APPROVAL OF JUNE 27-28, 2012, BOARD MEETING MINUTES.

The draft minutes are attached for review.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
2005 Evergreen Street, Suite 2050, Sacramento, CA 95815
P [916-263-2294] F [916-263-2701] | www.bot.ca.gov

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES

Wednesday, June 27, 2012

Board Members Present
Bobbi Jean Tanberg, President
Eric Alegria
Mary Evert
Linda Florey
Luella Grangaard
Kathay Lovell
Nancy Michel

Board Staff Present
Heather Martin, Executive Officer
Norine Marks, Legal Counsel
Jeff Hanson, Enforcement Coordinator
Jody Quesada, Office Technician

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

President Tanberg called the meeting to order at 9:45 am, and opened the meeting in memory of Nancy Michel's husband Glen. Secretary Florey called roll and a quorum was established. President Tanberg announced that agenda item twenty-two, Closed Session, would be moved to immediately follow the lunch break.

2. President's remarks. *(B. Tanberg)*

President Tanberg thanked the Board Members for their committee work.

3. Board member updates/activities. *(All Board Members)*

Mary Evert reviewed an article from the United States Navy, regarding training courses implemented to address unethical behavior. Ms. Evert suggested the Board confer with other Boards, as well as research the ethics training courses available so that the Board could consider using them in its disciplinary cases.

Luella Grangaard reported attending the Advisory Board meeting for Stanbridge College. Ms. Grangaard reported that Stanbridge will be implementing an OTA to OT Bridge Program and will be looking for faculty.

4. Approval of the March 22, 2012, Board Meeting minutes.

- Mary Evert moved to approve the March 22, 2012, Board meeting minutes.
- Eric Alegria seconded the motion.
- ***The motion was adopted.***
- Kathy Lovell and Linda Florey abstained.

5. Legislative and Regulatory Affairs Committee Report *(L. Grangaard)*

A. Highlights from June 14, 2012, meeting.

Committee Chairwoman Luella Grangaard reported that the committee members approved the minutes for the January 24, 2012, and March 8, 2012, meetings.

B. Acceptance of the January 24, 2012, Committee Meeting minutes.
- Ms. Grangaard moved that the Board accept the January 24, 2012, meeting minutes.
- Ms. Evert seconded that the minutes be received and filed.

C. Acceptance of the March 8, 2012, Committee Meeting minutes.
- Ms. Grangaard moved that the Board accept the March 8, 2012, meeting minutes.
- Ms. Evert seconded that the minutes be received and filed.

D. The Committee reviewed and recommended positions on the following bills: Assembly Bills (AB) 171, 439, 518, 1435, 1588, 1896, 1904, 1932, and 2570, and Senate Bills (SB) 770, 924, 975, 1228, 1274, 1327, and 1575.

- Chairwoman Grangaard moved on behalf of the Committee to recommend the Board watch AB 1435, AB 1588, AB 1904, SB1274 and SB 1327.
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

- Chairwoman Grangaard moved on behalf of the Committee to recommend the Board remain neutral on AB 1932.
- Mary Evert seconded the motion.
- ***The motion was adopted.***

- Chairwoman Grangaard moved on behalf of the Committee to recommend the Board support AB 2570, SB 975, SB 1228 and SB 1575.
- Mary Evert seconded the motion.
- ***The motion was adopted.***

- Chairwoman Grangaard moved on behalf of the Committee to recommend the Board oppose AB 1896 and SB 924.
- Mary Evert seconded the motion.
- ***The motion was adopted.***

- Chairwoman Grangaard moved to authorize the Executive Officer to write letters of support and/or opposition, as appropriate, for the aforementioned bills.
- Mary Evert seconded the motion.
- ***The motion was adopted.***

6. Review and consideration of establishing a process to review legislation and determine Board position in between meetings. ***(H. Martin)***

Heather Martin referenced a Policy Memorandum from the California Commission on Disability Access (CCDA) that outlines their process for dealing with legislative activities when time constraints don't allow them time to schedule and hold a meeting to discuss. Included in this process is the establishment of a committee that will take positions on legislative activities when time is of the essence. Ms. Martin asked the Board Members to give feedback as to the implementation of such a committee or an alternative suggestion on how to keep abreast of such legislative changes.

Mary Evert acknowledged the wisdom of this procedure but expressed concern that sufficient safeguards be implemented to assure that the Board is allowed input in legislative issues.

Eric Alegria agreed with Ms. Evert's comment and requested clarification on the timeline in which the proposed committee would be allowed to utilize their power and authority on behalf of the Board.

Ms. Grangaard expressed the need to have a way to respond timely when the bills are amended quickly or before the deadline for the legislative policy committees to meet. She stated that she believed this could be achieved with a process where the committee, or some other mechanism, could respond when the bills are time-sensitive and the Board can still be a part of the legislative process. Ms. Grangaard also expressed her interest in clarifying when such a committee should act on behalf of the Board.

- Mary Evert moved that the Executive Officer bring a proposed protocol for dealing with legislation under certain time constraints to the next Board meeting for further discussion.
- Eric Alegria seconded the motion.
- ***The motion was adopted.***

Luella Grangaard requested staff look into the cost of subscribing to a service that reviews bills and sends updates to the Board, so that staff has the most up to date information available.

President Tanberg noted Ms. Grangaard's request.

7. Ad-hoc Sunset Review Committee Report ***(L. Grangaard)***

A. Highlights from June 19, 2012, meeting.
Luella Grangaard suggested the Board Members identify all new and/or problematic issues and use the Sunset Review as an opportunity to address them.

B. Review of draft Sunset Review Report.
Heather Martin reviewed the plan of action for completing the Sunset Review.

8. Executive Officer's report. ***(H. Martin)***

A. Budget information.
Heather Martin reported that as of May 31, 2012, the Board has spent slightly over $1.1m of the $1.4m budget and earned $971k of the original revenue projection of $980k. Ms. Martin reported that the Board's ability to cover the 24% over-expenditure of the enforcement-related budget was made possible due to salary savings resulting from leaving two limited term positions vacant. Ms. Martin cautioned the 'extra' salary savings will not be available in fiscal year 2012-13 if enforcement costs exceed the budgeted amount.

B. Personnel update.
Ms. Martin stated that the funding for the two limited term positions will end September 30, 2012. Ms. Martin also reported that due to the Salary Savings Plan, she is required to lose a .8 position, which means that if and when a vacancy occurs, the position will not be backfilled.

C. Performance measurements.
Ms. Martin included the third quarter performance measures in graph format. The Board's performance measures, along with those of all other boards, are posted on DCA's website on a quarterly basis.

D. Board Member Disciplinary Resource Manual.
Ms. Martin reviewed the manual and acknowledged the input from Norine Marks, Senior Legal Counsel, and Janice Lachman, Supervising Deputy Attorney General with the Office of the Attorney General. Ms. Martin expressed hope that the manual will prove useful to the Board members. She stated that she considers it a work in-progress and asked the Board members to give suggestions to improve the manual. President Tanberg thanked Ms. Martin for the manual, calling it exceptional.

E. Other informational items.
Breeze (new Department of Consumer Affairs' applicant, licensing, and enforcement, computer system) is still on schedule to launch in May of 2013.

Ms. Martin confirmed that San Jose State University will be hosting the Board Meeting on October 12, 2012; the location for October 11, 2012, is to be determined.

Ms. Martin reported that Uniform Standards for Substance-Abusing Licensees were previously integrated into the Disciplinary Guidelines and will now have to be removed; consequently, the Board will end up with a set of Disciplinary Guidelines and a separate set of standards for a substance-abusing licensee. Ms. Martin reported that the Enforcement Committee will be taking a look at what substance abusing means and establishing a definition, and reviewing modified language for the Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees.

Ms. Martin briefed the Board Members on the Autism Advisory Task Force and its intent to identify licensure for a group of people, who up to this point have only been required to hold a national certification. Ms. Martin spoke with the moderator of the task force and recommended they seek participation from the licensing boards that could ultimately be required to possess additional licensure. Ms. Martin also had a conference call with Dr. Florence Clark, who is representing occupational therapy on the task force, regarding the proposed licensure and regulation of behavior analysts.

9. Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4101, Delegation of Certain Functions, and establish section 4146, Definitions.

At its September 7, 2011, meeting the Board voted to adopt California Code of Regulations (CCR) Sections 4100, 4048, 4149 and 4149.1 and proposed modifications to Sections 4101 and 4146.

The text of Sections 4101 and 4146 was modified and noticed; the modified text was made available for public comment September 23, 2011, through October 10, 2011.

- Mary Evert moved to adopt sections 4101and 4146 as presented.
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

10. Consideration and adoption of proposed regulatory language to amend Title 16, and establish CCR Sections 4116, Definitions; 4117, Sponsoring Entity Registration and Recordkeeping Requirements; 4118, Out-of-State Practitioner Authorization to Participate in Sponsored Event; and 4119, Termination of Authorization and Appeal.

The Board reviewed modified text, modified applications, and data supporting the application fee that were provided in the agenda materials. There were no questions related to the materials provided.

- Mary Evert moved to adopt the regulations as presented.
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

- Nancy Michel moved to delegate authority to the Executive Officer and Legal Counsel to make minor technical, non substantive changes as needed in the final rulemaking process.
- Linda Florey seconded the motion.
- ***The motion was adopted.***

11. Discussion and consideration of amending Title 16, to renumber CCR Section 4122 to 4127 and add new section 4128, Retired Status.

- Mary Evert moved to approve for noticing.
- Luella Grangaard seconded the motion.
- ***The motion was adopted.***

- Mary Evert moved to delegate authority to the Executive Officer and Legal Counsel to make minor technical and non substantive changes barring negative public comment.
- Kathy Lovell seconded the motion.
- ***The motion was adopted.***

12. Discussion and consideration of amending Title 16, CCR Section 4130, Fees.

Heather Martin presented the Board with examples of application and renewal fees charged by other health boards.

The Board members changed the effective date in item (d) to January 1, 2014; the amount in item (f), the inactive fee will change from $25 to $50, establish a $50 application fee, establish a $25 fee for application for retired status, and increase the biennial renewal fee from $150 to $170.

- Nancy Michel moved to approve and notice the language as amended.
- Eric Alegria seconded the motion.
- ***The motion was adopted.***

13. Discussion and consideration of amending Title 16, CCR Section 4154, Post-Professional Education and Training.

The Board reviewed the proposed regulatory language in the meeting materials.

- Nancy Michel moved to approve for the language noticing.
- Eric Alegria seconded the motion.
- ***The motion was adopted.***

14. Discussion and consideration of amending Title 16, to add CCR Section 4172, Standards of Practice for Telehealth.

Ms. Martin referenced meeting materials, including:

- A legislative proposal previously approved by the Board to amend BPC 2570.2(k) and establish Standards of Practice for Telehealth in Occupational Therapy;
- Amendments to the legislative proposal suggested by AOTA;
- An article entitled *The Telehealth Advancement Act of 2011 – Opportunities for Innovation in California.*
- A copy of AB 415, the bill which amended BPC 2290.5, to replace 'telemedicine' with 'telehealth' and expanding 'telehealth' to all healthcare providers;
- A copy of BPC 2290.5, which provides definitions and requirements for providing services via telehealth; and
- A letter from Dr. Burns, Medical Director, Karuk Tribal Health Program, requesting the Board's assistance in moving forward with telehealth to improve service-delivery to his patients.

Ms. Martin referenced the Board-approved legislative proposal that amended the definition of occupational therapy by adding telehealth as an option for service delivery and established Standards of Practice for Telehealth. Ms. Martin reported she was unable to acquire an author for this proposal.

Ms. Martin reminded the Board that in December, Jennifer Snyder spoke on behalf of Occupational Therapy Association of California (OTAC) and the American Occupational Therapy Association (AOTA), and reported that AOTA was working on model language to establish telehealth standards. As of May, the model language was not available from AOTA; however, the Board's legislative proposal was reviewed by AOTA with their model language in mind; they presented their recommended changes.

- Article: *The Telehealth Advancement Act of 2011 – Opportunities for Innovation in California.*
  To give the Board some background and perspective on the issue of telehealth, Ms. Martin presented a handout title "The Telehealth Advancement Act of 2011", the actual language that authorizes occupational therapists (OTs) and occupational therapy assistants (OTAs) to provide services via telehealth.

- AB 415 (Logue), bill amending BPC 2290, to replace 'telemedicine' with 'telehealth' and expanding 'telehealth' to all healthcare providers.
  Ms. Martin included a copy of the amended bill for the Board's review.

- BPC 2290.5, providing definitions and requirements for providing services via telehealth.
  Ms. Martin reported that BPC 2290.5 is the section in the Medical Practice Act that was modified to expand telehealth to mean all healthcare providers.

- Letter from Dr. Burns, medical director, Karuk Tribal Health Program, requesting the Board's assistance in moving forward with telehealth to improve service-delivery to his patients.
  Ms. Martin reviewed the letter from Dr. Burns that stated that for the last several years their clinic has made extensive use of telemedicine. Dr. Burns supports and sees the implementation of telerehabilitation as a wonderful opportunity.

- Proposed text to establish CCR Section 4172, Standards of Practice for Telehealth.
  Ms. Martin said that she contacted Senator Logue, and asked that he carry the Board's legislative proposal that would have amended the definition of occupational therapy and established the new practice standards.

Ms. Martin met opposition from the Center for Connected Health Policy and The Rural Health Care Association. The concern identified from these groups was that the standards established were too limiting.

Ms. Martin and Legal Counsel, Norine Marks suggested trying to establish Standards of Practice for Telehealth in regulation. Ms. Martin referenced the proposed text to establish CCR Section 4172, Standards of Practice for Telehealth, in the meeting materials.

Ms. Martin informed the Board that the first step of this process would be to move forward with the regulatory process and the second step would be to work with the author's office to get something in statute. Senator Logue's office amended a current bill that would add a new section to the general provisions of the B&P code that addressed the Board's concerns in terms of the standards, by emphasizing therapists should follow the Practice Act and the ethical standards of practice.

Discussion ensued regarding AOTA's suggested amendments of BPC 2572.

Mary Evert commented that section (f), subsection (5) found the words "Comply with best practices established by the occupational therapy profession" erroneous. Ms. Grangaard commented that a lot of the suggested amendments were open ended and left too much latitude for interpretation. President Tanberg suggested soliciting input from Tammy Richmond, of the National Association for Telehealth, as she has been involved with the issue of telehealth for quite some time.

President Tanberg asked if anyone had suggested amendments to BPC 2572.

Luella Grangaard suggested that the last sentence in (b) be amended to add that the therapist reside in California. Following lunch, Legal Counsel, Norine Marks submitted a new draft of BPC 2572 to the Board members that included the suggested amendment to the last sentence of (b).

- Luella Grangaard moved to extract from AOTA's suggested amendments the second sentence (d) which begins "As part of their clinical reasoning...." and numbers (1) "whether an in-person evaluation...." and (2) "whether during the course of treatment...." From section (e) and insert into Legal Counsel's new draft of BPC 2572 under section (d), subsection (1) as (a), (b), and (c) respectively.
- Mary Evert seconded the motion.

- Eric Alegria moved to amend the last sentence of section (c) to read "An occupational therapist shall obtain verbal informed consent from the patient or client prior to delivering occupational therapy services via telehealth or telerehabilitation and shall include documentation of the consent in the patient's or client's health record."
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

President Tanberg stated that the main motion brought before the Board had been amended and asked that Ms. Grangaard restate the motion.

- Luella Grangaard moved to make the amendments stated in her previous motion and include the amendments suggested in Eric Alegria's motion.
- ***The motion was adopted.***

President Tanberg indicated the next topic for discussion would be any suggested changes to the proposed text of California Code of Regulations (CCR) Section 4172, Standards of Practice for Telehealth.

- Mary Evert moved to approve Section 4172 with amendments.
- Kathay Lovell seconded the motion.

Discussion of amendments ensued among the Board members.

- Mary Evert moved to amend Section 4172 as follows:
  - Section (c) to read, "An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth, and shall include documentation of that consent statement in the patient's or client's health record".
  - Amend the wording under section (d), to make it clear occupational therapy practitioners must consider whether services provided via telehealth would be safe, effective, and appropriate. Subsection (d)(1) is amended to read "Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine whether an in-person evaluation is necessary; and". Subsection (d)(2) is amended to read "Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine whether in-person interventions are necessary".
  - add "and reside in the state." to the last sentence of section (a).
- Kathay Lovell seconded the motion.
- ***The motion was adopted.***

- Mary Evert moved to approve the amendments for noticing and to authorize the Executive Officer to make technical and non-substantive changes.
- Kathay Lovell seconded the motion.
- ***The motion was adopted.***

The Board may convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on Disciplinary Decisions.

- **Closed session took place from 1:03 to 1:10 pm.**

15. Discussion regarding SB 1050 (Alquist), Autism: telehealth task force.

- Luella Grangaard moved to direct the Executive Officer to draft a letter of support if the bill is amended to include licensed providers who treat this population group and to include a practicing occupational therapist on the Autism Telehealth Task Force.
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

Board members directed the Executive Officer to submit the drafted letter to President Tanberg prior to sending.

16. Discussion regarding AB 1733 (Logue),Telehealth.

Heather Martin reported that this section was informational. There was no discussion related to the materials provided.

17. Report on Pending Regulations. ***(H. Martin)***

Ms. Martin reviewed the Regulation Update Report most of which was previously discussed by the Board. Board members agreed to have staff prioritize regulations to review for the October meeting.

18. Disaster Preparedness/Disaster Response Committee Report ***(M. Evert)***

A. Highlights from June 26, 2012, meeting.
Committee Chairwoman Evert reported that a major concern for this committee is boosting awareness and the importance of developing a disaster preparedness plan for patients. The committee discussed occupational therapists delivering one on one conversation and devising personalized disaster preparedness plans.

Chairwoman Evert indicated that she had worked with Kit Sinclair, past president of the World Federation of Occupational Therapist (WFOT), and submitted a presentation to AOTA on the issue of being prepared in the event of a disaster. The presentation will include a disaster simulation, have therapists devise a client plan, and ask that the therapists collaborate with their coworkers and employers to create a workplace plan.

Kathay Lovell commented that presenting this topic as a required course might be the best way to gain awareness. Ms. Lovell suggested that this online course should provide basic knowledge of what to do in the face of a disaster.

Chairwoman Evert asked fellow Board Members for feedback as to what ideas they like the best and to solicit their coworker's opinions on the subject and find out what will motivate them to share and address disaster preparedness information. President Tanberg asked that the Board Members gather this information and bring it to the October Board meeting.

Ms. Martin suggested soliciting the Interested Parties list and Facebook followers to submit their input regarding disaster preparedness, the responses could be forwarded to the Committee prior to their next meeting.

B. Acceptance of the January 24, 2012, meeting minutes.
C. Acceptance of the May 17, 2012, meeting minutes.

- Luella Grangaard moved to accept the minutes from the January 24, 2012, and May 17, 2012, as presented.
- Nancy Michel seconded the motion.
- ***The motion was adopted.***

D. Other informational items.
The date of the next meeting will be August 9, 2012.

19. Enforcement data and reports for the period 1/1 – 3/31/2012. ***(J. Hanson)***
Board Members reviewed the supplied data and reports. There were no questions or comments related to the materials provided.

20. Public comment session for items not on the agenda.

No public comment was offered.

21. Proposed Agenda Items for Next Meeting.

Board members committed to participating in a teleconference Tuesday, July 31, 2012, at 9:30 am. Heather Martin reported that there will be reports from the committees, regulation updates, Sunset Review report update and standard topics.

22. The Board may convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on Disciplinary Decisions.

This agenda item took place from 1:03-1:10 pm.

Adjournment.

The meeting adjourned at 3:07 pm.