



## **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY BOARD MEETING MINUTES**

**Wednesday, May 8, 2013 and Thursday, May 9, 2013**

### Board Members Present

Luella Grangaard  
Nancy Michel  
Linda Florey  
Kathay Lovell

### Board Staff Present

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

### **WEDNESDAY**

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

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

President Luella Grangaard called the meeting to order at 9:00 am and Secretary Linda Florey called roll; a quorum was established.

2. President's remarks. (*L. Grangaard*)

President Grangaard reviewed the scheduled hearings for the day.

#### Administrative Hearings

9:00 SALCIDO, Kimberly - Petition for Reinstatement of Revoked License

*The hearing began at 9:02 am and concluded at 9:39 am.*

10:00 POSUNIAK, Kathleen - Petition for Modification

*The hearing began at 9:46 am and concluded at 10:28 am.*

11:00 GALAVIZ, Jaime - Petition for Early Termination of Probation

*The hearing began at 10:38 am and concluded at 11:18 am.*

#### **CLOSED SESSION**

*The Board entered in to closed session at 11:28 am. Closed session concluded at 12:03 pm.*

#### **RESUME OPEN SESSION**

3. Adjourn for the day  
The meeting was adjourned at 12:05 pm.

### **THURSDAY**

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

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

President Luella Grangaard called the meeting to order at 9:02 am and Secretary Linda Florey called roll; a quorum was not established.

2. President's remarks. (*L. Grangaard*)

President Grangaard remarked that the legislative committee had met a couple of times since the previous board meeting, the Sunset Review had taken place and there were some trends and issues that she would discuss under agenda item 5.

3. Board member updates/activities. (All Board members)

Linda Florey informed the Board that she had attended the American Occupational Therapy Association (AOTA) conference in San Diego. Ms. Florey said that there were over five thousand people in attendance and it was a magnificent conference.

Kathay Lovell expressed her appreciation for all the hard work and dedication put forth by the legislative committee and board staff in their effort to protect the public.

**9:05 am** – Nancy Michel arrived; a quorum was established.

4. Approval of the February 27, 2013, Board meeting minutes.

Linda Florey pointed out that the title stated the meeting as a teleconference and that a change needed to be made to reflect that the meeting was not a teleconference meeting.

Legal Counsel Norine Marks asked that page 5, item 15, paragraph 1 be amended to remove the final sentence and add a period completing the paragraph directly following the word "herself". Ms. Marks also asked that a period be added in place of the " / " on page 6, item 17, first paragraph.

- ❖ Linda Florey moved to approve the February 27, 2013, Board meeting minutes as amended.
- ❖ Nancy Michel seconded the motion.
- ❖ ***The motion was adopted.***

President Grangaard informed the Board that the agenda would be revised and the next item addressed would be agenda item 18, the public comment session.

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

Mr. Ronald Calkins addressed the Board members by reading a prepared statement regarding his displeasure with the handling of his complaint against an occupational therapist.

*No further public comment*

President Grangaard asked if it was the pleasure of the Board to discuss the matter in closed session. The Board members agreed.

5. Review of Sunset Review Background Paper and Board response to Identified Issues, Background and Recommendations and Possible Board Action.

President Grangaard informed the Board that she and Heather Martin prepared responses to the Identified Issues, Background and Recommendations received from the Senate Committee on Business, Professions, and Economic Development. After that she and Ms. Martin attended the Sunset Review hearing in March.

Based on one of the Committee's recommendations, Ms. Martin asked the Board to reconsider their decision to not post citations, which are public information, on the Board's website.

No public comment

- ❖ Nancy Michel moved that the Board post citations on the Board's website.
- ❖ Kathay Lovell seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Nancy Michel moved to amend the motion to move forward with the posting of citations on the Board's website and to review the limits on posting the citations at the next Board meeting.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

President Grangaard asked if the Board had been able to attain an author to carry the language regarding the continuous query. Heather Martin confirmed that the Board did not yet have an author.

6. Consideration and adoption of proposed regulatory language amending Title 16, CCR Section 4101, Delegation of Certain Functions, adding Section 4146.5, Effective Date of Decisions, amending Section 4147, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, and adding Section 4147.5, Uniform Standards Related to Substance Abuse. (H. Martin)

No public comment

- ❖ Kathay Lovell moved to adopt the language as noticed.
  - ❖ Linda Florey seconded the motion.
  - ❖ **The motion was adopted.**
4. Consideration and adoption of proposed regulatory language amending Title 16, CCR Section 4127, Inactive Status, adding Section 4128, Retired Status, and amending Section 4130, Fees. (H. Martin)

Heather Martin explained that the previous package was disapproved internally due to the fact that the fee increases could not be coordinated with the repayment of the general fund loan and in order to not have the entire package disapproved, information relating a renewal fee increase was stricken. The language to establish new fees was allowed to remain and the modified language was noticed.

No public comment

- ❖ Linda Florey moved to adopt the second modified text.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**

5. Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice. (*H. Martin*)

Heather Martin reviewed the modified text provided and advised the Board members that she included a copy of the public comment received from Jennifer Snyder on behalf of the Occupational Therapy Association of California (OTAC).

Public Comment

Jennifer Snyder on behalf the American Occupational Therapy Association (AOTA) and the Occupational Therapy Association of California (OTAC) stated that both organizations were concerned about the reference to telehealth in section (c)(3) and section (f) reporting requirements. AOTA and OTAC requested additional time to review and discuss these concerns with Heather Martin and the Board.

Heather Martin asked Ms. Snyder to indicate which provisions she was asking the Board to edit or remove.

Jennifer Snyder recommended that subsection (c)(3) of the modified text not be specific to include telehealth and that she felt section (f) included extensive reporting requirements.

Tammy Richmond, Chair of OTAC's Telehealth Ad Hoc Committee and member of the AOTA Telehealth Committee confirmed her support of AOTA's and OTAC's position to remove the double underlined sentence "...including to receive services delivered via telehealth,..." in subsection (c)(3) of the modified text. In the alternative, Ms. Richmond suggested use of the phrase "telehealth technologies" in place of "telehealth."

Ms. Richmond questioned and asked for clarification of the words "consistent with..." in section (a)(1) of the modified text.

Ms. Richmond asked for clarification on whether the timeframe mentioned in section (b)(2) of the modified text that states "...within six (6) months of termination of the occupational therapy services,..." is referring to the conclusion of insurance billed services or also includes privately paid services. Ms. Richmond also asked for the definition of "social or any other manner."

- ❖ Kathay Lovell moved to adopt the modified text.
- ❖ Nancy Michel seconded the motion.
- ❖ ***The motion was adopted.***

Discussion ensued regarding the questions raised during public comment.

Response to public comment 1

Nancy Michel explained that the use of "consistent with..." in section (a)(1) is standard terminology that is used throughout statute.

Response to public comment 2

President Grangaard addressed the six month timeframe as it relates to avoiding relationships with patients. President Grangaard explained that she would prefer to leave the statement broader and with more flexibility to give staff a bit more discretion. Legal Counsel, Norine Marks stated that Office of Administrative Law (OAL) would inform the Board if they felt the statement was too broad. Ms. Marks also stated that the reasoning behind the six month timeframe was discussed in length at the previous Board meeting.

Response to public comment 3

Nancy Michel recommended that "...including to receive services delivered via telehealth,..." from section (c)(3) be stricken.

Response to public comment 4

Heather Martin stated that the new language in section (f) of the modified text referred to existing statute 2570.36.

- ❖ Kathay Lovell moved to amend the motion to modify the text to remove "including to receive services delivered via telehealth," from section (c)(3) and notice it for fifteen days.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Kathay Lovell moved to delegate authority to the executive officer to adopt the language absent any negative comments.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Nancy Michel moved to delegate authority to the Executive Officer to make any technical, non-substantive changes necessary to complete the rulemaking file.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

6. Consideration and adoption of proposed regulatory language to add Title 16, CCR Section 4172, Standards of Practice for Telehealth. (*H. Martin*)

Heather Martin informed the Board members that there was significant public comment submitted in response to the modified text and all of the comments were provided in their meeting materials. Additionally, there were written comments received after the close of the comment period that were also included in the meeting materials, including AOTA's new Telehealth Position Paper that was sent to all state licensing Boards on March 22, 2013, and correspondence from the Center for Connected Health Policy dated March 28, 2013.

Public Comment

Tammy Richmond, Chair of OTAC's Telehealth Ad Hoc Committee and member of the AOTA Telehealth Committee, stated that the October version of the modified language was both non restrictive and broad enough.

Ms. Richmond stated that requiring an additional informed consent to provide telehealth technologies is a burden on the provider and a barrier to patient care.

Ms. Richmond voiced her concern regarding section (c) in that it seemed to overlook a provider's right to due process by a subpoena.

Ms. Richmond questioned section (d)(1) and in particular the part that discusses having a local therapist on-site prior to providing telehealth services. Ms. Richmond stated that this was improbable and illogical.

Ms. Richmond stated the last sentence of section (e) was redundant.

Mae Kwong from The Center for Connected Health Policy, stated that she was available to offer any technical advice or answer any questions that the Board members might have. Ms. Kwong offered that some of the language presented in Section 4172 may have an unintentional adverse impact on the legislative intention of AB 415.

Jennifer Snyder encouraged the Board to table the regulations and allow for some discussion time due to the fact that the outcome of pending legislation regarding telehealth, Assembly Bill 809, has yet to be decided.

Discussion ensued regarding the questions raised during public comment.

Response to public comment 1

The Board members agreed to amend section (b) to read, "An occupational therapist shall obtain...via telehealth, consistent with section 2290.5 of the code."

Response to public comment 2

Heather Martin stated that Legal Counsel, Norine Marks informed her that California Code of Regulations Section 4149 (b) would allow the Board to strike section (c) of the modified text altogether.

Response to public comment 3

President Grangaard clarified that section (d)(1) is worded as a recommendation rather than a requirement. Section (d)(1) will now be labeled section (c)(1) and will read, "...and ensure a therapist must be available only if an onsite visit is required."

Response to public comment 4

President Grangaard agreed that section (e) of the modified text was redundant and could be removed.

- ❖ Kathay Lovell moved to notice the second modified text as amended for fifteen days.
- ❖ Nancy Michel seconded the motion.
- ❖ **The motion was adopted.**
  
- ❖ Nancy Michel moved to delegate authority to the Executive Officer to adopt barring any negative comment and make any technical, non substantive changes.
- ❖ Linda Florey seconded the motion.
- ❖ **The motion was adopted.**

7. 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. (*H. Martin*)

Heather Martin referenced the chart provided. The Board members had no questions and no action was required.

No public comment

8. Legislative and Regulatory Affairs Committee Report and Possible Board Action.  
(*L. Grangaard*)
  - A. Approval of the June 14, 2012, Committee meeting minutes.
  - B. Approval of the April 3, 2013, Committee meeting minutes.
  - C. Recommended position on pending legislation, including:

- i. Assembly Bill (AB) 186 (Maienschein), Professions and vocations: military spouses: temporary licenses.
- ii. AB 213 (Logue and Pan), Healing arts: licensure and certification requirements: military experience.
- iii. AB 582 (Chesbro), Medi-Cal: custom rehabilitation technology services.
- iv. AB 633 (Salas) Emergency medical services: civil liability.
- v. AB 809 (Logue), Healing arts: telehealth.
- vi. AB 864 (Skinner), Athletic trainers.
- vii. AB 894 (Mansoor), Consumer affairs.
- viii. AB 1000 (Wieckowski), Physical therapists: direct access to services.
- ix. AB 1003 (Maienschein), Professional corps: healing arts practitioners
- x. AB 1013 (Gomez), Consumer affairs.
- xi. AB 1017 (Gomez), Incoming telephone calls: messages.
- xii. AB 1147(Gomez), Masage therapy.
- xiii. AB 1231 (Perez) Regional centers: telehealth and teledentistry.
- xiv. Senate Bill (SB) 138 (Hernandez), Confidentiality of medical information.
- xv. SB 158 (Correa), Autism services: demonstration program
- xvi. SB 305 (Price) Healing arts: boards.
- xvii. SB 306 (Price), Healing arts: boards.
- xviii. SB 381 (Yee), Healing arts: chiropractic practice.
- xix. SB 555 (Correa), Developmental services: individual program plans and individual family service plans.
- xx. SB 626 (Beall), Workers' compensation.
- xxi. SB 809 (DeSaulnier and Steinberg), Controlled substances: reporting.
- xxii. SB 816 (Committee on Health), Hospice facilities: developmental disabilities: intellectual disability.

- ❖ President Luella Grangaard moved that the Board accept the minutes of June 14, 2012, and April 3, 2013, that were approved by the Legislative and Regulatory Affairs Committee.
- ❖ Nancy Michel seconded the motion.
- ❖ ***The motion was adopted.***
- ❖ President Luella Grangaard moved that the Board accept the Committee's recommendation to watch AB 186, AB 213, AB 894, AB 1013, AB 1017, AB 1147, AB 1231, SB 138, SB 158, SB 305, SB 555 and SB 816.
- ❖ Kathay Lovell seconded the motion.

No public comment

- ❖ ***The motion was adopted.***
- ❖ Linda Florey moved to accept the Committee's recommendation to write a letter of support for AB 582.
- ❖ Nancy Michel seconded the motion.

No public comment

- ❖ ***The motion was adopted.***

- ❖ Linda Florey moved to accept the Committee's recommendation to remain neutral on AB 633.
- ❖ Nancy Michel seconded the motion.

No public comment

- ❖ **The motion was adopted.**
- ❖ Nancy Michel moved to accept the Committee's recommendation to write a letter of opposition to AB 809.
- ❖ Linda Florey seconded the motion.

Public comment

Jennifer Snyder, on behalf of OTAC and AOTA, stated the bill was meant to be interpreted as above and beyond the initial consent and she requests the Board reconsiders their position.

- ❖ **The motion was adopted.**
- ❖ Linda Florey moved to accept the Committee's recommendation to oppose AB 864.
- ❖ Kathay Lovell seconded the motion.

Public comment

Jennifer Snyder, on behalf of OTAC and AOTA supported the Board's opposition and stated that AOTA is working with the author.

- ❖ **The motion was adopted.**
- ❖ Nancy Michel moved to accept the Committee's recommendation to oppose AB 1000, unless it is amended to add occupational therapists.
- ❖ Linda Florey seconded the motion.

Public comment

Jennifer Snyder on behalf of OTAC and AOTA commented that the legislative offices viewed the language as a global fix. Ms. Snyder reported that OTAC and AOTA would like to work with Heather Martin collaboratively and to develop some legislation that deals with occupational therapy.

- ❖ **The motion was adopted.**
- ❖ Nancy Michel moved to accept the Committee's recommendation to support SB306.
- ❖ Linda Florey seconded the motion.

No public comment

- ❖ **The motion was adopted.**
- ❖ Nancy Michel moved to accept the Committee's recommendation to oppose SB 381 unless it is amended to exclude occupational therapists.
- ❖ Linda Florey seconded the motion.



Public comment

Jennifer Snyder on behalf of OTAC and AOTA stated that she supported the Board's position and indicated that there are ongoing discussions with the author.

❖ ***The motion was adopted.***

- ❖ Nancy Michel moved to accept the Committee's recommendation to write a letter of support SB 626.
- ❖ Linda Florey seconded the motion.

No public comment

❖ ***The motion was adopted.***

- ❖ Nancy Michel moved to accept the Committee's recommendation to write a letter of support for SB 809.
- ❖ Linda Florey seconded the motion.

No public comment

❖ ***The motion was adopted.***

9. Discussion and consideration of taking a position on pending legislation, including:
- A. AB 258 (Chavez), State agencies: veterans.
  - B. AB 291 (Nestande), California Sunset Review Commission.
  - C. AB 376 (Donnelly), regulations: notice.
  - D. AB 518 (Yamada and Blumenfield), Community-based adult services.
  - E. AB 772 (Jones), Department of Consumer Affairs: intervention in state agency or court proceedings.
  - F. AB 1310, (Brown), Medi-Cal: pediatric subacute care.
  - G. SB 176 (Galgiani), Administrative procedures.
  - H. SB 690 (Price), Licenses.
- ❖ Linda Florey moved to accept the Committee's recommendation to watch AB 258, AB 291, AB 376, AB 772, SB 176 and SB 690.
  - ❖ Kathay Lovell seconded the motion.

No public comment

❖ ***The motion was adopted.***

- ❖ Linda Florey moved to support AB 518.
- ❖ Nancy Michel seconded the motion.

No public comment

❖ ***The motion was adopted.***

- ❖ Kathay Lovell moved to watch AB 1310.
- ❖ Linda Florey seconded the motion.

Public comment

Jennifer Snyder on behalf of OTAC and AOTA reported that the intent of this bill is to slightly broaden the criteria for a child to be moved from a hospital to a higher level of care if needed. Ms. Snyder reported that although OTAC has not taken a position, AB 1310 seems to be a good bill.

❖ ***The motion was adopted.***

10. Discussion and consideration of Business and Professions Code Section 2570.185, requiring retention of records for a specified period, and how to implement the requirement if the business is closed or sold or if the practitioner is no longer in private practice. (*H. Martin*)
  - ❖ Nancy Michel moved to delegate Heather Martin to research the matter and bring an appropriate response to the public comment email to the August Board meeting.
  - ❖ Linda Florey seconded the motion.

Public comment

Tammy Richmond offered her knowledge to the Board regarding the selling/purchasing and negotiation of medical records (assets) that belong to failed private practices. Ms. Richmond suggested that the Board reach out and see if there is a standard in the healthcare lawyer industry.

❖ ***The motion was adopted.***

11. Discussion and consideration of revising the Board's Administrative Manual. (*H. Martin*)

Heather Martin questioned whether it was the pleasure of the Board to add the draft "Board Member Responsibilities" contained in the meeting materials to the Board's Administrative Manual.

Linda Florey and Kathay Lovell agreed to work with Heather Martin on the development of this section and a draft will be presented at the August Board meeting.

No public comment

12. 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. (*L. Grangaard*)

Heather Martin stated that this agenda item would be addressed at the August Board meeting due to the fact that it is part of the Administrative Manual.

No public comment

13. Executive Officer's Report and Possible Board Action. (*H. Martin*)

Heather Martin summarized her report by stating that the Board's expenditures exceed the revenue it earns each year and the implementation of BreEZe has been further delayed.

President Grangaard stated her appreciation for the hard work of Board staff.

No public comment

14. Enforcement data and reports for the period January 1 – March 31, 2013. (*J. Hanson*)

Heather Martin reviewed the provided report and commented on the decrease in “cease practice orders” issued for probationers who test positive for banned substances.

No public comment

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

President Grangaard reported that Nancy Michel would not be in attendance at the August Board meeting but that new members should be appointed by then.

No public comment

16. Proposed Agenda Items for Next Meeting:

- Regulatory amendments
- Petition for Reinstatement
- Executive Officer evaluation

**CLOSED SESSION**

*The Board entered in to closed session at 12:08 pm and closed session concluded at 12:45 pm.*

**RESUME OPEN SESSION**

17. Meeting adjournment.

The meeting adjourned at 12:47 pm