopt proposed section 4124, Persons Exempt from Requirements.**
- ◆ **Hugh Smith seconded the motion.**
- ◆ **The motion carried unanimously.**

There were no public comments on section 4154. However, Mr. Hanson reported that the Board's meeting minutes from August 27, 2004, reflect that the Board voted to delete proposed section 4154(c)(3) because it would not be enforceable. The Board concurred that this section should have been deleted. Ms. Marks indicated the change would require a 15-day notice that can be done concurrently with other changes voted on under Agenda Item E.

- ◆ **Hugh Smith moved to delete section 4154(c)(3) and notice the change for a 15-day comment period including the changes voted on under Agenda Item E to sections 4154(a)(4) and (a)(5) and to delegate to the executive officer authority to adopt the modified text if no negative comments are received during the comment period.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

J. Discussion of Supervision Requirements for the School Based Occupational Therapy Assistant

Roberta Murphy led this discussion by indicating that section 2570.3(j) of the Occupational Therapy Practice Act contains the requirements for supervision of occupational therapy assistants. She noted that the law allows an occupational therapist (OT) to supervise up to two occupational therapy assistants (OTA) at any one time but the Board may permit an OT to supervise a greater number if there would be adequate supervision and the public health and safety would be served. However, she said that the law states that in no case can the total number of OTAs supervised exceed twice the number of OTs employed by the facility.

Ms. Murphy indicated that School based settings are unique in that OTAs are usually employees of the school district while OTs are hired as independent contractors to provide OT services and to supervise OTAs throughout a district. Mr. Hanson advised that staff has been contacted by several OTs that are being asked to supervise more than two OTAs in a school district and they are concerned that, in doing so, they are violating the OTPA.

Following discussion, the Board agreed that the problem of supervising more OTAs than the law allows appears to occur mostly in rural areas. The Board noted that school districts are under severe budget constraints that may be leading to the problem of too few OTs to provide the required supervision. The Board also discussed the full time equivalent (FTE) ratios between OTs and OTAs and had questions

regarding what constitutes a “facility” when dealing with school districts. The Board asked staff to continue to track the types of questions being posed and bring the issue back at the next meeting.

K. Discussion of Proposed Legislation to Create a Retired License/Certificate Status

Ms. Grangaard led the discussion on whether the Board should seek legislation to create a “retired” license status. She indicated that since the OTPA is both a “title” and a “practice” act, occupational therapists are prohibited from using the title “OT” after they retire. Following discussion, the Board agreed to seek legislation to create a “retired” status that would allow licensees to retain the privilege of using the title of OT or OTA that would also include a reduced renewal fee and exempt the licensee from meeting continuing competency requirements.

L. Discussion of Process to Select an Executive Officer

Mr. Hanson reported that Gretchen Kjose was not retiring at this time. Therefore, this agenda item was not discussed.

M. Schedule of Future Meetings

The Board tentatively set its next meetings for February 10, 2005 in Palm Springs and May 19, 2005 in Sacramento.

N. Public Comment Session

There were no public comments under this agenda item.

O. Closed Session Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

P. Closed Session Pursuant to Government Code Section 11126(a) – Appointment of an Executive Officer

Q. Adjournment

The meeting adjourned at 3:35 p.m.