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**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
AMMENDED BOARD MEETING MINUTES**

MARCH 19, 2009

Board Members Present

Mary Evert, President
Patti Horsley
Bobbi Jean Tanberg
Christine Wietlisbach

Board Staff Present

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

Board Member Excused Absence

Nancy Michel

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

At 9:05 a.m., President Mary Evert called the meeting to order. Secretary Bobbi Jean Tanberg called the roll. A quorum of the Board was present.

B. President's remarks.

Ms. Evert advised Board Members that a component of the next meeting scheduled for April 16, 2009, will be to review and revise the Board's strategic plan.

Ms. Evert reported that later in the evening she would be attending an open house for St. Augustine College, a new accredited occupational therapy degree program in the San Diego area.

C. Board member updates/activities.

Christine Wietlisbach reported that she will be conducting an occupational therapy workforce study for the California Board of Occupational Therapy. Ms. Wietlisbach also reported that she will be instructing a course at Occupational Therapy Association of California's Spring Fling that is designed to assist individuals with reentering the profession. The course would outline requirements to qualify for licensure and clarify the application process for obtaining a state license.

D. Approval of the November 20, 2008, Board meeting minutes.

- ❖ Bobbi Jean Tanberg moved to approve the November 20, 2008, Board and Teleconference Meeting minutes with minor technical edits to page 2 and 3.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

E. Discussion regarding the “practice of occupational therapy” as defined in Business & Professions Code and as it relates to:

- 1. 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) and**
- 2. The Accreditation Council for Occupational Therapy Education Standards (effective 1/1/08)**

Ms. Evert discussed a necessity to define what constitutes practice as it relates to clinicians, educators, researchers and consultants. Bobbi Jean Tanberg concurred; and stated that clarity is needed in this area. Patti Horsley expressed that when she reads Business and Professions Code Section 2570.2(k), the scope of practice for occupational therapy, she interprets it to apply to someone that works in a clinical setting.

Board members commented on the breadth of the “scope of practice” of other states regulating occupational therapy practice. Texas, Maryland and Tennessee were cited as examples that clearly define roles and settings that constitute practice in their respective states. Board members reviewed an attorney-client privileged communication forming a legal opinion whether unlicensed educators in accredited occupational therapy degree programs are breaching the licensure requirement. Legal counsel opined that such cases should be reviewed on a case by case basis taking into account the degree to which an unlicensed faculty member is providing didactic or clinical instruction.

- ❖ Patti Horsley moved for the Board’s Executive Officer to construct a panel of experts to review all OT and OTA courses taught in California to determine whether teaching a particular course would constitute practice.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

Ms. Evert reported the Board will continue to be in contact with the National Board for Certification in Occupational Therapy concerning correspondence submitted by their legal counsel over professional representations, registered trademarks, and how they interrelate and conflict with the Business and Professions Code Section 2570.18.

Public comment from Ruth Zemke, a retired professor from the University of Southern California, expressed desire for the Board to seek legislation to develop a “retired” status. Ms. Zemke articulated concern over the content, quality or lack thereof, of material or data the panel of experts would be reviewing to render determinations on whether teaching a specific course constituted practice.

F. Update on pending regulations.

- 1. Title 16, Division 39, CCR Section 4110 – Applications**
- 2. Title 16, Division 39, CCR Section 4130 – Fees**
- 3. Title 16, Division 39, CCR Section 4161 - Continuing Competency**
- 4. Title 16, Division 39, CCR Section 4181 – Supervision Parameters**

Ms. Martin presented the regulatory report which sets forth the status of proposed regulations. Ms. Martin suggested that a new column be added to the report to indicate “date submitted to OAL.” Board Members agreed and had no questions.

G. Consideration of proposed regulatory language to amend Title 16, Division 39, California Code of Regulations Section 4100 Definitions, to add and define “incompetence”, “negligence” and “gross negligence” and add substantial relationship criteria.

The proposed regulations are designed to clarify definitions for incompetence, negligence, and gross negligence and establish specific crimes or acts that are substantially related to the practice of occupational therapy.

Discussion ensued regarding the necessity, advantages, and disadvantages, of defining “incompetence”, “negligence”, and “gross negligence” in regulation. Ms. Martin remarked that the terms and their definitions are provided in the Board’s *Expert Witness* booklet. Legal Counsel Norine Marks advised against defining these terms in regulation as these are legal terms defined in law. There was no comment or discussion surrounding the crimes or offenses that were being proposed as being substantially related to the practice of occupational therapy.

- ❖ Christine Wietlisbach moved to adopt the proposed regulatory language with minor edits to subsections (g) and (h) replacing references to “license” with “licensed” and direct the Board’s Executive Officer to notice the proposed regulation and set for a public hearing.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

H. 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 proposed regulations will amend Section 4180 to establish, clarify, and define qualifications for clinical instructors and field work supervisors, and make the requirements consistent with the Guidelines of the Accreditation Council for Occupational Therapy Education.

The Board decided it would be best to separate definitions for “clinical instructor” and “fieldwork site instructor” as opposed to combining the definitions. In making these changes the Board enhanced the respective definitions to read as follows:

“Clinical Instructor” means a licensed occupational therapist or occupational therapy assistant who has a minimum of one year of practice experience following the issuance of a license.

“Level II fieldwork site instructor” means a licensed occupational therapist or occupational therapy assistant who has a minimum of one year of practice experience following issuance of a license.

The Board also decided to delete “administrative” from the definition of “Non-client related tasks”. The purpose of deletion was to avoid any potential reference that “administrative,” could be interpreted as meaning management within the definition.

- ❖ Christine Wietlisbach moved to approve the proposed regulatory language with the edits specified above and authorize the Executive Officer to notice the proposed language and set for a hearing.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

I. Consideration of proposed regulatory language to establish regulations setting forth Infection Control Practices.

Business and Professions Code Section 2570.28(p) authorizes the Board to take disciplinary action against a therapist for failing to follow infection control guidelines. The proposed regulations establish, define, and assist implementation of the statute.

The Board decided to delete “with blood or body fluids” from proposed Section 4171(b)(1)(B) to make it read “If hands are visibly soiled, hands should be washed with soap and water or an antimicrobial hand wash”.

Various notations that were placed within the text that were designed to solicit comment from the Board or seek clarification of certain items identified as needing removal prior to the completion of the final draft.

- ❖ Christine Wietlisbach moved to approve, in concept, the proposed regulatory language. Ms. Wietlisbach offered to work with the Board’s Executive Officer and Legal Counsel to finalize edits in order to bring the proposed language back to the Board as time permits.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

J. Discussion and consideration of defining Patient Abandonment.

The Board thanked staff for the information and research. Board members did not feel it was necessary to develop regulations to define patient abandonment. No action was taken regarding this agenda item.

K. Consideration of policy to allow the Board to hear a contested case when an individual who has been cited and requests an appeal.

Discussion surrounding the types of citation cases the Board could hear directly with an Administrative Law Judge presiding over a hearing expanded beyond class “C” and “D” violations. The Board requested the Executive Officer to bring back a proposed policy that would include all citation class violations but define circumstances and situations in which the Board would hear such cases.

L. Consideration of policy to allow the Board to hear a case when an applicant, whose application has been denied for practicing without a license for a period in excess of one year, requests an appeal.

Ms. Martin reported that although the state licensing requirement went into effect in 2003, Board staff was still finding and discovering cases of unlicensed activity. Since six (6) years have elapsed since the requirement had become effective, Ms. Martin asked the Board's opinion if they would like to hear such cases directly.

- ❖ Christine Wietlisbach moved to approve the policy as proposed.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

M. Discussion regarding occupational therapy assistants serving in leadership roles (i.e., rehabilitation manager, departmental director, facility owner, etc.).

Ms. Evert reported the Board previously reviewed a scenario where an occupational therapy assistant (OTA) owned and operated a business that employed occupational therapists (OT). While there is no statute or regulation that prohibits an OTA from owning and operating a rehabilitation business, caution must be exercised by the OTA/owner not to exceed their scope of practice (i.e. an OTA owner cannot subvert or undermine the clinical role and duties between an OT and OTA).

Discussion regarding an OTA functioning as rehabilitation manager or departmental director ensued between practitioner members. Many factors or issues were considered and hypothesized such as: Does the OTA manager/director possess other qualifying education such as an MBA? Is the OTA manager/director providing clinical services? If the OTA manager/director is providing clinical services, does he/she receive appropriate supervision? Ethically, is it appropriate to receive supervision from a subordinate? If functioning solely in an administrative role, does the OTA manager/director have a role in directing patient care or specifying the duration and/or frequency of treatment? What is the role of an OTA manager/director in developing or assessing the clinical skills of an OT working under their management/direction?

- ❖ Bobbi Jean Tanberg moved for Board staff to conduct more fact finding and consult with the American Occupational Therapy Association and accredited OTA programs and bring back information to the June or September Board Meeting.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

N. Legislation.

1. Ms. Martin referenced Assembly Bill (AB) 16, which proposes to increase the punishment of individuals convicted of sex crimes with minor victims; the members had no questions.
2. Ms. Martin referenced AB 17, which proposes to increase the penalties associated with solicitation, pimping and pandering; the members had no questions.
3. Ms. Martin referenced AB 416, which would require the State Department of Developmental Services to establish a consumer abuse registry; members had no questions.

4. Ms. Martin referenced AB 452, which would establish the California Independence Program for individuals otherwise ineligible for in-home supportive services; the members had no questions.
5. Ms. Martin referenced AB 583, which would require certain health care practitioners to display their license, type, disclose their education and post their office hours; members had no questions.
6. Ms. Martin referenced AB 657, which would require the Office of Statewide Health Planning and Development, in collaboration with the California Workforce Investment Board, to develop a health professions workforce master plan for the State; members had no questions.
7. Ms. Martin referenced AB 721, which would expand the physical therapy scope of practice and provide for a physical therapist (PT) to initiate treatment of a patient without a physician's referral (commonly referred to as "direct access"). Board members discussed the amendments to Business & Professions Code (BPC) section 2620(a) which expands the physical therapy scope of practice; members concluded that the proposed language was both vague and unclear.

The Board members also discussed the amendments to BPC section 2620(b) regarding direct access and concluded there were consumer protection concerns on a number of levels, including the variety of symptoms a patient could present that could potentially be misdiagnosed. Concerns were also expressed about the varied education levels (ranging from baccalaureate to doctoral degrees) as well as the varied qualifications of the entire licensee population.

After much discussion, including the vague and unclear proposal to 2620(a) and the fact that not all PTs are appropriately trained and/or educated to recognize all medical conditions as proposed in 2620(b), the Board agreed unanimously to oppose the bill.

- ❖ Bobbi Jean Tanberg moved to direct the Executive Officer to prepare a letter of opposition.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

8. Ms. Martin referenced AB 783, which would require that all statutorily created state agencies, boards, and state commissions that are funded by General Fund revenues, except for the Franchise Tax Board, be repealed on January 1, 2022; members had no questions.
9. Ms. Martin referenced AB 877, which would enact legislation authorizing the Director of Consumer Affairs to appoint a committee to perform occupational analyses and to prepare written reports on any bill that seeks to expand the scope of a healing arts practice; members had no questions.
10. Ms. Martin referenced AB 1037, which would establish a Medi-Cal Managed Care Pilot Program to be administered by the Department of Health Care Services; members had no questions.
11. Ms. Martin referenced AB 1140, which makes non-substantive, technical amendments to the portion of the Business & Professions Code that requires healing arts practitioners to disclose their name and license status; members had no questions.

12. Ms. Martin referenced AB 1310, which would require all healing arts boards to collect specified information and submit it to the Health Care Workforce Clearinghouse; members had no questions.
13. Ms. Martin referenced Senate Bill (SB) 43, would require specified healing arts boards to collect information regarding the cultural and linguistic competency of their licensees; members had no questions.
14. Ms. Martin referenced SB 117, which makes non-substantive, technical amendments to the adult day health care centers; members had no questions.
15. Ms. Martin referenced SB 389, which would require specified healing arts boards to require fingerprinting of applicants; members had no questions.
16. Ms. Martin referenced SB 599, which would require every board within the Department of Consumer Affairs to post each accusation, statement of issues, or disciplinary action taken by the board on that board's Internet Web site within 10 days of the filing date of the accusation or statement of issues, or the effective date of the disciplinary action; members had no questions.
17. Ms. Martin referenced SB 638, which would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties and required other specified entities to be subject to review; members had no questions.
18. Ms. Martin referenced SB 674, which would impose advertising requirements on specified healing arts licensees and allow a health care practitioner, in a practice or office, to disclose his or her name and type of license verbally; members had no questions.
19. Ms. Martin referenced SB 762, which would make it unlawful for a city, a county, or a city and county, to prohibit a healing arts licensee from engaging in any act that falls within their scope of practice; members had no questions.
20. Ms. Martin provided an update on licensure for occupational therapy assistants. The licensure language is contained in SB 821, the Department of Consumer Affairs' annual omnibus bill and contains proposed language approved by the Board last summer. In reviewing this language, Ms. Tanberg pointed out that in section 2570.2(c), the definition of "Association" indicates "...representing occupational therapists in this state" and should read "...representing occupational therapy in this state." Ms. Martin indicated that she would share that with the Senate Committee on Business, Professions and Economic Development. There were no further comments by the members.
21. Ms. Martin provided an update on other bills of interest to the Board, including SB 819, which contains the same language that was present in SB 1779, the Department's omnibus bill that was vetoed last year. SB 819 is the bill that includes the long awaited educational "clean up" language in 2570.6; the members had no questions.

O. Executive Officer's report.

1. Revenue and expenditures (7/1/08 – 12/31/08)

Ms. Martin referenced the revenue report contained in the meeting materials which indicates that through the first half of the fiscal year (FY), the Board has received approximately \$580,267 in revenue and spent approximately \$508,047. The board members had no questions.

2. Budget Change Proposal – Federal Database Query

Ms. Martin referenced the document entitled *Fact Sheet: An Overview of the Proactive Disclosure Service Prototype (PDS)* which discusses queries of the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank. Ms. Martin explained that in FY 2009/2010, the Board's budget would be increased by nearly \$385k to support querying the database and any resulting enforcement costs and provide for three staff on a one-year limited term basis to query the databanks and follow up on any "hits." The members had no questions.

3. PACT Roundtable – Healing Arts, April 15, 2009

Ms. Martin mentioned that the Department of Consumer Affairs would be holding a follow-up meeting to the Professionals Achieving Consumer Trust (PACT) Summit that was held last November. On April 15, 2009, there would be a PACT Roundtable specific to the healing arts boards to provide the leadership of healing arts boards with an opportunity to discuss and share ideas on major cross-cutting issues. Hopefully, these sessions will produce themes and subjects for the full PACT Summit to be held in January 2010. Ms. Mary Evert, Ms. Christine Wietlisbach, and Ms. Martin will be attending the event; other board members are also welcome to participate.

4. Substance Abuse Coordination Committee Meeting (Senate Bill 1441)

Ms. Martin referenced the agenda for the Substance Abuse Coordination Committee (SACC) Meeting held March 3, 2009, and indicated that as a committee member she attended the meeting. Ms. Martin indicated that a copy of SB 1441 (signed in 2008) was contained in the packet that explains the purpose of the SAAC. Ms. Martin also provided members a copy of a power point presentation provided by one of the speakers and commented that she spoke to the presenter, who may be available to attend a future meeting.

5. Emergency Medical Services Authority – Disaster Healthcare Volunteers System

Ms. Martin mentioned that she had been in contact with the Emergency Medical Services Authority and provided a link on the Board's website for practitioners to register with the Disaster Healthcare Volunteers System. Ms. Martin indicated that a new brochure was being developed, and once available, would also put a link to it on the website.

6. Adult Day Health Care Centers update

Ms. Martin referenced two information items in the packet: a copy of SB 1755 (signed in 2006) which, among other things, sets forth the eligibility criteria for adult day health care services and a document entitled *Separately Billable Services FAQs* prepared by the California Association for Adult Day Services. Ms. Martin reported that she and Mr. Hanson recently met with representatives of the Department of Aging due to concerns with the Medi-Cal billing practices for occupational therapy (OT) services at Adult Day Health Care Centers (ADHC). New regulations are being proposed, which should improve the documentation requirements of the service providers and the billing practices of the ADHCs. However, Ms. Martin still believes that a CBOT outreach and

education campaign regarding billing for OT services should commence once the regulations are finalized.

7. Personnel updates

There were no changes to report.

8. Other informational items

Ms. Martin referenced a number of informational handouts, including:

- A memorandum from DCA's Legal Office regarding Interim Suspension Orders (ISO). Ms. Martin pointed out DCA's recommendations to include pursuit of an ISO if a practitioner sustains a DUI with a high blood alcohol level, e.g., .18% or greater blood alcohol content, which is a lower level than staff previously considered as "high" when considering cases for discipline.
- A memorandum from DCA's Legal Office regarding Retroactive Fingerprinting, including the direction that boards establish regulations to deal with retroactive fingerprinting. Ms. Martin indicated that all licensees have been fingerprinted, however, there may be a situation where the Department of Justice record is no longer on file or not available; the proposed regulatory language will cover that scenario. Ms. Martin indicated that she already discussed this issue with Ms. Marks, Senior Staff Counsel, and would present language for their consideration at the next meeting.
- A copy of the March 4, 2009, agenda for a meeting of the Senate Committee on Health regarding California's Healthcare Workforce – Toward a Comprehensive Solution and a document entitled Healthcare Workforce Background, prepared by the Senate Office of Research.

Ms. Martin stated that she believed that this was the first of what could be several meetings regarding the healthcare workforce issue by the Committee. She also noted that she felt there was some misinformation contained in one of the handouts, a matrix of the "Top Health Professions with Need for Workforce Development." Board members remarked that the data regarding OTAs didn't appear to be accurate and the comments not too positive.

Ms. Martin noted that one of the presenters was with the Regional Health Occupations Resources Centers, which includes Community college members, and that mention of the occupational therapy assistants programs were noticeably absent. Ms. Tanberg asked that she be provided a copy of the information; Ms. Martin agreed.

- The February 2009 *State Policy Update* published by the American Occupational Therapy Association; there were no questions or comments regarding this item.
- A research paper provided to her by Ms. Wietlisbach entitled *Sexual boundaries between physiotherapist and patients are not perceived clearly: An observational study* and a publication of the Physical Therapy Board of California entitled *Physical Therapy Never Includes Sex*. Ms. Martin remarked that the Board didn't have any consumer brochures and expressed a need for something similar. Ms. Wietlisbach volunteered to prepare a draft brochure for the Board's review.

- “A Consumer’s Guide” to occupational therapy prepared by the Missouri licensing board. Members like the brochure and requested Ms. Martin follow-up with the Missouri board to see if we could model our brochure after theirs. Ms. Evert and Ms. Horsley volunteered to work together to prepare a draft brochure for the Board’s review.
- “A Consumer Guide to Speech-Language Pathology;” there were no questions or comments regarding this item.
- Syllabi from OT and OTA re-entry programs offered by Pacific University, in Hillsboro, OR. Members particularly like the fact that the programs provide a clinical fieldwork for returning practitioners.
- Several documents related a Medical Board of California’s Non-Adoption case against a physician with substance abuse issues. Ms. Martin briefly summarized the documents; members had no questions or comments.

Ms. Martin indicated that due to a Board member conflict for the last Board meeting of the year, November 19th, she wanted to discuss changing the meeting date(s).

Board members agreed to add a new date to the 2009 meeting schedule to work on the Board’s Strategic Plan and Action Plan and other issues. Thus, the 2009 meeting schedule will be as follows:

- **April 16, 2009**, in Sacramento (held in conjunction with the PACT Roundtable).
- **June 18, 2009**, in the San Diego area.
- **October 26, 2009**, in Sacramento (following the annual conference of the Occupational Therapy Association of California).
- **December 3, 2009**, in San Francisco.

P. Enforcement data and reports (10/1/08-12/31/08).

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

Board Members had no questions regarding Items P(1), P(2) or P(3).

Q. Discussion and consideration of member selection for Committee members (Education and Outreach, Enforcement, Disaster Preparedness and Response, Legislative and Regulatory Affairs).

Due to the length of the meeting and time constraints for return travelers the item was not discussed and will be scheduled for a future meeting.

R. Discussion of Strategic Plan and development of Strategic Plan Action Plan.

Due to the length of the meeting and time constraints for return travelers the item was not discussed and was scheduled for discussion at the next meeting on April 16, 2009, in Sacramento.

S. Discussion of non-traditional (non-medical) OT practice areas and the Board's role in monitoring these activities.

Due to the length of the meeting and time constraints for return travelers the item was not discussed and will be scheduled for a future meeting.

T. Discussion of specialized OT practice areas and the Board's role in monitoring these activities.

Due to the length of the meeting and time constraints for return travelers the item was not discussed and will be scheduled for a future meeting.

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

This item was taken up after agenda item I. From 10:48 a.m. to 11:30 a.m. the Board convened in Closed Session to deliberate on Disciplinary Decisions.

V. Public comment session for items not on the agenda.

There were no public comments relating to this agenda item.

W. Adjournment.

At 3:01 p.m. the meeting adjourned.