



## BOARD MEETING MINUTES

**Thursday, December 8, 2016 and  
Friday, December 9, 2016**

### Board Member(s) Present

Denise Miller, OT – President  
Richard Bookwalter, OT - Vice President  
Teresa Davies  
Jeff Ferro  
Laura Hayth, OT  
Beata Morcos

### Board Staff Present

Heather Martin, Executive Officer  
Jeff Hanson, Enforcement Coordinator  
Jody Quesada, Staff Services Analyst  
Ileana Butu, Legal Counsel

### Board Member(s) Absent

Sharon Pavlovich, OTA - Secretary

### **Thursday, December 8, 2016 9:30 am - Board Meeting**

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

Board President Denise Miller called the meeting to order at 9:34 a.m., roll was called, all Board members were present with the exception of Sharon Pavlovich; a quorum was established.

2. President's Remarks – Informational only; no Board Action to be taken.

Ms. Miller extended a thank you to the Board's staff for all the work completed during the 2016 year and looks forward to what 2017 holds for occupational therapy. Ms. Miller opened it up to the other Board members for any remarks.

3. Board Member Remarks – Informational only; no Board Action to be taken.

Mr. Bookwalter welcomed all the visitors to the meeting and Mr. Ferro stated it's been a busy year. The remaining Board members had no comment.

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

Members of the public audience introduced themselves at will.

Ada Boone Hoerl, OTA and Professor at Sacramento City College made a request to the Board as an educator and practitioner regarding the potential for the Board to review the continuing education for new licensees within their first renewal period. Ms. Hoerl indicated that she did a preliminary research of other states and found that Florida exempts the licensee only if it is within the second biennium of their first renewal period. She provided examples of other states as well and indicated that in California the least experienced practitioners can go the longest period of time without continuing education.

Ms. Miller asked Heather Martin to provide a status to the Board members regarding the letter that was submitted by Ms. Hoerl to the Board. Ms. Martin indicated that the letter was received, but she did not have sufficient time to include it for the December meeting and that it can be added to the March 2017 agenda.

- ❖ Jeff Ferro made a motion to bring this matter to the March 2017 meeting for discussion.
- ❖ Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

5. Presentation by Chuck Wilmarth, Director, State Affairs, American Occupational Therapy Association, Inc., on recent issues and policy considerations including license portability, continuing professional development, accreditation, and other national trends.

Mr. Wilmarth gave a power point presentation that incorporated a variety of topics and provided updates on AOTA activities. He provided some background and history of AOTA and indicated they represent 213,000 occupational therapy practitioners and students in the United States. Mr. Wilmarth provided information on the upcoming AOTA Conference that will be held in Pennsylvania, March 30-April 2, 2017. He noted two special events were being scheduled, a stakeholder meeting on license portability on March 29, 2017, and a state regulatory forum on March 31, 2017.

Mr. Bookwalter indicated he was interested in the continuing professional development plan. Mr. Wilmarth stated that they are of the belief that the scope of education should be broader. Discussion pursued on this matter.

Mr. Ferro commented that he appreciated Mr. Wilmarth's presentation, but stated it would be beneficial to him and the Board to look at not just the stakeholders that might benefit from a change in the scope of practice; but those stakeholders who might challenge or oppose any change and how the Board would defend a change if questioned by the Legislature.

Ms. Miller stated she found the AOTA paper on occupational therapy's role in medication management helpful. She encouraged AOTA and/or their work with the state association to continue along these lines. Ms. Davies supported the comments made by Ms. Miller and stated that as a public member the information was very insightful and helpful.

There was no public comment.

6. Discussion and consideration of availability of fieldwork sites, potential workforce shortage and impact to consumers.

Ms. Martin directed the Board members to a letter in their Board packet from Genesis Rehab Services sent to programs that are placing students within their facilities. There will be a requirement starting in the next academic school year that the schools and colleges would have to pay for the placement of those students. The schools are concerned about this proposal.

Laura Hayth stating that she believes this is the first company that's doing this and that there will probably be more companies that will follow. Ms. Hayth indicated her concern was that the cost was going to ultimately be passed on to the students. She sees this as a new way for companies to survive in today's economy and that many other companies may follow suit.

#### Public comment

Winifred Schultz-Krohn, Program Director with San Jose State University, commented that as one of only two public programs in California they are not allowed to pass the fee on to the students.

Mr. Ferro commented that his vision, based on what Genesis will start to do, that many might follow and will push the profession back to working toward an apprenticeship program. He welcomes looking into an earn as you learn apprenticeship and possibly making it a requirement that if the colleges want to operate in this state they will have to offer an apprenticeship program and not charge for the program.

Mr. Bookwalter indicated fieldwork facilities may be reluctant to accept students because Medicare rules have changed and eliminated reimbursement for student services.

Lynette Beadles, Academic Fieldwork Coordinator for Sacramento City College, indicated recently proposed regulations to increase the number of PDUs a practitioner can gain for supervising student fieldwork will hopefully prove to be helpful in recruiting supervisors and new fieldwork sites. She stated that there has been a decrease in sites because of changes in productivity and expectations of students. School Programs are required by accreditation to provide students with a variety of fieldwork sites and if sites begin charging fees to place students it is going to add another layer to the challenges that are currently out there.

Teresa Davies asked if there has been any discussion with Genesis from any of the associations on how this may impact the state since this seems to be a blanket decision made nationally. Heather Kitching from California State University Dominguez Hills responded "no" that the association has not responded as it has largely been addressed through the Fieldwork Council and the fact that it was a nationally driven letter. She thanked the Board for recently passing a change to the continuing education units for fieldwork education.

Ms. Martin indicated there has been communication between the PT Board and Speech Board, but she's not sure if the two Boards have met on the issue. However, the executive officers have reached out to each other and are also looking at this matter.

Mr. Wilmarth with AOTA indicated that this issue has come up and it has been discussed; however, he's not aware of any outreach between AOTA and Genesis. The Board of Directors voted in November 2016 to establish an ad hoc committee to explore current experiential requirements in the OT education and alternative models that would best ensure future entry level practitioners. He stated this is a supply and demand issue in terms of the number of fieldwork sites.

Ms. Hoerl voiced concerns about equity and opportunity for students. She indicated that paying for fieldwork placement has the potential to change the overall education model. She expressed concerns about the accreditation of St. Catherine's University online OTA degree program and believes there are potentially broader implications.

Ms. Martin clarified that the Board does not regulate or accredit occupational therapy education programs. Statutes establish a candidate for licensure must complete an OT or OTA program that is accredited by the Accreditation Counsel of Occupational Therapy Education (ACOTE). Ms. Martin reported that after being contacted about this issue she reached out to the Bureau for Private Postsecondary Education (BPPE) who is the regulator for the schools who operate in California. Ms. Martin was advised BPPE's oversight only applied to schools physically located in California. Thus, neither the Board nor BPPE have jurisdiction over an occupational therapy education program accredited by AOTA that is physically located outside of California (but offers an online program to students within California).

Ms. Butu commented that the Board does not have any authority over approving the schools and it would take legislation for the Board to change. Ms. Martin stated that she sees this as two issues, one being whether the Board wants to approve the schools, and the second is to work with BPPE regarding their laws and regulations which only apply to schools physically located in this state.

Ms. Davies stated that she is concerned about the lack of regulatory oversight by the Board in this situation. She stated she would like to see what the other boards are doing on this matter, since there is strength in numbers and the dialogue needs to occur.

Mr. Bookwalter indicated it is difficult to project what might transpire since the Genesis stipend doesn't take effect until September 2017. Mr. Bookwalter stated that limited fieldwork sites are a national issue and since the AOTA conference is in April 2017, it is likely there will be some discussion on the matter at the conference. He believes the Board should wait to see what ideas might come up since it's a larger issue involving other states; he felt discussion at the Board's meeting in March is too soon.

7. Review and vote on approval of the October 27, 2016, Board meeting minutes. Ms. Miller asked the Board if there were any questions regarding agenda item number 7; hearing no questions, she asked for a motion.

- ❖ Beata Morcos moved to accept the minutes from October 27, 2016.
- ❖ Jeff Ferro seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Abstain
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

8. Review and vote on approval of the November 11, 2016, Board meeting minutes.

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

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Abstain
Denise Miller	Aye
Beata Morcos	Abstain

Motion carried.

9. Review and vote on approval of the November 17, 2016, Board meeting minutes.

- ❖ Laura Hayth moved to accept the minutes as presented.
- ❖ Beata Morcos seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

10. Consideration and possible action related to proposed regulatory language to amend Title 16, Division 39, CCR Section 4102, Filing of Addresses.

Ms. Martin directed the Board members to the proposed text in their Board packet. She stated that after further discussion with Jeff Hanson, the staff is recommending a change to subsection (f). Ms. Butu shared some of her concerns with this section for the Board to consider. She mentions the requirement to provide an address of record and a residence address. She referred to the authority provided under Business and Professions Code section 136 that allows the Board to request a mailing address that basically allows the Board to ask for one address. Therefore, if the Board is asking for an address of record and a residence address as opposed to one address that's public and the alternative one that is private, which is allowed; however, when requiring both it's possible it will be allowed, but that the authority is not obvious. Also, with regards to requiring an email address, Ms. Butu stated that it's not clear if this can be required. She stated that the regulation is not requiring someone to create an email address to give to the Board, but it stating if the individual has an email address it needs to be provided to the Board. Ms. Butu stated that Ms. Martin had asked if an actual street address is required to serve a subpoena. Ms. Butu stated that it turns out the post office have a way of handling this and that she will do some further research.

Ms. Miller asked for clarification on the language that is before them today, Ms. Martin stated that this is the first presentation of the language for the Board to consider. Ms. Miller stated that the language as written was modeled after the PT Board, which is why Ms. Butu stated it should pass through OAL. Ms. Martin stated the only difference is with subsection (f) which was taken from the current subsection (c) of this regulation. She stated that Board staff recommends replacing subsection (f) with the following language:

“(f) This section shall not apply to any person whose license has been revoked, surrendered, or cancelled.”

Existing regulations state the address change requirement applies to every person that holds who holds an active, inactive, unexpired, suspended license or a limited permit. The proposed change would require license holders with an expired license to notify the Board of an address change within 30-days.

Ms. Miller asked for an explanation for the next procedure in the process. Ms. Martin provided a detailed explanation of the current regulatory process. Ms. Marcos asked for some clarification regarding the name change requirement and what documents the Board requires. Ms. Martin explained that the licensee has to complete the Board's form and provide to forms of identification with the new name. Ms. Butu suggested that the form used by the Board to change the name be included in the regulation. Discussion ensued on this matter.

- ❖ Richard Bookwalter moved to approve the language contained in the Board Meeting materials with the amendment to subsection (f) to read “This section shall not apply to any person whose license has been revoked, surrendered, or cancelled.” and to add reference to the form and documentation for on-line and written name changes.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

Ms. Martin requested a second motion from the Board to work with legal counsel to identify some language to incorporate the on-line submission that was mentioned.

- ❖ Richard Bookwalter moved to charge the executive officer and legal counsel to consult on language to include on-line forms as well as proof of paper forms for address and name changes.
- ❖ Teresa Davies seconded the motion.

Ms. Miller clarified that the motion is not changing the language from going through. Ms. Martin confirmed the change suggested will not affect the language.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

11. Consideration and possible action related to proposed regulatory language to add Title 16, Division 39, CCR Section 4149.5, Petitions for Reinstatement of Modification of Penalty.

Ms. Martin advised the Board the language presented in the materials had been noticed and if the Board does not have any changes to the modified text or the forms then Board staff is looking for an adoption today. Ms. Davies asked if this form can be submitted on-line, Ms. Martin responded she was not sure. Mr. Hanson indicated that it cannot be submitted on-line.

- ❖ Richard Bookwalter moved to adopt the language as presented.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

12. Update and take action, if necessary, on pending Rulemaking files, California Code of Regulations, Title 16, Division 39:
- Section 4130, Fees;
  - Sections 4161, 4162, and 4163, relating to Continuing Competence;
  - Section 4172, Standards of Practice for Telehealth; and
  - Section 4176, Notice to Consumer.

Executive Officer Heather Martin gave an overview of the provided Regulations Update report that included those rulemaking files that were ‘in-process’ and those that were not yet started. The Board members had no questions.

Public Comment

There was no public comment.

13. Executive Officer’s Report.
- a. Operational Report

Ms. Martin advised the Board members that recruitment to fill vacant positions were on-going and several positions would be filled in January. She stated that part of salary savings that have occurred will be used for construction costs and to build a couple of cubicles. When all positions are filled there will be 15 staff members.

Budget Update – Ms. Martin advised the Board that more revenue was collected than what was spent in the first quarter and directed them to the meeting materials. Through October 31, 2016, the Board collected \$489k in revenue and spent \$483k of the Board’s \$2.3m budget.

Ms. Martin provided information to the Board members, based on a recommendation made by the Sunset Committee, that applicants or licensees upon renewal could self-certify that they have read the Occupational Therapy Code of Ethics and are familiar with Code. In order to support this, DCA’s Office of Professional Examination Services provided an overview of what would be required including a proposed occupational analysis development schedule, information on reviewing national and state examinations, and an estimated cost of \$50,000. The occupational analysis could take from approximately March 2017 to November 2018.



Ms. Miller asked for clarification if an occupational analysis is required in order to add the self-certification (or attestation). Ms. Martin responded that DCA strongly recommends completion of the occupational analysis. Ms. Miller asked if there were other items the occupational analyst could look at in order to justify the cost. Ms. Martin responded that the Board could go in this direction to require an attestation or self-certification rather than prepare a state specific exam to address ethical violations within the state. Subsequent to the Sunset Report's recommendation, the Board was advised by DCA that they should have an occupational analysis.

Ms. Miller asked what would happen if the statement was added without the occupational analysis. Ms. Martin responded that the occupational analysis should be considered because part of the analysis includes an audit of the national license examination. Ms. Hayth asked if there are any other alternatives. Ms. Martin suggested a regulatory amendment to require the attestation without the occupational analysis.

#### Public Comment

Mr. Wilmarth stated that he believes there was a previous discussion about changing the professional development requirement and having some portion be related to ethics and occupational therapy where periodically every couple of years they have to complete a course in ethics.

Mr. Bookwalter believes that there are regulations already in place that affect behavior that are adequate to cover the ethics issue. Ms. Miller asked that since this was a recommendation in the Sunset Report that was submitted to the legislature will the Board be questioned on this matter. Ms. Martin responded yes it is highly likely since the recent Sunset Report contained a question asking the Board what it has done since the 2012 report regarding this matter. Ms. Miller indicated that she feels that Board could justify their decision on this matter.

Discussion ensued on this matter. Ms. Miller suggested they instead spend the money to develop videos that are posted on the Board's website. Ms. Martin suggested expanding the March agenda item regarding continuing education for licensees renewing within their first renewal period, to include data from other California healthcare boards and some other state OT Boards that that require a portion of their CE to include ethics. It was agreed by all the Board members that the information would be helpful.

The Open Session adjourned at 1:26 p.m. The Board took a lunchbreak before moving into Closed Session.

The Board went into Closed Session at 3:09 p.m.

#### **CLOSED SESSION**

- The Board will convene in Closed Session pursuant to Government Code Section 11126(a)(1) to conduct the annual evaluation of the Executive Officer.
- The Board will convene in Closed Session pursuant to Government Code Section 11126(c)(3) to deliberate and vote on disciplinary matters.

#### **RECONVENE IN OPEN SESSION**

The Board meeting returned to open session at 4:54 p.m. and was adjourned.

**Friday, December 9, 2016**

**9:00 am - Board Meeting**

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

Board President Denise Miller called the meeting to order at 9:11 a.m., roll was called, all Board members were present with the exception of Sharon Pavlovich; a quorum was established.

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

There was no public comment.

Members of the public audience introduced themselves at will.

16. Presentation by Shaun Conway, Director, Credentialing Services, National Board for Certification in Occupational Therapy, Inc., on NBCOT Navigator<sup>®</sup> online continuing competency assessment tools.

Shaun Conway provided a PowerPoint presentation to the Board and audience on the specifics of the NBCOT's Navigator<sup>®</sup> he demonstrated how the new tools work. Ms. Davies expressed that she was impressed with the tool and what it has to offer, but wanted to know if the knowledge base would be expanded into other areas such as regulatory matters. Mr. Conway indicated that they will be looking at ongoing tools that can be developed and that he could take back to the developers.

Ms. Miller asked for some background on the NBCOT and Mr. Conway provided detailed information and backgrounds on the members. Mr. Bookwalter asked who the technology staff is that put together the material. Mr. Conway also advised the Board that NBCOT staff is constantly looking at the content to ensure it is reflective of current practice and that the tools are updated.

Mr. Ferro asked if Mr. Conway could provide Ms. Martin with a list of the regulatory agencies that are currently using the tools so that this Board could do some of its own research and he agreed.

Chuck Wilmarth provided some feedback on the information presented. Heather Kitching added her support of NBCOT and extended an invitation for them to attend the OTAC annual conference. Pam Richardson, NBCOT, Board of Directors and educator at San Jose State University provided some additional information on the navigator tools and the development of the program.

The Board took a break at 10:55 a.m.

The Board reconvened in Open Session at 11:07 a.m.

17. Discussion and possible action on proposed national policy regarding license portability (ease for inter-state movement by practitioners).

Ms. Martin stated license portability was placed on the agenda as the proposal is being considered by AOTA and the Board has been watching this item pending any outcome or update from AOTA. Ms. Miller asked Mr. Wilmarth if he had an update. He stated that the AOTA will be meeting on March 29, 2017, and this matter will be discussed at that meeting. He extended an invitation to the Board members and staff to attend. Ms. Miller stated this was placed on the agenda as a reminder for future discussion.

- ❖ Mr. Ferro made a motion to place this matter on the June 2017 agenda for consideration.
- ❖ Mr. Bookwalter seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

Before moving onto agenda item number 18, Ms. Miller wanted to revisit item number 10 from the previous day's agenda regarding possible action related to proposed regulatory language - filing of addresses and indicated there has been an update to this item.

Ms. Martin reported that Ms. Butu was provided the current name change request form required by the Board. The data requested is what is asked in BreEZe; the only difference is the privacy information pertaining to collection of personal information on the second page. Ms. Martin requested that the Board make a motion to approve the form incorporated by reference into section 4102. Ms. Butu indicated she had no issues with the wording on the form.

- ❖ Ms. Hayth made a motion to adopt the name change requested form as it was presented including the notice of personal information on page 8.
- ❖ Mr. Bookwalter seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

18. Suggested agenda items for a future meeting.

Ms. Martin stated that as a reminder some of the future items include adding further review and discussion of the following: the NBCOT Navigator to the March agenda; review and discuss processes for activating a license from inactive status and why the expiration date does not change (carry over from October 27, 2016 meeting); consider elimination of the continuing competence requirement for first time renewals; review and update the Administrative Manual, Disciplinary Resource Manual, and the Board's Disciplinary Guidelines; determine action or direction for Ad Hoc Committee on physically evasive components of swallowing evaluation; make committee appointments; and the Strategic Plan and Action Plan.

Ms. Miller added there will be a report from the AOTA regarding the ad hoc committee on fieldwork. The Board delegated the discretion to Ms. Martin along with the Board president to determine which items should go on which future meeting agenda.

Ms. Martin indicated that the Occupational Analysis will also need to be on the next agenda for discussion.

There was no public comment.

19. Election of Officers.

Ms. Martin stated that according to the Board's Administrative Manual it requires the election of officers to take place at the last meeting of the year with an effective date of the first of the following calendar year; the three offices can be taken individually or as a slate.

There was discussion regarding the absence of Ms. Pavlovich and the fact that she is currently serving as the Board's secretary. Mr. Ferro asked Ms. Butu if Ms. Pavlovich was nominated and elected and later decided that she was not interested in the position could she resign from the position. Ms. Butu indicated there was no indication in the Business and Professions Code or the Board's Administrative Manual regarding a Board member wanting to resign from a position if they desire at a later date.

- ❖ Ms. Ferro made a motion to take the existing officers for an additional year of service, with the understanding that if Ms. Pavlovich decides she doesn't want to serve that it will be reopened for that one position (Secretary).
- ❖ Ms. Miller seconded the motion.

Public Comment

There was no public comment.

**Roll Call Vote**

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Aye
Denise Miller	Aye
Beata Morcos	Aye

Motion carried.

20. Adjournment.

The meeting adjourned at 11:28 a.m.