



BOARD MEETING MINUTES

Thursday, February 8, 2018
Friday, February 9, 2018

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Laura Hayth – Secretary
Teresa Davies
Jeff Ferro
Denise Miller
Beata Morcos

Board Staff Present

Heather Martin, Executive Officer
Jeff Hanson, Enforcement Manager
Jody Quesada, Analyst
Norine Marks, Legal Counsel

Thursday, February 8, 2018

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

The meeting was called to order at 9:37 a.m., roll was called, a quorum was established.

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

President Richard Bookwalter thanked Kaiser San Leandro for use of their facility and acknowledged and thanked former Board President Denise Miller for her exemplary leadership.

3. Board Member Remarks – Informational only; no Board Action to be taken.

Denise Miller congratulated the new Board officers.

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

A letter from a member of the public regarding forming a professional corporation was reviewed and the Board members decided to add the topic to a future Board meeting.

There was no additional public comment.

5. Review and approve October 18-19, 2017, Board meeting minutes.

A technical non-substantive error was identified on page 4.

- Jeff Ferro moved to approve the minutes with amendments.
- Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

President Bookwalter addressed agenda item 7 prior to item 6.

6. Ad Hoc Committee on Fieldwork Report and Recommendation to Board of alternative approaches to increasing the availability of fieldwork sites in California for students completing academic requirements for licensure.

Committee Chair Sharon Pavlovich reported that it was the consensus of the Committee to explore the apprenticeship option and that more information was needed especially regarding funding.

Jeff Ferro stated that the Board could not be the vehicle that creates an apprenticeship program, employer and labor partners would need to take the lead.

Discussion ensued regarding funding and how to obtain it.

Teresa Davies commented that discussions were leaning more toward building a solution rather than exploration of alternatives and stated that wasn't the task assigned to the committee.

Public Comment

Ivan Altamura asked if the Board's regulations prevented apprenticeship.

Heather Martin stated there was no prohibition.

Cindy Garcia asked if the Committee considered partnering in the community as an alternative approach.

Sharon Pavlovich stated that community partnerships were a part of the conversation.

Discussion ensued regarding the actual number of shortages in fieldwork sites and that those numbers are currently gathered from the Employment Development Department (EDD) which in turn gets their data from employers which may not be the best collection method for accuracy.

An American Occupational Therapy Association (AOTA) representative reported that when AOTA was looking in to establishing a fellowship or residency they determined that a temporary license would need to be developed, the reimbursement process would have to be addressed and a plan to entice employers to participate would need to be devised. She reported that AOTA continues to research this issue.

7. Director's Report – *Dean Grafilo, Director, Department of Consumer Affairs and Christopher Castrillo, Deputy Director, Board and Bureau Services.*

Director Dean Grafilo introduced himself and stated that his first 11 months with the Department of Consumer Affairs has been positive and rewarding.

Director Grafilo and Deputy Director Christopher Castrillo reported holding a brown bag type Director's meeting that was attended by representatives from 30 programs, the department is holding meetings with Fi\$cal to share concerns, and spoke of the importance of the Future Leadership Development program in order to prepare for the future. Director Grafilo stated that it his intention and that of his team to be collaborative, forthright and transparent.

8. Presentation on legislative proposal sponsored by the American Occupational Therapy Association (AOTA), the Occupational Therapy Association (OTAC), and Capitol Advocacy, lobbyist for OTAC/AOTA, to amend the Occupational Therapy Practice Act and other sections relating to the practice of occupational therapy.

Ivan Altamura and Chrissy Vogeley thanked the Board for the opportunity to present proposed changes to legislative language and receive feedback.

Sharon Pavlovich asked if there was a reason that occupational therapy assistants (OTAs) were not included in the draft language and suggested the use of *occupational therapy practitioners* in the amendments would be more inclusive.

Ms. Pavlovich expressed her concern with the proposed removal of the word 'referred' in Section 2570.2(k) regarding Scope of Practice and the impact it may have to settings such as acute care hospitals and skilled nursing facilities.

Ms. Pavlovich suggested that language outlining the fact that educators are required to hold a California license to teach in California be added to the proposal.

Beata Morcos expressed a concern with proposed changes to Section 2570.3(d) that would allow a practitioner to self-attest that they have met the education and training required to provide advanced practice services as opposed to the existing requirement that a practitioner demonstrate to the satisfaction of the Board that they have met the requirements.

Ms. Davies stated that she was concerned that replacing advanced practice approval by the Board with a simple attestation would not be consistent with the Board's mandate to protect the public. Laura Hayth agreed.

The consensus of the Board was to oppose the implementation of an attestation for advanced practice approvals.

Public Comment

Cindy Garcia strongly advocated on behalf of OTAs that *occupational therapy practitioners* be used wherever feasible throughout the proposed language. Ms. Garcia also commented that occupational therapy is rooted in mental health and many fail to recognize mental health as a component.

Denise Miller questioned representatives from OTAC and AOTA about the responses they are receiving regarding the proposed language.

Mr. Altamura said OTAC and AOTA were getting good responses and that physical therapists had the biggest reaction surrounding the referral language due to the direct access issue.

9. Discussion of the amendments proposed in the AOTA/OTAC sponsored legislative proposal.

Regarding the addition of mental health language, Heather Martin suggested that OTAC reach out to the all the mental health disciplines for their opinion.

Teresa Davies recognized the need to update antiquated language but voiced her concern with fundamental changes to the scope of practice. Ms. Davies rhetorically asked how the proposed changes would benefit the consumer.

Richard Bookwalter stated he believed the OTAC/AOTA proposal to remove “referred” from Section 2570.2(k) does not represent a significant change to the existing language. Mr. Bookwalter reported the existing language does not specify a referral must come from a physician, and that referral as used in the section could pertain to many individuals, such a parent or the consumer themselves.

Public Comment

Chrissy Vogeley, AOTA stated that removing ‘referred’ removes barriers for consumers seeking occupational therapy services.

Ivan Altamura stated the discussion today has given him a sense of the pulse of the Board and that it is the goal of OTAC/AOTA to gain the support of the Board to proceed with legislative changes.

10. Discussion and possible action on bills of interest to the Board:
 - a. Assembly Bill (AB) 387 (Thurmond), Minimum wage: health professionals: interns.
 - b. AB 703 (Flora), Professions and vocations: licenses: fee waivers
 - c. AB 827 (Rubio), Department of Consumer Affairs: “task force” foreign-trained professionals.
 - d. AB 835 (Dababneh), Consumer affairs: licenses: prohibited acts.
 - e. AB 1087 (Irwin), Teacher credentialing: services credential with a specialization in occupational therapy or physical therapy services.
 - f. AB 1510 (Dababneh), Athletic Trainers.
 - g. AB 1659 (Low), Healing arts boards: inactive licenses.
 - h. Senate Bill (SB) 27 (Morrell), Professions and vocations: licenses: military service.
 - i. SB 359 (Galgiani), Professions and vocations: military medical personnel.
 - j. SB 572 (Stone), Healing arts licensees: violations: grace period.

- k. SB 715 (Newman), Department of Consumer Affairs: regulatory boards: removal of board members.
- l. SB 762 (Hernandez), Healing arts licensee: license activation fee: waiver.
- m. SB 1217 (Stone), Healing arts: reporting requirements: professional liability resulting in death or personal injury.

Ms. Martin reviewed the included handout on the status of the legislative bills.

Public Comment

Ivan Altamura reported that AB 1087 was going to be reintroduced and would be an OTAC sponsored bill and AB 1510 was going to be introduced by Mullin as AB 3110.

- 11. Discussion and possible action on the Accreditation Council for Occupational Therapy Education's proposed amendments to the educational programs' accreditation standards. (Draft III Revisions – December 2017)

Mr. Bookwalter commented that he was pleased that not requiring students to 'demonstrate' competence was removed from the document and that the reference to 'maximum hours' for fieldwork had also been fixed.

Public Comment

There was no public comment.

- 12. Update on pending rulemaking file to add section 4149.5, Petition for Reinstatement or Modification of Penalty, to California Code of Regulations (CCR), Title 16, Division 39.

Ms. Martin explained that although the Board had previously approved this language she filed a motion to withdraw the proposed language on behalf of the Board at the request of (control agency) Business, Consumer Services, and Housing Agency since Office of Administrative Law met with staff and indicated they were going to disprove this language. Although there was an opportunity to correct the language, the withdrawal was submitted given the sensitivity of the issue and the priority of the Administration regarding removing barriers to licensure.

Board members expressed their displeasure that the will of the Board was not carried out. Ms. Martin indicated that a possible solution was provided under agenda item 13.

Public Comment

There was no public comment.

- 13. Consideration and possible approval of proposed addition to Title 16, CCR Division 39, regarding petitions for reinstatement of licenses or modification of penalty.

Ms. Martin explained that the regulations were intended to implement and make specific B&P code section 2570.32 which states the Board 'may refuse to consider a petition under reasons as specified'. The Office of the Attorney General has said that, among other things, the use of 'may' is not transparent enough for the applicant. Discussion ensued regarding the difference between the 'shall refuse' and 'may refuse' to consider a petition.

Legal Counsel Norine Marks stated that concerns were specifically expressed with the Board exclusively choosing to not ‘consider’ specific kinds of cases.

A couple of different versions of proposed regulatory amendments were provided for the Board’s consideration.

- Laura Hayth moved to approve version three of the language for noticing.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

- Sharon Pavlovich moved to allow the Executive Officer to make technical, non-substantive changes.
- Teresa Davies seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

14. Consideration and possible approval of proposed amendments to Title 16, CCR Division 39, Section 4101, Delegation of Certain Functions.

Heather Martin explained that amended language proposed to section 4101 would delegate authority to the Executive Officer to vacate default decisions upon a motion or petition received from a licensee before the default decision (revocation) becomes effective. The proposed amendment would not extend the Executive Officer delegated authority to vacate a default decision in the event a Writ of Mandate in Superior Court after a default decision becomes effective.

Ms. Martin reported the proposed amendment would streamline administrative processes related to these matters, and hopefully translate to the licensee being set for a hearing sooner to promote public protection. Further the proposed amendment limits the

Executive Officer's delegated authority to only granting a motion or petition in these matters. The decision to deny a motion or petition filed by a licensee to vacate a default decision is maintained by the Board.

Ms. Martin reported that one recent Writ of Mandate that was recently filed against the Board requesting that a default decision be vacated to allow the licensee the opportunity to have a hearing could have been avoided if this proposed amendment had been adopted and in effect.

Teresa Davies and Denise Miller opposed the proposed changes, preferring that motions and petitions to vacate a default decision come before the Board for a vote.

- Sharon Pavlovich moved to accept the language for noticing.
- Jeff Ferro seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

- Jeff Ferro moved to allow the Executive Officer to make technical, non-substantive changes.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

15. Consideration and possible approval of proposed amendments to Title 16, CCR Division 39, Section 4146, Definitions.

Heather Martin informed the Board that staff has noticed an uptick in the number of domestic violence cases received and that the proposed changes address this type of case.

Following discussion amongst the Board members regarding the proposed changes and current Board operation regarding receipt of arrests, Beata Morcos clarified that approving this language would better serve the consumer by enabling Board staff to act on the arrest that is received within days rather than waiting for a conviction which could be many months or longer.

Ms. Martin confirmed Ms. Morcos' statement.

Board members asked to update section (d)(4) by replacing 'violating' with 'violation of.'

Public Comment

Ivan Altamura offered that temporary restraining orders are often issued with no adjudication of facts.

Cindy Garcia stated that restraining orders can be falsely obtained and that every case should be assessed on a case by case basis.

- Beata Morcos moved to approve language as amended for noticing.
- Laura Hayth seconded the motion.

Roll Call Vote

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

- Laura Hayth moved to allow the Executive Officer to make technical, non-substantive changes.
- Sharon Pavlovich seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

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

CONVENE CLOSED SESSION

The Board will meet in closed session pursuant to Government Code Section 11126(c)(3) to deliberate and vote on disciplinary matters.

The Board entered in to closed session at 3:36 pm.

RECONVENE IN OPEN SESSION

The Board convened in open session at 4:42 pm.

16. Recess for the day.

The meeting adjourned at 4:42 pm.

Friday, February 9, 2018

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

The meeting was called to order at 9:37 a.m., roll was called, Teresa Davies was absent. A quorum was established.

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

Please note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125 and 11125.7(a)]

Lindy Joffe identified herself as the practitioner who wrote the letter regarding wanting a certificate of registration from the Board in order for her to form a 'professional corporation' (as provided in the Moscone-Knox Professional Corporation Act).

Richard Bookwalter explained to Ms. Joffe that the Board members were aware of her concerns as the letter was discussed during the previous day's public comment session. Mr. Bookwalter welcomed any additional comments that Ms. Joffe wanted to add and informed her that the Board agreed to add her topic to the May Board meeting but would not be able to take any action at this meeting.

Ms. Joffe stated that it was a requirement that she get a certificate of registration from the licensing board to be recognized as a corporation and that her goal was to achieve being recognized as a corporation lawfully. Ms. Joffe stated that her attorney told her that the licensing board could write the certificate of registration without changing legislation.

Mr. Bookwalter questioned Ms. Joffe's use of "licensing board" and "OTAC" interchangeably throughout her letter. Ms. Joffe confirmed that she meant to reference the licensing board only.

Ms. Joffe stated that she would forward any additional information that her attorney may have to Board staff to have it included in the next Board meeting.

Public Comment

There was no additional public comment.

19. Discussion and consideration of new board logo.

The Board members discussed their opinions and ultimately asked Heather Martin to make a few updates and bring the results back to the Board for review.

Public Comment

There was no public comment.

20. Discussion and consideration of Administrative Committee's recommendations on proposed edits to the Board's Administrative Manual.

President Richard Bookwalter reported that he met with Vice President Sharon Pavlovich and Executive Officer Heather Martin to review and update the Board's Administrative Manual.

Discussion ensued regarding the proposed edits and Board members offered suggestions and edits of their own.

Sharon Pavlovich departed at 11:15 am. A quorum was still in place.

Mr. Bookwalter asked that Board staff make the agreed upon edits and bring the updated Administrative Manual to a future Board meeting for review.

Public Comment

There was no public comment.

21. Discussion on updating the Board's Disciplinary Guidelines.

Mr. Bookwalter reported that the Board's Disciplinary Guidelines hadn't been changed in approximately 5 years. Mr. Bookwalter stated that any changes to the Disciplinary Guidelines there would be an approximate timeframe of nearly two years to change the corresponding regulations.

Mr. Bookwalter asked the Board members how they wanted to proceed with the review of the Disciplinary Guidelines.

Discussion ensued regarding forming an Ad Hoc committee to review the Guidelines or assignment of the Administrative committee for review.

Legal Counsel Norine Marks cautioned the Board that the review is a painstaking process.

- Jeff Ferro moved to appoint the Administrative committee to review the Board's Disciplinary Guidelines.
- Laura Hayth seconded the motion.

Public Comment

There was no public comment.

Roll Call Vote

Richard Bookwalter	Aye
Laura Hayth	Aye
Teresa Davies	Absent
Jeff Ferro	Aye
Denise Miller	Aye

Beata Morcos
Sharon Pavlovich

Aye
Absent

22. Discussion on updating the Board's Disciplinary Resource Manual.

Mr. Bookwalter asked Ms. Martin if there was value in making changes to the Disciplinary Resource Manual along with the Disciplinary Guidelines.

Ms. Martin explained that the reviews should be independent because changes to the Disciplinary Guidelines require regulation updates that could take two years or more.

Mr. Bookwalter asked the Board members to review the Resource Manual and bring any concerns to the next Board meeting.

Public Comment

There was no public comment.

23. Update and possible action on the Board's Strategic Plan Action Plan.

Ms. Martin reviewed the included Strategic Plan Action Plan handout.

Public Comment

There was no public comment.

24. Licensing and enforcement data for the quarter ending December 31, 2017.

Ms. Martin reviewed the included enforcement data handouts.

Public Comment

There was no public comment.

25. Executive Officer's Report.

a. Operational Report.

Ms. Martin reported that Fi\$cal is the new consolidated budgeting, accounting, procurement, and cash management system that became operational July 1, 2017, and the revenue/expenditure information isn't yet available.

Ms. Martin informed Board members that Board staff would be sending emails regarding training to be completed, Board staff is looking for new office space and the number of Facebook and Twitter followers had increased.

b. Signed legislation.

Ms. Martin stated that a legislation update will be reviewed at the next meeting.

c. Future Agenda Items.

Ms. Martin said that in addition to the items listed in her report, the following items were identified as future agenda items:

- Mail ballot policy

- Little Hoover Commission report on licensure.
- Board Logo
- Board Administrative Manual with updates.
- Board Resource Manual.

d. Other Informational Items.

Ms. Martin reviewed the other Informational Items that she provided handouts for as information on Regulatory Amendments, Report from the Office of Attorney General and Little Hoover Commission Report.

Mr. Bookwalter asked the Board members to review the discipline section of the Little Hoover report and it could be discussed at a future Board meeting.

Denise Miller stated that she was not in support of several findings in the Little Hoover Commission report.

26. Suggested agenda items for a future meeting.

This topic was addressed under the Executive Officer's report.

Adjournment.

The meeting adjourned at 12:57 pm.