



## BOARD MEETING MINUTES

Thursday, May 9, 2019, and Friday, May 10, 2019

### Board Member(s) Present

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

### Board Staff Present

Heather Martin, Executive Officer  
Jeff Hanson, Enforcement Manager  
Jody Quesada, Analyst  
Reza Pejuhesh, Legal Counsel

### Thursday, May 9, 2019

#### 9:30 am - Board Meeting

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

The meeting was called to order at 9:38 a.m., roll was called, a quorum was established.

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

President Richard Bookwalter welcomed and thanked all in attendance. Mr. Bookwalter extended an invitation for all members of the public to introduce themselves at will.

Joyce Fries, Occupational Therapist and Fieldwork Coordinator, Grossmont College introduced herself.

Chuck Willmarth, Associate Chief Officer, Health Policy and State Affairs, American Occupational Therapy Association (AOTA) introduced himself.

Mike Chisar, Governmental Affairs Chair, California Athletic Trainers' Association introduced himself.

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

There were no Board Member remarks.

4. 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 session, except to decide whether to place the matter on the agenda of a future meeting.*

*[Government Code Sections 11125 and 11125.7(a)]*

Mr. Willmarth stated his appreciation for the work of Board staff but added that it is a hardship to not have the meeting materials posted on the Board’s website prior to the meeting.

Executive Officer Heather Martin informed Mr. Willmarth that the Board is in the process of obtaining the proper technology that will put the Board in compliance with a recently passed bill that requires all state websites including uploaded documents to be compliant with the Americans with Disabilities Act.

5. Review and vote on approval of the February 7-8, 2019, Board meeting minutes.

President Bookwalter asked that Board staff make three non-substantive corrections to the minutes.

- Denise Miller moved to accept the minutes with non-substantive changes.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Abstain</b>	<b>Abstain</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

6. Review and vote on approval of the March 7, 2019, teleconference Board meeting minutes.

- Jeff Ferro moved to accept the minutes as written.
- Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Abstain</b>

**The motion passed.**

7. Review and vote on approval of the April 10, 2019, teleconference Board meeting minutes.

Board staff was asked to include Denise Miller’s attendance at both events mentioned in Agenda Item 2.

- Jeff Ferro moved to accept the minutes with the update.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Abstain</b>

**The motion passed.**

8. Discussion and consideration of potential action and/or position on the following bills:

**a) Assembly Bill (AB) 829 (Bloom), California State University: Doctor of Occupational Therapy Program.**

Board members confirmed that there were no changes to the bill since April 10<sup>th</sup> and reported that they were satisfied with the ‘Support’ letter Board staff sent to the author on their behalf.

**Public Comment**

There was no public comment.

**b) AB 1592 (Bonta), Athletic trainers.**

**Public Comment**

Mike Chisar, Governmental Affairs Chair, California Athletic Trainers’ Association reported that AB 1592 is now a 2-year bill and asked for the Board to verbally address their points of opposition and suggestions included in their letter addressed to Assembly Member Low.

Denise Miller asked Mr. Chisar to define ‘direct patient care’ in the context of athletic training. Ms. Miller expressed her belief that the use of ‘direct patient care’ seemed to be a deviation from the previous language. Ms. Miller stated that she is not interested in limiting the Athletic Trainer (AT) scope but feels there is a loophole in the language.

Mr. Chisar stated that direct patient care language was taken from either the Nurse or Respiratory Care Boards’ language. Mr. Chisar said that Athletic Trainers are health care providers and the intent of the bill was never to limit the type of athlete or setting in which an AT can treat.

Vice President Pavlovich asked that the Board members with concerns regarding ‘direct patient care’ give Mr.Chisar an explanation of the concerns so that he can have clear feedback. President Bookwalter, Secretary Hayth and Vice President Pavlovich agreed that they had no concerns regarding the use of ‘direct patient care’.

Ms. Miller stated that the removal of the word ‘patient’ would clear it up for her. Jeff Ferro asked Mr. Chisar if the removal of the word ‘patient’ would compromise their scope.

Mr. Chisar expressed his willingness to go back and discuss the matter. Ms. Miller stated that her issue regarding the use of 'clinical' in 'evaluation and assessment' is the same as the issue she had with the use of 'patient' in 'direct patient care'.

President Bookwalter asked for clarification of the phrase 'advanced post professional study' as it relates qualifying education. He stated it was undefined and seemed like a lower level of specificity and a lower threshold.

Mr. Chisar stated that it was referring to ATs that go on to get a higher degree like a doctorate.

Vice President Pavlovich suggested delineation and clarification of the phrase 'advanced post professional study'.

President Bookwalter asked that the phrase be deleted altogether as the Legislation and Regulatory Affairs committee did not understand why it was included. Mr. Bookwalter asked if Mr. Chisar understood his objection was due to the fact that 'post professional study' was not defined in the bill. Mr. Chisar said he understood.

Mr. Bookwalter stated the way in which 'immediate care', 'temporary' and 'temporarily' are used is vague and can be interpreted broadly.

Mr. Chisar gave examples of events that may not have a clear end date such as the World Cup and other open-ended sporting events. In reference to 'immediate care' Mr. Chisar recalled that a previous bill used 'emergency care' and it was his recollection that Ivan Altamura of Capital Advocacy offered the suggestion of 'immediate care' in its place.

Conversation ensued surrounding events in states and possible situations where an AT can stay for extended timeframes with a team or athlete. The Board members expressed the importance of imposing a time limit or a timeframe that if exceeded requires licensure in that state. The Board members asked Board staff to reach out to other states and clarify if those states that have defined timelines for ATs to practice in that state without a license and report back to the Board.

### **Public Comment**

Joyce Fries, OT and Fieldwork Coordinator, Grossmont College, offered that clearly defining what your specialty is and outlining the qualifications could address the confusion.

Chuck Willmarth, AOTA stated that AOTA along with the Occupational Therapy Association of California (OTAC) looks forward to working with the ATs in California.

President Bookwalter stated that he is looking forward to future iterations of the Athletic Trainer bill. Jeff Ferro recommended that Mr. Chisar keep in touch with Executive Officer Heather Martin.

**c) Senate Bill (SB) 53 (Wilk), Open Meetings.**

President Bookwalter reported that there were no changes and the Board is watching this bill.

Ms. Miller asks that the if any information arises that may clarify why this bill is listed as urgent that Executive Officer Ms. Martin report it to the Board.

**Public Comment**

There was no public comment.

**d) AB 648 (Nazarian), Wellness programs.**

President Bookwalter reported that there were no changes and the Board is watching this bill.

**Public Comment**

There was no public comment.

**e) AB 888 (Low), Opioid prescriptions: information: nonpharmacological treatments for pain.**

President Bookwalter reported very small changes to the bill since the Board's April 10<sup>th</sup> meeting.

**Public Comment**

Mr. Willmarth stated that AOTA and OTAC support the legislation, but the minor amendment does not go where the Association wanted it to go.

9. Discussion and consideration of Legislative and Regulatory Affairs Committee's recommended position(s) to the Board on the following bills:

a) Highlights from April 12, 2019, Teleconference Legislative and Regulatory Affairs Committee Meeting.

b) AB 890 (Wood), Nurse practitioners.

The Legislative and Regulatory Affairs committee (Committee) recommended a neutral position but there have been changes to the bill since that committee meeting.

- Sharon Pavlovich moved to 'watch' AB 890.
- Denise Miller seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- c) AB 1271 (Diep), Licensing examinations: report.  
The Committee recommended a 'neutral' position.
- Jeff Fero moved to 'watch' AB 1271.
  - Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- d) AB 1382 (Aguiar-Curry), Master Plan for an Aging California.  
The Committee recommended a 'watch' position. Mr. Bookwalter reviewed the legislation and stated that he felt the bill has improved a lot.

Denise Miller reported that the AARP has made a national campaign around the burden that surrounds caregivers. She supports a position of 'watch' as she foresees this affecting the occupational therapy profession.

- Denise Miller moved to adopt the committee's recommendation of 'watch' on AB 1382.
- Sharon Pavlovich seconded the motion.

**Public Comment**

Mr. Willmarth reported that this bill seems like a step in the right direction and if the Board has information that they would like to share with incoming AOTA President Wendy Hildenbrand, she would welcome the opportunity.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- e) **AB 1494 (Aguiar-Curry), Medi-Cal: telehealth state of emergency**  
The Committee recommended a 'support' position.

Mr. Bookwalter stated that his personal take on the bill is that the face to face visits were meant to curtail fraud, however, a required face to face visit can be an obstacle during a state of emergency. Mr. Bookwalter said that he felt very strongly about this bill as did the committee members.

- Denise Miller moved to adopt the Committee's recommendation to 'support' AB 1494.
- Sharon Pavlovich seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

The Board members instructed Executive Officer Heather Martin to write a ‘letter of support’ to the author of the bill and asked that the letter include the Board’s support for the bill’s language that does not require face-to-face contact or a patient’s physical presence on the premises of an enrolled community clinic for services provided by the clinic to a Medi-Cal beneficiary during a state of emergency.

Denise Miller amended her motion.

- Denise Miller moved to adopt the committee’s recommendation of ‘support’ on AB 1494 and direct the Executive Officer to monitor the Stakeholder’s meetings and write a ‘letter of support’ on behalf of the Board to include previously discussed points.
- Jeff Ferro seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

**f) AB 1529 (Low), Telephone medical advice services.**

The Committee recommended a ‘watch’ position.

- Sharon Pavlovich moved to approve the committee’s recommendation to ‘watch’ AB 1529.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

**g) AB 1540 (Holden), Music therapy.**

The Committee recommended a 'support' position.

The Board discussed what points they wished to have included in a 'letter of support'. The consensus was to offer the Board's support for clarifying what a "Board Certified Music Therapist" is and establishing a baseline level of education and training which prohibits people from holding themselves out as a "Board Certified Music Therapist". Additionally, the Board expressed their support regarding the clarification that a "Board Certified Music Therapist" is prohibited from stating or implying they can provide mental health counseling, psychotherapy, or occupational therapy.

- Beata Morcos moved to approve the committee's recommendation to 'support' AB 1540 and instruct the Executive Officer to send a 'letter of support' on behalf of the Board to include previously discussed points.
- Sharon Pavlovich seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

**h) SB 163 (Portantino), Healthcare coverage: pervasive developmental disorder or autism.**

The Committee did not recommend a position on this bill but felt that clarification was needed on whether occupational therapy assistants (OTAs) were able to provide services, although not included in the list of qualified autism service providers.

Vice President Sharon Pavlovich stated that she hoped OTAs were not left out of this bill because it would limit their scope of practice. Ms. Pavlovich stated her opposition of the bill.

Denise Miller agreed with Ms. Pavlovich's statement regarding OTAs and stated that OTAs could be added to the list of service providers.

**Public Comment**

Mr. Willmarth stated that the original law goes back many years and it has not worked out the way that OTAC and AOTA hoped. It was their hope that those that have autism would receive services through an occupational therapy benefit not through this statute. Mr. Willmarth suggested that the Sponsor's office be contact and asked, "*You have these persons listed as qualified autism service providers, how is that being operationalized today?*"

Laura Hayth proposed that since the author is still making changes, the Board should watch the bill and act at a more appropriate time.



Beata Morcos stated that since changes are being made, it may be in the Board’s best interest to suggest proposed changes now.

Vice President Pavlovich stated that she was uncomfortable with the bill and there was a lot she doesn’t understand regarding the bill’s reference to occupational therapy and the scope of practice.

Executive Officer Heather Martin recommended watching the bill until a time that it comes out of appropriations at which point Board staff can proceed to reach out to the author.

- Denise Miller moved to ‘watch’ SB 163 and direct Board staff to seek clarification from the author as outlined in the committee’s recommendation if it comes out of the Assembly Appropriations committee.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

**i) SB 425 (Hill), Health care practitioners: licensee’s file: probationary physician’s and surgeon’s certificate: unprofessional conduct.**

The Committee recommended the Board ‘watch’ the bill.

Laura Hayth suggested asking for clarification of the word ‘allegation.’

- Jeff Ferro moved to approve the recommendation of the committee to ‘watch’ SB 425 and instructed the Executive Officer to seek clarification of the word ‘allegation’ and how it fits in to the reporting requirements.
- Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

**j) SB 697 (Caballero), Physician assistants: scope of practice.**

The Committee recommended the Board take a ‘neutral’ position.

- Denise Miller moved to ‘watch’ SB 697.
- Laura Hayth seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- 10. Legislative Items for Future Meeting. The Board may discuss other items of legislation in sufficient detail to determine whether such items should be on a future Board meeting agenda.

There were no additional legislative items considered.

- 11. Consideration and possible action of approving proposed regulatory language to amend Title 16, CCR section 4127 (Inactive License) and section 4130 (Fees).

Ms. Martin informed the Board that fiscal year 2017-18 had not yet closed, so the final revenue and expenditures are not available. She suggested that the Board wait to consider reducing the inactive renewal fee once the final numbers are available.

The Board members agreed to put this item on a future agenda.

- 12. Consideration and possible action of approving proposed regulatory language to amend Title 16, CCR section 4141 (Assessment of Administrative Fines).

The Board members were informed that the changes proposed in the language were required to implement the provisions of AB 2138.

- Jeff Ferro moved to approve the proposed regulatory language to amend CCR Section 4141.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- 13. Consideration and possible action of approving proposed regulatory language to amend Title 16, CCR section 4150, (Definitions), section 4151 (Hand Therapy), section 4152 (Physical Agent Modalities), section 4153 (Swallowing Assessment, Evaluation, or Intervention), section 4154 (Post Professional Education and Training), section 4155 (Application for Approval in Advanced Practice Areas) and section 4161 (Continuing Competency).

Ms. Martin explained that the changes to the applications provided were in response to AB 2221 which eliminated 'post professional' from the Practice Act. Ms. Martin and Board Legal Counsel Reza Pejuhesh went through the sections to come up with a way to eliminate the references to post professional but to ensure that the verbiage pertained to the advanced practices.

### **Public Comment**

Mr. Willmarth expressed concern that CCR Section 4151 Hand Therapy language could be misinterpreted because a student may not be applying for Advanced Practice approval but acquiring education to support a licensing application.

President Bookwalter offered a suggestion of additional verbiage to be included in CCR Sections 4151, 4152 and 4153 to address Mr. Willmarth's concern that the language could be misinterpreted.

Mr. Bookwalter proposed adding "or when performed as a part of an accredited occupational therapy education program" following "4155(a)(1)" in CCR Section 4151. Hand Therapy, following "4155(a)(2)" in CCR Section 4152 Physical Agent Modalities and following "4155(a)(3)" in CCR Section 4153 Swallowing Assessment, Evaluation, or Intervention.

Mr. Pejuhesh stated that the proposed changes were legally acceptable in his opinion.

Mr. Willmarth asked why post professional would be removed from CCR Section 4161 Continuing Competency.

Legal Counsel Reza Pejuhesh clarified that, in his interpretation, the removal of 'post professional' from the term 'post-professional coursework' in CCR Section 4161(b) does not preclude the use of post professional coursework. Mr. Pejuhesh reported that it was his impression that the removal of 'post-professional' broadens the language to include any type of coursework, whether it be post-professional or not.

Mr. Bookwalter asked Mr. Willmarth if he felt comfortable with the explanations provided for the proposed changes. Mr. Willmarth said that he was satisfied for now.

- Richard Bookwalter moved to adopt the proposed language with the addition of suggested language in CCR Sections 4151, 4152 and 4153 as discussed.
- Denise Miller seconded the motion.

### **Public Comment**

Mr. Willmarth asked if there would be any consideration for looking at the requirements of the section related to education and training hours and dialing back the required numbers.

Mr. Bookwalter said that the topic was on the agenda for the next day.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

- Information from Legal Counsel on meeting requirements resulting from passage of AB 2958 and clarification on 'primary' meeting locations.

Legal Counsel gave a verbal update on the amendment of the Open Meetings Act and teleconferencing. Ultimately the new teleconferencing provisions only pertain to Advisory Bodies. The primary physical meeting location must contain a quorum of the Advisory Body and the remaining members can call in remotely from an unnoticed location. Mr. Pejuhesh restated that this does not apply to Board meetings.

Mr. Pejuhesh reported that the language of the statute suggests an Advisory Body can only have one primary physical meeting location due to the use of the word "the" in the language. Mr. Pejuhesh recommended only using one primary physical location.

**Public Comment**

There was no public comment.

**CONVENE IN CLOSED SESSION**

The Board convened in Closed Session at 2:40 p.m.

**RECONVENE IN OPEN SESSION**

The Board reconvened in Open Session at 4:34 p.m.

- Recess for the day.

The Board adjourned at 4:35 p.m.

**Friday, May 10, 2019**

**9:30 am - Board Meeting**

Board Member(s) Present

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

Board Staff Present

Heather Martin, Executive Officer  
Jeff Hanson, Enforcement Manager  
Jody Quesada, Analyst  
Reza Pejuhesh, Legal Counsel

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

The meeting was called to order at 9:34 a.m., roll was called, a quorum was established.

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

President Richard Bookwalter welcomed all in attendance. Mr. Bookwalter extended an invitation for members of the public to introduce themselves at will.

Chuck Willmarth, Associate Chief Officer, Health Policy and State Affairs, AOTA, introduced himself.

President Bookwalter announced that he appointed members to the Practice committee. The appointees are Board members Denise Miller, OT and Laura Hayth, OT and Ernie Escovedo OT, Danielle Meglio OTA, Lauren Newhouse OT, and Aaron Weiss OT.

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 session, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125 and 11125.7(a)]*

There were no public comments.

19. Discussion and consideration of reducing advanced practice education and training requirements for students graduating after a certain date (date TBD).

Ms. Martin recapped that during the previous day's discussions Mr. Willmarth asked that as long as the Advanced Practice regulations were being reviewed to eliminate the reference to 'post professional' would it be possible to consider a reduction to the number of hours of education and supervised training for each of the three Advanced Practice areas.

Ms. Martin stated that there have been no changes to the Advanced Practice (AP) language since the regulations were implemented in 2004 and part of the reason the regulations were put in to place was due to the lack of a minimum national education

standards that would have ensured all students had education in these practice areas. ACOTE guidelines have changed over the years and it is her request that the two topics be reviewed by the Practice committee. Ms. Martin stated that the topics for review are identification of a graduation date after which students wouldn't be required to apply to the Board for advance practice approval to provide those services and to consider the reduction of the number of education and supervised training hours for those applicants that still need to demonstrate competence to the Board prior to being approved to provide AP services.

Vice President Pavlovich expressed her hope that the Practice committee would look at the education requirements and how each school is meeting and delivering those requirements to their students.

President Bookwalter referred the two topics outlined by Ms. Martin to the Practice committee for review and recommendation.

### **Public Comment**

There was no public comment.

20. Discussion and consideration of a limitation for the number of examination attempts for licensure or the placement of additional requirements after a certain number of examination attempts.

Ms. Martin reviewed the included document that indicated what other states are doing related to additional requirements for individuals who failed the national exam after a particular number of attempts.

Ms. Martin stated that her concern was never about the number of attempts at passing the national examination, but the amount of time lapsed from the graduation date to the eventual passing of the examination, to licensure and the eventual requirement to complete continuing competence. She referenced many instances where several years passed after the graduation with no required continuing education to keep the applicant current in practice.

Ms. Martin referred to current language pertaining to applicants whom have not practiced in the past five years and the requirement of completing 40 hours of continuing competence as a qualification for licensure; she expressed the importance to make sure the therapist's practice abilities are current in order to ensure consumer safety. Ms. Martin suggested that the Board can impose something similar for those applicants who have a similar passage in time after their graduation date due to their taking the national examination multiple times.

Ms. Pavlovich asked if any problems have arisen involving a practitioner that needed to take the national test multiple times during their California application process.

Ms. Martin stated that there was not, but it came to light due to the comparison to applicants that have not practiced in the past five years and the requirements expected of them.

Mr. Bookwalter liked the language of Pennsylvania but wasn't sure if it would require a change in regulation.

Mr. Ferro stated that consumer safety is very important, and he wants to be proactive and offer help to the students whom are struggling.

Ms. Pavlovich was hesitant because fiscal impact is huge for students and some of the states are requiring additional education which would further compound their debt. Ms. Pavlovich acknowledged that there are various reasons why students fail multiple times and expressed that she was struggling because there is not a case of patient harm that has arisen from this situation.

Ms. Pavlovich asked what the Board can do.

Ms. Martin said that any change would be statutory and suggested the change could outline that after a specific number of exam attempts additional education is required and that the education can be equivalent to continuing education courses which are more cost effective than courses offered by a university.

### **Public Comment**

Mr. Willmarth proposed reaching out to students and asking why they are failing repeatedly so that it can be addressed in the way of assistance. Mr. Willmarth stated that there are a lot of barriers already in place and adding additional requirements is not the direction to go.

Ms. Pavlovich suggested that the Board check with schools and faculty to get feedback on what problems they see and what their concerns are regarding students who take the test multiple times.

Board members requested that Board staff reach out to the education programs for information surrounding high test takers and put the topic on a future agenda.

Beata Morcos stated that she felt the information was important, but she hoped that the Board would keep the focus on consumer protection because the Board is in place to regulate the licensees and not the exams.

21. Discussion and consideration of the internship/clinical experience completed as part of a Doctor of Occupational Therapy (OTD) and discussion about Occupational Therapy Practice Act (OT Practice Act) requirements relative to OTD programs in California not yet accredited by the Accreditation Council on Occupational Therapy Education.

President Bookwalter gave the overview about the OT Practice Act requirements relative to OTD students obtaining a California license prior to entering their doctoral clinical experience and whether the OTD program is accredited and whom it needs to be accredited by.

Ms. Martin stated that it seems that the Practice Act language has not kept up with the times in terms of the references to education. She asked if it was the Board's understanding that the use of the word "accredited" in 2570.4 (b) meant accredited only by ACOTE or did it pertain to any accreditation?

Ms. Martin went on to offer an example to the Board members where an applicant who had completed her Masters' program, and passed the national examination, began her doctoral clinical experience several months before she submitted her application for licensure. Her attorney argued the applicant was exempted under BPC section 2570.4 since she was "pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited educational program," and that section did not clearly state that 'accredited' meant accredited by ACOTE.

Ms. Martin suggested seeking a legislative counsel opinion regarding the use of 'accredited' and whether it means accredited by any organization or just by ACOTE. She stated that she would work with Senate Business and Professions on crafting the question that would be submitted and reviewed by the Legislative Counsel.

Mr. Bookwalter asked if a Legislative Counsel is required.

Ms. Martin said that is was not required and the alternative was for the Board to pursue legislation without a Legislative Counsel review.

### **Public Comment**

Mr. Willmarth stated students completing clinical experience for their post-professional doctoral program must be licensed. Mr. Willmarth stated that AOTA would be supportive of a change that would modernize the OT Practice Act to, for example, add language outlining that students completing a doctoral capstone related to *clinical practice skills* must provide services under the supervision of a licensed occupational therapist. {Emphasis added.}

Ms. Miller stated that after listening to Ms. Martin's example and explanation she believed there is a true loophole in the language.

Ms. Martin stated that if the Board felt that individuals completing post professional degree programs needed to be licensed they could amend the language to read "...at an educational program accredited by ACOTE."

Ms. Miller asked Mr. Willmarth if AOTA and OTAC would support the change that was verbally proposed by Ms. Martin.

Mr. Willmarth offered rather than plugging in 'ACOTE' to use 'an entry level accreditation program'.

Mr. Ferro suggested that the Board come up with language relevant to the current situation, submit for review and get a sponsor to carry it.

Ms. Martin suggested that Board staff could collect information from program directors regarding contributors to educational success or lack thereof, possibly scheduling a townhall meeting in Southern California on a Friday to discuss in person, reach out to high test takers if possible and reach out to NBCOT regarding whether they have data on content areas that have the highest failure rate. Following the gathering of this information, an Ad Hoc committee could meet to discuss and make a recommendation to



the Board. Ms. Martin cautioned that due to breadth of information gathering this topic wouldn't be brought back to the board until after the August Board meeting.

President Bookwalter stated that he would take on developing the Ad Hoc committee. Board members asked that the committee consist of educators and at least one practitioner.

## 22. Discussion and consideration about the future of license portability.

### **Public Comment**

Mr. Willmarth stated that AOTA is planning to do a multiyear initiative to establish the interstate licensure compact that would allow licensed OTs and OTAs to practice in multiple states through a centralized compact commission. Legislation would need to be passed in all states that want it and that would create a compact and then the compact would create a commission which is an entity of government between the states.

Mr. Willmarth said it is not clear how many states must participate but a large number would be needed because it must be financed by licensure fees or fees paid by the state. He said it is important to clarify that this is a separate piece of legislation that will not involve amending the Practice Act. Mr. Willmarth stated that the benefits consist of improved access to occupational therapy specifically related to telehealth, increased mobility of practitioners especially spouses of military families, continuity of care and the enhanced exchange of licensure and disciplinary information between states.

Mr. Willmarth said that he was very optimistic but understands that it will take multiple years to reach a critical mass of participating states and financing will be a struggle.

President Bookwalter asked how the Physical Therapy profession got financing.

Mr. Willmarth said that Physical Therapy compact commission is affiliated with the Federation of State Boards of Physical Therapy (FSBPT). The FSBPT is lending financial support until the commission can become self-sufficient.

Ms. Pavlovich asked if she is licensed in California and decided that she wanted to go work in another state would she need to apply for that state's licensure. Ms. Pavlovich also asked about data sharing between states.

Mr. Willmarth stated that if both states participate in the compact the licensee would not need to apply for licensure; but, individuals would have to comply with any requirements the state asks for and it is intended that the participating Boards share disciplinary information.

Mr. Ferro stated that he appreciated the flexibility and portability of a licensure compact but he feels that a lot of work needs to be done and he appreciates being on a Board that looks at the higher commitment to consumer protection.

Ms. Morcos asked what would happen to a licensee who is already a part of the compact and their license gets disciplined.

Mr. Willmarth stated that it is a privilege to belong to the compact and they can be removed.

Ms. Miller said that the compact could open the channels of communication to allow fluidity.

Ms. Martin commented that it would be a huge money saver for traveling therapists, however, she is concerned about subpoenas and getting cooperation from other states. Ms. Martin explained that in her experience utilizing the National Practitioner Data Bank it is common practice that California has not received discipline information from other states in the past.

Mr. Willmarth responded that a compact is a very powerful agreement and the state boards are required in statute to share information. State boards can be removed from the compact for not complying. The regulators will be deciding how the information will be shared.

23. Discussion and clarification on per diem policy in updated Board Administrative Manual.

Ms. Miller expressed her concern that the appointed Board President should not be put in the position of having oversight of the rest of the Board members and feels it should be a function of Board staff whom are not appointed but employed by the State of California and then subsequently reported to the Board President by staff.

Ms. Martin stated her reasoning for staff not being involved has to do with references throughout the Board Administrative Manual's Per Diem policy the language references 'Board President approval being needed for activities' and this form is consistent with that.

Legal Counsel Reza Pejuhesh reviewed four issues for Board consideration to the Per Diem section:

- The Board members agreed that they should not be paid for the actual time (hours) spent traveling.
- The Board members agreed to remove "as defined" from sixth line of item two in the section.
- The Board members agreed to add the word 'for' to the introduction of paragraph three.
- The Board members agreed that paragraph four is acceptable as written.

The Board members agreed to add a checkbox to account for the signature lines on the fillable pdf form to claim per diem and to forward their completed form directly to the Board President.

- Richard Bookwalter moved to remove 'as defined' from the per diem policy, add the word 'for' to the policy and add directions that the completed form be sent to the President of the Board.
- Jeff Ferro seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	Y	Y	Y	Y	Y	Y

**The motion passed.**

24. Executive Officer’s Report.

a) Operational and budget reports.

Ms. Martin reported that the Board currently has two vacant positions. She provided FY 2018-19 (Month 8) revenue/expenditure information, revenue collected and projections for FYs 2016-17 through 2024-25, an updated fund condition and the memo provided by DCA re: FY 2017-18, month 13 revenue/expenditure information being expected after June 30, 2019.

b) BreEZe updates.

Ms. Martin informed the Board that the most recent BreEZe release occurred March 13, 2019, and included:

- Applications will ‘abandon’ consistent with the regulations.
- Add language to initial license application regarding the ITIN.
- Automate the application deficiency letter.
- One-page renewal reminder being sent to all; standard four-page Renewal Notice being sent upon request.

c) Pending rulemaking files.

Ms. Martin reviewed the included summary of pending rulemaking files. The Board members decided to re-prioritize the rulemaking files to reflect the following order for completion:

1. Amend: Delegation of functions, Application, Citations, Definitions, Disciplinary Guidelines, Other Actions Constituting Unprofessional Conduct, Revocation for Sexual Contact.  
Add:  
Rehabilitation Criteria for Applicants and Licensees  
Probation Monitoring costs  
Applications for Petitions for Reinstatement and Modification/Early Termination of Probation.
2. Eliminate reference to ‘post-professional’ to ensure consistency in regulatory and statutory language.
3. Amend Filing of Addresses and Continuing Competence.
4. Add Acceptance of PT license for advanced practice approval for Hands/PAMs.
5. Free sponsored health care events.

- Jeff Ferro moved to re-order the priority of the rulemaking files as proposed.
- Beata Morcos seconded the motion.

**Public Comment**

There was no public comment.

<b>VOTES</b>	Richard Bookwalter	Sharon Pavlovich	Jeff Ferro	Laura Hayth	Denise Miller	Beata Morcos
	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

**The motion passed.**

d) Presentation of licensing and enforcement data.

Ms. Martin reviewed the included handouts with the licensing and enforcement data from January 1, 2018 – March 31, 2019.

Ms. Pavlovich requested information regarding case type trends be provided at a future meeting if possible. She was referring to cases that would come before the Board.

Mr. Bookwalter asked under what category in the violation table would sexual harassment cases fall, if SB 425 passes. Ms. Martin indicated she believed it would fall under unprofessional conduct.

e) Future agenda Items.

Ms. Martin reviewed the items listed for ‘Future Agenda Items’

f) Other informational items.

Ms. Martin stated that the floorplan for the new office location was signed off and the move will be sometime between December 2019 and June 2020.

Ms. Martin reported that three license surrenders were effective in Q1.

25. Suggested agenda items for a future meeting.

There were no additional items suggested.

**Adjournment.**

The meeting was adjourned at 12:16 p.m.