

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
March 30, 2006
Ontario, California**

Board Members Present

Luella Grangaard, President
Margaret Cunningham
Mary Evert
Christine Wietlisbach

Staff Present

Heather Martin, Executive Officer
Norine Marks, Legal Counsel
April Freeman, Associate Analyst

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

President Luella Grangaard called the meeting to order at 8:37 a.m. Secretary Mary Evert called the roll. A quorum of the Board was present.

B. President's Remarks

Ms. Grangaard thanked everyone for attending. She explained that the Board does its work during Board meetings and, therefore, may not always recognize or respond to public comments immediately, but will recognize public comments at some point during the meeting.

Ms. Grangaard announced that April is OT Month and requested that information be added to the Board's web site. She also directed staff to advise the Department of Consumer Affairs.

C. Approval of the Amended November 4, 2005 Board Meeting Minutes

The Board reviewed the amended November 4, 2005 Board meeting minutes.

- ◆ **Christine Wietlisbach moved to approve the November 4, 2005, minutes.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

D. Approval of January 26, 2006, Board Meeting Minutes

The Board reviewed the minutes from the January 26, 2006, Board meeting. They requested that Item I be corrected to reflect that two Board members were appointed to attend the February 24, 2006, public hearing concerning the proposed amendments to the advanced practice regulations.

- ◆ **Mary Evert moved to approve the January 26, 2006, minutes as amended.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

E. Approval of the February 16, 2006, Board Meeting Minutes

The Board reviewed the minutes from the February 16, 2006, teleconference. They requested that the minutes be corrected to reflect that Jeff Hanson was not present and that Marsha Gove was present.

- ◆ **Christine Wietlisbach moved to approve the February 16, 2006, minutes as amended.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

F. Practice Committee Report

Ms. Grangaard gave a summary of the Practice Committee Meeting held on February 23, 2006, in Oakland, California. She stated that the Committee reviewed a draft of the Expert Reviewer application developed by staff. The Board reviewed and discussed the draft application.

Mary Evert suggested that the application include a disclaimer that would prohibit an expert reviewer from using the designation for any other purpose or in advertisements. The Board discussed the advantages and disadvantages of including the disclaimer in the application or developing a cover letter that would include that information.

Norine Marks stated that she would be glad to work with staff and the Committee to finalize the application. She suggested that the Board request input from the Deputy Attorney General Office's Liaison. Ms. Marks stated that the Board does not necessarily have to actually approve the applications; they can simply accept applications to use as a resource pool.

Ms. Grangaard stated that the Committee also discussed the compensation rate for Expert Reviewers. The Committee did not recommend an hourly rate for reviewing documents or providing an expert opinion, but did recommend a minimum of \$100 per hour for testimony.

Ms. Marks stated that expert reviewer compensation might be a personnel issue. Ms. Martin indicated that she would research the issue with the personnel office to find out if there are minimum or maximum amounts allowable. The information will be provided to the Board at the next meeting.

Ms. Grangaard stated that the Committee recommended that the continuing competency audit be performed on 5% of license renewals.

Ms. Grangaard stated that the Committee discussed the review of advanced practice provider applications. She would like to have the Committee set criteria for reviewing the applications and then establish a subcommittee to review the applications.

Ms. Grangaard stated that she would like to appoint two additional members to the Practice Committee; one in pediatrics and one in the mental health field. Ms. Marks indicated that the Board President can appoint Committee members.

Ms. Marks reminded the Board and staff that Committee members must be informed of the rules of public hearings, etc.

Ms. Wietlisbach requested a list of all of the members of each the Board's Committees.

The Board thanked the Practice Committee for their hard work and great suggestions.

G. Executive Officer's Report

1. Internal Audit Update

Ms. Martin stated that subsequent to the Internal Audit, performed as part of the Sunset Review process, the Board received an Exit Conference Outline. This document gives staff an idea of what will be in the final audit report, which is due in April. She stated that the Department did not have this document prior to providing their issues for the Sunset Review hearing. Staff will respond to the final audit report and provide copies to the Board at the next meeting.

Ms. Grangaard requested information about the auditor's qualifications. Ms. Martin explained the processes that the auditor went through when performing the audit, specifically determining if our policies and procedures adhere to the laws and regulations.

The Board raised the question of whether course content for license qualification should be listed in the statute.

Ms. Martin requested that members wishing to respond to the items in the Exit Conference Outline do so within two weeks. Staff will provide the Board with a copy of the final audit and develop a work plan with timelines for correcting the items identified; the final work plan will also be provided to the Board. Ms. Martin also advised the Board that there will be 180-day and 360-day follow-ups.

2. Sunset Review Update

Ms. Martin reported that the Department of Consumer Affairs recommended that the Board be continued and that the statute be amended regarding out-of-state practitioners. The Joint Committee on Board, Commissions and Consumer Protection has concerns regarding the budget surplus and recommended biennial renewal.

Ms. Grangaard stated that the Board has been working on a regulatory amendment to reduce the renewal fee since 2003.

Ms. Martin stated the Sunset Review hearing was scheduled for today (March 30, 2006). She was not required to attend because the issues raised were not controversial. The vote will be held next week. Ms. Martin will follow-up on legislation for the out-of-state practitioners and retired status.

The Board requested that a press release be prepared regarding the continuation of the Board and that an article be developed for the next newsletter.

3. Budget Report

Ms. Martin stated that staff is continuing to work on the fee reduction language. She stated that revenue and expenditures will be in line with projections. Budget Change Proposals (BCPs) will be submitted for the 2007/08 fiscal year for computer equipment, increased rent costs and additional permanent staff. The out-of-state travel request was submitted for funds for two people to travel the NBCOT conference, AOTA conference, and either the CLEAR or the FARB conference.

There is no additional information on possible Board appointments.

H. Enforcement Data for the period July 1, 2005 – December 31, 2005

1. Citation and Fine Statistics

Ms. Martin stated that the Board issued only 10 citations and fines for the first half of the 2005/06 fiscal year due to workload exceeding capacity. A new position has been established that will focus solely on issuing citations. This means the number of citations issued will go up in the future since there will now be resources dedicated to this function. Further discussion of fine ranges and public disclosure will be on the next Board agenda.

Ms. Martin advised the Board that other boards do disclose citation information to the public. She requested input from the Board concerning issues surrounding disclosure of citations. At the Board's request, staff will provide information and

statistics to assist the Board in determining what is in the best interest of the public.

2. Probationer Update

Ms. Martin advised the Board that with the additional enforcement staff person, the probation monitor will be able to meet with probationers more often. Staff intends to have meetings quarterly with each probationer.

3. Disciplinary Case Status

Ms. Martin discussed statistics on disciplinary cases. She indicated that staff is following up with the Division of Investigation on older cases. Staff is also expecting to receive a Statement of Issues to be filed soon.

I. Discussion and Consideration of Occupational Therapy Assistants changing from a Certificate to a License

The Occupational Therapy Association of California (OTAC) has requested that the Board take a position on possible legislation that would change the statute to reflect licensure instead of certification for occupational therapy assistants.

Ms. Marks stated that in California, occupational therapy assistants receive the same rights concerning due process, disciplinary actions, etc. under their certificates as they would if the term were licensed. She is not aware of the reason for the use of the different terms in the statute.

Ms. Grangaard stated that when the licensing law was being developed, the Physical Therapy Association felt that occupational therapy assistants performed at a technical level and they should not be license. Physical therapy assistants are now licensed. Ms. Weitlisbach questioned whether that was a result of a change in statute. James Simms of the Physical Therapy Association, stated that the change was not legislative, it was changed in regulation at the Board level.

- ◆ **Mary Evert moved to have the Board investigate regulatory and statutory language in order to change the term “certified” to “licensed” for occupational therapy assistants.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

Bobbie Jean Tanberg, COTA, stated that she was attending the meeting to represent southern California occupational therapy assistants. She stated that OTAs are more vulnerable to having their skills performed by unlicensed individuals. She stated the OTAs are in short supply and will be the more rapidly growing profession in the future. Ms. Tanberg thanked the Board for supporting occupational therapy assistants in their goal to have the statute reflect licensure versus certification.

J. Discussion of Business and Professions Code Section 2570.14, Procedure for Applicant Not Engaged in Practice for Five Years

Ms. Martin advised the Board that staff does not have guidelines for determining whether applicants who have not practiced in the past five years should take the examination or provide continue competency. She stated that there are so many different scenarios surrounding individuals who have not practiced in the five years immediately proceeding their application for licensure. She does not believe the applicant should be given the authority to determine which requirement they will fulfill.

The Board directed staff to prepare recommended language for review by the Practice Committee and Board at their next meetings.

Ms. Marks commented that the continuing competency regulations may also need amendment.

K. Discussion of Scope of Practice Inquiries and Development of Database to serve as resource to Practitioners and the Public

Ms. Martin stated that the Board continues to receive questions regarding scope of practice issues. She recommended that a database be developed that contains formal responses and policies on issues that have been reviewed and approved by the Board. The database could be set up in such a way that individuals could sort it by the date the response was issued or the subject matter. The database would be available on the Board's web site.

Ms. Grangaard stated that the Board has requested this in the past and would support going forward with this idea.

Ms. Marks suggested that the database be preceded by a statement to refer individuals to the scope of practice contained in the statute and to remind licensees that they must be able to demonstrate competency in areas in which they practice.

L. Discussion of Proposed Regulation to Amend Title 16, Division 39, California Code of Regulations Section 4154, Post Professional Education and Training, Section 4155, Advanced Practice Certification and add Section 4156, Advanced Practice Representation

Ms. Evert reported that a public hearing for proposed regulatory amendments to the advanced practice regulations was held on Friday, February 24, 2006, in Sacramento. She explained that everyone in attendance was asked to make a comment. She stated that 19 people made comments; 12 opposed, 6 in favor, and 1 neutral. The Board will continue to study the issue and report back at a future meeting.

M. Consideration of Withdrawal of Proposal Regulations to Amend Title 16, Division 39, California Code of Regulations Section 4130 – Fees

Ms. Martin reiterated that the Board has been attempting reduce renewal fees for quite some time. The current proposed regulatory language was noticed on July 9, 2005, and has been modified twice since then. She stated that any further modifications to the originally noticed language have to be noticed again, showing all of the previous modifications. She explained that, from a processing standpoint, it might be easier and cleaner to withdraw the current language and then simply notice the new language.

Ms. Marks stated that the Board could delegate to the Executive Officer the authority to withdraw the notice and re-notice with appropriate fee amounts.

- ◆ **Mary Evert moved to delegate to the Executive Officer the authority to withdraw the notice for regulatory amendments to Title 16, Division 39, California Code of Regulations Section 4130 and then re-notice with the appropriate fee amounts.**
- ◆ **Margaret Cunningham seconded the motion.**
- ◆ **The motion carried unanimously.**

N. Approval of Proposed Regulatory Language to Amend Title 16, Division 39, California Code of Regulations Section 4114 – Abandonment of Application

Ms. Martin requested that the Board approve a proposed regulatory amendment that would strengthen the application abandonment language. Upon approval, the language will be noticed for public comment.

- ◆ **Christine Wietlisbach moved to approve for notice and set for hearing the proposed regulatory amendments to Title 16, Division 39, California Code of Regulations Section 4114.**
- ◆ **Mary Evert seconded the motion.**
- ◆ **The motion carried unanimously.**

O. Proposed Agendas

The Board review the proposed agendas for the May and July meetings and added the following items:

- Sunset Review Update
- Expert Reviewer Application (DAG Liaison/Personnel Input)
- List of All Committee Members
- Draft Response/Action Plan for Audit
- Citation Disclosure/Web Capabilities
- Practice Committee Report
- OTA/C vs. OTA/L Issue
- Business & Professions Code Section 2570.14

Mary Evert recommended that the title for Item F on the May agenda be changed from “Strategic Planning – 2006” to “Plan to Plan.”

P. Public Comment Session

Kim Morgan spoke about the HTC credential and thanked the Board for hearing her concerns.

Linda DeMeo thanked the Board and encouraged the Board to be a pacesetter in the nation.

James Simms spoke as a physical therapy licensee. He stated that disclosure of disciplinary action serves as a huge deterrent. He stated that laws should be enforced no matter how miniscule they may seem. He also stated that the Little Hoover Commission has an interesting document concerning the Governor’s plan to dissolve the Boards vs. the Sunset Review process.

Gigi Smith thanked the Board for taking a position on OTAs becoming licensed. She also made a statement concerning practitioners becoming licensed after five years of not being engaged in the practice. There are refresher courses available.

Q. Closed session pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary decisions

There were no disciplinary decisions.

M. Adjournment

The meeting adjourned at 11:09 p.m.