



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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BOARD MEETING MINUTES

Wednesday, June 3, 2015

Thursday, June 4, 2015

Sacramento, CA 95815

Board Member(s) Present

Denise Miller – President
Richard Bookwalter – Vice President
Jeff Ferro
Laura Hayth
Nancy Michel
Beata Morcos
Sharon Pavlovich

Board Staff Present

Heather Martin, Executive Officer
Jeff Hanson, AGPA
Jody Quesada, Staff Services Analyst
Norine Marks, Supervising Legal Counsel
Ileana Butu, Legal Counsel

Wednesday, June 3, 2015

12:30 pm - Board Meeting

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

The Board meeting was called to order at 12:55 p.m. Roll was called, all Board members were present and a quorum established.

2. President's remarks.

President, Denise Miller, welcomed all in attendance. Ms. Miller remarked that she attended the Occupational Therapy Association of California (OTAC) Spring Symposium, as a speaker. Ms. Miller stated that she also attended the American Occupational Therapy Association Conference in Nashville. Ms. Miller stated that she was able to engage with leaders of the profession to discuss important issues and emerging trends.

President Miller thanked the Governor for quickly appointing new Board Members, resulting in a full Board. Ms. Miller thanked Board staff for their hard work.

3. Swearing-in of new Board Members.

President Miller welcomed and subsequently swore in Laura Hayth and Beata Morcos.

4. Public Comment session for items not on the agenda.

There was no public comment.

Administrative Hearings

ABRAMS, C. - Applicant/Statement of Issues Hearing

On the record at 1:17 p.m.

Off the record at 2:36 p.m.

SALINAS, S. - Petition for Reinstatement
On the record at 2:51 p.m.
Off the record at 3:59 p.m.

CLOSED SESSION

The Board entered into closed session at 4:16 p.m.
Closed Session adjourned at 4:55 p.m.

RECONVENE IN OPEN SESSION

5. Meeting adjournment for the day.

The Board returned to open session for the purpose of adjourning the meeting for the day.
The meeting adjourned at 4:56 p.m.

Thursday, June 4, 2015 9:00 am - Board Meeting

Board Member(s) Present

Denise Miller – President
Richard Bookwalter – Vice President
Jeff Ferro
Laura Hayth
Nancy Michel
Beata Morcos
Sharon Pavlovich

Board Staff Present

Heather Martin, Executive Officer
Jeff Hanson, AGPA
Jody Quesada, Staff Services Analyst
Norine Marks, Supervising Legal Counsel
Ileana Butu, Legal Counsel

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

The Board meeting was called to order at 9:08 a.m. Roll was called, all Board members were present and a quorum established.

2. President's remarks.

President Miller expressed thanks and appreciation to occupational therapist Linda Florey for her work protecting California consumers and her service with the Board. Ms. Florey served on the Board for five years.

President Miller welcomed new Board members Laura Hayth and Beata Morcos and thanked the Governor for filling all vacant positions on the Board. President Miller thanked Christine Lally, Deputy Director of Board Relations for her attendance, and Board staff and Legal Counsel for their hard work.

3. Board member updates/activities.

President, Denise Miller, stated that she attended the OTAC Spring Symposium in March, where she presented on behalf of the Board. Ms. Miller reported that the presentation brought a human aspect to the work of the Board and the feedback received showed that attendees had a better understanding of the differences of a professional body and a regulatory body. Ms. Miller said she also attended the American Occupational Therapy Conference in Nashville where she engaged with leaders in the profession to discuss

important issues and emerging trends. Ms. Miller expressed the importance of the Board staying abreast of current trends.

Vice President Richard Bookwalter stated that he would be attending the Rehabilitation Engineering and Assistive Technology of North America conference where a practitioner can learn about new equipment and how equipment is used.

Laura Hayth commented that she was excited and proud to be on the Board and serve her profession. Ms. Hayth stated that she has been an occupational therapist since 2000; she holds a doctorate in spiritual studies and has authored a book titled *Integrating Spirituality and Occupational Therapy Treatment*.

Beata Morcos stated that she was public member appointed to the Board and she is proud and excited to serve. Ms. Morcos reported that she is the Chief Executive Officer of a nonprofit organization.

Nancy Michel had no Board news to report.

Sharon Pavlovich stated that she recently returned from the Harvard Macy Institute in Boston where she worked as a faculty mentor. Ms. Pavlovich said that she was very excited to be a part of that process.

Jeff Ferro stated that he had no Board news to report. Mr. Ferro expressed that as a result of serving on the Board, he is appreciative of the new perspective he has gained regarding occupational therapy.

4. Public Comment session for items not on the agenda.

There was no public comment.

Agenda Items 5 & 6 were addressed out of order. Items 5 & 6 followed agenda item 9.

5. Presentation by the National Board for Certification in Occupational Therapy (NBCOT) on allowing the NBCOT to serve as the Authorized Agent for reporting occupational therapy disciplinary actions to the National Practitioner Data Bank (NPDB), administered by the U.S. Department of Health and Human Services. (Shaun Conway, Director, Credentialing Services, NBCOT, presenting/participating via teleconference)

Mr. Conway reviewed his outline as to what services NBCOT would provide to the Board as an authorized agent for reporting discipline to the NPDB.

Mr. Conway stated that the goal would be that the Board would report any final action to NBCOT and NBCOT would subsequently report to the NPDB and to all other participating states. Mr. Conway stated that guidelines for receiving and reporting disciplinary data would be worked out in an agreement that would be signed by the Board. Mr. Conway said that implementation of their reporting system is set to begin in 2016 and 12 states are currently interested in further exploring an agreement with NBCOT.

Mr. Conway thanked the Board for the opportunity to discuss NBCOT's proposal. In closing, Mr. Conway stated that this service would be beneficial to all and the more states that participate the better.

6. Discussion, consideration, and possible action on the request from the NBCOT to serve as the Board's Authorized Agent to report disciplinary actions to the NPDB on behalf of the Board.

Laura Hayth said that this proposal was progressive and would be a benefit to the Board if the Board could see the discipline from other states.

Nancy Michel said the proposal sounded good as long as it didn't make extra work for Board staff.

Legal Counsel, Ileana Butu, asked whether there were any confirmations of participation yet?

Mr. Conway said 12 states responded affirmatively and six states' replies were outstanding. He said the next step would be to provide contracts to those who confirm participation.

Public Comment

Elizabeth Gomes, Co-Chair of OTAC's Practice, Ethics & Reimbursement asked if an occupational therapist or an occupational therapy assistant did not keep up their registration with NBCOT, would this exempt them from having disciplinary action reported against their license?

Mr. Conway stated that NBCOT registration does not factor in to reporting discipline.

Executive Officer, Heather Martin, summarized the current NPDB reporting process. Ms. Martin asked Mr. Conway to find out whether, if the system becomes available January 2016, as planned, the data collection would be from the system implementation date going forward or whether it would include past action.

Mr. Conway stated that he would be able to obtain the answer to that question in the next few weeks. Mr. Conway stated that he would be available to continue the dialog with the Board Members at the next meeting.

The Board members asked that this topic be brought to the September Board meeting.

7. Review and vote on approval of the March 6, 2015, Board meeting minutes.

- ❖ Richard Bookwalter moved to approve the minutes as presented.
- ❖ Nancy Michel seconded the motion.

Legal Counsel stated that there were technical, non-substantive changes that needed to be made.

Legal Counsel agreed to work with Executive Officer Heather Martin to make said changes.

- ❖ Richard Bookwalter rescinded his previous motion and moved to approve the minutes as amended after the Executive Officer makes the technical, non-substantive changes.
- ❖ Jeff Ferro seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Abstain
Nancy Michel	Aye
Jeffrey Ferro	Abstain
Beata Morcos	Abstain

8. Consideration and possible action of adopting proposed regulatory language to amend Title 16, CCR Section 4151, Hand Therapy and Section 4152, Physical Agent Modalities.

Ms. Martin reminded Board Members this language is identical to the previously proposed action that was adopted by the Board and unfortunately missed the one year deadline to file with the Office of Administrative Law (OAL). As such, Board staff re-noticed the proposed action to pursue the regulatory change.

Public Comment

Ernie Escovedo asked for an explanation of the nature of the proposed action.

Heather Martin briefed Mr. Escovedo, she stated that the purpose of this proposed action is to streamline the advanced practice approval process in the areas of hand therapy and physical agent modalities for a therapist that is credentialed as a Certified Hand Therapist (CHT).

- ❖ Nancy Michel moved to adopt the proposed amendments to CCR Sections 4151 and 4152 as presented.
- ❖ Sharon Pavlovich seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

- ❖ Richard Bookwalter moved to authorize the Board’s Executive Officer to make technical, non-substantive changes as needed in the final rulemaking approval process.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

9. Consideration and possible action of adopting proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.

Ms. Martin reported language that had been modified and adopted by the Board at its March 6, 2015, meeting could not be reviewed and approved by control agencies before the deadline for this rulemaking file expired. Therefore, in order to proceed with this regulatory change, Board staff re-noticed this proposed action on April 10, 2015, to restart the regulatory process/

Legal Counsel, Norine Marks, sought clarification on the reference to “sexual orientation” in language proposed in Section 4170(a)(1) and how it relates to service delivery.

Richard Bookwalter indicated he thought it was important to incorporate “sexual orientation” in Section 4170(a)(1) and the Board would be remiss if it was removed as “sexual orientation” may affect sexual function which are activities of daily living and practitioners must be sensitive to relationships to make an effective care plan.

Public Comment

There were no comments from the public.

- ❖ Sharon Pavlovich moved to adopt the amended language as presented and moved to authorize the Board’s Executive Officer to make technical, non-substantive as needed in the final rulemaking approval process.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

10. Consideration and possible action on proposed amendments to the Board’s Disciplinary Guidelines, set forth in Title 16, CCR Section 4147, to modify the Rehabilitation Criteria language and establish new criteria regarding the Board’s refusal to hear petitions for reinstatement, as authorized in Business and Professions Code Section 2570.32.

Executive Officer, Heather Martin, stated that this agenda item was included to act as a spring board for conversation regarding 2570.32. Ms. Martin then summarized the current language of 2570.32, as well as the edits proposed by Board staff to establish evaluative criteria that could be routinely used in order to determine whether or not the petitioner would be scheduled for a hearing.

Discussion ensued amongst the Board members.

Public Comment

Meg H. stated that she was in attendance to support the idea of keeping the current language “may” as opposed to changing the language to “shall not” and encouraged the Board to look at all the facets of a person’s background.

Maureen B. stated there was no cure for alcoholism and she stressed the importance of Alcoholics Anonymous and providing sponsorship.

Another commenter stated that she objected to the proposal to change the verbiage and that this change may eliminate deserving individuals. Ms. C said that there is a difference in formal and informal probation.

Norma C. stated that she was a registered nurse for nearly fifty years and during her career as a Director of Nursing she witnessed troubled employees. Ms. C said licenses weren't taken away but instead discussions with the Board ensued and a plan was put in place for the practitioner to change their behavior.

Herman C. stated that he firmly believes that every citizen has the right to be heard and present their case. Mr. C said that a practitioner should be given the opportunity to speak and tell the Board how they have been rehabilitated.

Jeff Ferro agreed that addiction is an illness and rehabilitation is important. Mr. Ferro stated that the Board has an obligation to protect a vulnerable patient population and even more so due to the fact that occupational therapy constitutes a one on one interaction. Mr. Ferro said that it is the job of the Board to have a process in place to evaluate whether or not a practitioner has taken the appropriate steps to acknowledge their issue(s) and rehabilitate, thus deserving of the public's trust and patient trust. Mr. Ferro stated that the staff's proposed edits are appreciated as a spring board concept and that the use of "shall" in said language is very important but should not limit a practitioner indefinitely.

Legal Counsel, Ileana Butu, stated that the current statute says "may" and it would be helpful to have some criteria or conditions that would need to be met, so that the licensees and the Boards have criteria to look at and gauge whether or not it would be a good time to apply.

Vice President, Richard Bookwalter, stated that the proposed language gives the Board members something to structure their future decisions around.

Legal Counsel, Norine Marks, commented that the new language should be added to the Regulations and not the Disciplinary Guidelines.

President, Denise Miller, stated that the Board is looking for clear cut criteria to make the best decision on behalf of the profession and the consumer.

Jeff Ferro proposed establishing a Board committee to review the proposed language. Mr. Ferro suggested that this committee consider the concerns of the Board members and the comments of the public.

President, Denise Miller, asked Jeff Ferro, Laura Hayth and member of the public, Elizabeth Gomes, to serve as said committee.

- ❖ Jeff Ferro moved to defer further discussion of this topic until the time that the newly established Ad Hoc committee can bring recommendations to the next meeting.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

11. Report on and possible Board action, if necessary, on pending Rulemaking files, Title 16, CCR Section 4161, Continuing Competency and Section 4170, Ethical Standards of Practice.

Executive Officer, Heather Martin, reviewed the rule making reports provided.

President, Denise Miller, stated that it has been reported to her by experts in the telehealth community that the California Board's language in comparison to other state's language regarding telehealth is not working.

The Board directed Ms. Martin to bring the regulatory telehealth language of other states to the September Board meeting.

Ms. Martin alerted the Board members that Section 4110, Application, must be noticed in July. Ms. Martin said that the changes are minimal and consist of modifying the revision date of the application and adding questions regarding military service and acceptance of the Individual Taxpayer Identification Number.

12. Ad Hoc Committee's Report, discussion of Ad Hoc Committee's recommendations, and possible Board Action.

Chair of the Ad Hoc committee, Richard Bookwalter, advised that an Ad Hoc committee was established to explore options to increase the current credit that can be earned for supervising a Level 2 student and to draft language.

Mr. Bookwalter reviewed the proposed language and the proposed fieldwork education attestation form.

There was a general consensus of satisfaction expressed by the Ad Hoc committee, the Board and Board staff regarding the final product submitted by the Ad Hoc committee.

After further discussion, it was decided that *California Code of Regulation (CCR) Section 4161(c)(4)(E)* should read:

"Credit for PDUs shall only be earned for the dates of supervision occurring during the renewal period."

And that *CCR Section 4161(c)(4)(F)* should read:

"Fieldwork supervision hours of a single student may be divided between licensees. Total weekly hours claimed by more than one licensee sharing supervision of a single student shall not exceed 40 hours per week."

Lastly, Ms. Marks commented that the Board may want to require that practitioners wishing to use student supervision to acquire professional development units, complete the attestation form at the time, rather than upon request.

Executive Officer, Heather Martin, suggested that *CCR Section 4162 Section(e)* read:

“Any occupational therapy practitioner who supervises Level 1 and/or Level 2 students shall document the supervision, using the Fieldwork Education PDU Attestation form (Form FEA New 5/2015) hereby incorporated by reference, and shall contain the signature of the licensee and a statement under penalty of perjury regarding the truthfulness of the information contained therein.”

Jeff Ferro suggested that the language should reflect the requirement that the attestation form be completed at the time the supervision concludes.

Following this suggestion *CCR 4162(e)* should read:

“Any occupational therapy practitioner who supervises Level 1 and/or Level 2 students shall document said supervision, immediately upon conclusion of the supervision period, using the Fieldwork Education PDU Attestation form (Form FEA New 5/2015) hereby incorporated by reference, and shall contain a statement under penalty of perjury regarding the truthfulness of the information contained therein.”

President, Denise Miller, commented that in the interest of looking toward current trends and keeping the Board current, inter-disciplinary practice should be given consideration.

Sharon Pavlovich stated that the inter-disciplinary topic would be a great collaborative effort with the National Board for Certification in Occupational Therapy (NBCOT).

Public Comment

OTAC supports the proposed language.

- ❖ Jeff Ferro moved to approve the recommendations of the Ad Hoc committee with the agreed upon edits.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

13. Consideration and possible action on AOTA/ACOTE potentially amending the academic requirements of an educational program required for licensure as an occupational therapist.

Sharon Pavlovich stated that she doesn't want the Board to model their decision after what other professions are doing in similar situations. Ms. Pavlovich said that her greatest concern is whether or not requiring a doctorate will help the OT/OTA profession as a whole and whether it's the best thing for the clients.

Laura Hayth commented that there is a shortage of Occupational Therapists and requiring a doctorate will hurt the profession.

President, Denise Miller, stated that the Accreditation Council for Occupational Therapy Education (ACOTE) will publish their recommendations in the near future and she would like the Board to promptly weigh in from a regulatory standpoint.

Beata Morcos stated that, as a consumer, the degree a practitioner holds would not be as important as the practitioner being current in their practice and ability.

Jeff Ferro suggested the Board weigh in prior to ACOTE publishing their recommendation.

Public Comment

Ernie Escovedo stated that a doctorate may not be necessary from a consumer safety stand-point.

- 14. Update on research OT educational programs providing superficial/mechanical modalities and deep thermal/electrotherapeutic modalities content in OT curriculum.

Executive Officer, Heather Martin, stated that the Samuel Merritt Research survey was originally scheduled to be sent to schools in May but was changed to July or August. Ms. Martin said that any new information would be discussed at the September meeting.

Public Comment

Ernie Escovedo stated that at the consumer level it's too early to eliminate the advanced practices because there is not adequate information from the schools.

President, Denise Miller, asked Mr. Escovedo if he would be willing to work with the person from Samuel Merritt on the research survey. Mr. Escovedo said that he would do so.

Elizabeth Gomes requested that when the Board looks at putting together new directions for facilitating a more timely review, it would help to streamline the advanced practice application process.

- 15. Consideration and possible amendments to the Board's mail-ballot policy to discuss disciplinary decisions in an upcoming closed session.

Executive Officer, Heather Martin, briefed the Board members on the current policy which includes a high threshold majority rules process. Ms. Martin presented a new draft policy that is broader and doesn't have such a high threshold in order to get the topic back before the Board.

Public Comment

There was no public comment.

- ❖ Richard Bookwalter moved to adopt the draft policy.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

16. Enforcement data and reports for the quarter ending March 31, 2015.

Jeff Hanson reviewed supplied enforcement data and reports. The Board Members had no questions.

17. Executive Officer's Report.

- A. Operational Report

Heather Martin stated that one staff vacancy has been filled, and that Board staff recruited for a second position but interviews have not been held.

- B. Budget Update

Ms. Martin reported that the numbers reflect data through the March 31, 2015, period only. Ms. Martin said that the extra money in the budget is due to the vacancies and due to a lull in cases transmitted to the Office of the Attorney General. Ms. Martin said that the revenue projections reflect that the Board has brought in more money than expected and the fund condition is very healthy. Ms. Martin stated that projections show that even if the Board spent 100% of the budget, there would still be 23 months of reserves.

- C. BreEZe Update

Ms. Martin said that the BreEZe release date is back on track for a December 2015, release. Ms. Martin stated that even with the Board's portion of the BreEZe costs, the Board will still have a 22 month reserve. Ms. Martin alerted the Board Members that the Organizational Change Management, which is a baseline report that reflects Board staff's readiness pertaining to BreEZe; will be available in September.

- D. Strategic Planning Update

Ms. Martin reported that although over 900 emails were sent, Board staff received only 61 responses.

- E. Other Informational Items – No Board action

Ms. Martin stated that the number of applicants has increased and there are new schools coming.

Ms. Martin said that Santa Ana College, which is one of the accredited programs, will begin offering a Bachelor's Degree in Occupational Studies. Santa Ana will start admitting students in the Fall of 2017 and graduate them in the Spring of 2019. Ms. Martin stated that occupational therapy assistants who decide to return to school will start out as juniors and, due to the fact that Santa Ana is accredited for higher education, students will be able satisfy all the pre-requisites for the Master's program.

Ms. Martin commented that in answer to the Board's back-log, she has reached out to the Consumer Information Center as well as the Medical Board, Department of Investigation and the Budget Office for assistance.

Ms. Martin alerted the Board members that the 2016 Sunset Report preparation will take place February-August 2016, and a review committee will need to be formed.

18. Consideration and possible action regarding proposed agenda Items for a future meeting.

- A. Records retention requirement if an occupational therapy business is closed or sold or if the practitioner is no longer in private practice.

- B. Process and procedures of Board staff when issuing administrative citations.

- C. Discussion, consideration, and possible action on the request from the NBCOT to act as an authorized agent for the Board.

- D. Evaluate and report on statutory language regarding the time period an applicant must wait when denied.
- E. Streamlining the Advanced Practice application process.
- F. AOTA amendment on license portability.
- G. Status on Athletic Trainers issue.
- H. Bring back the telehealth regulatory language of other states.
- I. Bring any new developments regarding the Samuel Merritt survey.
- J. Results of the Ad Hoc committee's meeting regarding CCR Section 4147, specifically the Board's position on hearing petitions.

19. Election of Officer(s).

- ❖ Nancy Michel moved to nominate Sharon Pavlovich to be the Secretary of the Board.
- ❖ Jeff Ferro seconded the motion.

Sharon Pavlovich accepted the nomination.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Laura Hayth	Aye
Nancy Michel	Aye
Jeffrey Ferro	Aye
Beata Morcos	Aye

20. Adjournment.

The Board Meeting adjourned at 3:33 pm.