



BOARD OF OCCUPATIONAL THERAPY

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

June 18, 2009

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. Called the meeting to order, roll call, establishment of a quorum.

At 9:40 a.m. President Mary Evert called to meeting to order. Secretary Bobbi Jean Tanberg called the roll. A quorum of the Board was present.

B. President's remarks.

President Evert thanked the University of St. Augustine for hosting the meeting. Prior to the meeting being called to order, a tour of St. Augustine College was provided to those in attendance. Ms. Evert reported that Board Members had been busy revising the strategic plan and recruiting volunteers to fill new and vacant committee assignments. Ms. Evert thanked outgoing Committee Members who had served two consecutive terms for their services to the Board.

C. Board member updates/activities.

Christine Wietlisbach reported she was working on a project to develop a consumer brochure to educate the public about sexual misconduct and therapy. Ms. Wietlisbach requested that a minor edit be reflected in the March 19, 2009, meeting minutes, regarding an occupational workforce project that she was also performing. To affect the requested edit, Board staff reported the matter would be placed on the next Board Meeting agenda so action could be taken.

D. Approval of the April 16, 2009, Board meeting minutes.

- ❖ Nancy Michel moved to approve the April 16, 2009, Board Meeting Minutes with an edit inserting "for noticing" to the motion made in Agenda Item E.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ Motion passed unanimously.

10:00 a.m. – Regulatory Hearings

E. Regulatory hearing – Amendments to 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.

Discussion ensued as to whether or not definitions for incompetence, negligence, and gross negligence should be pursued in the proposed regulation. Norine Marks, CBOT Legal Counsel, provided a recommendation to the Board to delete the definitions for incompetence, negligence, and gross negligence from the proposed regulation. The Board decided to maintain the definitions primarily so practitioners would not be required to reference the definitions in case law, the Evidence Code, or other applicable Code sections.

Proposed language contained in subsections (i)(1)(D)(E) was determined to be too limiting and not in the broadest interest of public protection. Reference the motion below to review the edits made to these subsections.

Christine Wietlisbach sought clarification of whether Board staff would be obligated to take disciplinary action against a practitioner that committed an act or offense that was listed in the proposed substantial relationship criteria. Ms. Wietlisbach was advised the proposed regulation would not obligate staff to initiate disciplinary action against a practitioner or applicant. The Board received no public comment regarding the proposed regulation.

A minor technical edit was made to subsection (i)(2) by adding “client” to the end of the language.

- ❖ Nancy Michel moved to make the following amendments to the proposed regulation and notice a “15-Day Notice of Modified Text” as follows:

4100(i)(1)(B)

~~Conviction of Crime involving f(F)iscal dishonesty, theft, or larceny.~~

4100(i)(1)(D)

~~Conviction of a crime involving harassment or stalking (as defined by Penal Code),
of a patient or client, former patient or client, or patient’s or client’s significant other.~~

4100(i)(1)(E)

~~Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or
pandering and/or indecent exposure (as defined by the Penal Code), in connection
with a patient or client, former patient or client, or patient’s or client’s significant other.~~

4100(i)(2)

For the purposes of this section “significant other” is defined to include: parents, caretakers, teachers (if the patient is a minor), other legal guardian, domestic partner, or any other person residing in the immediate household or involved in the care of the patient/client.

- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

Supplemental Motion

- ❖ Bobbi Jean Tanberg moved to delegate authority to the Executive Officer to adopt the regulations barring any negative public comments after noticing the modified text.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

F. Regulatory hearing – Amendments to Title 16, Division 39, California Code of Regulations Section 4120 (Renewal of License or Certificate), to require fingerprinting as a condition of license renewal, under certain conditions, as directed by the Board.

The proposed regulation is a directive from the Department of Consumer Affairs (DCA) to proactively deal with the potential loss of criminal offender record information for practitioner records that did not convert to the new DOJ information system. Due to a data base conversion at the Department of Justice (DOJ), some licensee fingerprint records may not have successfully converted to the new information system. DCA Office of Information System staff and DOJ staff are currently working to identify practitioner records that did not successfully convert. Preliminary information indicates there will be minimal impact to occupational therapy practitioners. Discussion ensued between Board and representatives of the Occupational Therapy Association of California regarding the necessity of the regulation and potential costs to practitioners whose records did not convert.

- ❖ Christine Wietlisbach moved to adopt the proposed regulation.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ Motion passed unanimously.

Nancy Michel requested that Board staff follow up with statistical data regarding the number of practitioners that are impacted so that the Board may consider reimbursing practitioners for their cost for resubmitting fingerprints.

G. Regulatory hearing – Amendments to Title 16, Division 39, California Code of Regulations Section 4180 (Definitions), to add and define “Clinical instructor” and “fieldwork site instructor” and amend “non-client related tasks.”

In the March 19, 2009, meeting, the Board thought it would be best to provide separate definitions for “Clinical Instructor” and “Field Work Instructor”. However, subsequent research found a better way to implement the Board’s intent to establish an experience requirement for Level II Fieldwork Educators that is consistent with national educational standards established by the Accreditation Council for Occupational Therapy Education (ACOTE). The Board received no public comment regarding the proposed regulation.

Also, the terms “Clinical Instructor” and “Fieldwork Instructor” were stricken as they were considered too broad and not consistent with current ACOTE terminology.

- ❖ Bobbi Jean Tanberg moved to adopt the regulation as noticed.
- ❖ Nancy Michel seconded the motion.
- ❖ Motion passed unanimously.

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

At 11.00 a.m. Board Members entered into closed session to consider Disciplinary Decisions.

I. Return to Open Session.

At 12:50 p.m. the meeting returned to open session.

J. 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 Regulation Update Status Report to Board Members. Board Members had no questions or comments.

K. Discussion and consideration of proposed regulatory language to establish Infection Control Practices.

Ms. Martin reported that Board staff had consulted with other specified healthcare Boards to ensure consistency with the guidelines as specified in the statute. The purpose of the proposed regulation is to establish, implement, define, and clarify infection control guidelines for occupational therapy practitioners pursuant to Business and Professions Code section 2570.28(p).

- ❖ Christine Wietlisbach moved to approve and notice the proposed language with the following amendments:

4171(b)(1)(B)

When hands are visibly soiled ~~with blood or body fluids~~, hands shall be washed with soap and water or an antimicrobial hand wash

4171(b)(2)

Delete an extra comma between “body fluids, secretion”.

Change all references specifying “i.e.” to “e.g.” in the proposed language.

- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ Motion passed unanimously.

L. “*Substance Abuse Issues in Health Professionals*” - Presentation by Shannon V. Chavez MD, Medical Director, UCSD Outpatient Psychiatric Services and Chair, UCSD Physician Well-Being Committee.

Shannon V. Chavez, M.D. provided a power point presentation on Recognizing the Signs and Symptoms of Drugs and Alcohol. She reported on substance abusing health care professionals and the potential impact to the public and answered questions.

M. Discussion and consideration of proposed legislation to establish a “retired” status (Senate Bill 821) and any other bills of interest to the Board.

As currently proposed, SB 821 would allow a therapist that had been licensed in California to use titles or professional abbreviations that would represent that he or she is a retired occupational therapist. The Board discussed the possibility of seeking an amendment to the proposed legislation to allow a retired practitioner from another state to also use titles or professional abbreviations indicating they are retired even though they would have never held a California license. The Board decided to take no action to seek amendments that could compromise or delay the proposed legislation.

N. Consideration of policy to allow the Board to hear a contested case when an individual has been issued a citation and appeals for an Administrative Procedures Act hearing.

The proposed policy establishes that the Board itself will hear formally contested citations where the facts and circumstances surrounding the citation stem from practicing with an expired license and unlicensed practice.

- ❖ Nancy Michel moved to adopt the proposed policy.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

O. Discussion and consideration of Committee member appointments.

Not all committee positions had filled; additional recruitment was on-going. Board members were requested to forward the names of interested individuals to Ms. Martin.

P. Executive Officer’s report.

1. Update on establishing Expert Panel to evaluate occupational therapy educational programs courses.

Ms. Martin reported that educational information was forwarded to the Expert Panel members and expected information to be returned to the Board by early to late July. Ms. Martin referred Board members to a letter opposing the establishment of an Expert Panel that was signed by the Program Directors of all California OT/OTA educational programs, the American Occupational Therapy Association, and the Occupational Therapy Association of California (OTAC) and to her letter of clarification sent to all in response to the letter of opposition.

Ms. Evert reminded all present that the information was a tool and that the situation would be judged on a case-by-case basis.

Discussion ensued regarding what constituted practice. Shawn Phipps, President, OTAC, stated for the record that OTAC opposes the establishment of an Expert Panel and stated that the Practice Act was unclear regarding the educators being required to be licensed; he requested that the Board clarify the language in statute. Ms. Marks clarified that teaching or instructing in an educational program is not an exempt setting, however, she recognized that all faculty members are not “practicing” according to statute. She reminded attendees that is why a review by an expert is so important.

2. NBCOT regarding use of “OTR” and “COTA.”

Ms. Martin referenced two letters from the National Board for Certification in Occupational Therapy (NBCOT) dated May 4, 2009, and June 15, 2009. Ms. Martin reported that she and Ms. Marks held a conference call with representatives of NBCOT, including their Legal Counsel, regarding NBCOT’s concerns with the Practice Act prohibiting the use of “OTR” and “COTA,” which are owned by and trade-mark protected by NBCOT.

Ms. Evert commented that the language is not new; the use of “OTR” and “COTA” has been prohibited unless licensed and contained, as written, within the Practice Act since the licensure language was first introduced in 1998 or 1999.

Discussion ensued and it was decided that no action was necessary.

3. Revenue and expenditures (1/1/09 – 3/31/09)

Ms. Martin referenced Board packet material displaying revenue received and expenditures through March 31, 2009, and a fund condition reflecting year-end projections. The Board members had no questions.

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

Ms. Martin provided a verbal update on the Substance Abuse Coordination Committee (SACC) and referenced a report issued by the California Department of Alcohol and Drug Programs, entitled “*Californians in Treatment: Fiscal Year 2006-07.*”

Ms. Martin also provided notes from a presentation by Mr. Gaylon Newsome, California Department of Transportation, (CalTrans) Office of Alcohol and Drug Programs, at the March 3, 2009, SACC meeting. In response to a request that Mr. Newsome provide a video-taped session of the training that he provides to all CalTrans’ supervisors and managers, he provided the handout entitled, “*Recognizing the Signs and Symptoms of Alcohol and Drugs.*” Ms. Martin indicated that she would have this valuable information added to the Board’s website. The Board members had no questions.

5. Personnel updates

Ms. Martin reported that the Board had recently hired another analyst to assist with administrative assignments (budget, legislation, reports, etc.) and an Enforcement staff member was going out on medical leave for two months. The Board members had no questions.

6. Other informational items

Ms. Martin referenced a print-out of disciplinary information provided on the website of the Board of Vocational Nurses and Psychiatric Technicians and questioned whether the Board was interested in doing something similar.

Discussion ensued and the Board decided that they wanted to continue providing disciplinary information the way it is provided now.

Q. Enforcement data and reports (1/1/09-3/31/09).

1. Citation and fine statistics

Ms. Martin referenced the standard report on the number and types of citations issued during the period January 1, 2009 through March 31, 2009. Only eight citations had been issued during the third quarter of the fiscal year: six to OTS, one to an OTA, and one to an applicant. The Board members had no questions.

2. Probationer update

Ms. Martin referenced the probationer report, which includes information regarding practitioners placed on probation and applicants granted a probationary license/certificate. The Board members had no questions.

3. Disciplinary case status

Ms. Martin referenced the Board's Enforcement Statistical Report for the period January 1, 2009 through March 31, 2009, which includes information on complaints received and closed; investigations initiated by the Division of Investigation and investigative reports received; and information regarding 20 cases pending at the Office of the Attorney General.

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

Ms. Evert reported that some of the objectives identified in the Strategic Plan need rewording and commented that she would like to see future Board meeting Agenda Items tied back to the Strategic Plan. She also noted that many of the Completion Target Dates are on-going and will not indicate a specific date. She would also Board member input regarding which of the objectives can be assigned to specific Committee.

Ms. Evert requested that Board members review the Strategic Plan and forward suggested changes to Ms. Martin.

S. Discussion and consideration of future agenda items:

Tentative meeting date: July 30, 2009

1. Discussion and consideration of legislative proposals for 2010 Legislative Session

The next Board meeting was scheduled as a Teleconference meeting to consider legislative proposals. However, after further discussion, the Board determined its next meeting would be a full meeting rather than a teleconference and, subject to availability of a meeting site, would be held either September 9, 2009 or September 10, 2009. The exact date and location would be noticed in accordance with the Public Meeting Act.

Tentative meeting date: October 26, 2009

1. Ethical Decision Making training course (*for Board members*).
2. Discussion regarding proposed amendments to the 2003 Disciplinary Guidelines.
3. Discussion of occupational therapy assistants in leadership roles.
4. Discussion of specialized OT skills acquired post entry-level (i.e., wound care, lymphedema treatment, etc.) and the Board's role in monitoring these areas.
5. Regulatory hearing – Amendments to Title 16, Division 39, California Code of Regulations to Infection Control Practices.

Tentative meeting date: December 3, 2009

1. Discussion of emerging non-traditional/developing OT practice arenas and the fieldwork guidelines issued by the Accreditation Council on Occupational Therapy Education (ACOTE) regarding these arenas.

Ms. Martin indicated she would like to add a future agenda item to discuss and review the Speech-Language Audiology and Pathology Board's (SLAPB) ruling that requires an occupational therapist to register as an aide when the OT is training under a Speech-Language Pathologist to meet the experience requirement in the Advanced Practice area of Swallowing Assessment, Intervention & Evaluation. Ms. Martin reported she will request the SLPAB's legal opinion on the matter and obtain information if the SLAPB has received any complaints involving an occupational therapist.

Bobbi Jean Tanberg indicated she would like to add a future agenda item for further review and potential revision of Business and Professions Code section 2570.2(k), defining the "practice of occupational therapy," to make the language very clear as to what acts constitute practice and what roles, functions and duties require licensure.

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

There were no public comments regarding items that were not on the agenda.

U. Adjournment.

At 3:19 p.m. the meeting adjourned.