



## **BOARD OF OCCUPATIONAL THERAPY**

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# **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY BOARD AND TELECONFERENCE MEETING MINUTES**

**November 20, 2008**

### **Board Members Present**

Mary Evert, President  
Patti Horsley  
Nancy Michel  
Bobbi Jean Tanberg  
Christine Wietlisbach

### **Board Staff Present**

Heather Martin, Executive Officer  
Norine Marks, Legal Counsel  
Jeff Hanson, Analyst

### **A. Call to order, roll call, establishment of a quorum**

President Mary Evert called the meeting to order at 9:12 a.m. establishing contact with the teleconference site. Secretary Bobbi Jean Tanberg called the roll. A quorum of the Board was present.

Ms. Evert announced that the Board was immediately going to go into closed session for agenda Items Q and R to obtain as much Board Member input as possible because a situation beyond the Board's control jeopardized the quorum. Ms. Evert indicated that when the Board returned to public session agenda item M would be taken up in consideration of several individuals from the public that were in attendance for the discussion of what constitutes practice.

At 9:45 a.m. the Board reconvened in public session.

### **B. President's remarks**

Ms. Evert reported she attended a meeting of the Physical Therapy Board of California on November 18, 2008, and training sessions designed for Board Members, consumer advocates, and law enforcement on November 19, 2008. These activities were provided in conjunction with the Professionals Achieving Consumer Trust Summit. Ms. Evert briefed Board Members on her activities at the National Board for Certification in Occupational Therapy (NBCOT) State Regulatory Affairs Meeting held on October 24 & 25, 2008 in Phoenix, Arizona. Ms. Evert reported the State of Colorado would begin regulating therapists effective January 1, 2009. Ms. Evert briefed Board Members on her activities as the United States delegate with the World Federation of Occupational Therapy (WFOT).

### **C. Board member updates/activities**

Patti Horsley briefed Board Members on her activities with California Older Driver Task Force.

**D. Approval of the September 26, 2008, Teleconference Board meeting minutes**

- ❖ Christine Wietlisbach moved to approve the September 26, 2008, Teleconference Board Meeting minutes with grammatical and spelling edits.
- ❖ Bobbi Jean Tanberg seconded the motion.
  
- ❖ Motion passed unanimously.

**E. Consideration and adoption of proposed regulatory language to amend Title 16, Division 39, California Code of Regulations Section 4110 – Application.**

The proposed regulation defines and clarifies the term “substantially equal” as it pertains to applicants that have completed foreign education and training. It further establishes that foreign applicants must be approved by NBCOT’s foreign credentialing review process and identifies predecessor organizations that reviewed and approved foreign education programs prior to NBCOT’s inception.

Board Members were advised that no public comments had been received within the 45-day comment period.

- ❖ Christine Wietlisbach moved to adopt the proposed regulations.
- ❖ Nancy Michel seconded the motion.
- ❖ Christine Wietlisbach supplemented the initial motion to authorize the Executive Officer to make non-substantive technical changes as might be needed in the regulatory approval process.
- ❖ Nancy Michel seconded the motion.
  
- ❖ Motion passed unanimously.

**F. Consideration and adoption of proposed regulatory language to amend Title 16, Division 39, California Code of Regulations Section 4130 – Fees.**

The proposed regulation clarifies that initial licensing fees shall be prorated pursuant to CCR Section 4120(a)(1) and based on the biennial license fee of \$150. The proposed regulation is being pursued to eliminate an applicant’s confusion when reviewing the fee schedule in CCR Section 4130.

Board Members were advised that no public comments were received within the 45-day comment period.

- ❖ Patti Horsley moved to adopt the proposed regulations and authorized the Executive Officer to make non-substantive technical changes as might be needed in the regulatory approval process.
- ❖ Christine Wietlisbach seconded the motion.
  
- ❖ Motion passed unanimously.

**G. Consideration and adoption of proposed regulatory language to amend Title 16, Division 39, California Code of Regulations Section 4161 – Continuing Competency.**

Board Members were advised that, prior to the Board meeting, public comments were received on the proposed regulatory language. Section 4161(c)(4) was modified to more clearly state that supervising the level II fieldwork of an occupational therapy assistant (OTA) student constitutes an activity that can be used toward the professional development requirement.

- ❖ Patti Horsley moved to adopt the proposed regulations as modified and authorized the Executive Officer to make non-substantive technical changes as might be needed in the regulatory approval process.
- ❖ Nancy Michel seconded the motion.
- ❖ Motion passed unanimously.

#### H. Update on Regulatory Items

1. Title 16, Division 39, CCR Section 4114 – Abandonment of Application
2. Title 16, Division 39, CCR Section 4123 – Limited Permits
3. Title 16, Division 39, CCR Section 4141 – Assessment of Administrative Fines
4. Title 16, Division 39, CCR Sections 4154 and 4155 – Post Professional Education and Training and Application for Approval in Advanced Practice Areas
5. Title 16, Division 39, CCR Section 4170 – Ethical Standards of Practice
6. Title 16, Division 39, CCR Section 4181 – Supervision

Executive Officer Heather Martin briefed Board Members on the Regulatory Update Chart included with the Board Meeting material. Board Members had no questions.

#### I. Executive Officer's report.

##### 1. Revenue and expenditures (7/1/07 – 9/30/07)

Ms. Martin referenced the reports showing that revenue for the first quarter of the fiscal year was \$331,850 and expenditures for the same period were approximately \$117,338. Ms. Martin indicated the expenditure figure was low due to the recent budget situation; more bills will continue to come in for the same period, which previously went unpaid. Board Members had no questions.

##### 2. Fund Condition

Ms. Martin briefed the Board Members on the Fund Condition chart included with the Board meeting material. The Fund Condition shows that, at the end of the current fiscal year, the Board would have a reserve balance of approximately 35 months. Ms. Martin cautioned that the number of months of reserve will change when the Board loans \$2 million to the General Fund in July 2009. Board Members had no questions.

##### 3. Personnel updates

Ms. Martin indicated that the Board was able to fill the position previously held by Ms. Freeman. Mr. James Schenk joined the Board in mid-September.

##### 4. Discussion on legislative issues

###### a. Amendment to Occupational Therapy Practice Act to change status of occupational therapy assistants from "certified" to "licensed."

Ms. Martin indicated that she is working with the Department of Consumer Affairs, the Occupational Therapy Association of California and their lobbyist, Capitol Advocacy, to seek amendments to the

Occupational Therapy Practice Act so that occupational therapy assistants would be issued a license by the Board rather than a certificate. Ms. Martin pointed out the terminology of "certificate" and "certified" being used by both the Board and NBCOT caused some confusion. For example, if an individual maintained their California certificate and their NBCOT certificate, the individual would be a "certified occupational therapy assistant, certified."

Ms. Martin referenced two charts in the Board meeting material provided by the American Occupational Therapy Association. This included a breakdown by jurisdiction, a breakdown of how occupational therapy assistants are recognized, i.e. licensed, registered, certified or unregulated. The other chart showed the number of occupational therapists (OTs) and OTAs in all the states as of 2008. Board Members had no questions.

**b. Proposed new language would establish a Loan Repayment Program for newly licensed Occupational Therapists and Occupational Therapy Assistants.**

Ms. Martin indicated that based on discussions with legislative staff, due to the strained economy and the fact that the Board's Fund was loaning \$2million to the General Fund, that this is not a good time for the pursuing Board to pursue this legislation and implement a program of this sort. Board Members indicated that they understand the recommendation and had no questions.

**5. Other informational items**

**a. Update on pending Advanced Practice applications**

Ms. Martin indicated that recent changes to the Advanced Practice regulations, which establishes an application abandonment clause, went into effect October 22, 2008. Ms. Martin referenced the language and a letter sent to 430 licensees whom, during the period 2003-2008, submitted applications for approval in one of the three advanced practice areas, but have not completed their applications. This letter was sent as a courtesy to those individuals whom had not yet completed their applications but would be subject to application abandonment if they failed to complete their application and/or provide deficient items by April 30, 2009. Board Members had no questions.

**b. Update on Expert Witness and Expert Reviewer Programs**

Ms. Martin indicated now that the staffing level has stabilized, the Board will be able to solicit the profession to serve as Expert Witnesses (those who review complaints and/or enforcement cases) or as Expert Reviewers (those who review Advanced Practice applications). The plan is to prepare a letter to send information to those on the Interested Parties list and post information on the Board's website. Board Members had no questions.

**c. Update on Committee Member selection process**

Ms. Martin referenced the Board organizational chart and indicated that due to recent staffing and budget issues, there had been no efforts to solicit the profession to participate in the committees established to support the Board. The committee solicitation will be posted on the Board's website and sent again to those on the Interested Parties list. Ms. Martin is optimistic that the committees can be staffed and become operational this spring. Bobbi Jean Tanberg requested that this topic be discussed

**d. Update on final report of Internal Audit**

Ms. Martin referenced the letter from the Chief of the Internal Audit Office to Scott Reid, Chief Deputy Director, Department of Consumer Affairs. Ms. Martin indicated that there were some improvements in the audit findings, however, due to staffing issues over the past couple of years, progress in developing and documenting policies and procedures has been limited.

**e. Memo from DCA regarding Enforcement and Public Disclosures**

Ms. Martin referenced a letter from Carrie Lopez, Director, DCA, that among other things, directed all boards to fingerprint their licensees and post all accusations on the boards' websites.

**f. Website video taping**

Ms. Martin indicated that all of the Boards under the umbrella of DCA were preparing videos explaining the regulation of the profession and that the Board would be preparing/posting a video soon.

**g. Newsletter**

Ms. Martin indicated that due to limited resources, staff had been unable to prepare a newsletter. She hoped that one could be prepared and mailed in the late spring or early summer

**h. Miscellaneous**

Ms. Martin referenced information in the board packet that included side-by-side information about the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank. Both data banks are maintained by the federal government.

Ms. Martin also provided copies of two surveys completed by the World Federation of Occupational Therapists, including the "Professional Practice Survey 2007" and the "Occupational Therapy Human Resources Project."

Ms. Martin referenced an email to DCA, Office of Human Resources, regarding twelve State of California classification specifications (for OTs and OTAs) that fail to include licensure by the Board as a minimum qualification.

**J. Discussion regarding compensation rate for Experts who review Advanced Practice applications.**

Board Members decided to maintain the current rate of reimbursement for subject matter experts that review applications for advanced practice services.

**K. Enforcement data and reports (7/1/07 -9/30/07)**

- 1. Citation and fine statistics**
- 2. Probationer update**
- 3. Enforcement/Disciplinary case status and statistics**

Board Members had no questions regarding the statistical data provided.

**L. Board President Presentation and discussion regarding the role of occupational therapists (OTs) and occupational therapy assistants (OTAs) in response to disasters and emergencies.**

President Evert provided a power point presentation and distributed informational material regarding the roles and responsibilities OTs and OTAs could assume in disasters and emergencies.

**M. Discussion regarding the "practice of occupational therapy" as defined in Business and Professions Code Section 2570.2(k) as it relates to the various roles and practice settings of OTs and OTAs (i.e. OT/OTA clinician, OT/OTA educator, OT/OTA researcher, OT/OTA consultant or contractor)**

Circumstances and events surrounding the submission of several applications for licensure from occupational therapy faculty that teach and conduct research in California have necessitated Board staff to seek clarification if such activities constitute occupational therapy practice.

Board staff Internet research of faculty in California accredited programs revealed many individuals are teaching in accredited programs that do not possess a state license, maintain a current license, or potentially have violated Section 2570.18 for using professional initials or representations that only a licensed therapist is authorized to use.

Correspondence from the Occupational Therapy Association of California, California State University-Dominguez Hills, and from the American Occupational Therapy Association (AOTA) were presented weighing in on the issue. Each entity indicated the practice act does not clearly specify educators are required to possess a license to teach. The AOTA also asked that when considering potential violations of Section 2570.18, for professional representations, intent be considered when considering any sanction.

Discussion surrounding the review of Section 2570.2(k), the scope of practice for occupational therapy, opined that it appeared the scope of practice was geared toward the provision of patient care to develop, improve or restore functional daily living skills or minimize dysfunction.

There also was discussion and significant public interaction regarding the use of professional initials and representations. Practitioners that were in attendance indicated that they were unaware that using the initials "OTR" could be a violation of the practice act if an individual using those initials was not licensed by the Board. Titles and/or representations for unlicensed educators were discussed to alleviate issues surrounding potential violations of Section 2570.18.

Executive Officer Heather Martin indicated she thought it was very clear that any faculty or individual that supervised the fieldwork of a level II student was practicing occupational therapy.

Board Members requested legal counsel to research case law and provide a legal opinion on whether teaching theoretical coursework, conducting or contributing to occupational therapy research, and supervising the fieldwork of occupational therapy students constitutes practice.

**N. Selection of 2009 Board Meeting dates.**

The Board decided on the following dates and locations of meetings for the 2009 calendar year:

| <u>Date</u>                    | <u>Location</u>                                       |
|--------------------------------|---|
| Late January or early February | Teleconference (for potential disciplinary decisions) |
| March 19, 2009                 | Sacramento  |
| June 25, 2009                  | Undetermined  |
| September 24, 2009             | Undetermined  |
| November 19, 2009              | San Francisco   |

**O. Future agenda items:**

- 1. Discussion and consideration of member selection for Committees (Education and Outreach, Enforcement, Disaster Preparedness and Response, Legislative and Regulatory Affairs)**
- 2. Discussion of Strategic Plan and Strategic Plan Action Plan**
- 3. Draft regulatory language to establish Infection Control Practices**
- 4. Discussion of non-traditional OT practice areas and the Board's role in monitoring these activities**
- 5. Discussion of specialized OT practice areas and the Board's role in monitoring these activities.**
- 6. Consideration of proposed regulatory language to amend Title 16, Division 39, California Code of Regulations Section 4180, Definitions, to add and define "clinical instructor" and "fieldwork site instructor."**

The Board Members agreed with the proposed future agenda items provided.

**P. Public comment session**

There were no public comments.

**Q. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions.**

At 9:14 a.m. the Board went into Closed Session to deliberate on a Disciplinary Decision.

At 9:30 a.m. the Board concluded its deliberation on the Disciplinary Decision.

**R. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(a)(1) for the Evaluation of the Executive Officer.**

The Board convened twice in closed session on this matter, from 9:31 a.m. to 9:40 a.m. and from 4:45 p.m. to 5:07 p.m.

**S. Return to open session**

**T. Adjournment**

At 5:08 p.m. the meeting adjourned.