

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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State of California
Department of Consumer Affairs
Gray Davis, Governor



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
March 15, 2003
Sacramento, California

Agenda

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

Board President Luella Grangaard called the meeting to order at 1:30 p.m. Gretchen Kjose, Executive Officer, called the roll.

Board Members Present

Luella Grangaard, President

Christine Wietlisbach, Vice President

Cynthia Burt

Margaret Cunningham

Hugh Smith

Board Members Absent with Excused Absence

Roberta Murphy, Secretary

Suzanne Sampson

Staff Present

Gretchen Kjose, Executive Officer

Laura Freedman Eidson, Legal Counsel

B. President's Remarks

Ms. Grangaard welcomed the audience and thanked staff for their hard work in processing thousands of license applications over the past four months.

She reported that the motion she sent to the American Occupational Therapy Association (AOTA) last November proposing that occupational therapy education should be reflective of current practice would be heard by AOTA's Representative Assembly (RA) in June 2003. She noted that the motion would first be heard by a task force before being considered by the RA and said she would attend the task force meeting. She also advised that the physical therapy (PT) profession's Model Law was mirrored in the accreditation guidelines for PT programs and she would attempt to amend her motion to do the same using AOTA's Model Law.

C. Approval of the December 13, 2002 Board Meeting Minutes

The Board reviewed the December 13, 2002 Board Meeting Minutes.

- ◆ **Christine Wietlisbach moved to approve the December 13, 2002 Board Meeting Minutes.**
- ◆ **Cynthia Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

D. Executive Officer's Report

Ms. Kjose asked Board member Cindy Burt to report on her work with the National Board for Certification in Occupational Therapy's (NBCOT) Examination Development Committee which met in January. Ms. Burt advised that committee participants include representatives from state boards and experts in various areas of practice and said the committee's job was to review new test questions written by item writers to make sure they are appropriate, accurate, reflective of entry level practice, grammatically correct, etc. The committee also reviews existing test questions to determine whether they are meaningful, appropriate, and statistically sound, among other things. She said the committee would be meeting four to five times annually.

Ms. Kjose announced that NBCOT would be holding its annual conference for state regulatory boards on April 11-12, 2003 in Louisville, Kentucky and that AOTA's annual conference was scheduled for June in Washington DC. She indicated however that Board staff and members would be unable to attend due to the State's budget crisis because the Governor asked all agencies to reduce travel expenses by 35% and cancelled all out of state travel.

Ms. Kjose gave an update on total revenues collected this fiscal year from license/renewal fees and said the Board was on schedule to repay \$464,000 to the General Fund by June 30, 2003. She also advised that the Administration was planning to borrow \$1,000,000 from the Board in 2003/04 to help balance the State budget, monies that would be repaid with interest some time in the future. She noted that if the Board's fund condition could not support a loan in that amount, the amount would be reduced to a level that would allow sufficient funds for daily operations.

Ms. Kjose reported that as of March 7, 2003, 228 complaints had been opened as the result of consumer complaints or receipt of criminal conviction information from the Department of Justice. Of those, 186 had been resolved, 38 were pending additional information, and 4 applications were denied. She also noted that 6,477 occupational therapists and 1,155 occupational therapy assistants had been licensed or certified, 100 limited permits had been issued, and 900 applications were in varying stages of completion.

She gave an overview of a data system under development by the Department of Consumer Affairs, the Professional Licensing and Enforcement Management System (PLEMS), and said that it would eventually replace the existing applicant and enforcement tracking systems currently used by most boards and bureaus.

Ms. Kjose reported that Senate Business and Professions Committee was sponsoring Senate Bill 1077 and had included language that would amend section 2570.4(d) of the Occupational Therapy Practice Act (Act) to clarify that only practitioners licensed in other jurisdictions have authority to practice in California for 45 days annually without getting a California license. She also advised that the Board is following Senate Bill 746 (Matthews) that would require the Board to revoke a license or certificate for any felony or misdemeanor involving Medi-Cal fraud.

Ms. Kjose stated that one of the program technicians quit without notice in January. She also announced that two new employees had been hired to fill the associate analyst and office technician positions, effective April 1, 2003.

Finally, she indicated the public hearing for the Continuing Competency and Supervision regulations was held on January 14, 2003 and that many comments had been received that must be addressed before the rulemaking file is finalized.

E. Practice Committee Report

1. Policy Concerning Applicants Not Engaged in Practice for 5 Years

Ms. Grangaard explained that the Board's Practice Committee would be responsible for reviewing scope of practice and other practice issues and developing policies, procedures and recommendations for consideration by the full Board regarding such issues. She advised that she, Roberta Murphy and Hugh Smith would be on the Committee and that Board staff would recruit occupational therapy practitioners from various practice areas to participate as well.

She reported that the first Committee meeting was held earlier today during which two applications for licensure from individuals who had not been engaged in practice during the past five years had been reviewed. She explained that, effective January 1, 2003, occupational therapy practitioners who have not been working in the field during the five years prior to application for licensure/certification must demonstrate that they are minimally competent to practice. She noted that neither of the applicants appeared to have engaged in any type of continuing education during the last five years and had failed to provide documentation that would demonstrate minimal competency. On that basis, the Committee recommended that both applications be denied at this time.

- ◆ **Christine Wietlisbach moved to accept the recommendation of the Practice Committee.**
- ◆ **Cindy Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

F. Regulatory Committee Report on Swallowing Assessment, Evaluation or Intervention; Hand Therapy; Physical Agent Modalities

Ms. Burt gave an overview of the work that had been done by the Regulatory Committee over the past year and a half regarding advanced practice regulations and indicated that proposed regulations had been completed and would be summarized by the Board's legal counsel, Ms. Freedman Eidson, under Agenda Item G.

G. Review and Approval of Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations Regarding Swallowing Assessment, Evaluation or Intervention, Hand Therapy, and Physical Agent Modalities

Ms. Burt explained that the Act identifies three areas of advanced practice that require post professional education and training before an occupational therapist is authorized to offer those services. She identified the areas of advanced practice as swallowing assessment, evaluation or intervention, hand therapy, and the use of physical agent modalities. She said that the Act requires the Board to develop regulations identifying the education and training that must be completed, in collaboration with the Speech Language Pathology and Audiology Board (SLPAB), the Physical Therapy Board of California (PTBC), and the Board of Registered Nursing Board (BRN).

She advised that the Regulatory Committee had developed the advanced practice regulations over the past year and a half by working with the SLPAB, the PTBC, speech-language pathology and audiology, physical therapy and occupational therapy practitioners, and the professional associations affiliated with each. She also commented that, although the BRN had been invited to participate in the process, no one from that board attended the committee meetings. She asked Ms. Freedman Eidson to give an overview of the proposed regulations, noting the changes made at today's Regulatory Committee meeting.

Ms. Freedman Eidson read each proposed regulation and indicated that the following proposed changes would be incorporated:

- The post professional education and training requirements would be removed from section 4150 and placed in section 4154. Within section 4154, the education and training components would be separated to clearly identify the sources from which each could be obtained. A provision would be added that Board approved providers must be "pre-approved" before offering courses.
 - Definitions of the pharyngeal and esophageal phases would be deleted from section 4150 because they were considered unnecessary.
 - In sections 4151, 4152, and 4153, the provision that all training be supervised was added and on the job training was included as another source of training.
 - Section 4153 would be modified to clearly indicate that occupational therapists would not be authorized to perform the physically invasive components of instrumental evaluations.
 - Section 4154 would specify that the supervision requirements be consistent with other supervision requirements adopted by the Board.
 - Section 4154 would also set a 5-year time frame for completing post professional education and training.
 - Existing section 4154 was renumbered to 4155.
 - Clarification of what must be contained in the Statement of Learning would be added to section 4155.
 - The provision that certification by the Hand Therapy Certification Commission on or before December 31, 2003 would be considered substantially equivalent for purposes of advanced practice certification would be added to section 4155.
- ◆ **Cindy Burt moved that the proposed advanced practice regulations be adopted by the Board with the modifications made at today's meeting.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

H. Review and Approval of Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations Section 4170, Ethical Standards of Practice

Ms. Kjose reported that the Board's proposed regulations on Ethical Standards of Practice, which were sent to the Office of Administrative Law (OAL) for final review in November 2002, had been withdrawn. She explained that the Board was notified on January 5, 2003 that OAL intended to reject the regulations on the basis that several provisions were unclear, unenforceable and others were viewed to be unnecessary. Rather than have the regulations rejected requiring them to go through the entire regulatory process again, she asked that they be withdrawn allowing time for modified language to be developed, noticed, and resubmitted prior to the one year deadline in June 2003. She explained that modified text had been prepared and was ready for the Board's consideration.

The Board reviewed the modified language and suggested changing section 4170(a) to read "Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination" and changing section 4170(b)(1) to read "Occupational therapy practitioners shall not exploit clients in any manner."

- ◆ **Hugh Smith moved to approve the proposed regulations as modified and to delegate to the executive officer the authority to make any technical, non-substantive changes that might be required by OAL.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

I. Review and Approval of Proposed Regulations to Adopt Title 16, Division 39, California Code of Regulations Regarding Complaint Disclosure

Ms. Kjose explained that when a complaint is filed against a licensee and it appears that there has been a violation of law that warrants suspension or revocation of the license, the investigative and formal disciplinary process usually takes months and even years to complete. During that time, the Board receives inquiries regarding the status of cases and should have a policy that identifies the type of information to be disclosed and when it will be disclosed. Ms. Freedman Eidson pointed out that the Public Records Act (PRA) and the Information Practices Act (IPA) identify information that must be disclosed and said that the policy the Board adopts could not conflict with either of those two laws. She noted that some of the proposed language provided for the Board's consideration was confusing and not in compliance with the PRA and IPA and suggested that she and staff continue to work on this regulation for review by the Board at its next meeting. The Board concurred with that suggestion.

J. Discussion of Senate Bill 77 (SB 77, Burton)

Ms. Grangaard advised that SB 77, introduced by the California Physical Therapy Association would change the scope of practice for physical therapy to be reflective of model law that the profession has been trying to get adopted throughout the United States. The proposed scope of practice includes tasks that have traditionally been considered occupational therapy, i.e., functional training in self care and in home, community, or work integration or reintegration and application and fabrication of assistive, adaptive, orthotic and prosthetic devices and equipment. Ms. Freedman Eidson commented that since the Act prohibits occupational therapists from practicing physical therapy, SB 77 creates ambiguity for the Board in applying the Act. After discussion, the Board agreed to oppose SB 77 unless amended to include uncodified language that would clearly indicate that its provisions were not intended to alter or restrict the practice of occupational therapy and asked Ms. Kjose to prepare the letter of opposition.

- ◆ **Christine Wietlisbach moved to oppose SB 77 unless amended.**
- ◆ **Cynthia Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

K. Strategic Planning Report

Ms. Kjose gave an overview of the goals and objectives that had been identified in the Board's 2002 Strategic Plan, noting the ones that had been achieved, and the ones still to be accomplished. The Board reviewed its vision statement, mission, and core values, and set new target dates for its goals and objectives.

- ◆ **Hugh Smith moved to approve the 2003 Strategic Plan**
- ◆ **Cindy Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

L. Schedule of Future Meetings

Ms. Kjose explained that the Governor had asked all boards and bureaus to reduce travel expenses for the remainder of the fiscal year and suggested that the Board revise its meeting schedules accordingly. The Board tentatively scheduled meetings for the remainder of 2003 as follows:

July 10, 2003 – Los Angeles
November 14, 2003 – San Francisco

M. Public Comment Session

Members of the audience participated during the public comment session. There were no other public comments under this Agenda Item.

N. Adjournment

The meeting adjourned at 4:35 p.m.