



BOARD MEETING MINUTES

**Thursday, February 18, 2016 and
Friday, February 19, 2016**

Board Member(s) Present

Denise Miller – President
Richard Bookwalter – Vice President
Sharon Pavlovich - Secretary
Teresa Davies
Jeff Ferro (February 18, 2016, only)
Laura Hayth
Beata Morcos

Board Staff Present

Heather Martin, Executive Officer
Jody Quesada, Staff Services Analyst
Jeff Hanson, Enforcement Coordinator
Ileana Butu, Legal Counsel

Thursday, February 18, 2016

10:00 am - Board Meeting

(Presentation to University of Saint Augustine students (9-10 am))

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

The meeting was called to order at 10:15 am, roll was called, and a quorum was established.

2. Introduction of new of Board Member.

President Denise Miller thanked the Governor for filling our reappointments so rapidly and introduced new Senate Appointee Teresa Davies.

Ms. Davies stated that she has been professionally involved with the Energy industry for a very long time, she has served on several nonprofit organizations and is also a veteran. Ms. Davies said that she is happy to serve on the Board.

3. President's remarks.

President Miller stated that the Board would be rearranging the order of agenda items. She stated that Agenda items 8, 10 and 11 would immediately follow Agenda item 4.

President Miller thanked the University of St. Augustine for hosting the Board meeting. She also thanked the Ad Hoc committees for their fantastic work.

President Miller commented that she would be speaking about Board processes at the Occupational Therapy Association of California (OTAC) symposium in San Diego, as

well as attending the American Occupational Therapy Association (AOTA) in Chicago, in April. In February, Los Angeles County Supervisor Michael Antonovich appointed Ms. Miller to a task force regarding prevention, community health and population health.

4. Board member updates/activities.

Member Sharon Pavlovich reported that her students are doing great work and they continue to try to get their article published. Ms. Pavlovich stated that she is working on her Ph.D.

Member Laura Hayth reported that she is a published author and her passions are spirituality and occupational therapy. Ms. Hayth stated that her book gives really good scenarios about occupational therapy and getting people in touch with their spiritual roots.

Vice President Richard Bookwalter reported he would be attending the AOTA conference in April, recently participated in two Ad Hoc committees for the Board, and participates in a Kaiser Symposium task force, which is tasked with revamping and improving rehabilitation services in Northern California.

Jeff Ferro reported his involvement at the Capital surrounding the regulation of medical marijuana. Jeff stated that he runs a medical marijuana organizing program for the United Food and Commercial Workers Union and it is his belief that the medical marijuana business should be consistent and follow safe practices.

President Miller proceeded to agenda item 8.

8. Presentation by DCA and overview of BreEZe functionality and the ability of Board to vote on disciplinary actions through BreEZe.

Jillian Seely, Business Informations Analyst with the Department of Consumer Affairs' OIS gave an overview of the license renewal process and a process overview on a future feature of mail ballot voting (on disciplinary matters) for Board members.

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

There were no public comments.

President Miller proceeded to agenda items 10 and 11.

10. Discussion and possible action on Ad Hoc Committee's report and recommendation(s) on amending the definition of "occupational therapy" as set forth in Business and Professions Code (BPC) Section 2570.2.

Executive Officer Heather Martin reported that the Ad Hoc committee was tasked with looking at the definition of occupational therapy and making a recommendation to the Board whether or not to proceed with seeking a legislative amendment to BPC Section 2570.2.

Ad Hoc committee member Jeff Ferro stated that a concern was raised at the November Board meeting regarding practitioners losing the ability to treat certain types of patients (e.g., hands and behavioral health) and how the tasks mentioned fall within OT care but are being delegated to other health care providers.

Mr. Ferro said that it was the recommendation of the Ad Hoc committee not to pursue any legislative changes at this time but that the committee should continue its efforts to identify future legislative and regulatory amendments.

Public Comment

There was no public comment.

- ❖ Beata Morcos moved to accept the Ad Hoc committee’s recommendations not to pursue legislative changes at this time, but to continue working to identify specific legislative amendments and explore additional opportunities for regulatory amendments on the definition of occupational therapy.
- ❖ Laura Hayth seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

President Miller asked the Ad Hoc committee to meet again and develop a conclusionary statement utilizing the committee’s recommendations and address the strengths of the language in the Board’s Practice Act. Ms. Miller also asked that the Ad Hoc committee members consider their availability to serve on the Practice committee.

Public Comment

There was no public comment.

- ❖ Teresa Davies moved to have the Ad Hoc committee reconvene and develop a conclusion statement and solicit the committee members’ participation in the Practice committee.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

11. Discussion and possible action on Ad Hoc committee's report and recommendation(s) regarding occupational therapists performing the physically invasive components of an instrumental evaluation (e.g., fiber optic endoscopy evaluation of swallowing (FEEs)).

Committee Chair Richard Bookwalter explained the Ad Hoc committee's evaluative process and discussion. Mr. Bookwalter explained that this type of instrumental evaluation is invasive as the scope is passed through the nasal passage and into the throat. He indicated that there may be a "turf" issue between the practice of speech language pathology and occupational therapy.

Mr. Bookwalter reported that current language prohibits an Occupational Therapist (OT) from performing FEEs and this regulation is seen as unnecessarily restrictive, and requires OTs refer patients to other providers for the test.

Ms. Miller asked whether the committee has enough information to consider this or if they need go back and do more research before making a recommendation. Mr. Bookwalter expressed his concern about the invasiveness of the procedure; it is possible for an OT to learn this, but doesn't know what the training would look like.

Mr. Bookwalter provided four reasons given by OTs as to why they should be allowed to perform FEEs.

- Consumers would have to work with both OT and SLP (speech/language pathologist). The patient would need to develop two therapeutic relationships, when one might otherwise be enough. This can be time-consuming and inconvenient to the patient.
- OTs must develop treatment plans based on assessment information received secondhand from an SLP, which could result in potential handoff errors for consumers.
- Access issue for consumers. Supervisors receiving referrals for FEES must schedule them with SLPs. Shortages of qualified staff result in long wait times and delayed FEES treatment planning. Result: Consumers suffer.
- Billing for two services providers (OT and SLP), which adds costs to system and to consumers with copayments for each service.

Mr. Bookwalter stated that the recommendation of the Ad Hoc committee is for the Board to take steps to allow OTs to perform the physically invasive components of swallowing evaluations and that the Board charge the Ad Hoc committee to develop alternative regulatory language around education, training and other conditions under which some OTs might be able to perform FEES while preventing harm to the public.

President, Denise Miller, asked if consumers would be sufficiently protected and expressed her opinion that the topic should be revisited by the Ad Hoc committee and Board Legal Counsel to further discuss consumer protection.

Ms. Davies indicated that they should look at why the barrier was put up in the first place before making any changes. Ms. Hayth expressed her opinion that the committee seemed biased to the professional population and should include public member(s) as well. Ms. Pavlovich indicated that they need to address additional consumer protection concerns and there needs to be additional discussion. Mr. Bookwalter believes that Illinois is the only state that allows OTs to perform this procedure. Ms. Miller recommended to send the issue back to the Ad Hoc committee before discussing laws and regulations. Ms. Morcos said it was premature to proceed and that she needs more information to proceed.

Public Comment

A member of the public stated that as a consumer she would rather work with one professional in her hospital room, rather than a team and that from a practice standpoint OTs shouldn't be prohibited from performing FEEs if the proper education is in place.

A member of the public stated that, from a consumer standpoint, too many practitioners in the room is not productive for the patient. As a follow up, she asked about the geriatric population and whether or not, if a practitioner is certified in pediatrics, qualifies said practitioner in geriatrics as well. Lastly, the member of public asked that rural and home health be considered when the committee resumes discussion because smaller communities may not have an SLP available.

Secretary Sharon Pavlovich asked the committee to look in to how Speech Therapists ensure consumer protection, so that occupational therapists can compete.

Public Comment

A member of the public expressed that co-pays are expensive and one co-pay instead of two or three is important and affects the consumer.

A student stated that they found the conversation interesting as they may one day be approved to provide such services.

A member of the public asked whether other states allowed OTs to work in dysphagia and if so, would those same therapists be able to practice in California.

President Denise Miller asked that the committee further examine the regulations and statutory language that could allow OTs to perform endoscopic evaluations, further define the statement within the advanced practice language and, if OTs can't do endoscopic evaluations, what would the ramifications be to the profession and what would the next step(s) be?

The following outline was suggested for the Committee's next meeting:

- Ms. Butu to research the conflicts in the laws and regulations regarding whether or not an OT can perform endoscopic evaluations.
- The Committee to identify skills and clinical practice training that an OT actually has that allows them to perform such services.
- The Committee to discuss and decide if any additional skills or training would be required if the Committee decides to move forward with a recommendation that the Board move towards allowing OTs to perform FEEs.
- The Committee to discuss consumer protection.
 - ❖ Teresa Davies moved to reject the Ad Hoc committee's first recommendation and return the item to the committee for further consideration.
 - ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

- ❖ Teresa Davies moved to modify the committee's second recommendation and charge the committee with exploring the education and training an occupational therapist will need to safely perform the physically invasive components of swallowing evaluations and consider consumer protection.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

- ❖ Jeff Ferro moved to expand the Ad Hoc committee to include public Member Beata Morcos.
- ❖ Sharon Pavlovich seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

6. Review and vote on approval of the November 19-20, 2015, Board meeting minutes.

- ❖ Beata Morcos moved to update the minutes to reflect Vice President, Richard Bookwalter's response that 12 PDUs is the maximum number of hours that can be used toward student supervision in a renewal period.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Abstain
Jeff Ferro	Abstain
Laura Hayth	Aye
Beata Morcos	Aye

7. Review and vote on approval of the January 5, 2016, Board meeting minutes.

- ❖ Laura Hayth moved to accept the minutes as presented.
- ❖ Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Abstain
Jeff Ferro	Abstain
Laura Hayth	Aye
Beata Morcos	Aye

8. Presentation by DCA and overview of BreEZe functionality and the ability of Board Members to vote on disciplinary actions through BreEZe.

Agenda Item 8 was addressed following Agenda Item 4.

9. Establishment of Ad-hoc Sunset Review Committee.

Executive Officer Heather Martin asked that an Ad Hoc committee be established to execute an editorial review and provide feedback for completed portions of the Sunset report.

Ms. Martin asked that a November Board meeting be scheduled to review the Sunset report since the report should be due on December 1.

Denise Miller, Laura Hayth, and Beata Morcos volunteered to be a part of the Ad Hoc Sunset Review committee. Laura Hayth will be the Chairperson of the committee.

- ❖ Sharon Pavlovich moved to have Denise Miller, Laura Hayth, and Beata Morcos serve on the Board's Ad Hoc Sunset Review Committee.
- ❖ Denise Miller seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

10. Discussion and possible action on Ad Hoc Committee's report and recommendation(s) amending the definition of "occupational therapy" as set forth in Business and Professions Code Section 2570.2.

Agenda Item 10 was addressed following Agenda Item 5.

11. Discussion and possible action on Ad Hoc Committee's report and recommendation(s) regarding occupational therapists performing the physically invasive components of an instrumental evaluation (e.g., fiber optic endoscopy evaluation of swallowing).

Agenda Item 11 was addressed following Agenda Item 5.

12. Executive Officer's Report.
a) Operational Report

Executive Officer Heather Martin reported that the Board had two vacancies; however, one was recently filled, with a projected start date of April 11, 2016.

- b) Budget Update

Ms. Martin reported that through 12/31, the Board collected \$790k in revenue and spent \$733k, or nearly half of the \$1.4M budget. Ms. Martin said the fund condition shows that, if current revenue and expenditure patterns continue, the Board will run out of money in fiscal year 2018-19.

c) BreEZe Update3

Ms. Martin reported that the Board successfully transitioned to the new BreEZe system on January 19, 2016. The Board had nearly 300 pending "paper" applications that required manual input once BreEZe went 'live' and that Board staff is grateful to the Department for providing assistance with the inputting of all the pending applications.

Ms. Martin stated that applicants and licensees can now submit applications, pay for licenses or limited permits, change a name or address, renew licenses, submit advance practice applications and request license verifications online with BreEZe.

Ms. Martin advised the Board that there are several items that need to be updated/fixed in BreEZe and Board staff has prioritized these for programming 'fixes' that will be released over the next few months.

d) Future Agenda Items

Ms. Martin stated that future agenda items would now be listed under her Executive Officer reports.

e) Other Informational Items – No Board action

Ms. Martin reported that the Athletic Trainers have a new bill to be introduced and is specific to brain injuries for athletes, which they let wind its way through the process and/or use it as a springboard to try to get trademark protection and licensure.

Ms. Martin reported the Strategic Plan *Action Planning* session was rescheduled to April 6, 2016. Ms. Martin also said that she would be attending the Annual Fieldwork Educators conference on June 10, 2016, at San Jose State University.

13. Consideration and possible action of approving proposed regulatory language to amend Title 16, CCR Section 4130, Fees.

Executive Officer Heather Martin reviewed the handouts provided that include fee increases, the regulatory language outlining fee increases and subsequent fund conditions showing what the various fee increases would look like.

Ms. Martin stated that in 2007 the Board went from \$150 renewal fee every year to \$150 every two years, which resulted in a decrease in annual revenue. Ms. Martin said that if there is no fee increase then expenditures would need to be decreased as the Board cannot operate without sufficient funds. Ms. Martin stated that she would check with other Boards and what they are doing with fees and bring back a breakdown of Board expenditures as well as the difference in wages between an OT and OTA.

Secretary, Sharon Pavlovich asked that a graph of expenditures be provided.

President Miller stated that Ms. Martin's review and included handouts painted a clear picture but she would need more information in order to vote.

Jeff Ferro stated that if fee increases are needed that the Board should not delay. He stated although it's nice to have a comparison to other Boards, those comparisons should not be a deciding factor as to whether or not the Board of Occupational Therapy proposes an increase. Mr. Ferro recommended that the Board have a fact sheet available to establish clarity and provide some background.

Beata Morcos supported taking action immediately.

Laura Hayth agreed that immediate action should be taken and that we shouldn't compare the Board of Occupational Therapy to other Boards while making a decision.

Vice President, Richard Bookwalter asked that more information be provided as to what expenditures can be cut and the resulting projections.

Teresa Davies stated that she was reluctant to vote for an increase and is in favor of decreasing expenditures and overhead.

- ❖ Sharon Pavlovich moved to accept Scenario One and notice the language.
- ❖ Laura Hayth seconded the motion.

Public Comment

A member of the public reported that the Physical Therapy Board recently raised fees and that their application fee was raised to \$300, the initial license fee was raised to \$150 and their renewal fee is \$300.

Roll Call Vote

Denise Miller	No
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	No
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

The motion passed.

14. Update and take action, if necessary, on pending rulemaking files - California Code of Regulations, Title 16, Division 39:

Executive Officer Heather Martin reviewed the included handout as to the status of each referenced rulemaking file.

- Section 4110, Application;
Language published July 31, 2015; edits to application needed. Modified text adopted at January 2016 meeting.

- Section 4170, Ethical Standards of Practice.
Language published April 10, 2015; adopted by Board at June 2015 meeting.
Modified text adopted at January 2016 meeting.
- Section 4172, Standards of Practice for Telehealth.
Language published September 25, 2015; Modified text adopted at January 2016 meeting.

15. Prioritization of future rulemaking files: California Code of Regulations, Title 16, Division 39.

Executive Officer, Heather Martin asked for input on prioritization of future rulemaking files.

- ❖ Richard Bookwalter moved to set the priority as follows:
 1. Fees
 2. Continuing Competency and Notification to Consumers
 3. Criteria to consider when the board refuses to hear a petition while the individual is on court ordered probation/parole or subject to PC 290 registration.
 4. Accept PT license for Hands/PAMs approval.
- ❖ Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Beata Morcos	Aye

16. The Board will convene in Closed Session pursuant to Government Code Section 11126(c)(3) to deliberate and vote on disciplinary matters.

There was no closed session.

17. Meeting adjournment for the day.

The Meeting adjourned at 5:17 p.m.

Friday, February 19, 2016

9:00 am - Board Meeting

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

The meeting was called to order at 9:04 a.m., roll was called, Jeff Ferro was absent. A quorum was established.

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

A member of the public stated her concern with the “choose a gender” question on the Board application and the fact that the options available don’t allow for gender diversity. She said that phrasing that question alternately would make the application more sensitive to the overall population.

Vice President, Richard Bookwalter spoke generally about his experience at work with altering an application and how difficult that has proved to be in the past.

Board Legal Counsel Ileana Butu stated that she wasn’t sure that the Board of Occupational Therapy had the flexibility to change the licensing application in that manner. Ms. Butu stated that she would check in the gender selection issue and update the Board.

20. Presentation by Legal Counsel on the *North Carolina State Board of Dental Examiners vs. Federal Trade Commission* Supreme Court Decision, California Attorney General’s Opinion Regarding ‘Active State Supervision,’ and Federal Trade Commission Guidance on ‘Active State Supervision.’

Board Legal Counsel, Ileana Butu gave a presentation prepared by the DCA Legal Division regarding the *North Carolina* case. Ms. Butu indicated that she would work with the Board to address any potential anti-trust issues.

21. Discussion and possible action on the *North Carolina State Board of Dental Examiners vs. Federal Trade Commission* Supreme Court Decision.

Discussion ensued regarding the fact that the Board members felt it is best practice for the Board to articulate their position on changes in policy and regulation.

As a result of this discussion the Board felt it appropriate to add a second public member to the Ad Hoc Committee on Occupational Therapists performing the physically invasive components of an instrumental evaluation.

- ❖ Laura Hayth moved to add Teresa Davies to the Ad Hoc Committee on Occupational Therapists performing the physically invasive components of an instrumental evaluation.
- ❖ Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Teresa Davies	Aye
Laura Hayth	Aye
Beata Morcos	Aye

Agenda Item 24 was moved to immediately follow Agenda Item 21.

24. Enforcement data and reports for the quarter ending December 31, 2015.

Jeff Hanson reviewed the standard enforcement statistical report provided. Board Members had no questions.

22. Discussion and possible action on research by Samuel Merritt University on occupational therapy educational programs providing superficial/mechanical modalities and deep thermal/electrotherapeutic modalities curricula.

Executive Officer Heather Martin briefed the Board on the theoretical discussion regarding Advanced Practice skills; now that the Accreditation Council for Occupational Therapy Education (ACOTE) guidelines have been updated to incorporate curriculum in specified areas as a requirement for all educational programs.

Ms. Martin also gave a preliminary verbal report on Dr. Breger-Stanton's findings since the 2015 Modalities Survey results research has not yet published. Ms. Martin reported that Dr. Breger-Stanton sent the survey 164 program chairs and received 68 responses.

Public Comment

A member of the public stated that a new graduate shouldn't have to comply with advanced practice guidelines due to the training received in school.

An instructor of OT asked specifically about getting a two unit modalities course which produced an average grade point average of 90%, approved by the Board.

Board staff member Jeff Hanson stated that he would check in to the instructor's submission.

Vice President, Richard Bookwalter encouraged the students to help encourage respective schools to get involved with ACOTE.

A member of the public stated that physical therapy students and occupational therapy students take the same courses, yet physical therapists aren't required to do post professional training.

23. Discussion and possible action on retention and public disclosure of discipline information.

Executive Officer Heather Martin reviewed the email from a licensee who articulated that her 2002 disciplinary action and the subsequent indefinite posting of it on the Board's website has had a negative impact on her ability to obtain employment.

President, Denise Miller said that she found the licensee's argument compelling due to the age of the crime and the fact that the licensee has not had any reoccurrences. Ms. Miller also said that she appreciated having access to disciplinary records.

Board Legal Counsel, Ileana Butu indicated that the Business and Professions Code does not specify how long disciplinary information must be posted on the Board's website. Ms. Butu said that she will bring back clarifying information regarding the issue.

Public Comment

A member of the public stated that indefinite public disclosure on the Board's website seemed excessive for a single violation.

Vice President, Richard Bookwalter stated that he hoped an employer would review the posted details and act fairly.

24. Enforcement data and reports for the quarter ending December 31, 2015.

Agenda Item 24 was addressed immediately following Agenda Item 21.

25. Enforcement performance measures reported to DCA for the quarter ending December 31, 2015.

Executive Officer, Heather Martin reviewed the first quarter Performance Measures report. Ms. Martin stated there were 164 new complaints received in the first quarter in comparison to the 210 received in the previous quarter. Ms. Martin reported that Board staff met the goal of responding to complainants timely and exceeded the goal of responding to licensees with probation violations.

Public Comment

There was no public comment.

26. Suggested agenda items for a future meeting.

- License portability, out-of-state applicants and the acceptance of their out-of-state education, especially veterans.
- Status updates on ACOTE's task force and the minimum entry level education requirements. (e.g., Is OTA entry-level education going to remain an Associate's degree?)
- Visit the Strategic Plan, including outreach.
- Regulation update by President Miller. NBCOTs regulation meeting is prior to the Board's May Board meeting.
- Retention and public disclosure of disciplinary records (Board Legal Counsel).
- BreEZe update on Renewal SIR.

Public Comment

There was no public comment

27. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(a)(1) to discuss the annual evaluation of the Executive Officer.

The Board entered in to Closed Session at 10:45 a.m.

The Board reconvened at 12:20PM.

28. Adjournment.

The meeting adjourned at 12:21 PM.