REVIEW AND APPROVAL OF THE NOVEMBER 19-20, 2015, BOARD MEETING MINUTES.

The meeting minutes are attached for review.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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BOARD MEETING MINUTES

Thursday, November 19, 2015 and Friday, November 20, 2015

Board Member(s) Present
Denise Miller – President
Richard Bookwalter – Vice President
Sharon Pavlovich - Secretary
Laura Hayth
Beata Morcos
Jeff Ferro (November 20, 2015 only)

Board Staff Present
Heather Martin, Executive Officer
Jody Quesada, Staff Services Analyst
Ileana Butu, Legal Counsel

Thursday, November 19, 2015
9:30 am - Board Meeting

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

   The meeting was called to order at 9:47 a.m., roll was called, and Jeff Ferro and Nancy Michel were absent. A quorum was established.

2. President's remarks.

   Board President Denise Miller thanked West Coast University (WCU) for hosting the Board meeting.

   Founding Dean and Occupational Therapy Program Director of WCU, Dr. Nicolaas van den Heever, OTR/L, welcomed the Board and expressed his pleasure at hosting the meeting.

   President Miller reported that she presented two sessions at the Occupational Therapy Association of California (OTAC) conference in Sacramento, including 'Wellness and Aging' and the Board's perspective in 'What You Need to Know about OT Regulations in California.' President Miller stated that she participated in Senator Carol Liu's round table discussions meant to identify the best long term care options for seniors. Ms. Miller reported on Glendale Adventist Medical Center's participation in the City of Glendale's community initiative on population health which is a cooperative effort to move toward improving the health of Glendale's population by 1%.

3. Board member updates/activities.

   Board Member Beata Morcos had no update.

Board Secretary Sharon Pavlovich introduced herself to the audience as a teacher at Loma Linda University. Ms. Pavlovich reported that her student research group will be presenting the first ever holistic sexuality questionnaire at the colloquium and she is hoping to get the questionnaire published after four years of hard work and effort by her students.

Vice President Richard Bookwalter stated that he attended the OTAC conference and attended continuing education training on myoelectric prosthesis. Mr. Bookwalter encouraged the student audience to attend these exciting training opportunities.

Board Member Laura Hayth stated that her passions are spirituality and occupational therapy (OT) which led her to author a book on integrating OT and spirituality.

4. Public Comment session for items not on the agenda.

There were no public comments from the audience in attendance. President Miller directed the Board members and the public to review the written public comments received by the Board and asked whether anyone would like to place either of these on the agenda of a future meeting. The Board tabled this item until later in the day.

5. Review and vote on approval of the September 17-18, 2015, Board meeting minutes.

- Richard Bookwalter moved to approve the minutes as presented.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Abstain
Laura Hayth	Aye
Beata Morcos	Aye

6. Review and vote on approval of the October 24, 2015, Board meeting minutes.

- Richard Bookwalter moved to approve the minutes as presented.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Abstain
Laura Hayth	Aye
Beata Morcos	Aye

7. Review and vote on acceptance of the March 3, 2015, Ad Hoc Committee meeting minutes discussing an increase in PDUs earned when supervising students.

Vice President, Richard Bookwalter, gave an overview of the purpose of the Ad Hoc committee and its discussions regarding whether to increase professional development units (PDUs) earned for supervising OT and OTA students during their fieldwork.

Public Comment
A member of the public asked if the new proposal meant that 12 weeks of student supervision would equal 12 PDUs.

Mr. Bookwalter replied, "Yes" in response to the question.

- Sharon Pavlovich moved to approve the committee minutes as presented.
- Laura Hayth seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

8. Review and vote on acceptance of the April 22, 2015, Ad Hoc Committee meeting minutes discussing an increase in PDUs earned when supervising students.

- Sharon Pavlovich moved to approve the committee minutes as presented.
- Beata Morcos seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

9. Announcement of appointments to the Board's Practice Committee.

President Miller said that she will announce appointment to the Practice Committee at the Spring Board meeting.

10. Consideration and possible action on updating policy for handling Orders resulting from hearings on Petitions for Reinstatement, Petitions for Early Termination of Probation, and Petitions for Modification of Probationary Terms, written by an Administrative Law Judge (ALJ) that are not consistent with the Board's Decision.

Executive Officer Heather Martin presented the changes to the policy discussed by the Board during the September 17-18, 2015, Board meeting. Vice President Bookwalter indicated he supports the changes in policy. President Miller stated that changes made were in line with the policy adopted by the Board at the previous meeting.

Public Comment
There was no public comment.

11. Review and possible action on Board policy to hear cases involving unlicensed practice for a period of more than one year.

Executive Officer, Heather Martin, gave background to the students in the audience regarding the ramifications of unlicensed practice.

Public Comment
A member of the public asked how this policy affects employers.

Laura Hayth indicated that employers are responsible to make sure that the practitioners under their employ have a valid license, and in the event that a practitioner practices without a license, the employer would be subject to certain penalties.

A member of the public asked for Ms. Martin to review the Board's limited permit process.

Ms. Martin went over the limited permit process as well as the process for a practitioner that holds a valid license in good standing from another state and their being able to work for 60 days from the date the Board receives their application.

Ms. Martin also stated that any supervising OT can be held accountable for allowing an occupational therapist (OT) or occupational therapy assistant (OTA) to work under their supervision without a current and valid license.

Public Comment
There was no further public comment.

- Richard Bookwalter moved to retain the policy that the Board may hear cases involving unlicensed practice for a period of more than one year.
- Laura Hayth seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

- Richard Bookwalter rescinded his motion to retain the policy.
- Laura Hayth seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

- Laura Hayth moved to retain ENF - 2011-01, the policy allowing the Board to hear cases involving unlicensed practice for a period of more than one year.
- Sharon Pavlovich seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

12. Consideration and possible action on developing procedure for handling Orders resulting from a Statement of Issues hearing written by an ALJ that isn't consistent with the Board's Decision.

Ms. Martin summarized the last two paragraphs of the proposed policy.

- Richard Bookwalter moved to adopt ENF– 2015-02 as presented.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

13. Discussion and possible action of amending Title 16, CCR Section 4151, Hand Therapy, and Section 4152, Physical Agent Modalities, to allow occupational therapists to meet the requirements for advanced practice approval in hand therapy and the use of physical agent modalities upon providing proof of current licensure as a physical therapist.

Ms. Martin stated that this item is a staff recommendation and elaborated on the background of the proposed text. She explained the proposal deals with a dually licensed OT/PT (physical therapist) whom by virtue of their PT license would meet statutory provisions allowing them to supervise an OT for advanced practice approval in hand therapy and the use of physical agent modalities, but under their OT license still needs supervision.

Ms. Martin further explained that this language was modeled after the language that accepts current certification with the Hand Therapy Certification Commission as a CHT to meet the education and training requirements for approval in hand therapy and the use of physical agent modalities.

Public Comment
There was no public comment.

- Sharon Pavlovich moved to approve the proposed text.
- Beata Morcos seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

14. Discussion and possible action on occupational therapists performing fiber optic endoscopy evaluation of swallowing (aka FEES).

President Miller moved agenda item 14 to the agenda for Friday, November 20, 2015.

President Miller did offer up the floor to any member of the public that wished to speak on this topic that would not be in attendance on Friday.

Public Comment
There was no public comment.

15. Update and take action, if necessary, on pending Rulemaking files, California Code of Regulations, Title 16, Division 39:
    - Section 4110, Application;
    - Section 4151, Hand Therapy, and Section 4152, Physical Agent Modalities;
    - Section 4170, Ethical Standards of Practice.

Executive Officer Heather Martin reviewed the meeting materials on pending rulemaking files. Ms. Martin reviewed the proposed modified text for amendments to Title 16 of the California Code of Regulations (CCR) Section 4170, Ethical Standards of Practice. She explained that the revisions were necessary to have the regulatory language be consistent with recent amendments to Business and Professions Code section 726. The revisions need to be posted for a 15-day comment period to comply with rulemaking requirements.

- Richard Bookwalter moved to approve the language of CCR Section 4170 as presented for noticing.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

President Miller asked the audience if there were any public comments on CCR Sections 4110 and Section 4151.

Public Comment
There was no public comment

16. Consideration and possible action of adopting proposed regulatory language to amend Title 16, CCR Section 4172, Standards of Practice for Telehealth.

President Miller stated that she had received feedback from the public that California's telehealth language was considered by many as not model language to follow. After further discussion the Board agreed that the item should be held over until the next day to allow the public to have another opportunity to provide feedback to the Board.

Public Comment
There was no public comment.

President Miller moved agenda item 16 to the agenda for Friday, November 20, 2015.

President Miller moved agenda items 21 and 22 from Friday's agenda to the Thursday, November 19, 2015, agenda.

21. Enforcement performance measures reported to DCA for the quarters ending March 31, 2015, June 30, 2015, and the 2014-15 annual performance measures.

Executive Officer, Heather Martin, reviewed the handouts provided. Ms. Martin stated that Board staff's performance being below target is a direct result of resource issues.

Ms. Martin stated that these numbers will require explanations in the upcoming Sunset Review.

22. Enforcement data and reports for the quarter ending September 30, 2015.

Executive Officer Heather Martin reviewed the handouts provided regarding the enforcement data and reports.

17. Meeting adjournment for the day.

President Miller reminded all in attendance that agenda items 14 and 16 will be moved to Friday's agenda and she asked the Board members to review the public comments provided.

Legal Counsel Ileana Butu asked that agenda item 4 be revisited before adjournment of this meeting. Ms. Butu indicated that the Board may want to decide whether to place the public comments received by the Board on a future agenda.

The Board members reviewed the first written comment and decided to not add the public comment to a future agenda.

The Board members reviewed the second written comment and agreed to add the public comment to a future agenda.

The meeting adjourned at 12:39 p.m.

Friday, November 20, 2015
9:00 am - Board Meeting

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

    The meeting was called to order at 9:15 a.m., roll was called, and Nancy Michel was absent. A quorum was established.

19. Public Comment session for items not on the agenda.

    There was no public comment.

    Public Member Jeff Ferro introduced himself as the Speaker's appointee. Mr. Ferro stated that his day job is with the United Food and Commercial Workers Union.

    President Miller inserted agenda items 14 and 16.

14. Discussion and possible action on occupational therapists performing fiber optic endoscopy evaluation of swallowing (aka FEES).

    Executive Officer, Heather Martin, referred to the email submitted to the Board by Bryant Edwards, OTD, MA, OTR/L, BCP, MPH, outlining his request that the Board consider amending 16 CCR 4153(a) to allow OTs the ability to perform the physically invasive aspect of instrumental assessments associated with swallowing/dysphagia evaluations.

    Vice President, Richard Bookwalter stated the need to identify steps that will give the Board or committee direction. Mr. Bookwalter identified these steps as:

    - Identify the consumer protection aspect.
    - Identify if there is an access issue.
    - Identify what other states are doing regarding FEES.
    - Identify the minimum competencies of speech therapists.
    - If the recommendation is to consider allowing instrumental assessments, determine what steps are necessary for the OTs and what protections must be put in place for the patients/clients.

    Ms. Martin stated that it may be beneficial for the Board to reach out to some of the larger hospitals to ask what internal competencies they require of speech-language pathologists performing the instrumental evaluations. Ms. Martin stated that this could help the Board members to safely shape the direction or regulation(s) regarding what additional training an OT would need to administer FEES.

Public Comment

Bryant Edwards, OTR/L spoke about his belief that a sufficiently trained and competent OT should be allowed to perform the physically invasive aspect of instrumental assessments associated with swallowing/dysphagia evaluations. Mr. Edwards also reported on how his employer currently handles the administration of FEES and the dynamics surrounding the working relationship of speech-language pathologists and OTs surrounding the use of FEES.

- Laura Hayth moved to establish an Ad Hoc committee to explore the FEES issue.
- Sharon Pavlovich seconded the motion.

Public Comment
There was no public comment

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye
Jeff Ferro	Aye

- Richard Bookwalter moved to appoint himself, Luis Arabit, Bryant Edwards, Kimberly Carter and Kary Rappaport to the Ad Hoc committee to discuss OTs performing FEES.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

16. Consideration and possible action of adopting proposed regulatory language to amend Title 16, CCR Section 4172, Standards of Practice for Telehealth.

President Denise Miller welcomed member of the public Tammy Richmond, OTR/L, FAOTA and CEO of Go 2 Care Inc. Ms. Richmond voiced her support of the Center for

Connected Health Policy's position on the proposed changes to CCR Section 4172; they believe the language should clarify that informed consent only need be obtained once unless the course of treatment changes.

Vice President, Richard Bookwalter outlined his concern with CCR Section 4172 (c)(1) and the language that requires the OT to ensure a therapist is available if an onsite visit is required.

A member of the public questioned whether the consent is only needed once or every time the practitioner goes on line with the patient.

Ms. Butu clarified that the Business and Professions Code states that prior to the delivery of care via telehealth the practitioner initiating the care should obtain informed consent. Ms. Butu informed the Board that if they want to clarify this fact in the regulations they can do so. Ms. Butu went on to say that from a legal and consumer protection standpoint, she supports the proposed text of CCR 4172(b).

Ms. Martin reminded the Board that every time changes are made to proposed language an additional 15 day notice is required for public comment. Ms. Martin advised the Board that it would be more efficient to submit all requested changes at once so as to require only one additional 15 day noticing period.

Member of the public Tammy Richards stated that she would like Section 4172(c) to be removed altogether.

- Richard Bookwalter moved to approve and notice the following changes to the proposed text of CCR Section 4172:

  - Remove sub section (c)(1) and (c)(2)
  - Renumber the remaining sub sections. (d) would be labeled as (c), (e) would be labeled as (d), (f) would be labeled (e).
  - The new sub section (c) would read as follows:

  "An OT shall determine whether an in-person evaluation or in-person interventions are necessary considering: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye

The Board rejected the Center for Connected Health request due to the fact that the last five lines of CCR Section 4172(b) require that the OT obtain consent in accordance with Section 2290.5 of the Code.

The Board rejected the request of the California Nurses Association Government Relations Department based on the fact that the last five lines of CCR Section 4172(b) require that the OT obtain consent in accordance with Section 2290.5 of the Code.

Tammy Richards thanked the Board and applauded their openness and participation in the telehealth conversation.

20. Discussion and possible action on Ad Hoc Committee's Report and recommendations regarding criteria for the Board to consider when refusing to hear a petition for reinstatement:

    A. Acceptance of the October 24, 2015, Ad Hoc Committee meeting minutes.
    B. Ad Hoc Committee's recommend criteria for the Board to use when considering whether it will refuse to consider a petition for reinstatement of license pursuant to Business and Professions Code Section 2570.32.

Laura Hayth reported that the committee had initial concern as to whether to include PC 290 as criteria during the consideration process for a reinstatement. The committee came to the consensus that the PC 290 criteria would remain.

Legal Counsel Ileana Butu reported she had a due-process concern regarding the proposed regulatory language if the Board's determination of whether the petitioner is on court-imposed probation is based on records obtained by the Board that the petitioner does not have access to and therefore cannot refute.

Ms. Butu stated that Board staff can make only ministerial decisions. All substantive decisions need to be handled by the Board members.

Ms. Butu reminded the Board of previous public comments relating to the differences between formal probation vs. informal probation when considering whether to refuse to hear a petition for reinstatement.

The Board members agreed that it should not differentiate between informal and formal probation but treat them both with the same weight in considering whether to refuse to consider a petition for reinstatement.

Heather Martin suggested that the Board add a new section to the proposed language that requires the petitioner to provide certified copies of court documents of all convictions along with their original petition.

- Laura Hayth moved to approve the proposed language and add a new section stating that the petitioner shall be required to provide certified copies of court documents.
- Richard Bookwalter seconded the motion.

- Laura Hayth withdrew her motion.
- Richard Bookwalter withdrew his second.

- Laura Hayth moved to approve the proposed language with the addition that states, "a petitioner shall provide a petition and certified court records where a criminal offense resulted in court imposed probation or parole or order of registration pursuant to Section 290 of the Penal Code."
- Sharon Pavlovich seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye
Jeff Ferro	Aye

- Richard Bookwalter moved to accept October 24, 2015, Ad Hoc Committee meeting minutes.
- Beata Morcos seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Abstain
Laura Hayth	Aye
Beata Morcos	Aye
Jeff Ferro	Aye

21. Enforcement performance measures reported to DCA for the quarters ending March 31, 2015 and June 30, 2015, and the 2014-15 annual performance measures.

Agenda item 21 was addressed on Thursday, November 19, 2015.

22. Enforcement data and reports for the quarter ending September 30, 2015.

Agenda item 22 was addressed on Thursday, November 19, 2015.

23. Executive Officer's Report.

A. Operational Report
Ms. Martin reported that the Board has two vacancies and there are work backlogs in the areas of enforcement, advanced practice applications, website updates and various administrative reports.

B. Budget Update
Ms. Martin reported that through Q1, the Board has collected $390k and spent $391k.

C. BreEZe Update
Ms. Martin reported that the Go-Live date for BreEZe is January 19, 2016.

D. Other Informational Items – No Board action
Ms. Martin reported that she checked into the status of the athletic trainers at the Board's request and found that AB 161 was introduced January 21, 2015, and the bill enrolled on September 9, 2015. Ms. Martin also provided the Governor's veto message dated September 28, 2015. After further discussion, the Board directed Ms. Martin to obtain further information about the athletic trainers' intent regarding any future legislation.

24. Election of Officers.

- Jeff Ferro moved to keep the existing slate of officers.
- Laura Hayth seconded the motion.

Public Comment
There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Beata Morcos	Aye
Jeff Ferro	Aye

25. Selection of 2016 Board meeting dates.

After discussion and consideration of members' schedules and availability, the following meeting dates and general locations were selected:

February 18-19, 2016, at the University of St. Augustine in San Marcos.
May 19-20, 2016, in the Ontario area.
August 18-19, 2016, in the Bay area.
October 27, 2016, in the Pasadena area.
December 8-9, 2016 in the Sacramento area.

26. Proposed agenda items for a future meeting:
    A. Strategic Plan and implementing Action Plan to be on all future agendas.
    B. Ad hoc committee's recommendation regarding possible amendments to the definition of "occupational therapy" as set forth in Business and Professions Code Section 2570.2.
    C. Sunset Report development plan and establishment of ad hoc Sunset Report Review Committee.
    D. Update on research by Samuel Merritt University on occupational therapy educational programs providing curriculum/ on modalities.
    E. Overview of administrative citation issuance process.
    F. Review the Board's Administrative Manual.
    G. Review the Board's Enforcement Procedures Manual.
    H. Other future agenda items.
    - Breeze demo for Board members
    - Update on license portability
    - Executive Officer evaluation
    - Discipline retention policy

- Athletic trainers update
- North Carolina Dental Board Supreme Court decision.

The Board agreed to a short teleconference meeting in January to discuss the telehealth and ethical standards modified text following the 15 day noticing period, as well as the updating of the Board's Initial Application for Licensure in support of regulatory amendments to 16 CCR section 4110.

The Board further authorized the Executive Officer to prioritize and schedule the remaining future agenda items amongst the 2016 meetings.

27. The Board will convene in Closed Session pursuant to Government Code Section 11126(c) (3) to deliberate on disciplinary matters.

    The Board entered in to Closed Session at 1:00 p.m.
    Closed Session adjourned at 1:16 p.m.

28. Adjournment.

    The Board returned to open session for the purpose of adjourning the meeting for the day. The meeting adjourned at 1:17 p.m.