



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

**Monday, September 16, 2013**

### Board Member(s) Present

Linda Florey  
Kathay Lovell  
Nancy Michel  
Denise Miller

### Board Staff Present

Heather Martin, Executive Officer  
Norine Marks, Legal Counsel  
Kyle Muteff, Legal Counsel  
Jeff Hanson, Office Manager  
Jody Quesada, Office Technician

### Board Member(s) Absent

Sharon Pavlovich

### **9:00 a.m. – Board Meeting**

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

President Nancy Michel called the meeting to order at 9:15 am. Secretary Linda Florey called roll; a quorum was not established.

#### **2. President's remarks (N. Michel)**

President Michel reported that due to some reassignments in the Department of Consumer Affairs' (DCA) Legal Office, Legal Counsel Kyle Muteff, would be attending the Board's meeting and eventually be transitioning into the role of the Board's legal counsel, replacing Norine Marks.

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

Vice President Kathay Lovell reported that she met with Linda Florey and Heather Martin several times to review the Board's Administrative Manual, discuss formatting, clean-up and consideration of additions and changes.

Secretary, Linda Florey stated that she was looking forward Occupational Therapy Association of California (OTAC) conference that will be held at the end of October in Sacramento. Ms. Florey indicated that Board Executive Officer, Heather Martin will be speaking at the conference and that she was also looking forward to her presentation.

Kathay Lovell inquired about new Board members. Heather Martin responded that Sharon Pavlovich, Loma Linda University faculty member and Occupational Therapy Assistant (OTA), was recently appointed by the Governor's office. This recent appointment leaves one assembly public member vacancy and one occupational therapist (OT) vacancy.

9:24 a.m. - Denise Miller arrived, a quorum was established.

**4. Approval of the April 25, 2013, Board meeting minutes.**

Linda Florey pointed out a date error on page two, paragraph two, second sentence.

Heather Martin stated that it would be best for Board staff to review the tape recordings in order to correct this error and that she would bring back a corrected version to the November meeting for consideration.

**5. Approval of the May 8-9, 2013, Board meeting minutes.**

- ❖ Kathay Lovell moved to approve the May 8-9, 2013, Board meeting minutes.
- ❖ Linda Florey seconded the motion.

No Public Comment

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted.**

**6. Approval of the June 21, 2013, Board meeting minutes.**

- ❖ Linda Florey moved to approve the May 8-9, 2013, Board meeting minutes.
- ❖ Nancy Michel seconded the motion.

No Public Comment

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted.**

**7. Discussion and consideration of amending Title 16, CCR Section 4151, Hand Therapy, and Section 4152, Physical Agent Modalities, to allow occupational therapists to meet the requirements for approval in hand therapy and the use of physical agent modalities upon with certification by the Hand Therapy Certification Commission.**

Heather Martin informed the Board that she collaborated with Martin Walsh, Executive Director at the Hand Therapy Certification Commission (HTCC), on the proposed regulatory language that is being presented. Ms. Martin reported the language would allow occupational therapists (OT) that are certified by the Hand Therapy Certification Commission as certified hand therapists (CHT) to be granted Board approval to provide

advanced practice services in the areas of hand therapy and physical agent modalities. In order to receive Board approval, the OT would need to submit an advanced practice application and provide documentation verifying their CHT credential. The rationale behind this proposal is that CHTs are practitioners who have thousands of hours of training and have passed a competency-based examination establishing knowledge in the advanced practice areas. Acceptance of the CHT credential would streamline the advanced practice application approval process for those OTs who have already met the higher standards required of CHTs. Ms. Martin stated that the language was reviewed by staff counsel.

- ❖ Linda Florey moved to approve the language for noticing.
- ❖ Denise Miller seconded the motion.

No Public Comment

Legal Counsel, Norine Marks stated that there were a few extra words at the end of section (b) of the proposed language in Section 4152.

- ❖ Kathay Lovell moved to amend Linda Florey's previous motion to approve the language for noticing by adding Executive Officer, Heather Martin, is authorized to make grammatical edits that were identified by Ms. Marks.
- ❖ Denise Miller seconded the motion.

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted**

- ❖ Linda Florey moved to delegate authority to Executive Officer, Heather Martin to make technical, non substantive changes.
- ❖ Denise Miller seconded the motion.

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted**

**ITEM 8 WAS TAKEN OUT OF ORDER AND FOLLOWS ITEM 17.**

- 9. Report on Pending Regulations: Title 16, Division 39, CCR Sections 4128, Retired Status and Section 4130, Fees; Section 4170, Ethical Standards of Practice; Section 4172, Standards of Practice for Telehealth; and Section 4101, Delegation of Certain Functions, Section 4146.5, Effective Dates of Decisions, Section 4147,**

## **Disciplinary Guidelines, and Section 4147.5. Uniform Standards Related to Substance Abuse.**

Heather Martin reviewed the Regulation Update Report, specifically addressing the Retired Status and Fees package. Ms. Martin reported the final rulemaking file was submitted in June and was currently being reviewed by the Business, Consumer Services, and Housing Agency (Agency) for approval. This rulemaking file was initially submitted for approval in December 2012 and was disapproved by Agency because it proposed modest increases to renewal and licensing fees when there was a current loan to the General Fund still outstanding.

Ms. Martin reported the regulatory packages for Retires Status & Fees, Ethical Standards of Practice, and Standards of Practice for Telehealth all needed a ninety-day extension from the Director. Ms. Martin stated there should be more information about these packages in November.

### **10. Discussion and consideration of Business and Professions Code Section 2570.185, requiring retention of records for a specified period, and how to implement the requirement if the business is closed or sold or if the practitioner is no longer in private practice. (H. Martin)**

Heather Martin reviewed the Business and Professions Code (BPC) on documentation and record retention and how the medical records must be retained for seven years or until a patient is eighteen years of age.

The Board received an email questioning how a practitioner should handle the patient/client records in the event they sell their business. Ms. Martin provided the Board members with materials from varying sources that outlined retention schedules for medical records. Ms. Martin stated there was not a current regulation in place and asked the Board if they wanted to delegate an ad hoc committee to develop a plan that will pertain to occupational therapy.

Denise Miller and Linda Florey volunteered to head up the Ad hoc committee to research the issue further. Ms. Martin suggested that the ad hoc committee meet and develop proposed regulatory language that they will in turn bring to the Board for discussion.

### **11. Discussion and consideration of establishing policy regarding disclosure of administrative citations. (H. Martin)**

Heather Martin explained that the Board currently does not post administrative citations on the Board's website nor is the information available on the individual's licensing record. Ms. Martin provided a list outlining the methods by which other Boards and Bureaus post administrative citations or share the information (website, newsletter, etc.).

Discussion ensued amongst the Board members. Ms. Martin stated that even though citations are considered a public document, the only method by which Board staff currently discloses administrative citations and fines, is in the event someone contacts Board staff and directly asks whether or not a specific licensee has been issued a citation.

Ms. Martin explained that the Speech-Language Pathology & Audiology Board currently has their web page set up to display a listing for disciplinary action and public records as a secondary option.

Ms. Martin stated that she would bring a mock-up or examples of what posting administrative citations might look like on the web license look-up and the disciplinary action web page with the Board's citation record retention language to the next meeting for further discussion and provide additional examples of what other Board's do with the citations.

**12. Discussion and consideration of restructuring the Board's standing Committees, including Disaster Preparedness/Disaster Response Committee, Education and Outreach Committee, Enforcement Committee, Legislative and Regulatory Affairs**

Heather Martin asked the Board members to review the Board's current committees and decide what type of committee support is necessary to support the Board, vet issues, and provide recommendations to the Board.

Kathay Lovell stated she and Mary Evert went as far as they could go with the Disaster Committee. Ms. Lovell felt that any issues that need to be addressed can be done so by an ad hoc committee.

Linda Florey indicated that the Education and Outreach Committee could function as an ad hoc committee.

Denise Miller said she felt the Education and Outreach Committee was important and volunteered to bring back a new outreach plan to the next meeting for the Board to review.

Legal Counsel, Norine Marks suggested that the Board members consider changing the structure of the committees as they are described in the Board's Administrative Manual to alleviate the challenge that arises when there is a lack of attendance at the committee meetings.

- ❖ Kathay Lovell moved to keep the Administrative, Education and Outreach, Legislation and Regulatory Affairs and the Practice committees as standing committees, to remove the Disaster Preparedness Response committee, to make the Enforcement committee an ad hoc committee and to change the requirement of five (5) committee members to four (4).
- ❖ Linda Florey seconded the motion.

No Public Comment

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted**

**13. Discussion and consideration of revising the Board's Administrative Manual. (H. Martin)**

Heather Martin stated that the example provided was a product of a review by the ad hoc committee made up of Linda Florey and Kathay Lovell. Ms. Martin said that there were suggestions from Legal Counsel, Norine Marks that had not yet been reflected. Ms. Martin proposed that the Board members review the manual provided and note any amendments and forward them to her. Subsequently, an additional ad hoc meeting will be scheduled with Ms. Marks in attendance to provide rationale for her suggestions.

Linda Florey stated that Chapter 2 (page 3) needed a title. Kathay Lovell suggested that the title should be Board Responsibilities.

Legal Counsel, Norine Marks suggested that the section titled "Officers" (page 3) should be revised to read that new officers assume their position on January 1<sup>st</sup> of the next calendar year. Ms. Marks expressed concern with the inclusion of the section "Communication with Interested Parties" (Page 5). Ms. Martin asked Ms. Marks to consult with Legal Counsel, Kurt Heppler to clarify whether the Medical Board included this section in the final draft of their Administrative Manual.

Ms. Marks stated that the Department of Consumer Affairs (DCA), Office of Human Resources sent a memo in February that would have to be incorporated in the section titled "Executive Officer Evaluation" (page 6).

Committee changes discussed in Agenda item twelve (12) should be reflected on pages fourteen through sixteen (14-16).

Linda Florey suggested that the section title "NBCOT" (page 23) be revised by removing the word "membership" and replacing it with "a working relationship".

President Michel reported that she authorized Board staff to submit the necessary documentation to facilitate Board members receiving their per diem pay, retroactive to 2011. At the time, Board members decided not to accept per diem pay in the midst of the State's budget crisis.

Public Comment

It was brought to the attention of the Board by a member of public audience that page eleven (11) of the manual should be titled Chapter 4 instead of Section 4.

**14. Enforcement data and reports for the period April 1 – June 30, 2013. (J. Hanson)**

Jeff Hanson reviewed the standard enforcement reports and expressed his hope that the Board's oldest complaint would be resolved by the next meeting.

**15. Executive Officer's Report and Possible Board Action. (H. Martin)**

a) Board Operations

Heather Martin reported that the Board is in a holding pattern as far as staffing, and BreEZe continues to experience delays.

## **b) Budget Update**

Heather Martin reviewed her included budget reports and stated that the Board reverted \$105,000 of the budget. Ms. Martin reported that even though the authorized budget was underspent, the revenue collected was still less than that. Ms. Martin reviewed two fund condition reports that project the Board's financial condition through 2017. One report assumed the Board would be repaid \$1m for a General Fund loan and the other report did not account for the loan repayment. Ms. Martin reiterated that until the General Fund loan is repaid in its entirety to the board, any increases to licensing or renewal fees will not be allowed.

## **c) Other Informational Items**

Heather Martin reviewed the Performance Measures report and noted that the Board is significantly beating targeted processing times for "Intake and Investigation" as well as "Formal Discipline".

Ms. Martin stated that when the Board delegated authority to the Executive Officer to adopt stipulated surrenders she has not taken this authority lightly. Ms. Martin provided a recent stipulated surrender that had taken effect, so the Board members would have an idea of what type of action could result in a stipulated surrender. Ms. Martin asked for Board member feedback on whether they were comfortable with her continuing to exercise her delegated authority to adopt stipulated surrenders or whether they would like these cases brought before the Board. The Board members expressed that they were comfortable with Ms. Martin adopting stipulated surrenders.

Ms. Martin asked for feedback from the Board members regarding when to hold the Strategic Plan meeting. It was decided that Strategic Plan meetings should not be incorporated with regular Board business unless a one (1) day meeting with a short agenda would allow sufficient time for both.

## **16. Public comment session for items not on the agenda.**

President Michel asked if there was any public comment. There weren't any comments offered from the public.

## **17. Proposed Agenda Items for November Meeting.**

- Petition for Reinstatement
- Regulatory amendments
- Executive Officer evaluation

The following items were added during the meeting:

- Administrative Manual
- April 25, 2013 minutes
- Ad hoc committee, Linda Florey & Denise Miller to bring back proposed regulatory language regarding record retention.
- New Education and Outreach Committee plan presented by Denise Miller for Board approval.
- Mock-ups of web site postings regarding administrative citations.

**8. Discussion and consideration of adopting amendments to Title 16, CCR Section 4110, Application, Section 4112, Review of Application, Section 4120, Renewal of License or Certificate – Forms, Section 4121, Renewal of Expired License or Certificate, Application, Fees; Effective Date of Renewal, Section 4123, Limited Permit, and Section 4127, Inactive License.**

Heather Martin reviewed the August 29, 2013, memorandum provided by DCA. Ms. Martin stated that one of the policy issues that may need to be considered and reflected in the language has to do with prorating continuing education for active duty service members. Ms. Martin stated the Board's current language reflects that the Board would waive the renewal fee of an active duty service member but still require completion of twenty-four (24) continuing competency hours. Ms. Martin asked the Board to provide direction regarding the nature and extent continuing education requirements might be modified for active duty service members.

Kathay Lovell stated that she felt the Board should extend any extra help and be as flexible as possible in accommodating active duty service members.

Kathay Lovell volunteered to work with Board staff to propose language that can be considered by the Board.

*Public Comment*

A member of the public audience commented that a licensee that has been inactive for a lengthy period of time is required to complete twenty-four (24) professional development units when they decide to actively practice. In the interest of protecting the public, it would be appropriate to require military personnel that have been out of the profession for extended periods to also complete professional development activities as well.

Legal Counsel, Norine Marks answered that the Board has to be consistent with Business and Professions Code Section 114.3 that was enacted for these purposes. The memo from DCA indicates that the waivers are permanent for that period of time.

A second member of the public commented that there are so many federal regulatory changes and if a licensee is absent from the profession for an extended amount of time, their knowledge of current practice and treatment is going to be severely compromised and the practitioner will need to complete some type of continuing education to be brought up to speed. In closing, the member of the public stated that there has to be something in place to prove the licensee's competency and protect the public.

Heather Martin clarified the Board was trying to develop language that would be consistent with the new laws and incorporate suggestions from the memo from the DCA Legal Office, while ensuring consumer protection. Ms. Martin provided an example of an active duty service member who is out of the profession for a short amount of time being required to complete less continuing competency as opposed to a service member who did not practice for an extended period of time, thus more continuing competency may be needed to bring them up to speed with the profession.

The members of the public audience agreed.



- ❖ Linda Florey moved that Heather Martin work with Kathay Lovell to bring back suggestions to the Board.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Kathay Lovell	Aye
Nancy Michel	Aye
Denise Miller	Aye
Linda Florey	Aye

**The motion was adopted.**

President Michel asked if the public had any further comments or questions. There were no comments or questions presented.

President Michel asked if the Board members have any further questions or comments.

Kathay Lovell asked for Heather Martin to provide a copy of her most recent Executive Officer evaluation as well as to have Board staff check the status of required Board member training and expiration dates.

**18. Meeting Adjournment**

Meeting adjourned at 11:59 a.m.