## APPROVAL OF JUNE 16, 2011, BOARD MEETING MINUTES.

The draft minutes are attached for review.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
**BOARD OF OCCUPATIONAL THERAPY**
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# CALIFORNIA BOARD OF OCCUPATIONAL THERAPY TELECONFERENCE BOARD MEETING MINUTES

## Thursday, June 16, 2011

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Board Members Present
Mary Evert, President
Linda Florey
Luella Grangaard
Kathay Lovell
Nancy Michel
Bobbi Jean Tanberg

Board Staff Present
Heather Martin, Executive Officer
Norine Marks, Legal Counsel
Jeff Hanson, Staff Services Manager
Jody Quesada, Office Technician

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

President Evert called the meeting to order at 12:41 pm. Contact was established at all teleconference sites. Secretary Nancy Michel called the roll. A quorum of the Board was established.

**2. President's remarks.**

President Mary Evert reminded everyone of protocols for teleconferences such as announcing your name before speaking and to let her know if anyone from the public wished to comment.

President Evert reported that she, Luella Grangaard, and Heather Martin will continue to work on the strategic plan for the fall Board Meeting. The draft plan will be provided to everyone for review and discussion at the next meeting.

President Evert also reported the Department of Consumer Affairs (DCA) encourages the Board to take positions on bills and an opportunity will present itself later in the meeting.

**3. Board member updates/activities.**

Kathay Lovell reported she had a conference call with Ms. Martin last month regarding board operations and that Ms. Martin was very helpful.

Linda Florey reported she attended the Practice Committee meeting on April 7, 2011, and next meeting will be held August 25, 2011, via teleconference.

Bobbi Jean Tanberg reported the June Education Meeting was postponed and the next meeting will be held August 31, 2011.

Luella Grangaard remarks that she will be reporting under agenda item #7.

Nancy Michel reported the Enforcement Committee had not met since the last meeting.

**4. Approval of the March 3, 2011, Board Meeting minutes.**

- Nancy Michel moved to approve the March 3, 2011, Board Meeting Minutes as presented.
- Luella Grangaard seconded the motion.

Roll Call Vote

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|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

**5. Director's Report.**

Kim Kirchmeyer, Deputy Director of Board and Bureau Relations, appeared on behalf of the Department of Consumer Affairs (DCA). Ms. Kirchmeyer reported that she would be transitioning to her new position as Chief Deputy Director at the Medical Board of California. Ms. Kirchmeyer thanked the Board Members and Staff for welcoming her during her time as Deputy Director of Board and Bureau Relations.

Ms. Kirchmeyer reported that Governor, Jerry Brown appointed Anna Caballero, Secretary, and Dr. Willie Armstrong, Under Secretary, of the State and Consumer Services Agency (SCSA).

Ms. Kirchmeyer reported she anticipates that there would be minimal impact to the Boards and Bureaus in regard to the Governor's budget.

Ms. Kirchmeyer indicated the hiring freeze is still in place; however, DCA is still accepting exemption requests. Exemptions must first go through the Department, State Consumer Services Agency, Department of Finance and then the Governor's Office. These requests must have critical justification such as: current workload, backlog and pending workload or be tied to the public's health and safety. Ms. Kirchmeyer reported that only a few exemptions have been denied up to this point.

Ms. Kirchmeyer reported that Governor Brown has restricted all travel. The only permitted travel is "mission critical". Enforcement and Board Meeting travel is considered "mission critical".

Ms. Kirchmeyer indicated that the third set of performance measures for Consumer Protection Enforcement Initiative (CPEI) have been posted on the DCA website and encouraged Board Members to review the data and compare its performance with other agencies.

Ms. Kirchmeyer thanked and recognized the Board for being the first to submit proposed regulations to the Office of Administrative Law to implement Senate Bill 4141-Uniform Standards for Substance-Abusing Healing Arts Licensees.

Ms. Kirchmeyer reported that final proposals for the Breeze Information Technology Project were received in March 2011, and costs were higher than anticipated. DCA is revisiting the cost

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issue and a final contract approval will be secured through the Department of General Services and the legislature between June and August. The contractor is anticipated to start at the end of August or early September. DCA anticipates project completion will be in early 2013.

Ms. Kirchmeyer reported Executive Officer salaries are being reviewed. The last review was conducted 10 years ago. The study likely would be completed in August 2011. In addition, the Executive Officer Evaluation Report is being updated and a skill set form will be added. The revised form should be complete by June 2011.

**6. Executive Officer's report.**

**A. Revenue and expenditure information**

Ms. Martin reported that projected revenue for FY 2010/2011 was $881,000 but $912,955 has been received year to date. Final year-end revenue estimated at nearly $1,000,000.

Ms. Martin indicated the CBOT's total budget for the year is $1,420,500 and $923,646 of it has been spent. Ms. Martin projected that approximately $1,100,000 would be spent by the end of the year. The remainder is considered a reversion and will positively affect our fund condition.

Ms. Martin reported the fund condition (FC) shows that the CBOT should end the year with approximately 7.3 months of operating expenses in reserve. By under-spending the $1.42m budget, the number of months in reserve will increase.

Ms. Martin indicated the Governor's Budget for Fiscal Year 2011/12 includes the General Fund (GF) loan repayment of $640k (monies loaned in FY 2003/04). Depending on the CBOT's 2011-12 revenue and expenditures, additional monies from the 2009/10 GF loan may need to be repaid in 2013/14.

**B. Personnel updates**

Ms. Martin reported the Board currently has 10 staff. Vacancies include 1.5 permanent positions, 1.0 limited term positions, and 3.0 vacant two-year limited positions (CPEI) that cannot be filled due to the hiring freeze. Freeze exemptions will be submitted for the permanent Staff Services Manager, part-time clerical positions, and 1.0 of the 2-year limited term positions to assist with Enforcement.

**C. Other Informational items**

Disaster Preparedness – The first meeting will be Summer/early Fall.
Education/Outreach Committee – August 31, 2011, and November 10, 2011(both teleconference).
Enforcement Committee – August 3, 2011(teleconference). Fall date TBD.
Legislative/Regulatory Affairs Committee – The first meeting will be late Summer/early Fall.
Practice Committee – August 25, 2011, (teleconference).

New Board Member

Ms. Martin reported that a new Board Member was appointed effective June 13, 2011. The Board Member's name is Eric Alegria and he is a public member appointed by the Speaker of the Assembly. President Evert requested that Ms. Martin schedule a conference call to welcome and touch bases with Mr. Alegria.

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Travel Approval

Ms. Martin reported that travel for the next Board Meeting in September has been approved by DCA for two days. The meeting will be held at Stanbridge College in Irvine. The first day will be Regulatory Hearings in the morning with Board business in the afternoon and the second day will be the Administrative Hearings in the morning with Board business in the afternoon. The December Board Meeting is currently scheduled at St. Augustine University in San Marcos but may change to the Bay area.

BreEZe-DCA Information Technology Project

Ms. Martin reported that the BrEZe implementation will roll out the Healing Arts boards before the non-healing arts boards. The last roll out for healing arts boards is tentatively scheduled for February 2013, and the Board should be in this phase. All other boards under DCA will be on the new system by September 2013. Despite the delay in securing a qualified vendor, OIS has worked very hard to keep this project on track. Most importantly, BreEZe will allow licensees to renew online with a debit or credit card.

Recent Graduates of Dominguez Hills

Ms. Martin advised Board Members that new graduates from California State University Dominguez Hills have been experiencing lengthy delays in getting their transcripts issued due to budget cuts at the institution. The delay is causing a barrier to practice for those who immediately apply, take, and pass the national OTR examination. In order to assist these individuals Ms. Martin is allowing graduates who passed the NBCOT exam to receive a limited permit that is valid for 3 months from date of issue to mitigate the issue. Ms. Martin stated this is a fair and equitable given the circumstances. Ms. Martin indicated she would introduce proposed language for the Board Members to consider at the September meeting that will correct the matter. Ms. Martin asked Board Members if they had any concerns or questions with the way she is handling the issue. The Board Members had no questions.

OTAC Conference

Ms. Martin was asked if the CBOT will have a booth at the OTAC conference. Ms. Martin indicated that travel is still restricted and she is unsure if Board Members would be reimbursed for costs incurred.

Regulations

Ms. Martin reported the Board's Disciplinary Guidelines incorporating the uniform standards will be going into effect July 6th. Ms. Martin is hopeful that they will be posted on the CBOT website by mid July. Ms. Martin informed the Board that the updated Disciplinary Guidelines will be included in the new Board Member Disciplinary manual, which will be presented at the September meeting.

Strategic Plan

Strategic Planning sessions were facilitated by DCA staff and a draft of the Strategic Plan will be presented to the full Board for review at the September meeting but will be sent out ahead of the meeting for review.

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Information Technology Purchase/Webcasting

Ms. Martin reported that DCA/OIS confirm that the new Agency Secretary has committed to approving the use of slates (iPads or equivalents) in the future. Board staff will resubmit a purchase request in September or October. Ms. Martin cited numerous benefits in purchasing this equipment for Board Meetings. Ms. Martin also reported that she recently has become part of DCA's Technology Innovation Committee.

Ms. Martin indicated that future Board Meetings may be held in locations with a computer where people can log on, see meeting materials, and edits could be made live. This program will also include a question and answer tool. This type of meeting will be more effective in terms of productivity without compromising the quality.

President Evert asks if there are any public comments or questions for Ms. Martin. No public comment was made.

**7. Consideration of legislation and consideration:**

**A. AB 374 (Hayashi) – Provides for licensure of athletic trainers.**

Ms. Grangaard recommended that the Board take a neutral position. Scope is very broad and it has evolved into a "Title" act rather than a "Practice" act.

**B. AB 415 (Logue) – Telemedicine**

Replaces "telemedicine" with "telehealth", allows a health care provider to provide healthcare by telecommunication. The legislation would allow payment of telehealth by health care service plans and health insurers.

- Luella Grangaard moved for the Board to support for the bill.
- Bobbi Jean Tanberg seconded the motion.

Roll Call Vote

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|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted

**C. AB 783 (Hayashi) – Professional corporations.**

Amends the corporation code and adds OTs to the list of healing arts licensees that wish to be employed by various professional corporations.

Ms. Grangaard recommended that the Board take a neutral position and do nothing until the bill is amended or new information is received from DCA. Jennifer Snyder from AOTA confirmed that AOTA was in support of the legislation.

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Ms. Grangaard asked Ms. Snyder if the Physical Therapy Board is in support of this bill. Ms. Snyder indicated they are in opposition because they argue that in adding PT's it moves away from physical therapists in private practice and it adds to self referral issues.

**D. AB 958 (Berryhill) – Statute of limitations for disciplinary actions.**

Amends the B&P codes to impose specific limitation periods in which the Board may file disciplinary actions against the licensee

Ms. Grangaard recommended the Board oppose the bill unless it is amended. President Evert asked why Ms. Grangaard would oppose it. Ms. Grangaard indicated the legislation does not allot enough time to complete an investigation. Ms. Martin confirmed that it would not be enough time to complete a case due to all other investigatory agencies involved such as DOI, OAH and the Department of Attorney General.

President Evert asked if there is a motion to oppose the bill. Ms. Martin reported it is a 2 year bill and she would recommend that the Board oppose the bill unless it is amended.

- Luella Grangaard moved that the Board oppose the bill unless amended.
- Nancy Michel seconded the motion.
- Luella Grangaard withdrew the motion
- Nancy Michel agrees to withdraw.

The motion was taken off the table. Norine Marks, Senior Legal Counsel, informed Ms. Grangaard that she may simply oppose the bill because it didn't seem that there would be an amendment that would make the legislation more palatable for the Board.

- Luella Grangaard moved for the Board to oppose the bill.
- Nancy Michel seconded the motion

<u>Roll Call Vote</u>

| | |
|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

**E. SB 541 (Price) – Exemptions for boards from the Public Contract Code requirements.**

Luella Grangaard recommended that the Board submit a letter in support of the bill.

Heather Martin informed the Board Members that DCA provided contract training and Jeff Hanson attended which could enable us to do in-house contracts thus speeding up the contract process.

- Luella Grangaard moved to support the bill.
- Bobbi Jean Tanberg seconded the motion.

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Roll Call Vote

| | |
|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

**F. SB 544 (Price) – Amendments to the Business and Professions Code: the general provisions and the Occupational Therapy Practice Act.**

Luella Grangaard reported that this bill will be reintroduced next year.

**G. SB 924 (Walters) – Direct patient access to physical therapy.**

Luella Grangaard recommended a neutral position on the bill.

Public member Christine Wietlisbach asked Jennifer Snyder what position OTAC was taking on this bill. Ms. Snyder reported OTAC did not have a position either way.

**H. SB 946 (Committee on Health) – Telemedicine.**

Luella Grangaard recommended that the bill be monitored for future amendment.

- Luella Grangaard moved that the Executive Officer write letters of support or opposition pursuant to the decisions rendered by Board Members on these matters.
- Kathay Lovell seconded the motion.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

**8. Discussion regarding application of California Code of Regulations sections 4125 – Representation. (H. Martin)**

Ms. Martin referenced the AOTA's letter dated May 31, 2011, that provided suggestions for FAQs regarding implementation of section 4125. Ms. Martin recommended minor edits that were more aligned with terminology that is contained in the OTPA and provided more clarity.

- Nancy Michel motions to accept work done on FAQ 1, 2 and 3 and not to consider FAQ 4 at this time.
- Linda Florey seconds the motion.

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Roll Call Vote

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|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

Jennifer Snyder conveyed her appreciation of the Boards' willingness to post this information on the website and asked how soon the information would be posted. Ms. Martin anticipated the information could be posted within 10-15 business days, depending on work load of the unit that maintains the Board's web site.

Ms. Martin discussed the Arent Fox letter regarding NBCOT's Certification Marks. President Evert suggested that Ms. Martin hold firm on the Board's response consistent with the conversation she and Ms. Marks had a couple months ago.

Norine Marks did not find it necessary that a formal motion be presented in order for Ms. Martin to compose a response to the letter. Ms. Martin informed the Board Members that she would respond in a manner that was consistent with today's conversation as well as Business and Professions Codes Sections 2570.3 and 2570.18.

**2:40 BREAK**

**9. Discussion and consideration of the mail-ballot policy to discuss decision in closed session.**

Ms. Martin explained that currently, when considering a case is being considered via mail ballot, if a Board Member wants to discuss it during closed session at the next meeting, it would take only one voting member to request it.

Ms. Martin proposed that it makes more sense that a majority rule apply to mail voting in this matter, rather than only one person. President Evert agreed.

- Bobbi Jean Tanberg moved that the policy be changed as suggested.
- Kathay Lovell seconded the motion.

Roll Call Vote

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|---|---|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- The motion was adopted.

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**10. Disciplinary process overview and review of proposed Board Member Disciplinary Reference Manual.**

Heather Martin indicated Board staff would be composing a manual that will be designed to assist the Board members with the various disciplinary decisions, mail voting, and describe the overall process. A draft Table of Contents and a couple of examples were provided. Board members express their interest and support of this manual. Ms. Martin asked the Board members to send any suggestions or requests before mid-August. Ms. Martin indicates she will bring a more complete draft to the September Board Meeting for review.

**11. Public comment session for items not on the agenda.**

There was no public comment regarding this item.

**12. Agenda Items for Next Meeting – Thursday, June 16, 2011**

Heather Martin reports there are too many agenda items to discuss due to the time constraints of this meeting.

**The Board will convene in CLOSED SESSION pursuant to Government Code Section 1126(c)(3) to deliberate on Disciplinary Decisions.**

At approximately 3:00 p.m. the Board entered into Closed Session to deliberate on four (4) disciplinary matters.

**13. Adjournment.**

At 3:44 the Board returned to Open Session and immediately adjourned.

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