



BOARD OF OCCUPATIONAL THERAPY
2005 Evergreen Street, Suite 2050, Sacramento, CA 95815
T: (916) 263-2294 F: (916) 263-2701
E-mail: cbot@dca.ca.gov Web: www.bot.ca.gov

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

Thursday, September 10, 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. Call to order, roll call, establishment of a quorum.

At 9:32 a.m. President Mary Evert called the meeting to order. Ms. Evert thanked Loma Linda University for hosting the Board's Meeting. Nancy Michel called the roll. A quorum of the Board was present.

B. President's remarks.

Ms. Evert reported that the Administrative Committee and Executive Officer had been in constant communication since the Board's last meeting on June 18, 2009, regarding pending legislation.

Ms. Evert thanked staff for their efforts and sacrifices during the state's budget crisis.

C. Board member updates/activities.

Patti Horsley, a public member appointed by the Speaker of the Assembly, reported she would be resigning her position with the Board in December 2009.

Ms. Evert encouraged individuals with an interest in serving on the Board to apply to the Governor's Office to fill vacancies on the Board. It is imperative for a new member, or new members, to be appointed in order to preserve a quorum that would allow the Board to maintain its business.

At the end of December 2009, the following vacancies will exist on the Board:

- Two Governor-appointed positions for a licensed occupational therapist.
- A Governor-appointed position for a public member.
- A Speaker of the Assembly appointment for a public member position (that will be vacated by Patti Horsley).

D. Approval of the June 18, 2009, Board meeting minutes.

- ❖ Nancy Michel moved to approve the June 18, 2009, Board Meeting Minutes.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ Motion passed unanimously.

E. Reconsideration of the March 19, 2009, Board meeting minutes.

- ❖ Christine Weitlisbach moved to reconsider the March 19, 2009, minutes.
- ❖ Nancy Michel seconded the motion.

Discussion ensued about correcting the minutes to reflect that Ms. Wietlisbach's plan to conduct an occupational therapy workforce study was being performed for the Board, not her doctoral degree program. Therefore, language indicating the workforce study was being performed "as part of her doctoral degree program" will be struck, and replaced with "for the California Board of Occupational Therapy".

- ❖ Nancy Michel moved to amend the March 19, 2009, Board Meeting Minutes as noted above.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

F. Ethical Decision-Making Training (for Board members).

Norine Marks, Senior Legal Counsel, presented a training session provided by the Department of Consumer Affairs. Ms. Marks reminded Board members of the various laws governing the Open Meetings Act and provided examples and scenarios that Board Members might typically encounter. Ms. Marks also described different situations when a Board member may be subject to a mandatory Disqualification or when they might voluntarily Recuse themselves from a Board vote.

G. Update on pending regulations.

1. Title 16, Division 39, CCR Section 4100 - Definitions
2. Title 16, Division 39, CCR Section 4110 - Applications
3. Title 16, Division 39, CCR Section 4120 - Renewal of a license
4. Title 16, Division 39, CCR Section 4130 - Fees
5. Title 16, Division 39, CCR Section 4161 - Continuing Competency
6. Title 16, Division 39, CCR Section 4175 – Minimum Standards for Infection Control
7. Title 16, Division 39, CCR Section 4180 – Definitions

Ms. Martin presented the Regulation Update report to Board members; they had no questions or comments.

Ms. Martin also advised the Board members that on August 24, 2009, a Decision Not to Proceed with Rulemaking Action was noticed regarding the regulatory proposal to establish Minimum Standards for Infection Control for failure to include all amendments and to timely provide notice to Interested Parties. Ms. Martin explained that the language was modified to include a number of amendments suggested by another Board and was re-noticed September 4, 2009, providing a 45-day public comment period before the hearing, which will be held at the October 26th Board meeting. Board members had no questions or comments.

H. Enforcement data and reports.

Ms. Martin referred to the data and reports contained in the meeting agenda packet. Board Members had no questions or comments regarding the information provided.

I. Discussion regarding Standard Term # 7 (Employment Requirements and Limitations) contained in the Disciplinary Guidelines.

Ms. Martin explained that the Board's Disciplinary Guidelines assist administrative law judges, the Office of the Attorney General, and the Board, to implement consistent decisions in disciplinary matters. Among its contents are standard and optional terms that are used in probation decisions. In particular, standard term and condition #7 prohibits a probationer from working in settings where supervision may be nonexistent, minimal and inconsistent. The term contains language that would allow Board staff to deviate from the standard on a case by case basis. Since revision of the Disciplinary Guidelines is a future goal, staff was seeking input on the Board's thoughts in drafting future changes.

Discussion ensued between Board Members regarding the rationale and necessity of the term and condition. Members discussed that the underlying purpose of the term was to ensure that a probationer receives supervision commensurate with the act or offense that resulted in the disciplinary action.

Public interaction by practitioners and educators in attendance suggested that the Board might consider deleting reference to the types of settings where one could work and focus on the aspect of the various levels of supervision an individual should receive while serving their probationary period.

J. Executive Officer's report.

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

Ms. Martin explained that a preliminary review had been completed and that, based on the information provided, several individuals with pending applications had been issued approval letters.

2. Revenue and expenditures (4/1/09 – 6/30/09)

Ms Martin referred to Expenditures Report, which summarized expenditures for the fiscal year ending June 30, 2009, and the Budget Report which provides more detail regarding the years' expenditures. Ms. Martin also referred to the Revenue report which shows that revenue was estimated at \$1,145,000 for the fiscal year, however, only \$986,562 was received.

Ms. Martin referenced the Board's Fund Condition which reflects the \$2,000,000 loan to the General Fund in July 2009 and the resulting impact. Ms. Martin expressed concern regarding the low reserves and reminded the Board members that the Board has this and another outstanding General Fund (GF) loan. Ms. Martin explained that the Executive Order authorizing the loans to the GF requires the Department of Finance to repay the Board any outstanding loan plus interest, before the Board can raise any fees;

this provides some protection or comfort to the licensees who may fear a renewal fee increase due to the GF loan.

**3. Substance Abuse Coordination Committee Meeting (Senate Bill 1441)
– Draft Standards.**

Ms. Martin reported that the Substance Abuse Coordination Committee met on September 2, 2009, and that progress was being made in developing the 16 standards required by Senate Bill 1441.

4. Report on background checks for licensees.

Ms. Martin reported that the Board had not yet received the data file from the Department of Justice (DOJ); thus, she was unable to report how many licensees will need to submit fingerprints. Once the number of licensees is identified, she will report back to the Board. This was in response to Ms. Michel's suggestion at a previous meeting that the Board assume the cost of the fingerprinting for licensees, whom by no fault of their own, would be required to re-submit fingerprints due to the loss of data at DOJ.

5. Report on Expert Witness pool.

Ms. Martin reported that the Expert Witness application has been finalized and the Expert Witness booklet is almost completed. Once that is done, there will be information posted on the Board's website and an email blast will be sent to all Interested Parties and information will be posted on the Board's Facebook Page.

6. Report on pending legislation.

Ms. Martin reported that Senate Bills 819 and 821, the Department of Consumer Affairs' annual omnibus bills, were progressing through the houses and she was hopeful that both bills would be signed by the Governor.

7. Personnel updates.

Ms. Martin reported that the office would be hiring a permanent Office Technician position to provide additional support in the office and hire two additional limited-term positions and a Retired Annuitant or limited term non-sworn Special Investigator to address increased enforcement workload as well as assist with reducing the complaint processing timeframes. These positions would be in addition to the permanent enforcement positions being requested for next fiscal year.

Ms. Martin also reported that one employee recently returned from a two-month leave of absence and another staff member would be going out on leave in a couple of weeks and not return until January 2010.

8. Other informational items.

Ms. Martin referred to a memo dated August 31, 2009, from Brian Stiger, the new Director of the Department of Consumer Affairs (DCA), urging all health boards to adopt complaint prioritization guidelines; suggested guidelines were provided. A complaint prioritization schedule would ensure that complaints of a higher priority or those requiring urgent attention are not lost in the queue along with other less egregious complaints. Ms. Martin explained that too many boards have a complaint process of "first in - first out" which has caused more urgent complaints not to get the immediate attention that may be necessary. Ms. Martin also referred to an in-house prioritization schedule that was suggested by Board staff in July 2009 when the issue of complaint

aging was raised by DCA. Ms. Martin also mentioned that she was working with enforcement staff to develop internal standards for processing times, e.g., how soon documents from the Attorney General or Division of Investigation should be reviewed, etc. Ms. Martin indicated that based on the new Enforcement Model being proposed at DCA, this issue will be sure to come back before the Board again at a future meeting.

Ms. Martin referred the Board members to several recent website updates to the Licensees page, including:

- adding the Disciplinary Action list to make it easier for supervisors to verify whether any OTs or OTAs on staff had been disciplined by the Board;
- the solicitation for practitioners to serve on the Board's committees;
- adding the Mandatory Reporting requirements;
- adding a document entitled "Recognizing the Signs and Symptoms of Drugs and Alcohol;"
- providing a link to treatment programs provided on the website of the California Department of Alcohol and Drug Programs; and
- A complaint process flow chart.

Ms. Martin indicated that they planned to continue to add documents to the website so that practitioners would see the Board's website as a resource or tool to assist them.

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

1. Amendment to Business & Professions Code Section 2570.2

The lack of clarity in current statutory language has caused confusion within the profession regarding the necessity for an individual to possess a license when performing roles that extend beyond the direct delivery of services to a client. The proposed amendment identifies roles that an occupational therapist or assistant may assume which includes but is not limited to clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/client, thereby requiring licensure.

- ❖ Bobbi Jean Tanberg moved to adopt the language with a minor edit (delete references "i.e." and replace with "e.g.").
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

2. Amendment to Business & Professions Code Section 2570.3

Business and Professions Code Section 2570.3(j)(2) specifies that an occupational therapist may supervise a maximum of two occupational therapy assistants. The Section also authorizes the Board to allow a supervisor to supervise more than two assistants, if in the opinion of the Board, the public's health and safety would be served. The proposed amendment strikes the last sentence of the statues that contains confusing and conflicting language.

Board Members expressed a desire to establish and define standards that would allow a supervisor to supervise more than two assistants in regulation. The assignment was delegated to the Legislative & Regulatory Committee.

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

3. Amendment to Business & Professions Code Section 2570.16

The proposed amendment would authorize the Board to charge an applicant or licensee the costs incurred by the Board to obtain documents or information related to a criminal conviction sustained by the licensee or applicant. The proposed amendment would also allow the Board, in its discretion, to reduce the amount of any fee prescribed by this section.

- ❖ Nancy Michel moved to adopt the proposed statutory change in concept and authorize the Executive Officer and Legal Counsel to make non substantive edits as might be needed.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

4. Amendment to Business & Professions Code Section 2570.18

The current statute identifies professional titles and abbreviations that therapists and assistants may use in representations to the public. The amendment would add language regarding representations that a practitioner may use when they have completed a doctoral degree by specified accrediting agencies.

- ❖ Nancy Michel moved to adopt the proposed statutory change in concept and authorize the Executive Officer and Legal Counsel to craft language regarding Honorary Doctoral degrees.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ Motion passed unanimously.

5. Amendment Government Code Section 8659 to limit the liability of occupational therapy practitioners who provide services during an emergency or disaster. Government Code Section 8659 limits the liability of specified health care professionals during an emergency or disaster. The proposed amendment adds occupational therapy practitioners to the list of health care practitioners identified in this Code.

- ❖ Bobbi Jean Tanberg moved to adopt the proposed statutory change with an edit striking reference to proposed language “occupational therapy practitioners” and replacing it with “occupational therapist and occupational therapy assistant”.
- ❖ Nancy Michel seconded the motion.
- ❖ Motion passed unanimously.

L. Discussion and consideration of future agenda items:

Ms. Martin indicated that the next meeting was scheduled to be held October 26th in Sacramento and that there were several items scheduled to be on the agenda including:

1. Select 2010 meeting dates
2. Regulatory Hearing – Minimum Standards for Infection Control
3. Announcement of Committee member appointments.
4. Discussion regarding proposed amendments to the 2003 Disciplinary Guidelines.
5. Discussion of Strategic Plan and development of Strategic Plan Action Plan and assignments.
6. Discussion of occupational therapy assistants in leadership roles.
7. 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.

Ms. Martin remarked that the meeting after that was scheduled for December 3rd at the Hilton Garden Inn in Emeryville, CA. There were no additional items requested as a future agenda item.

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

There was no public comment regarding items not on the agenda.

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

At 2:00 p.m. the Board convened in closed session to deliberate on a disciplinary decision.

O. Return to Open Session.

At 2:32 the Board returned to open session.

P. Adjournment.

At 2:33 the meeting was adjourned.