

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
May 18, 2006
Sacramento, California**

Board Members Present

Luella Grangaard, President
Margaret Cunningham
Mary Evert
Christine Wietlisbach
Nancy Michel

Staff Present

Heather Martin, Executive Officer
Norine Marks, Legal Counsel
April Freeman, Associate Analyst
Jeff Hanson, Staff Analyst
Kristen Borges, Management Services Technician
Marsha Gove, Office Technician
William Brown, Office Assistant

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

President Luella Grangaard called the meeting to order at 10:08 a.m. Ms. Grangaard swore in the Board's new member, Nancy Michel. Secretary Mary Evert called the roll. A quorum of the Board was present.

B. President's Remarks

Ms. Grangaard thanked everyone for attending. She explained that the Board does its work during Board meetings and, therefore, may not always recognize or respond to public comments immediately, but will recognize public comments at some point during the meeting.

C. Approval of the March 30, 2006, Board Meeting Minutes

The Board reviewed the minutes of the March 30, 2006, Board meeting and made typographical corrections on pages 5, 6 and 8.

- ◆ **Mary Evert moved to approve the March 30, 2006, minutes as corrected.**
- ◆ **Christine Weitlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

K. Practice Committee Report (out of order)

Pam Roberts, Practice Committee Chair, gave a summary of the Practice Committee Meeting held on the morning of May 18, 2006, in Sacramento, California. The Committee's actions included:

- Approval of the February 23, 2006, Practice Committee minutes.
 - Directed staff to define the role of the Practice Committee.
 - Recommended that the entire Practice Committee review the applications to provide advanced practice post-professional education.
 - Recommended that the application for advanced practice certification be revised and define the learning statement expectation. The Practice Committee would like to see a draft before the revised application goes to the Board.
 - Recommended that the continuing competency regulations be amended to include more specific requirements for initial applicants who have not practiced in five years. The entire 24 units required should be directly related to the delivery of occupational therapy services.
- ◆ **Mary Evert moved to accept the Practice Committee's report and recommendations.**
 - ◆ **Christine Wietlisbach seconded the motion.**
 - ◆ **The motion carried unanimously.**

The Board directed staff to develop regulatory language concerning continuing competency requirements for initial applicants and provide to the Practice Committee for review. Once the Practice Committee has reviewed the amended language, it will be reviewed by the full Board.

D. Executive Officer's Report

1. Sunset Review Update

Ms. Martin stated that the Joint Committee on Boards, Commission and Public Protection met on March 30, 2006, and recommended that the Board continue. The Board will not be up for Sunset Review again until 2011. The Committee is changing their criteria for review from every four years to every six years because most Boards have already gone through Sunset Review twice. Since the Sunrise Bill is still being amended and will not be signed until the fall, the Department of Consumer Affairs' press office is reluctant to issue a press release on the Board's behalf. However, they will provide assistance if the Board wants to prepare a statement to mail to other Boards and professional organizations, and post on the web site.

2. Update on Other Boards' Sunset Status

Ms. Martin discussed charts showing a status of Boards that have undergone Sunset Review in the past and Boards that are currently under review.

3. Draft Internal Audit Report

Ms. Martin stated that the Board received the draft Internal Audit Report on May 9, 2006. The Board's response is due on May 23, 2006. She requested that members submit any specific responses they may have via email. Ms. Martin will provide a draft response to each member for review. Staff will then develop a work plan later in the month.

Ms. Grangaard stated that the audit will drive the planning session at the next meeting.

Ms. Martin stated that Board staff has already addressed some of the audit items.

4. Budget Report

Ms. Martin discussed the Board's workload projections based on history and the current year-to-date earnings. As of March 30, 2006, revenue was higher than expected. Ms. Martin reminded the members that the Board operates with a bottom-line budget, which shows that we have about 35% of our budget remaining. Ms. Martin plans to purchase new computers. Furthermore, the salaries for the limited-term staff did not affect our budget.

Ms. Martin explained the fund condition, which showed the Board's reserves if the fee reduction is approved. She also explained that Budget Change Proposals (BCP) have been submitted requesting funding, effective July 1, 2007, for additional staff and new equipment. The Department of Consumer Affairs has prepared a blanket BCP for all Boards for iLicensing costs.

5. Update on Changing OTA designation from Certificate to License

Ms. Martin stated that the Board received a letter from the American Occupational Therapy Association (AOTA) requesting support for legislation that would change occupational therapy assistants (OTA) from certified to licensed. If the Board supports the legislation, Ms. Martin suggested a letter be sent to AOTA and the Occupational Therapy Association of California (OTAC).

Ms. Wietlisbach stated that she understood the letter to be a request for the Board to begin calling OTAs licensed instead of certified similar to how the California Board of Physical Therapy handled the situation. Ms. Martin explained that the Physical Therapy Practice Act's language reads "approved by" whereas

the Occupational Therapy Practice Act specifically states “certified by.” This was determined based on staff research subsequent to the questions raised at the March 30, 2006, Board meeting.

Ms. Evert pointed out that a motion was made at the March 30, 2006, to support the legislation and suggested that staff be directed to respond to the letter as such. Ms. Martin will prepare a letter of support and include an explanation as to why the Board cannot just refer to OTAs as licensed as the Physical Therapy Board does.

6. Listing of Current Committees/Members

Ms. Martin requested input concerning the need to discontinue any committees or change Committee structure.

Ms. Wietlisbach stated that the Advanced Practice Regulatory Committee will be recommending to the Board that it be discontinued as there is no additional work that needs to be done.

Ms. Martin stated that staff has been reviewing the regulations and bringing to the Board the sections that need clean-up or clarification. She asked members if they felt that it is important to have a regulatory committee to review language before it comes before the entire Board.

Ms. Grangaard explained that in the beginning the Board developed the regulations more so than staff whereas now staff develops most of the language. She prefers that staff develop the language and provide to the Board for review. She agreed that the Advanced Practice Regulatory Committee could be disbanded.

Norine Marks suggested that depending on how the new committees are structured, proposed regulatory amendments could be reviewed by a committee associated with that subject area. Ms. Martin agreed with the concept but pointed out that committees related to each major content area must be established. Margaret Cunningham stated that the strategic planning sessions would be helpful in determining which committees would be necessary.

Ms. Evert suggested that the Sunset Review Committee be disbanded.

Ms. Grangaard directed staff to advise the Board which committees would assist them in their work.

7. Other Informational Items

Ms. Martin shared copies of items posted on the Board’s web site for “April is OT Month.” She stated that the “April is OT Month” logo and link to OTAC’s web

site was posted not only on the Board's web site, but also DCA's home page. Other items on the Board's web site included quizzes for professionals and consumers. The professionals were eligible to win a polo shirt with the Board's logo. All Board members will also receive a polo shirt with the Board's logo.

Ms. Martin stated that the first continuing competency audit letters have been sent. The audit included 5% of renewals from January, February and March 2006. Practitioners were asked to submit documentation of their continuing competency activities. Staff will report on audit responses at the next meeting.

Ms. Martin stated that it has come to the Board's attention that not all OTs practicing in school-based settings are licensed. She spoke to the Director of the Division of Special Education, California Department of Education (CDE), who requested that the Board prepare a letter that CDE will either mail to all school districts and other educational institutions on our behalf or approve for the Board to distribute. The letter will also request that CDE amend their regulation to include the requirement for licensure. Members discussed the issue of unlicensed practice, in addition to the problem of aiding and abetting unlicensed practice by current licensees. Ms. Evert suggested that a statement be posted on the Board's web site concerning this issue, and advise AOTA and OTAC of the problem.

Ms. Martin advised the Board of the status of cases pending at the Division of Investigation (DOI). Of particular concern was a case that was sent in May 2004. Although a reason for the delay was not given, Ms. Martin was assured by a DOI Supervising Investigator that a report would be provided by the end of the month. The second oldest case which was sent over in October 2005 is still being investigated; the investigator requested and was granted additional hours in March 2006. The five cases sent in November and December 2005 are still being investigated, but are not considered overdue at this point.

Ms. Martin reminded the Board that the BCP for moving costs was approved; the funds are available in FY 2006/07. She stated that a BCP has been submitted for increased rent costs beginning FY 2007/08. The Department of General Services (DGS) space planner is working on plans for a larger suite in the same complex. DGS is also working with the landlord concerning tenant improvement costs. The move is still targeted for December 2006.

E. Consideration of Pending Legislation

1. Senate Bill 1476 (Figueroa)

Ms. Martin stated that SB 1476 contains the Sunrise language. The Board's extension date is 2011. The Joint Committee on Boards, Commissions and Public Protection did not carry the retired status provisions. Ms. Martin was advised that if she provided the language along with justification again, they

would consider amending it into a future version. They did carry the language regarding licensees from other states practicing in California prior to licensure; the length of time was extended from 45 days to 60 days as long as an application is filed. Ms. Martin stated that she and Ms. Marks believe that some important language was omitted, including reference to a “current and valid” license in another state, and the requirement that applicants cannot have already applied to and been denied a license by the Board in the past. Ms. Martin stated the language “in association with an occupational therapist licensed under this chapter” has also been removed.

- ◆ **Christine Wietlisbach moved to support SB 1476 amended to include the language “current, active and non-restricted” referring to the out-of-state license.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

- ◆ **Margaret Cunningham moved to support SB 1476 amended to include the language “an application for license in this state has not been previously denied.”**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

2. Senate Bill 1397 (Lowenthal)

Ms. Martin stated that SB 1397, the Athletic Trainer Bill, has been amended due to a number of objections to the language. The new language does make it more specifically a title protection act. The Board originally took an “oppose unless amended” position. Ms. Martin requested the Board’s position on the amended version.

Ms. Evert expressed concern with the use of the term “board.” It was determined that in this case, the term “board” was allowed because the language does refer to the National Athletic Trainers’ Association Board of Certification, Inc.

- ◆ **Margaret Cunningham moved to withdraw the Board’s opposition.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

Ms. Evert requested that, if and when the bill passes, the Board notify OTs via the web site that this is not a California licensing board; it is just for registration purposes. The Board requested copies of future versions of the bill.

F. Enforcement Date for the period January 1, 2006 – March 31, 2006

Ms. Martin discussed citation statistics, probation statistics and enforcement statistics with the Board.

G. Recommendations Regarding Citation Range Amounts for Violation of the Occupational Therapy Practice Act.

Ms. Martin reported back on the fine range for citations issued. She explained that within the regulations there are “classes” of citation violations with examples of violation types and a fine range. Staff prepared a chart with suggested fine ranges for various violations.

Ms. Evert suggested that the second bullet from the class “A” violations, referencing failing to provide adequate supervision to an OTA resulting in patient harm, be added to the class “B” violations but referencing a result of “no patient harm.” She also suggested that the seriousness of the violation should be taken into consideration when determining in which class violation it belongs. Staff explained that the regulations already give the Board the ability to determine the amount of the fine based on a number of factors.

Ms. Martin advised the Board that the Business and Professions Code giving the Board citation and fine authority was recently amended to increase the fine amount to maximum of \$5,000, per investigation, for fraudulently billing an insurance company, Medicare or Medi-Cal.

The Board discussed issues surrounding fraudulent billing and in which violation class it belongs. They also discussed the way citations are issued when there are multiple instances of billing fraud.

Ms. Evert questioned whether there would be an instance where an occupational therapist who caused harm to a patient would be issued a citation. Ms. Martin explained that the outcome of the investigation would determine whether a citation would be issued or disciplinary action taken.

The Board agreed that the fine ranges listed were appropriate.

H. Discussion on Public Disclosure of Citations

Ms. Martin advised the Board that numerous other Boards disclose citations and fines to the public. She requested that the Board advise her if they feel that it’s relevant for consumers or employers to know that an OT or OTA has a citation and, if so, do they want disclosure limited to certain violation classes. Currently, citation information is available on the Board’s licensing system. If a member of the public contacts the Board by telephone they are informed of citations. However, if they verify a license online, the citation information is not disclosed.

Ms. Marks stated that although all citations are public documents, the Board must decide what information should be posted on the web site.

Ms. Martin explained that the licensing system does not have the capability to post only specific citations from the same class. The Board would have to decide for each violation class if that class should be disclosed online.

Ms. Evert felt that all violations should be disclosed with the exception of address violations and requested that a separate class "D" be created solely for address violations. Ms. Martin agreed that could be done.

The Board directed staff to prepare language to amend citation regulations to create class "D" violations.

- ◆ **Mary Evert moved to direct staff to prepare language to amend Title 16, Division 39, California Code of Regulations, Section 4141 to create a class "D" violation to include address change violations only; make fraudulent billing a class "A" violation; and, make failure to provide adequate supervision to an OTA resulting in no patient harm a class "B" violation.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

The discussion of citation and fine purge criteria was tabled for next year.

I. Review and Adoption of Proposed Regulations to Amend Title 16, California Code of Regulations Section 4130 - Fees

Ms. Martin stated the Board previously adopted language at the Board meeting held January 26, 2006. However, that language was subsequently modified to change the effective date from July 1, 2006 to January 1, 2007, and retain the license/certificate renewal fee of \$150, in addition to transitioning from an annual to a biennial renewal cycle. She stated that she met with DCA Budget and Executive staff and the State and Consumer Services Agency, and DCA Budget staff discussed the language informally with the Department of Finance; all parties informally accepted the language.

- ◆ **Margaret Cunningham moved to adopt the modified language noticed on April 19, 2006, for the regulatory amendments to Title 16, Division 39, California Code of Regulations, Section 4130, and to delegate authority to the Executive Officer to make any technical, non-substantive changes.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

J. Discussion on Expert Reviewer Participant Criteria, Application, Compensation and other Suggestions

Ms. Martin stated that the Board continues to work on creating an Expert Review Program. She provided the Board with the language that will be posted on the web site for licensees who download the expert reviewer application. The language included the

disclaimer regarding advertising in response to the Board's concerns. The Board approved of the disclaimer on the application.

Ms. Martin requested a recommendation from the Board regarding compensation for expert reviewers. The Practice Committee previously recommended \$100 per hour for testimony, however, no rate was set for record review and report preparation. After discussion, the rate for record review and report preparation was set at \$75.00 and the rate for testimony was set at \$120.00.

Ms. Martin stated that the application was originally reviewed by the Practice Committee, then reviewed by the Board, and finally reviewed by the Board's liaison at the Attorney General's Office. The Attorney General liaison recommended a number of changes, which were incorporated into the application. The application did not go back to the Practice Committee for review.

Ms. Evert questioned the importance of an expert reviewer applicant listing current association memberships on their application. Ms. Grangaard responded that the information is an additional tool to determine if the individual is qualified to be an expert reviewer.

Ms. Wietlisbach stated that during the Advanced Practice Regulatory Committee meeting that morning they discussed whether occupational therapy assistants could act as expert reviewers. She stated it is not common practice, at least with physical therapists. Ms. Evert believes that if the issue surrounds the roles of an OTA then it would be appropriate for an OTA to be an expert reviewer. The Board agreed.

L. Advanced Practice Regulatory Committee Report

Ms. Wietlisbach reported on the Advanced Practice Regulatory Committee meeting held on the morning of May 18, 2006, in Sacramento, California. The Committee's actions included:

- Recommended that the Board require that all courses for advanced practice certification be pre-approved, effective January 8, 2008.
- Recommended that staff create a model application, to include instructions on how to present non-pre-approved courses.
- Recommended that the Advanced Practice Regulatory Committee be disbanded.

Ms. Martin advised the Board that the Application for Post-Professional Education has been modified to require that the provider indicate which required educational subject areas are included in their course. The courses will then be advertised with that information so that licensees can ensure that the courses they take will cover all of the required subject areas. Ms. Grangaard added that the Application for Advanced Practice Certification would be changed to advise applicants that each subject area needs to be covered in their statement of learning.

Ms. Evert asked who is going to review the application for post-professional education. Ms. Grangaard stated that the course approval would be done by the entire Practice Committee by mail vote. Ms. Martin stated that requiring pre-approved courses would provide a way for staff to review applications with set criteria, only forwarding to a subcommittee of the Practice Committee those cases that were unclear. Ms. Grangaard reminded the Board that the learning statement is the component that allows the applicant to demonstrate an understanding of the required subject areas, and that is the area that staff may have difficulty reviewing. The Board has been advised by legal counsel to have staff redact the applicant's personal information before sending the application to members for review.

Ms. Grangaard suggested that the Advanced Practice Certification Review Committee become a subcommittee of the Practice Committee.

- ◆ **Mary Evert moved to accept the Advanced Practice Regulatory Committee's report and recommendations.**
- ◆ **Nancy Michel seconded the motion.**
- ◆ **The motion carried unanimously.**

M. Update on Proposed Regulations to Amend Title 16, Division 39, California Code of Regulations Section 4154, Post Professional Education and Training, Section 4155, Advanced Practice Certification and add Section 4156, Advanced Practice Representation.

Ms. Evert stated that the Board has reviewed the testimony presented at the public hearing and researched all of the circumstances surrounding the issue. The Board has decided not to pursue the amendments to the advanced practice regulatory language. The Board will continue to watch this issue.

- ◆ **Mary Evert moved to withdraw the regulatory amendments to Title 16, Division 39, California Code of Regulations Section 4154, Post Professional Education and Training, Section 4155, Advanced Practice Certification and add Section 4156, Advanced Practice Representation.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

N. Proposed Agendas

Ms. Grangaard requested that the Practice Committee be held in August instead of July.

Ms. Martin requested clarification from Ms. Evert regarding the "Plan-to-Plan" agenda item in July. Ms. Evert stated that the idea is to map out a strategic planning process, to include the implementation plan, action plan, etc. Ms. Evert stated the agenda was fine as it reads.

Ms. Grangaard requested that a closed session item be added for review of the Executive Officer's salary.

O. Public Comment Session

Linda DeMeo stated that the reimbursement rate for expert reviewers (\$75 per hour) isn't enough. She also suggested that the Board consider adding reference to the shoulder in the definition of hand therapy in the laws and regulations.

Q. Closed session pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary decisions

There were no disciplinary decisions.

M. Adjournment

The meeting adjourned at 12.35 p.m.