



BOARD OF OCCUPATIONAL THERAPY

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

Monday, October 26, 2009

Board Members Present

Mary Evert, President
Patti Horsley
Nancy Michel
Christine Wietlisbach

Board Staff Present

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

Board Member-Excused Absence

Bobbi Jean Tanberg

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

At 9:45 a.m., President Mary Evert called the meeting to order. Executive Officer Heather Martin called the roll. Member Nancy Michel was not present for roll call, but arrived during the President's Remarks, agenda item B.

B. President's remarks; announcement of Committee member appointments.

President Evert reported that Governor Schwarzenegger signed Senate Bills 819 and 821; all legislative amendments will become effective January 1, 2010.

Collectively, the bills amend the education and examination requirements in the Practice Act to take into account era-appropriate, accrediting and certifying entities; streamlines the initial license application process for applicants who completed an occupational therapy degree program prior to 1995; requires practitioners to document client records legibly. More importantly, the legislation changes the status of occupational therapy assistants from being "certified" to being "licensed."

Ms. Evert also expressed pleasure that the Board finally achieved its legislative goal of creating a retired status for licensed occupational therapists.

Ms. Evert referenced documentation provided in the meeting packet regarding an extract from the presentation "Health Care Reform in 2009," provided by the American Occupational Therapy Association (AOTA). Ms. Evert drew attention to AOTA's effort advocating for the profession. Ms. Evert offered to provide copies of the entire presentation to anyone who might be interested in the information.

Ms. Evert announced the names of new practitioners that have been nominated to serve on Board Committees. The individuals and the committee that they are nominated to serve on are as follows:

Practice Committee

Didi Olson
Richard Bookwalter

Enforcement Committee

Claudia Peyton
Margaret Fuller
William Levanduski

Education & Outreach Committee

Diane Mayfield
Danielle Meglio

Disaster Preparedness Committee

Mohammed Khalifa
Glenda Fuge

Ms. Evert asked anyone interested in serving on a Committee to contact the Board as several vacancies remain.

A question regarding the possibility of allowing an Occupational Therapy Association of California (OTAC) committee member to serve concurrently on a Board committee was discussed. It was determined that a conflict of interest would exist. Therefore, individuals currently serving on an OTAC committee would be unable to serve on a Board committee.

C. Board member updates/activities.

Christine Weitlisbach reported she was a co-presenter of a course on licensing and practice issues at OTAC's 33rd Annual Conference in Sacramento, on October 23-25, 2009.

Ms. Weitlisbach briefed those in attendance on the Disciplinary Guideline Workshop Meeting that she, Nancy Michel, and Mohammad Khalife participated on October 22, 2009. The purpose of the workshop was to brainstorm proposed changes to the Board's Disciplinary Guidelines for the Enforcement Committee to consider in the future. Three individuals from the public attended the workshop and provided input on matters that were discussed and posed questions on disciplinary processes in general.

D. Approval of the September 10 2009, Board meeting minutes.

- ❖ Nancy Michel moved to approve the September 10, 2009, Board Meeting Minutes.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

E. Select 2010 meeting dates

The following Board meeting dates and locations were tentatively established:

February 11, 2010
May 13, 2010
August 26, 2010
November 4, 2010

Sacramento
Los Angeles
San Francisco Bay area
San Diego

10:00 a.m. – Regulatory Hearing

At 10:04 a.m. the regulatory hearing commenced regarding amendments to Title 16, Division 39, California Code of Regulations, to add section 4175, establishing Minimum Standards for Infection Control. No individual from the public provided testimony at the hearing. The regulatory hearing adjourned.

F. Consideration and adoption of proposed regulatory language to add section 4175, establishing Minimum Standards for Infection Control.

The Board received one written comment supporting the proposed regulation during the 45-day public comment period. No comments were provided in the public hearing.

- ❖ Christine Wietlibach moved to adopt the proposed regulatory language as presented.
- ❖ Nancy Michel seconded the motion.
- ❖ Motion passed unanimously.

Supplemental motion:

- ❖ Nancy Michel moved to supplement the above motion to authorize the Executive Officer and Legal Counsel to make minor technical changes as might be needed in the final regulatory review and adoption process with the Office of Administrative Law.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

G. Discussion and consideration of regulatory language to amend Title 16, Division 39, California Code of Regulations Sections 4150-Definitions; 4151-Hand Therapy; 4152.1-Use of Topical Medications; 4153-Swallowing Assessment, Evaluation or Intervention; 4154-Post Professional Education and Training; and 4155-Application for Approval in Advanced Practice Areas.

The proposed amendment will: Delete current reference to an education contact hour as being fifty (50) minutes of instruction, amending it to sixty (60) minutes; clarify that educational requirements relating “upper extremity” includes education of the “the hand, wrist, and forearm;” specifies that within the 45 contact hours of education required for hand therapy approval, 30 hours must be specific to the hand, wrist and forearm; delete narrow and constrictive language regarding the administration of topical medications by deleting specific references to iontophoresis and phonophoresis; clarify that an occupational therapist is not authorized to administer medication via injection; require the written agreement for advanced practice training between a therapist and supervisor must be signed prior to accrual of supervised experience; identify and prohibit relationships and situations that could undermine effective supervision relating to the experience requirement; require a therapist to submit an application designed by the Board that is specific to the advanced practice area in which they seek approval; identify and clarify the types of supporting documents that are required in the application for advanced practice approval and deletes the statement of learning requirement.

Shawn Phipps with the Occupational Therapy Association of California suggested that more clarification might be needed regarding the reference to “business” in Section 4154(b)(3) relating to prohibited relationships and situations that undermine effective supervision. Mr. Phipps was encouraged to submit a written comment and/or provide modified language during the 45-day public comment period when the proposed regulations are published by the Office of Administrative Law.

- ❖ Christine Wietlisbach moved to approve the proposed language for noticing and to schedule a hearing if a request is submitted from the public.
- ❖ Patti Horsley seconded the motion.
- ❖ Motion passed unanimously.

H. 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 4180 - Definitions

Ms. Martin referenced the Regulation Update Report contained in the meeting packet and briefed the Board on the status of pending regulations. The Board had no questions.

I. Enforcement data and reports.

Ms. Martin briefed the Board on various Enforcement Reports contained in the meeting packet. The Board had no questions.

J. Discussion of occupational therapy assistants in leadership roles.

Discussion and comment ensued between the Board members regarding an assistant’s role in management and other leadership roles. Particular interest was drawn to an article in “OT Practice” dated August 25, 2008, regarding an occupational therapy assistant in Maryland that owns her own private practice.

Christine Wietlisbach expressed two areas of concern:

- Potential conflicts of interest in the delivery of services
- Assistants assessing the performance of a therapist in a management role

Since Bobbi Jean Tanberg, the Board’s occupational therapy assistant member, was unable to attend, it was decided to schedule this matter for further discussion in the future.

Two occupational therapy educators from the Occupational Therapy Assistant Program at Sacramento City College, Ada Hoerl, Program Director, and Marlene Steele, spoke to the Board to advocate for occupational therapy assistants. Both encouraged the Board to work with and consult professional associations to define roles and develop guidelines regarding assistants in leadership roles including emerging and nontraditional practice areas.

K. Discussion regarding Speech-Language Pathology and Audiology Board Legal Opinion regarding occupational therapists becoming aides before commencing training under supervision of SLP or audiologist

Ms. Martin reported she is concerned that occupational therapists who train under a Speech-Language Pathologist for advanced practice approval in swallowing assessment, evaluation and intervention are not aware of the Speech-Language Pathology and Audiology Board's (SLPAB) statute that requires occupational therapists to register as aides with the SLPAB. Ms. Martin also referenced a Legal Opinion from the SLPAB' Legal Counsel opining the same.

Ms. Martin informed the Board that if the Board's Legal Counsel concurs with the opinion of the SLPAB attorney, then future outreach efforts need to note this requirement.

Ms. Martin indicated Board staff is not aware of any disciplinary action taken against an occupational therapist by the SLPAB regarding this matter.

Ms. Evert questioned the appropriateness of requiring a licensed occupational therapist to register as an aide with the SLPAB.

Mr. Phipps suggested the Board consider making a regulatory change to omit Speech Language Therapists from being authorized to train occupational therapists in the process of qualifying for approval in Swallowing Assessment, Evaluation and Intervention.

No action was directed by the Board regarding this matter. Ms. Martin indicated she will bring this matter back at a later date for more discussion, after Ms. Marks has the opportunity to review the SLPAB statute and the SLPAB Legal Opinion.

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

The Board asked Ms. Martin to propose completion target dates for objectives contained in the plan. The Board's rationale was to defer to Ms. Martin's ability to gauge current and future staff resource capability in consideration of on-going workload and state furloughs.

Ms. Martin will bring proposed priorities to Board for consideration at their meeting on December 3, 2009.

M. Executive Officer's report.

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

Ms. Martin reported that since there were very few, if any, applicants requiring investigation, there was no need for the continued use of the Expert Panel. The Board has already received and voted on the one applicant who required formal disciplinary action. The Board had no questions.

2. Revenue and expenditure information.

Ms. Martin referenced an expenditure report that included first quarter actual expenditures and with expenditure projections through year-end. Ms. Martin pointed out that with the continued expenditure pattern, the Board should revert approximately 13% of its \$1.4m budget. The first quarter revenue report indicates that, using the same numbers, by year-end, the Board should bring in approximately \$1.2m. The Board had no questions.

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

Ms. Martin reported that the last Substance Abuse Coordination Committee had been cancelled, however, the final meeting would be held November 16th. All draft standards would be voted on at that meeting, prior to its submission to State and Consumer Services Agency, the Governor, and the Legislature. Ms. Martin remarked that she would provide more information at the next Board meeting. The Board had no questions.

4. Report on background checks for licensees.

Ms. Martin reported that due to the size of the fingerprint file from the Department of Justice, staff had not completed its analysis to identify how many licensees would need to be fingerprinted. Ms. Martin informed the Board that more information should be available by its December meeting. The Board had no questions.

5. Report on Expert Witness pool.

Ms. Martin reported that staff was working with the Department of Consumer Affairs' (DCA's) Internet Team to post the Expert Witness and Expert Reviewer applications and recruitment information on-line. There would also be a mention of the recruitment information in the Board's next newsletter. The Board had no questions.

6. Report on pending legislation.

Ms. Martin reminded the Board that SB 819 and 821 has been signed by the Governor earlier in the month and that all legislative amendments would become effective January 1, 2010. Ms. Martin also reported that, thus far, DCA had accepted all Board-approved legislative proposals for inclusion in the Department's annual omnibus bill. The Board had no questions.

7. Personnel updates.

Ms. Martin reported that one staff member was still on leave and not return until the beginning of January 2010. She also reported that the recruitment would soon begin for several additional staff members, including two support staff, an Enforcement Analyst, and a Special Investigator. The support staff and analyst are necessary due to the increase in complaints and the investigator would assist with in-house investigations so that fewer cases would need to be referred out for investigation. Ms. Martin also reported that she was hoping to receive approval from DCA to hire a manager to assist with supervising staff and day-to-day operations.

8. Other informational items.

Ms. Martin referred members to meeting materials including a memo dated October 6, 2009, from DCA Director Brian Stiger, urging all health care boards to adopt Complaint Prioritization Guidelines and a flow chart proposing a Complaint Intake, Triage and Case Assignment process. Ms. Martin indicated that these documents were a result of DCA's effort at developing a Model enforcement program that could be utilized by all regulatory boards. Ms. Martin remarked that since the Complaint Prioritization Guidelines were not included on the agenda, the Board could take no action; however, she planned to bring the 'Guidelines' to the Board for consideration at their December meeting. The Board had no questions.

Ms. Martin referred members to a new Customer Satisfaction Survey posted on the Board's website. Ms. Martin explained that a Customer Services Evaluation form has been posted on the Board's website for several years, however, the form was not being utilized. Ms. Martin hoped that having a survey available on-line would encourage use and provide valuable feedback.

N. Discussion and consideration of future agenda items:

Tentative meeting date: December 3, 2009 – Emeryville, CA

1. Discussion regarding proposed amendments to the 2003 Disciplinary Guidelines.
2. 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.

2010 meetings

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.

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

There were no public comments pertaining to items not on the agenda.

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

At approximately 1:00 p.m. the Board convened in closed session to deliberate on two Disciplinary Decisions.

Q. Return to Open Session.

At approximately 1:39 p.m., the Board returned to Open Session.

R. Adjournment.

At approximately 1:40 p.m., the meeting was adjourned.