



## CALIFORNIA BOARD OF OCCUPATIONAL THERAPY BOARD MEETING MINUTES

**Wednesday, February 27, 2013**

### Board Members Present

Luella Grangaard  
Nancy Michel  
Linda Florey  
Kathay Lovell

### Board Staff Present

Heather Martin, Executive Officer  
Norine Marks, Legal Counsel  
Jeff Hanson, Office Manager  
Jody Quesada, Office Technician

### **9:00 am - Board Meeting**

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

President Luella Grangaard called the meeting to order at 9:03 am and Secretary Linda Florey called roll; a quorum was established.

#### **2. President's remarks.**

President Grangaard swore in Nancy Michel.

#### **3. Board member updates/activities.**

President Grangaard reported working with past president Bobbi Jean Tanberg on activities that were assigned at the last meeting and preparing for the upcoming presentation of the Sunset Report.

#### **4. Election of Vice President.**

- ❖ Nancy Michel nominated Kathay Lovell for Vice President
- ❖ Linda Florey seconded the nomination.
- ❖ ***The motion was adopted.***

#### **5. Approval of the October 11-12, 2012, Board meeting minutes.**

- ❖ Nancy Michel moved to approve the October 11-12, 2012, Board meeting minutes.
- ❖ Linda Florey seconded the motion.
- ❖ ***The motion was adopted.***

#### **6. Approval of the October 26, 2012, Board meeting minutes.**

- ❖ Nancy Michel moved to approve the October 26, 2012, Board meeting minutes.
- ❖ Linda Florey seconded the motion.
- ❖ Kathay Lovell abstained.

## 7. Disaster Preparedness/Response Committee Report and Board Action.

Kathay Lovell recommended suspending the Disaster Preparedness/Response Committee until all vacant positions Board member are filled.

- A. Acceptance of the September 20, 2012, meeting minutes.
- B. Acceptance of the October 24, 2012, meeting minutes.

No public comment

- ❖ Nancy Michel moved to accept the September 20, 2012, and October 24, 2012, meeting minutes.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

## 8. Discussion and consideration of restructuring the Board's standing Committees, including Disaster Preparedness/Disaster Response Committee, Education and Outreach Committee, Enforcement Committee, Legislative and Regulatory Affairs Committee, and Practice Committee, and discussion of Committee's responsibilities.

President Grangaard asked the Board members to consider whether the committee meetings are resulting in a meaningful product and support the Board's Strategic Plan. President Grangaard proposed that, due to the fact that the Board is currently understaffed, Board members record and produce their Committee's meeting minutes in an effort to minimize Board staff participation. She also suggested treating some of the present Committees as Ad-hoc committees, and only hold meetings when the need arises.

Heather Martin informed the Board members that a review of the Board's Administrative Manual will be on the agenda for the May Board meeting and in the event the Board wished to make any changes to Committee structure(s) or responsibility, the May meeting would afford the Board a perfect opportunity to make these changes.

No public comment

## 9. Discussion and consideration of Sunset Report and Sunset review process.

President Grangaard advised the Board members that she and Heather Martin are scheduled to appear before the Senate Committee on Business, Professions, and Economic Development, and the Assembly Committee on Business, Professions and Consumer Protection, at the Joint Oversight Hearing scheduled for March 18, 2013.

Linda Florey suggested the following corrections to the "Addendum to Sunset" Review Report.

Page 3, last paragraph should read:

Board Recommendation: The Board recommends approval for two additional positions with the Outreach and Licensing units: two Office Technicians to complete applications in a consistent and timely manner.

Page 4, last paragraph, second sentence should read:

...To address the backlog and bring the period being audited more current...

Kathay Lovell asked for clarification on page 99, section F of newly introduced Senate Bill 306.

Heather Martin confirmed that section F could be deleted.

No public comment

10. **Review of statutory language and consideration of a legislative proposal to establish a fine for licensees who fail to comply with a request for the medical records of a patient.**

Heather Martin questioned whether the Board was interested in pursuing legislation that would establish a fine for licensees who fail to comply with a request for the medical records of a patient.

President Grangaard asked that Board staff research and identify how prevalent this type of case is and the rate of non compliance from the practitioners.

No public comment

11. **Discussion regarding Moscone-Knox Professional Corporation Act and the implication of occupational therapists owning corporations and licensees being employed by other professional corporations and the consideration of pursuing legislation to effect changes.**

President Grangaard asked Legal Counsel, Norine Marks for her recommendation as to how the Board should proceed regarding the Moscone-Knox Professional Corporation Act.

Ms. Marks stated that in her opinion it should be up to the Department of Corporations to enforce the violations of a corporation and subsequently the responsibility of a Board to enforce violations of a licensee who is a part of a corporation that employed a licensee who is not specified in the Act.

On behalf of American Occupational Therapy Association (AOTA) and Occupational Therapy Association of California (OTAC), Jennifer Snyder, reiterated that both agencies were in support of occupational therapists (OTs) being employed by professional corporations and for OT corporations to have the ability to employ other practitioners.

Ms. Snyder stated that AOTA asked for clarification as to the definition of a professional corporation.

In response to Linda Florey's question regarding SB 924, Heather Martin replied that SB 924 was dead along with the amendments to the corporation code.

- ❖ Nancy Michel moved to direct Heather Martin to work toward amending the existing bill to include OT corporations and specified employees consistent with last year's legislative proposal.
- ❖ Kathay Lovell seconded the motion.
- ❖ ***The motion was adopted.***

12. **Recommended prioritization of previously approved legislative proposals for the upcoming legislative session.**

Legislative proposals include:

1. Amend BPC Section 2570.2, Definitions.
2. Amend BPC Section 2570.3, Licensing requirement.
3. Amend BPC Section 2570.16, Fees.

4. Add new BPC Section requiring mandatory reporting of employees who are terminated or suspended for cause, as specified, and consequences for failure to report.
5. Add new BPC Section establishing new language which would allow the Board to inspect records.
6. Add new BPC Section regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.

President Grangaard suggested that New BPC section 2570.34, section (b)(3) read as follows:

(3) Patient neglect, physical harm to a patient, or an employee, or sexual contact with a patient.

On behalf of AOTA and OTAC, Jennifer Snyder questioned the priority of dealing with these fees and the possible controversy surrounding imposing them as opposed to focusing on a more global approach to solving the advanced practice issues. Ms. Snyder stated that AOTA and OTAC are supportive of the Board's overall look at how to approach advanced practice and not have the Board as involved.

Ms. Martin clarified that eliminating the advanced practice requirement would only affect new graduates after a specific future graduation date and would not affect the current population, which meant there would be many years before the advanced practice approval requirement could phase out.

- ❖ Kathay Lovell moved to combine proposal one (1), two (2), three (3) and six (6) and keep proposal four (4) and five (5) separate.
- ❖ Linda Florey seconded the motion.
- ❖ ***The motion was adopted.***

**13. Review and consideration of legislative protocol when the Board is unable to meet to discuss pending legislation.**

The members discussed the policy and had no further questions.

*No public comment*

- ❖ Nancy Michel moved to approve policy as presented.
- ❖ Kathay Lovell seconded the motion.
- ❖ ***The motion was adopted.***

President Grangaard informed the Board members that there will be a standing teleconference meeting, if needed, for any legislative issues that are time sensitive.

**14. Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.**

Ms. Martin explained that the proposed language contained in the packet resulted from a conference call between Luella Grangaard, then-Board member Bobbi Jean Tanberg and herself. The Board discussed the language contained in the packet and suggested changes, including establishing a time period that a sexual relationship could be established within the termination of services and elimination of 'mood altering substance" in newly proposed subsection (c).

No public comment

- ❖ Nancy Michel moved to notice the language, as amended, for fifteen (15) days.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Nancy Michel moved to delegate authority to the Executive Officer to adopt the language absent any negative comment and make technical non substantive changes.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

**15. Consideration and adoption of proposed regulatory language to add Title 16, CCR Section 4172, Standards of Practice for Telehealth.**

Ms. Martin explained that the modified text contained in the packet resulted from a conference call between Luella Grangaard, then-Board member Bobbi Jean Tanberg and herself.

No public comment

- ❖ Nancy Michel moved to notice the language for fifteen (15) days as presented.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Nancy Michel moved to delegate authority to the Executive Officer to adopt the language absent any negative comment and make technical non substantive changes.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

**16. Discussion and consideration of amending Title 16, CCR Section 4110, Application, Section 4112, Review of Application, Section 4120, Renewal of License or Certificate – Forms, Section 4121, Renewal of Expired License or Certificate, Application, Fees; Effective Date of Renewal, Section 4123, Limited Permit, and Section 4127, Inactive License.**

Ms. Martin presented the proposed regulatory language and explained that the proposed amendments to sections 4120, 4121, and 4123 were previously approved by the Board. However, proposed amendments to sections 4110, 4112, and 4127 were all new; staff suggested submitting all six amendments in one rulemaking file.

No public comment

- ❖ Nancy Michel moved to notice the language as presented for the 45-day public comment period.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted**
  
- ❖ Nancy Michel moved to delegate authority to the Executive Officer to adopt the language absent any negative comment and make technical non substantive changes.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

**17. Discussion and consideration of amending Title 16, CCR Section 4102, Filing of Addresses, Section 4114, Abandonment of Application, Section 4122, Inactive Status,**

**Section 4141, Assessment of Administrative Fines, Section 4163, Exemption from Continuing Competency Requirements, and Section 4181, Supervision Parameters.**

Ms. Martin informed the Board that the sections in question were new to the Board and the only changes were the elimination of the words certificate, certified and certification. Thus the amendments qualified as a 'Section 100' change, which is explained in more detail under Agenda item 19.

No public comment

- ❖ Nancy Michel moved to notice the language, if necessary, or move forward with steps necessary to complete the rulemaking file as a Section 100 change.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

**Approval granted to Heather Martin by the Board to address item 19, prior to item 18**

- 18. Report on Pending Regulations: Title 16, Division 39, CCR Section 4128, Retired Status; CCR Section 4130, Fees; Section 4154, Post Professional Education and Training; and Sections 4184, Delegation of Tasks to Aides; and, 4187, Occupational Therapy Assistants Serving in Administrative Positions.**

Heather Martin reviewed each pending regulation and its status. Ms. Martin asked the Board members for their input and consideration as to the prioritization of the pending regulatory amendments for upcoming Board meetings. Ms. Martin agreed to carry out the prioritization suggested by the Board.

- 19. Discussion and consideration of delegating authority to Executive Officer to promulgate technical, non-substantive regulatory amendments pursuant to Title 1, CCR Section 100, Publication of "Changes Without Regulatory Effect." (H. Martin)**

Ms. Martin gave an overview of California Code of Regulations (CCR) Section 100 changes and referenced an extract from the Department of Consumer Affairs' (DCA) Rulemaking Manual and the requirements for what qualifies as a Section 100 change.

No public comment

- ❖ Nancy Michel moved to authorize the Executive Officer to process future rulemaking packages that qualified as a 'Section 100' change.
- ❖ Kathay Lovell seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Kathay Lovell moved to Move to direct the Executive Officer to determine whether authority to promulgate a CCR Section 100 change can be delegated by policy or whether the delegation is required to be set forth in section CCR 4101, Delegations of Certain Functions.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**

**20. Review and consideration of request from the Hand Therapy Certification Commission to deem licensees who are Certified Hand Therapists (CHTs) as meeting California's advanced practice requirements for hand therapy and the use of physical agent modalities.**

Ms. Martin summarized the letter submitted by the Hand Therapy Certification Commission, Inc. (HTCC), regarding HTCC's request that the Board consider waiving the requirement of having to apply for the Advance Practice designation in hands for Certified Hand Therapists (CHTs) who move to California from another state.

- ❖ President Grangaard volunteered to put together a document and possibly proposed language pertaining to the Board's consideration of applications for Advanced Practice approval by occupational therapists that are certified hand therapists and hold a license in good standing in another state.

No public comment

- ❖ Linda Florey moved to accept President Grangaard's suggestion that she develop proposed language that allows occupational therapists that hold the certified hand therapist designation and a license in good standing in another state, to meet the Board's advanced practice approval requirements.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**

**21. Enforcement data and reports for the period 10/1/2012 – 12/31/2012.**

Jeff Hanson reviewed the Board's enforcement case load and pointed out that there are twenty cases currently at the Attorney General's Office that would eventually be coming before the Board.

No public comment

**22. Executive Officer's report.**

A. Budget information.

Heather Martin reviewed her written report and emphasized that the Board is on track to exceed the enforcement budget and if the Board continues to overspend the enforcement costs it will have to seek an increase to underfunded line items such as the Attorney General's Office and Office of Administrative Hearings, via the budget change process. The Board may face opposition in this request due to the fact that there is disparity in the revenue collected and the Board's expenditures and when the revenue collected is insufficient to support the expenditures, the Department of Finance (DOF) is reluctant to approve any increase in budget, hence the need for a fee increase.

B. Personnel update.

Ms. Martin reviewed the current head count on staff and the fact that despite workload the Board is unable to request additional staff due to the disparity in the revenue collected and the Board's expenditures.

C. Performance measurements.

Ms. Martin referenced the included report and noted that formal discipline is out of the Board staff's control due to the fact that those cases include participation from staff of the Office of the Attorney General.

D. Bagley-Keene Open Meetings Act.

Ms. Martin supplied the memo from the DCA Legal Office letting the Board know that there were no changes to the 2013 law regarding the Open Meetings Act.

E. Other informational items.

Ms. Martin reviewed the memo received from the DCA legal office outlining the suggested procedure for developing and finalizing a decision of the Board during and after hearing a petition for reinstatement or modification or early termination of probation. Legal Counsel, Norine Marks reviewed the process for the Board members.

Ms. Martin reviewed DCA's handout that outlined each Board's cases and average cycle time.

Ms. Martin commented that a major factor that affects these numbers is the staff size.

Ms. Martin reviewed the "2012 Dental Board SWOT Analysis" handout. Ms. Martin informed the Board that her reason for including this handout was for the Board to have an opportunity to consider utilizing DCA's Solid unit for facilitating a future strategic planning session in which the Board can incorporate elements that would allow it to look at factors that can impact the Board's success.

**23. Review and discussion of revised Executive Officer Evaluation process.**

Ms. Martin reviewed the email and attached memo from DCA that outlined the Executive Officer Evaluation process.

**24. Proposed Agenda Items for May 8-9 Meeting.**

- Petition for Reinstatement
- Petition for Modification of Probation
- Petition for Early Termination of Probation
- Review and possible revisions to Board Administrative Manual
- Review and possible revision to Committees and structure
- Regulatory Hearings (if requested): Amendment to Disciplinary Guidelines and regulatory language approved February 27<sup>th</sup>.

**25. Public comment session for items not on the agenda.**

Heather Martin presented the Board with a copy of a recent stipulated surrender that she adopted as a result of the new authority to adopt stipulations recently delegated to her under new regulatory amendments.

The Board discussed scheduling a standing meeting on Thursdays in April from 12:30 – 1:30, on an "if needed" basis to discuss any time sensitive legislative issues.

**Adjournment**

The meeting was adjourned at 12:29 p.m.