



BOARD MEETING MINUTES

Thursday, October 27, 2016

Board Member(s) Present

Denise Miller - President
Richard Bookwalter - Vice President
Sharon Pavlovich - Secretary
Teresa Davies
Jeff Ferro
Beata Morcos

Board Staff Present

Heather Martin, Executive Officer
Jody Quesada, Staff Services Analyst
Jeff Hanson, Enforcement Coordinator
Norine Marks, Supervising Attorney

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

The meeting was called to order at 9:36 a.m., roll was called, and a quorum was established.

2. President's and Board Member's Remarks – Informational only; no Board Action to be taken.

Board President Denise Miller welcomed all in attendance. Ms. Miller thanked Board members and Board staff for their participation in the frequent meetings in the past few months. Ms. Miller commented that she participated in the quarterly meeting for all Board Presidents and Executive Officers held by the Department of Consumer Affairs.

Secretary Sharon Pavlovich stated that ten (10) Loma Linda University Department of Occupational Therapy faculty members were chosen to present at the 2017 American Occupational Therapy Association (AOTA) National Conference and Expo in Philadelphia, Pennsylvania and all department faculty will be in attendance.

The remaining Board members had no comment

Members of the public audience introduced themselves at will.

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

Closed session began at 9:42 a.m.

RECONVENE IN OPEN SESSION

The Board meeting returned to open session at 10:41a.m.

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

Executive Officer Heather Martin gave a synopsis of the letter submitted to the Board. The Board members decided to add this to the agenda of a future meeting and decided the discussion would surround renewal periods.

Public Comment

There was no additional public comment.

5. Review and vote on approval of the August 18-19, 2016, Board meeting minutes.

The Board members asked that a few non-substantive edits be made to the minutes.

- ❖ Richard Bookwalter moved to adopt the minutes as amended.
- ❖ Jeff Ferro seconded the motion.

Roll Call Vote

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

6. Discussion and possible action on Sunset Review Ad Hoc committee's report and recommendation(s) regarding:

- Prioritization and response on the status of issues included in the Board's 2012 Sunset Report,
- New issues identified in the Board's 2016 Sunset Report;
- Legislative proposals to include in the Board's 2016 Sunset Report;
- Review of draft 2016 Sunset Report;
- Acceptance of the September 15, 2016, Sunset Review ad hoc committee meeting minutes.

The Board members asked that a few non-substantive edits be made to the minutes.

- ❖ Richard Bookwalter moved to accept the ad hoc committee meeting minutes as amended.
- ❖ Teresa Davies seconded the motion.

Roll Call Vote

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

- Acceptance of the October 6, 2016, Sunset Review ad hoc committee meeting minutes.
- ❖ Richard Bookwalter moved to accept the ad hoc committee meeting minutes.
- ❖ Beata Morcos seconded the motion.

Roll Call Vote

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

The October 13, 2016, Sunset Review ad hoc committee meeting was cancelled.

The Board reviewed the legislative proposals the ad hoc committee recommended be included in the Sunset Report.

Government Code 8659

This language would be added to the Practice Act.

Vice President Richard Bookwalter commented that it was good to know that occupational therapy practitioners can help out in a disaster.

Public Comment

There was no public comment.

New BPC Section – immunity during a state of war

Public Comment

There was no public comment.

Amend BPC Section 146

Public Comment

There was no public comment.

Amend BPC Section 2570.3

Public Comment

Sabrina McCarley, OT, Advocacy and Government Affairs Chair, Occupational Therapy Association of California (OTAC) asked what the parameters would there be to verify whether or not the curriculum has actually changed.

Jeff Ferro was excused from the remainder of the Board meeting.

The Board members asked to have sections (l) and (m) revised to read as follows:

(l) The board may approve a provider of post-professional education courses, that on or after January 1, 2019, submits an application to the Board and pays the fee set forth in section 2570.16. Each approved provider shall expire on June 30, 2022, and shall only be valid for three years from the date of approval

(m) On or after January 1, 2019, the board may approve a post-professional education course, when the provider submits a post-professional education course application to the Board and pays the fee set forth in section 2570.16.

- ❖ Richard Bookwalter moved accept the amendments made to sections (l) and (m) of the language and return this issue to the Sunset Ad Hoc committee to discuss start dates and renewal intervals and then report back.

- ❖ Sharon Pavlovich seconded the motion.

Roll Call Vote

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

Amend BPC Section 2570.16

Public Comment

Chuck Wilmarth, AOTA's Director, State Affairs questioned all the fees outlined in this language and asked if current proposed fee increases are sufficient to include these costs as well.

Executive Officer Heather Martin responded that the Board will not charge anything extra, only enough to recoup the Board's costs.

Mr. Wilmarth added that some schools incorporate advanced practice training in their curriculum and questioned whether those schools will be required to pay to have the courses approved.

Ms. Martin said those schools would be held to the same standards as other providers of post professional education.

The Board members asked to have sections (e) and (g) revised to read as follows:

(e) A fee to query the National Practitioner Data Bank.

(g) A renewal fee for an approved post-professional education course provider shall be established in regulation, but no more than five hundred-fifty dollars (\$550) per renewal cycle.

- ❖ Richard Bookwalter moved to accept the legislative proposal with amendments that were made to sections (e) and (g) of the language.
- ❖ Teresa Davies seconded the motion.

Roll Call Vote

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

Amend BPC Section 2570.18

Public Comment

Chuck Wilmarth, AOTA's Director, State Affairs expressed his concern of the language being a bit harsh of violation in the event a practitioner forgets to identify what type of Dr. they are.

The Board members asked to have the lettering reassigned and have proposed sections (c) through (e) read as follows:

(c) A licensee who has earned a doctoral degree in occupational therapy (OTD) or, after adoption of the regulations described in subdivision (d), a doctoral degree in a

related area of practice or study may do the following:

(1) In a written communication, use the initials OTD, DrPH, PhD, or EdD, as applicable, following the licensee's name.

(2) In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, if the licensee's name is immediately followed by an unabbreviated specification of the applicable doctoral degree held by the licensee.

(3) In a spoken communication while engaged in the practice of occupational therapy, use the title "doctor" preceding the person's name, if the speaker specifies that he or she is an occupational therapy practitioner.

(d) A doctoral degree described in subdivision (c) shall be granted by an institution and program accredited by the Western Association of Schools and Colleges, the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and Colleges.

(e) The board shall define, by regulation, the doctoral degrees that are in a related area of practice or study for purposes of subdivision (c).

- ❖ Richard Bookwalter moved to accept the language with amendments.
- ❖ Beata Morcos seconded the motion.

Roll Call Vote

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

Amend BPC Section 2570.27

Public Comment

There was no public comment.

The Board members asked to have proposed section (b) revised to read as follows:

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation, consistent with section 125.3 of the Code.

The Board members asked to have proposed section (b) revised to read as follows:

- ❖ Richard Bookwalter moved to accept the language with amendments.
- ❖ Teresa Davies seconded the motion.

Roll Call Vote

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

Amend BPC Section 2570.28

Public Comment

There was no public comment.

Proposed New Language

Executive Officer Heather Martin stated that this language places a requirement on employers to report the wrongdoings of occupational therapy practitioners.

Public Comment

Chuck Wilmarth, AOTA's Director, State Affairs asked what will be expected of the employer?

Ms. Martin stated that the employer will be responsible to identify and report to the Board any employees suspended or terminated for cause, as specified.

Mr. Wilmarth asked what the reporting timeframe would be?

President Miller agreed that this was a good point and should be discussed. The Board members discussed changes to the language.

The Board members asked to have sections (a) and (b) revised to read as follows:

(a) Any employer of an occupational therapy practitioner shall report, within thirty (30) days to the California Board of Occupational Therapy the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of records and protected information. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension or termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:

- (1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice occupational therapy.
- (2) Unlawful sale of controlled substances or other prescription items.
- (3) Neglect, physical harm to, or sexual contact with a patient or client.
- (4) Falsification of records and protected information.
- (5) Gross incompetence or negligence.
- (6) Theft from a patient, client, other employees, or the employer.

- ❖ Teresa Davies moved to accept the legislative proposal with amendments.
- ❖ Sharon Pavlovich seconded the motion.

Roll Call Vote

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

Proposed New Language

Executive Officer Heather Martin gave an overview of the proposed new inspection language.

Supervising Attorney Norine Marks expressed her concern regarding the language that states "Each member of the board may inspect, or require reports from...."

Ms. Martin agreed that this language should be removed.

President Miller expressed her support of the language following the removal of "Each member of the board".

Public Comment

Chuck Wilmarth, AOTA's Director of Health Policy and State Affairs asked if the newest version of the Physical Therapy Board's language on this matter has been reviewed.

Ms. Martin stated that the language is in the Physical Therapy Board's regulations.

The Board members requested the following changes to the proposed language:

Any licensed occupational therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing occupational therapy treatment or services and the occupational therapy staff thereof, with respect to the occupational therapy treatment, services, or facilities provided therein, and may inspect occupational therapy records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated to any person other than an occupational therapist. The unauthorized release of personal and protected information constitutes unprofessional conduct.

- ❖ Richard Bookwalter moved accept the legislative proposal with amendments.
- ❖ Denise Miller seconded the motion.

Roll Call Vote

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

7. Update and take action, if necessary, on pending Rulemaking files, California Code of Regulations, Title 16, Division 39:
 - Section 4130, Fees;
 - Section 4161, Continuing Competency, Section 4162, Completion and Reporting Requirements, and Section 4163, Exemption from Continuing Competency Requirements;
 - Section 4172, Standards of Practice for Telehealth.

Executive Officer Heather Martin reviewed the provided handout that outlined the pending rulemaking files.

Public Comment

There was no public comment.

8. Consideration and possible adoption of proposed regulatory language to add Title 16, Division 39, CCR Section 4149.5, Petitions for Reinstatement or Modification of Penalty.

Ms. Martin reviewed the included handouts which were the Notice, Proposed Text, Initial Statement of Reasons, Notice of Modified Text and Modified Text.

President Miller asked that Board staff bring this to the December Board meeting for discussion and possible adoption.

- ❖ Richard Bookwalter moved to table this item and bring it back to the December Board meeting.
- ❖ Teresa Davies seconded the motion.

Roll Call Vote

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

- 9. Consideration and possible adoption of proposed regulatory language to add Title 16, Division 39, CCR Section 4176, Notice to Consumer

Executive Officer Heather Martin reviewed the items included in the meeting materials.

Public Comment

Chuck Wilmarth, AOTA’s Director, State Affairs asked how this would affect services being provided via telehealth?

President Miller and Vice President Bookwalter stated that it would be easy enough for a practitioner to hold up their license to the camera at the onset of the session or place it behind the area the practitioner is seated, while conducting treatment.

Mr. Wilmarth suggested that FAQs would be a helpful tool to inform practitioners of their obligations.

- ❖ Richard Bookwalter moved to adopt the 2nd modified text.
- ❖ Beata Morcos seconded the motion.

Roll Call Vote

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

- ❖ Richard Bookwalter delegated authority to the Executive Officer to make technical non-substantive changes.
- ❖ Beata Morcos seconded the motion.

Roll Call Vote

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

- 10. Presentation of licensing and enforcement data and reports for the quarter ending September 30, 2016.

Executive Officer Heather Martin reviewed the provided enforcement data and reports.

Ms. Martin pointed out the ongoing audit problem that is displayed in the number of citations issued for audit violations just this quarter.

Board member Teresa Davies pointed out that the numbers presented are indicative of the occupational therapist and occupational therapy assistant population as a whole and that the Board needs to take action.

Supervising Attorney Norine Marks suggested including a “failure to respond timely” charge in the citation and fine so that those practitioners who wait until after the citation is issued to show compliance will still be held accountable to some degree.

Board members asked that Board staff work with the legal department on the issue above.

Public Comment

There was no public comment.

11. Discussion and consideration of outreach plan to educate and inform licensees regarding proposed fee increases.

Public Comment

Sabrina McCarley, OTAC offered suggestions that included, CBOT writing something regarding the proposed fee increases to include in the Occupational Therapy Association of California (OTAC) newsletter and something small for the OTAC News (internet). Ms. McCarley also suggested a teleconference venue.

Louis Arabit, OTAC, stated that the Association is encouraging members to be in attendance at meetings more frequently.

Chuck Wilmarth added that it would be helpful if the Board included the information previously provided at all outreach meetings in the renewal mailings.

Pat Nagaishi, OT suggested town hall meetings held at workplace locations. Ms. Nagaishi also commented that some practitioners don't take the time to look at the CBOT website to check for upcoming meetings.

- ❖ Teresa Davies moved to table the discussion and bring it to the December Board meeting.
- ❖ Richard Bookwalter seconded the motion.

Roll Call Vote

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

12. Executive Officer's Report.
 - a. Operational Report
Executive Officer informed the Board that staff has advertised several positions for the Enforcement unit and that applicants are in the process of being screened with a goal of filling the positions effective January 1, 2017.
 - b. Budget Update
Ms. Martin reported that through September 30 (Q1), the Board has collected \$383k in revenue and spent \$490k of the estimated \$2.3m budget.
 - c. BreEZe Update
Ms. Martin stated that Board staff continues to identify issues with BreEZe and submit requests for improvements/fixes/patches and subsequently test said 'fixes'.
 - d. Future Agenda Items
Ms. Martin reviewed the list of seven (7) items provided in her report as future agenda items.

e. Other Informational Items – No Board discussion or action

Ms. Martin referenced the included handouts provided for the Board members and public alike.

The handouts were:

DCA's new Rulemaking Review Process

DCA's Division of Investigation 'Case Referral Guidelines'

DCA's Administrative Services Calendar

Ms. Martin also stated that Chuck Wilmarth, Director, State Affairs, AOTA will be in attendance at the December 8-9, 2016 Board meeting as well as Shaun Conway, Senior Director, Credentialing Services, NBCOT.

Public Comment

There was no public comment.

13. Suggested agenda items for a future meeting.

Board staff will identify future agenda items suggested by the Board members throughout the meeting.

Public Comment

There was no public comment.

14. Adjournment.

Teresa Davies moved to adjourn the meeting at 3:38 p.m.