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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor

CALIORNIA BOARD OF OCCUPATIONAL THERAPY

BOARD MEETING MINUTES
April 16-17, 2004
Sacramento, California

A. Call to Order, Roll Call, Establishment of a Quorum

President Luella Grangaard called the meeting to order at 1:00 p.m. and Secretary Roberta Murphy called the roll.

Board Members Present
Luella Grangaard, President
Cynthia Burt, Vice President
Roberta Murphy, Secretary
Margaret Cunningham
Hugh Smith
Christine Wietlisbach

Staff Present
Gretchen Kjose, Executive Officer
Norine Marks, Legal Counsel
Janet Yagi, Associate Governmental Program Analyst

B. President's Remarks

Luella Grangaard reported that the American Occupational Therapy Association (AOTA) had rewritten the Occupational Therapy Model Practice Act, incorporating the occupational therapy practice framework into it, and stated that it would be presented to the Representative Assembly (RA) at AOTA's annual conference coming up in May 2004. She also noted that at last year's conference, AOTA recommended that the Accreditation Council of Occupational Therapy Education (ACOTE) consider rewriting its standards for accreditation to include AOTA's scope of practice and the practice framework in occupational therapy education. As a result, ACOTE sent out a questionnaire requesting input on their accreditation standards and guidelines and will hold a hearing on the standards and guidelines at this year's conference. Ms. Grangaard indicated she would be testifying at the hearing. She also mentioned that she and Gretchen Kjose would be speakers at the State Legislative and Regulatory Forum and would be discussing California's advanced practice regulations.

C. Approval of the January 26, 2004 Board Meeting Minutes

The Board reviewed the January 26, 2004, Board Meeting Minutes.

- **Roberta Murphy moved to approve the minutes.**
- **Christine Wietlisbach seconded the motion.**
- **The motion carried unanimously.**

D. Executive Officer's Report

Ms. Kjose reported that the Senate Business and Professions Committee had introduced Senate Bill 1913 (SB 1913) that includes clean-up legislation for the Board, repealing Occupational Therapy Practice Act (OTPA) section 2540.14(c). She also reported on SB 1158, SB 1485, AB 750, AB 2510, and AB 2909, health care bills of relevance to the Board.

Ms. Kjose announced that the Board's advanced practice regulations took effect March 9, 2004, but that as a result of the Governor's freeze on regulatory actions, the Board's limited permit and disciplinary guideline regulations had been withdrawn and were re-noticed on March 26, 2004.

She advised that, at the request of the Joint Legislative Sunset Review Committee, sunset review for the Board would be held over until 2006. Ms. Kjose noted that the Governor appointed Charlene Zettel as Director of the Department of Consumer Affairs (DCA). She also briefed the Board on the Governor's "California Performance Review" project, whose goal it is to restructure, reorganize and reform state government to make it more responsive to its citizens and the business community. One of the ideas being considered is consolidation of similar boards and bureaus within DCA.

Ms. Kjose reported that the Board's web site now includes a directory of California-based driver rehabilitation programs for consumers and a list of conferences and seminars for those interested in implementing older driver rehabilitation programs.

E. Practice Committee Report and Recommendations

Deborah Bolding reported that the Practice Committee had reviewed the occupational therapy license application of Kimberly Byers-Lund, O.D., who had been an occupational therapist (OT) ten years ago prior to becoming a doctor. She indicated it was the Committee's recommendation that licensure not be granted at this time, but that the applicant be advised her application would be reconsidered upon receipt of clear evidence of completion of continuing education in occupational therapy that includes current trends in the field and evidence of involvement in the profession at the state or national level.

- **Hugh Smith moved to accept the Committee's recommendation.**
- **Cynthia Burt seconded the motion.**
- **The motion carried unanimously.**

F. Regulatory Committee Report and Recommendations

Chair Roberta Murphy reported that the Committee began an initial discussion on developing a complaint disclosure policy or regulation by looking at how other boards deal with this issue. The Committee asked staff to gather more information as to how and when other health care boards disclose complaint information and to bring it back for further discussion at the next Board meeting.

Ms. Murphy reported that the Committee began discussing regulations that would clarify OTPA section 2570.4(d) (allows OTs licensed in another state to work in California for up to 45 days annually without getting licensed in California so long as they work in association with an OT licensed in California) by defining what "in association with" means. She advised that the Committee asked staff to contact AOTA for their input as to how other states handle this issue. She also said the Committee discussed whether out-of-state practitioners should have to notify the Board when they are practicing in California and document their working relationship with a licensee of the Board.

G. Advanced Practice Regulatory Committee Report and Regulation

Cynthia Burt reported on the Committee's discussion of several issues that had been raised regarding what constitutes advanced practice and what does not, as follows:

Q. Is icing considered a modality when performed in the context of sensory stimulation?
A. OT basic training includes sensory stimulation techniques that include icing used for facilitation/inhibition. When used in this capacity, it is not considered a modality requiring advanced practice certification.

Q. Is biofeedback used with someone who has difficulty swallowing advanced practice?
A. Surface biofeedback <u>measures</u> rather than <u>alters</u> tissue response and is not considered to be a physical agent modality.

Q. Is diet modification advanced practice?
A. Bolus control assessment begins in the oral phase of swallowing (oral, motor is entry level practice). Food texture modifications and positioning are used to recognize the potential for aspiration in the pharyngeal phase. It is appropriate for the entry-level therapist to make oral intake texture/consistency recommendations, position changes, and oral motor interventions. However, when aspiration risk is suspected, it is incumbent upon the therapist to refer to the appropriate healthcare professional.

Q. What part of the bedside evaluation is considered to be advanced practice?
A. OTs provide clinical feeding evaluations to screen patients for aspiration risk. Screenings occur in a variety of settings including acute hospitals, extended care facilities, community based treatment units and facilities. The evaluation can include determination of bolus control and recognition of aspiration signs. Oral intake consistency recommendations, position changes, and oral motor interventions are methods that can be used to improve feeding ability or determine aspiration risk. When risk is suspected, it is incumbent on the

therapist to refer the patient to the appropriate provider. Further evaluation of aspiration risk and development of an intervention plan is considered advanced practice, requiring advanced practice certification.

Q. What kind and how much supervision is required for OTs who are in the process of meeting the experience requirements for an advanced practice?

A. The Board will be developing regulations that address this issue. Until they take effect, the Board suggests that experience be gained in a structured and progressive mentoring program that has the following components: (1) Ongoing mentoring throughout the training process; (2) Intensity and degree of mentoring should be appropriate for the skill level of the therapist; and (3) Documentation of mentoring should include meeting dates, attendees, and review of the learning plan.

Ms. Kjose noted that supervision of advanced practice training should be clarified in regulation and said that staff would work on draft language that reflects the Committee's recommendation for consideration at the next meeting.

H. Review and Approval of Proposed Legislation Regarding the Application of Topical Medications by Occupational Therapists Certified in the Use of Physical Agent Modalities

Ms. Kjose advised that the application of topical medications through iontophoresis (electricity) and phonophoresis (ultrasound) has been a topic discussed by the Board's Practice Committee over the past several months. She said the issue had been raised that since the Physical Therapy Act contains statutory authority allowing physical therapists to apply topical medications, occupational therapists (OT) may need similar statutory authority. She noted that section 2570.2(m) of the Occupational Therapy Practice Act (OTPA) grants OTs authority to use physical agent modalities if the OT obtains advanced practice certification. Electricity and ultrasound are physical agent modalities. Therefore, the statute implies that OTs with advanced practice certification in PAMS can do iontophoresis and phonophoresis. However, legal counsel Norine Marks noted that rules of statutory construction assume legislators were aware of the provisions of the Physical Therapy Act and could have added similar language to the OTPA had they chosen to do so. The fact that they didn't might imply that OTs would not be allowed to apply topical medications without specific legislative authority.

Ms. Kjose reported that she contacted legal counsel for the Medical Board of California to determine whether application of a topical medication via iontophoresis or phonophoresis would constitute the practice of medicine, and was advised that it would not. Further, since it is a physician who prescribes the medication and the manner in which it is to be applied, the Medical Board's legal counsel did not believe the medical profession would oppose legislation granting OTs specific authority to do iontophoresis and phonophoresis.

Ms. Kjose recommended that the Board introduce legislation that clearly identifies the OT's authority to apply topical medications through iontophoresis or phonophoresis, when prescribed by a physician and when the OT had been certified in the use of physical agent modalities. Following discussion, the Board made the following decision:

- **Cynthia Burt moved to delegate to the executive officer authority to seek legislation granting OTs specific authority to perform iontophoresis and phonophoresis when prescribed by a physician and when the OT is certified in the use of physical agent modalities.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

I. Public Hearing on Title 16, Division 39 California Code of Regulations Sections 4130, Fees; 4141 Administrative Fines; 4160, 4161, 4162, and 4163, Continuing Competency; and 4181, 4182, 4183, and 4184, Supervision of OTAs, Limited Permit Holders, Students and Aides

The Board held a public hearing to take testimony on the above noted proposed regulations. There were no public comments offered at the meeting. However, Ms. Kjose recommended that the Board further reduce the license/certificate renewal and delinquent fees from the proposed annual amounts of $100/$50, to $75/$37.50 respectively, effective July 1, 2005. She explained that when the Board voted to reduce fees in November 2003, fund condition projections were based on an anticipated licensed population of 8,300 occupational therapy practitioners. She advised that since that time, the licensed population has grown to almost 9,000 practitioners and the fund condition supports a larger reduction than originally proposed.

Ms. Kjose presented fund projections through Fiscal Year 2008/09 showing revenues and expenditures based on renewal/delinquent fees of $75/$37.50 and $50/25. In recommending a reduction to the higher amount, Ms. Kjose noted that the Board would be expending more money in the future as it developed its consumer education, outreach and diversion programs, that enforcement costs could increase substantially, that the State might borrow money to balance the budget, that enrollment in occupational therapy programs is down which will affect the number of practitioners entering the field, etc., all of which will impact the Board's budget.

Following discussion the Board voted to modify Section 4130, Fees, as follows:

- **Ms. Grangaard moved to modify renewal fees to $75 annually and delinquent fees to $37.50, to publish a 15-day notice for both the modified text and updated data that the Board is relying on and to delegate authority to the executive officer to adopt the regulations if there are no negative comments during the 15-day comment period.**
- **Hugh Smith seconded the motion.**
- **The motion carried unanimously.**

No comments were received on Section 4141, Administrative Fines.

- **Christine Wietlisbach moved to amend Section 4141 by increasing the maximum amount of administrative fines to $5,000 to be consistent with law.**
- **Luella Grangaard seconded the motion.**
- **The motion carried unanimously.**

The Board considered written comments from AOTA regarding Sections 4160 and 4162, Continuing Competency, but determined that no changes were needed to the proposed regulations.

- **Christine Wietlisbach moved to adopt Sections 4160, 4161, 4162, and 4163 as proposed.**
- **Roberta Murphy seconded the motion.**
- **The motion carried unanimously.**

The Board considered written comments from AOTA regarding Section 4184, Delegation of Tasks to Aides but determined that no changes were needed to the proposed regulations.

Ms. Murphy questioned whether or not the definition of client related tasks versus non-client related tasks should be expanded upon to clarify that it is appropriate for an aide to take care of patients' needs without having to be under the direct, line-of-sight supervision of an OT. She gave examples such as when adjusting a footrest or assisting someone to the restroom where there might be physical contact involved but the activity does not constitute occupational therapy. After discussion the Board agreed that issues such as this would be addressed by educating facilities as to what constitutes occupational therapy and what does not.

Following discussion the Board voted as follows:

- **Hugh Smith moved to adopt Sections 4180, 4181, 4182, 4183, and 4184 as proposed.**
- **Christine Wietlisbach seconded the motion.**
- **The motion carried unanimously.**

J. Schedule of Future Meetings

The Board scheduled the following dates and locations for the remainder of 2004:

July 19, 2004 – Los Angeles
November 15, 2004 – San Francisco

K. Public Comment Session

There were no public comments under this agenda item.

L. Adjournment

The Board meeting adjourned for the day at 3:00 p.m.

April 17, 2004

M. Call to Order, Roll Call, Establishment of a Quorum

President Luella Grangaard reconvened the meeting at 8:30 a.m. and Executive Officer Gretchen Kjose called the roll. All Board members were present except Cynthia Burt who had an excused absence. Board staff Janet Yagi was also in attendance.

N. Strategic Planning

The Board's strategic planning workshop was facilitated by the Department of Consumer Affairs' training officer, Travis McCann. The Board reviewed and revised its mission statement, goals and objectives, and developed performance measures. The Strategic Plan will be updated and presented to the Board in July 2004 for adoption.

O. Public Comment Session

There were no public comments under this agenda item.

P. Adjournment

The meeting adjourned at 12:25 p.m.