



TELECONFERENCE SUNSET REVIEW AD HOC COMMITTEE MEETING MINUTES

Thursday, October 20, 2016

Committee Members Present

Laura Hayth, OT, Chair
Beata Morcos
Denise Miller, OT
Teresa Davies

Board Staff Present

Heather Martin, Executive Officer
Jeff Hanson, Board Staff
Heather Olivares, Legislative Analyst, DCA

Public Attendee

Luis Arbit, OT

1. Call to order, roll call.

Laura Hayth called the meeting to order at 4:07 p.m. and a quorum was established; contact was made between all teleconference locations.

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

There was no public comment.

3. Review and vote on approval of the September 15, 2016, Committee meeting minutes.

A motion was made by Beata Morcos to accept the minutes from the September 15, 2016 Committee meeting, the motion was seconded by Denise Miller.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

4. Review and vote on approval of the October 6, 2016, Committee meeting minutes.

A motion was made by Ms. Miller to accept the minutes from the October 6, 2016 Committee meeting; the motion was seconded by Ms. Morcos.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

5. Review and vote on approval of the October 13, 2016, Committee meeting minutes.

This item was not discussed since the October 13, 2016 Committee meeting was cancelled.

6. Consideration and review of previous policy issues identified in 2012 Sunset Report that have not been addressed and possible recommendation to Board regarding prioritization and response on the status of those previous issues in the Board's 2016 Sunset Report.

Ms. Hayth asked if there were any additional comments or suggestions to add to this item since the previous discussion. She stated at the last meeting there was discussion to draft a response to the license portability section, to add an ethics attestation on the application and renewal, and also the definition of OT. Ms. Hayth asked if there was anything more the Committee wanted to add.

Heather Martin indicated that she received one email comment the previous day from a staff member at the Department of Consumer Affairs (DCA), Office of Professional Examination Services (OPES). Ms. Martin read the comment made by OPES indicating they wanted to advise the Board that:

The decision to require a jurisprudence and/or ethics course requirement should be tied to an occupational analysis study, the recent release of the Little Hoover Commission's report has highlighted the importance of establishing defensible licensing requirements. DCA boards and bureaus tend to remember to link exams to occupational analysis studies; however, often forgot that we need to do the same thing for minimum qualifications CE, etc. Thus, the reason we are reaching out to you and all the other boards going through Sunset please feel free to utilize our services consultation pertaining to Sunset is covered under pro-rata we are here to assist.

Ms. Miller asked if the response was specifically related to adding something to the application or the overall Sunset process. Ms. Martin explained that it is specifically about the ongoing issue of requiring a jurisprudence exam and/or an ethics course requirement. One of the suggestions to the response was to have the self-certification attestation for new applications and for renewing licensees indicating they have read the code of ethics. Ms. Miller questioned if DCA agreed with the suggestion made by the Committee. Ms. Martin explained that what DCA is advising is in order to do what the Committee is suggesting, an occupational analysis will have to be conducted. Ms. Miller indicated that since DCA is willing to help the Board with this matter, she deferred to Ms. Martin for a recommendation to the Committee. Ms. Martin advised the Committee that until she received the email the previous day, she was not aware of the requirement for an occupational analysis for CE or minimum qualification changes.

Ms. Miller asked Ms. Martin if she could describe for the Committee what DCA's definition is in regards to an occupational analysis. Ms. Martin provided the example of NBCOT where they periodically conduct an occupational analysis in order to make sure that the OTR and COTA exams are legally defensible. In order for the exam to be legally defensible, so that an applicant who didn't pass wouldn't sue based on a poorly written

exam, the occupational analysis demonstrates that the questions being asked relate directly to the profession that is taking the exam. Ms. Martin further explained that although boards know they have to have an occupational analysis for exams, the boards also have to have one if the board wants to change minimum qualifications or require additional continuing education; thus what DCA OPES is stating is that if the Board wants to make the renewal requirement either to complete an ethics course or to complete an attestation stating that the person renewing their license has read the Board's code of ethics, an occupational analysis would have to be conducted first.

Ms. Miller asked Ms. Martin if there was sufficient time to make the request to DCA OPES to perform the occupational analysis prior to the Sunset review. Ms. Martin indicated that it is unlikely; however, the request could be placed in the Sunset report with the acknowledgement that an occupational analysis needs to be conducted first. That way the Legislature has the information and knows that the Board wants to move forward on this and if the occupational analysis comes out in support of licensees having to do this, then the Board has the data necessary to get this introduced in the next legislative session.

Public Comment

There was a public comment from Luis Arbit, OT asking if the ethics would be included in the 24 PDUs or if it would be in addition to the 24 hour requirement.

Ms. Martin responded that the Board has the flexibility to do it either way. Mr. Arbit agreed that it was a good idea to require licensees to read the code of ethics.

Public comment concluded.

The Committee directed Ms. Martin to reach out to DCA for their assistance in development of an occupational analysis and to gather the information on the process and when the report might be available and report back to the full Board at the next meeting. Ms. Hayth stated that in thanking DCA, to remind them that they alerted the Board to this while in the middle of the Sunset and that the Board would like to be notified of something like this much earlier. Although it was a good recommendation, it was late in the process. The Committee asked Ms. Martin to request that DCA fast track the analysis process for the Board.

Ms. Martin indicated that section 11 of the Sunset report will be the next portion that will be completed and provided to the Committee. The responses will be in draft format so that the Committee can review and make any adjustments.

7. Consideration and possible recommendation to Board relating to the identification and development of new issues to be identified in the Board's 2016 Sunset Report.

Ms. Hayth indicated that the information provided at the last Committee meeting by Ms. Morcos on new issues identified by the Board were items such as focusing on outreach and telehealth, which is where the Committee left off from the last meeting. Teresa Davies also mentioned that there was discussion on identifying the different levels of occupational therapy graduates as either masters or doctorates. Ms. Martin asked for clarification if the Committee is asking to introduce a new license type based on someone's education level. Discussion followed on this matter.

Ms. Miller asked Ms. Hayth if she could question the public member, Luis Arbit, OT who was attending the meeting. Ms. Hayth agreed to welcome public comments at this time.

Public Comment

Ms. Miller asked Mr. Arbit, who is a former faculty member at Dominguez Hills, whether or not there has been any discussion to change the level of degree received by an occupational therapist and if so, will it happen in the next four years. Mr. Arbit responded that there have been talks about having a doctorate program and he also serves as a board member advisor for the college. He stated this might be the direction in the future.

Public comment concluded.

Ms. Miller stated that it's not necessary to address this matter for the Sunset report, but it is something for the Board to address as the date gets closer. She stated that the college is putting it in motion by 2020.

Ms. Miller mentioned that she had been reading some articles on healthcare and some of the major trends and wanted to make sure the Board was current as well. Ms. Martin asked if she could share her findings so that she could include it for the next Committee meeting. Ms. Miller indicated that two items of great concern in healthcare going forward regardless of which administration takes over has to do with the triple aim of reducing costs, increasing quality, and taking care of the masses of population. Thus, when we look at California in the next 10 to 25 years the percentage of people over the age of 65, in the middle parts of our state, telemedicine is going to be significantly huge. Knowing this Ms. Miller wants to make sure that the Board is keeping up with technology and addressing any issues from a regulatory standpoint to ensure the protection of the consumer. She believes that innovations and technology in occupational therapy is going to move faster.

Ms. Morcos stated that regarding telehealth she believes it should be more black and white than what it is now and that as a Board it should be addressed in the Sunset report.

8. Consideration and possible recommendation to Board of legislative proposals to include in the Board's 2016 Sunset Report.

Ms. Hayth asked if Ms. Martin could provide a brief recap to the Committee for each of the proposals. Ms. Martin indicated that staff went back and looked at several legislative proposals that did not move forward and provided them as items to consider, as follows:

- Amending Government Code Section 8659 Privileges and Immunities, to include Occupational Therapists.
- Adding new Business and Professions Code (BPC) Section to OT Practice Act regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.

Ms. Martin summarized that these two proposals would provide immunity to an occupational therapist if they render services in the state of war, state of emergency, etc. A recommendation was previously made to add this same immunity language into the OT Practice Act this was necessary in the event occupational therapists were included as a first responder.

- Amending BPC Section 146, Violations of specified authorization statutes as infractions; Punishment, to include BPC 2570.3, Occupational Therapy.

Ms. Martin stated this has to do with unlicensed practice that would provide for an additional fine if someone is practicing without a license.

- Amending BPC Section 2570.3, Licensing Requirement, regarding approving post-professional education providers and courses.
- Amending BPC Section 2570.16, Fees, to include application and renewal fees for post-professional education providers and courses and queries of the National Practitioner Databank.

Ms. Martin indicated this has to do with advanced practice also known as post professional education, individuals are supposed to report to the Board if the course content, course instructor or number of hours has changed and they often do not report the information; therefore, the Board receives outdated information. Since the OT takes the course and then later submits the application, the Board finds out after the fact that the provider changed the course three or four years ago. If this language is approved, it would require the provider to submit the courses brand new, and then the Board would approve the providers and courses and charge them a fee. The course provider would have to pay ongoing renewal fees as well as a one-time nonrefundable fee per course.

- Amending BPC Section 2570.18, Representation to public, regarding licensees with a doctoral degree.

Ms. Martin explained that the OTD is becoming more prevalent and this is to clarify for the consumer when they see Dr. Smith in a white coat they should know if Dr. Smith is a doctoral OT or an MD. This would also allow the Board to draft regulations.

- Amending BPC Section 2570.27, Discipline; Initial license issued on probation, to include probation monitoring costs.

Ms. Martin indicated that this was brought to the Board for consideration to charge the probationers a monitoring fee. The DCA Legal Office at the time was split evenly between the fact that there had to be separate statutory language or simply putting it into the disciplinary guidelines as a requirement or putting into regulation. One or any of those could fail so instead if it was added into statute as part of the Sunset Committee, it would come into effect January 1, 2018, which is far sooner than any new regulation or amending the disciplinary guidelines.

- Amending BPC Section 2570.28, Grounds for denial or discipline, relating to infection control guidelines and transmission of infectious diseases.

Ms. Martin indicated this was a minor change in subsection (p) to change from blood-borne to infectious diseases.

- Adding new BPC Section to OT Practice Act to require reporting of employees who are terminated or suspended for cause, under specified circumstances, and consequences for failure to report.

Ms. Martin indicated this is suggested new language where an employer will be required to report to the Board any suspension or termination for cause as listed in items 1 through 6. Failure of the employer to report this will result in consequences being taken by the Board resulting in a fine as described in section c.

- Adding new BPC Section to OT Practice Act regarding inspection of records.

This is new language modeled after the PT Board to allow the Board to go in and inspect patient records. For the PT Board, the PT will go with an investigator to review records. Similarly, this is proposed language to allow an OT to go along with an investigator to review patient records.

The Committee went back over each one of the above proposed additions or amendments as follows:

- Amending Government Code Section 8659 Privileges and Immunities, to include Occupational Therapists.

Ms. Hayth asked for public comment.

Public Comment

Mr. Arbit commented that occupational therapists are working in disaster preparedness and he stated that "I think it's great."

There was no further public comment.

Ms. Hayth stated she thinks "it's a really good thing." Ms. Morcos felt this was a good idea as well. Ms. Davies asked for clarification on how long it might take to have this enacted. Ms. Martin explained that this was the best time to ask for the inclusion as part of the Sunset review.

Ms. Miller moved to recommend to the Board to add occupational therapists to Government Code section 8659. The motion was seconded by Ms. Davies.

There was discussion on this motion and the question was asked if this would include occupational therapist assistants. Ms. Martin responded that it did not include OTAs since they have to be under the supervision of an OT and didn't want to imply that the assistants could practice autonomously if there wasn't an OT available.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Adding new Business and Professions Code (BPC) Section to OT Practice Act regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.

There was discussion by the Committee about adding this language to the OT Practice Act. Ms. Hayth asked for public comment.

Public Comment

Mr. Arbit commented that in the proposed language it states “occupational therapist practitioners” he asked for clarification if this would apply to occupational therapists and assistants.

There was no further public comment.

The Committee discussed changing the language to state only occupational therapists and removing “practitioners.”

Ms. Morcos moved to add new BPC section with the removal of practitioner to the practice act. The motion was seconded by Ms. Miller.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Amending BPC Section 146, Violations of specified authorization statutes as infractions; Punishment, to include BPC 2570.3, Occupational Therapy.

The Committee had further discussion and Ms. Martin provided further clarification as to the purpose of the amendment.

There was no public comment.

Ms. Miller moved to recommend to the Board to amend Business and Professions Code section 146 to include the language regarding the fine for those practicing without a license. The motion was seconded by Ms. Morcos.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Amending BPC Section 2570.3, Licensing Requirement, regarding approving post-professional education providers and courses.

- Amending BPC Section 2570.16, Fees, to include application and renewal fees for post-professional education providers and courses and queries of the National Practitioner Databank.

Ms. Hayth stated that she felt this was a good amendment and Ms. Miller agreed. Ms. Hayth opened this up for public comment.

Public Comment

Mr. Arabit asked for further clarification regarding this amendment. Ms. Martin explained that post professional education providers offer courses for advance practice credit and that this amendment is to ensure that the providers notify the Board if there is a change in the course content, the length of the course, or the instructor and that the information must be reported timely to the Board.

Ms. Miller asked the question to Ms. Martin if anyone can apply to be a reviewer of the courses, Ms. Martin responded there are criteria listed on the Board's website; however, anyone can apply. Ms. Miller stated from a regulatory standpoint she completely agrees with this amendment. Mr. Arabit asked for further clarification and provided some additional information. Jeff Hanson responded to Mr. Arabit's comments and indicated that an advance practice application would still have to be submitted to the Board and be granted approval in PAMS to legally provide the services in California. Mr. Arabit confirmed that PAMS still has to go through the approval process at the Board. Mr. Hanson confirmed this is still required.

There was no further public comment.

Ms. Morcos moved to amend Business and Professions Code section 2570.3 and section 2570.16 to be included in the Sunset review. The motion was seconded by Ms. Miller.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Amending BPC Section 2570.18, Representation to public, regarding licensees with a doctoral degree.

The Committee discussed the proposed language; Ms. Hayth likes the language and agrees. She asked for any comments from the Committee. Ms. Miller asked if this was the same language used by the Physical Therapy Act. Ms. Martin responded it is very close. Ms. Miller asked if this was a good place to include some other statement regarding the doctoral level. Ms. Martin explained that she believes there is a separate place in the Sunset report to add some information about this topic.

Ms. Miller moved to accept the amendment to Business and Professions Code section 2570.18(c) regarding the use of the title doctor. The motion was seconded by Ms. Hayth.

There was no public comment.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Amending BPC Section 2570.27, Discipline; Initial license issued on probation, to include probation monitoring costs.

Ms. Martin provided further information on this topic; Ms. Miller believes this is a good amendment to pursue.

Ms. Morcos made a motion to proposed amendment to Business and Professions Code section 2570.27 be recommended to the Board. Ms. Hayth seconded the motion.

There was no public comment.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Amending BPC Section 2570.28, Grounds for denial or discipline, relating to infection control guidelines and transmission of infectious diseases.

Ms. Martin explained that this was a minor technical change to this section.

Ms. Miller moved to recommend accepting the amendment to Business and Professions Code section 2570.28 to change blood-borne to infectious diseases. Ms. Hayth seconded the motion.

There was no public comment.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Adding new BPC Section to OT Practice Act to require reporting of employees who are terminated or suspended for cause, under specified circumstances, and consequences for failure to report.

Ms. Hayth provided some further information to the Committee on this recommendation. She indicated that she liked the amendment. Ms. Hayth asked the Committee for

comments; Ms. Morcos stated that she doesn't completely agree with the recommendation. Ms. Miller added that this is something that would start with the employer and that if the employer terminates for cause they would have to inform the Board. Ms. Miller stated that if that was the intent then she is in support of the language. Ms. Morcos asked for further clarification whether this included suspension. Ms. Martin indicated that if the employee does any of the items listed in that section under 1 through 6 and the employee is suspended or terminated based on the conduct, then that employer would have to report the employee to the Board.

The Committee had further discussion on this matter. Ms. Hayth opened the discussion up to public comment.

Public Comment

Mr. Arabit stated there was some law that a supervisor for the employee is responsible to make sure that all employees under their jurisdiction are all up-to-date, if they are not up-to-date the supervisor is held responsible. Ms. Martin stated that there is a regulation that requires supervisors to ensure that any OTs or OTAs or limited permit holders under their supervision hold a valid license and if they fail to do so, the Board can cite the supervisor.

Mr. Arabit stated what he was trying to get at was the difference between looking at the supervisor who is also employed by the employer, the Board is holding the supervisor accountable, but in the bigger picture it should be the employer who is held accountable. Ms. Martin provided an explanation to Mr. Arabit's comment, explaining that this is a higher standard and it places the burden on the employer to report any suspension or termination to the Board.

There was no further public comment.

Ms. Martin stated that the suspension or termination for cause listed in the second sentence in section (a), she suggested that after the suspension or termination instead of stating "for cause" replace it with "for violations listed in subsection (b)" with 1 through 6 listed. Ms. Miller stated that she recommends leaving it as termination for cause. Ms. Hayth stated she agreed that the language should remain as stated.

Ms. Davies moved to accept the language as written concerning the requirement to report any termination for cause to the Board for licensing. The motion was seconded by Ms. Miller.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

- Adding new BPC Section to OT Practice Act regarding inspection of records.

Ms. Hayth stated that some of this section needs to be corrected and asked for Ms. Martin's advice. Ms. Martin recommended that in the second to last sentence putting in a period after occupational therapist and striking the balance of the italics portion. Ms.

Martin read the new language and stated that the last sentence after occupational therapist, would read “The willful unauthorized violation of professional confidence constitutes unprofessional conduct.” The Committee members agreed with the proposed change.

There was no public comment.

Ms. Morcos moved to accept the proposed new language with the added change suggested by Ms. Martin. The motion was seconded by Ms. Hayth.

Roll Call Vote

Laura Hayth	Aye
Denise Miller	Aye
Beata Morcos	Aye
Teresa Davies	Aye

Motion carried.

9. Review draft 2016 Sunset Report.

Ms. Hayth asked the Committee if everyone had a chance to read page 1 of the draft Sunset Report, she directed them to page 2 where there is strike out. Ms. Miller asked if this was a recommendation that came forward from the previous Ad Hoc Committee. Ms. Martin indicated it did not and that the information came from information she had compiled. Ms. Martin asked the Committee to provide her with feedback on the information so that it is accurate and understandable for someone who is not an occupational therapist. After discussion, the Committee decided to review section 3.

The Committee reviewed section 3 fiscal and staff of the draft report. Ms. Hayth and the other Committee members felt comfortable with the information. Ms. Miller asked if there were other portions of the Sunset Report that was new to the Committee; Ms. Martin indicated that every portion of agenda item 9 and the six sections are new to the Committee. Ms. Miller stated that the concept has been discussed at the Board meetings and, therefore, the Committee feels comfortable with the information presented. Ms. Martin indicated that she still needs some feedback from the Committee and whether they accept this section.

Ms. Martin asked the Committee how they want to move forward from this point on the Sunset Report. Ms. Miller asked Ms. Martin when the Sunset Report is due and she responded November 18th. Ms. Miller stated that she does not feel there will be major substantive changes to the report, but she is not ready to move it forward at this time.

Ms. Martin asked if sections were sent to the Committee members to review, that the goal would be to have a final version ready for the meeting on the 17th. The Committee decided to have another meeting on November 11, 2016 at noon to review the sections of the report.

10. Adjournment.

The Committee meeting was adjourned at 6:42 p.m.