



BOARD MEETING MINUTES

August 15-16, 2019

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Laura Hayth – Secretary
Denise Miller – Board Member
Beata Morcos – Board Member

Board Staff Present

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

Thursday, August 15, 2019

9:30 am - Board Meeting – San Francisco

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

The meeting was called to order at 9:32 a.m., roll was called, a quorum was established. Jeff Ferro was absent.

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

President Bookwalter welcomed all in attendance and offered the opportunity for members of public to introduce themselves at will.

Domenique Hendershot-Embrey, OT, Academic Fieldwork Coordinator at Samuel Merritt University introduced herself.

Karen Nelson, Assistant Deputy Director, Office of Board and Bureau Services introduced herself.

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.

There were no public comments.

5. Review and vote on approval of the May 9-10, 2019, Board meeting minutes.

Legal Counsel Reza Pejuhesh suggested two technical, non-substantive changes.

President Bookwalter stated that he would be appointing additional people to the Practice committee in the near future because the assignments for that committee have increased.

- Denise Miller moved to adopt the May 9-10, 2019, minutes with non-substantive changes.
- Laura Hayth seconded the motion.

Public Comment

There was no public comment.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Absent	<u>Laura Hayth</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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The motion passed.

6. Review and vote on approval of the July 12, 2019, teleconference Board meeting minutes.
 - Beata Morcos moved to adopt the July 12, 2019, minutes.
 - Laura Hayth seconded the motion.

Public Comment

There was no public comment.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Absent	<u>Laura Hayth</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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The motion passed.

7. Discussion and consideration of Legislative and Regulatory Affairs Committee's recommended position(s) to the Board on the following bills:
 - a) Highlights from June 21, 2019, Teleconference Legislative and Regulatory Affairs Committee Meeting and Legislative Summary table.
 - b) Assembly Bill (AB) 496 (Low), Business and professions.

President Bookwalter reported that the Legislative/Regulatory Affairs Committee (committee) recommended a position of watch.

- Sharon Pavlovich moved to accept the committee's recommended position of watch.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Absent	<u>Laura Hayth</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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The motion passed.

- c) AB 648 (Nazarian), Wellness programs.

The Board agreed to keep their current position of watch.

- d) AB 829 (Bloom), California State University: Doctor of Occupational Therapy Program.

The Board members acknowledged that a letter of support had been sent on their behalf.

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

The Board members acknowledged that AB 888 is a 2-year bill and continue their support of this bill.

- f) AB 890, (Wood), Nurse practitioners.

The Board members acknowledged that AB 890 is a 2-year bill. Denise Miller asked that the Committee discuss the costs associated with this new Board. Ms. Miller expressed her concern about workforce development and that the Committee keep that in mind during their next discussion.

- g) AB 1271, (Diep), Licensing examinations: report.

The Board members acknowledged that this bill was 'dead'.

- h) AB 1382, (Aguiar-Curry), Master Plan for an Aging California.

The Board members acknowledged their 'watch' position and that AB 1382 had since been referred to the Appropriations suspense file.

- i) AB 1494 (Aguiar-Curry), Medi-Cal: telehealth state of emergency

The Board members acknowledged that AB 1494 had been referred to the Appropriations suspense file.

j) AB 1529, (Low), Telephone medical advice services.

The Board members acknowledged that AB 1529 had been gutted and amended and was no longer applicable to the occupational therapy profession.

k) AB 1592 (Bonta), Athletic trainers.

The Board members acknowledged that AB 1592 is a two-year bill and a letter of opposition was submitted regarding the most recent version of the bill.

Executive Officer Heather Martin informed the Board that Board staff included a chart that provided how other states define 'temporary' and 'temporarily' and the corresponding language that pertains.

Public Comment

Mike Chisar, Governmental Affairs Chair, California Athletic Trainers' Association reported that no decisions had been made regarding defining 'temporary' or 'temporarily' and it was still under consideration.

President Bookwalter asked if there are any other upcoming events regarding this bill.

Mr. Chisar confirmed there were meetings with other parties on their calendar.

Mr. Bookwalter asked that AB 1592 be placed on November's agenda.

Denise Miller offered her appreciation that two of the Board's concerns from the opposition letter were addressed. However, Ms. Miller identified what she thought was an oversight regarding the editing out of the word 'clinical.' Mr. Chisar agreed that it was an unintentional oversight.

Mr. Bookwalter clarified that the Board's position has not yet changed but that the Board appreciates the attention paid to the Board's concerns.

Ms. Miller asked if the Legislative and Regulatory Affairs committee would be discussing the Board's concerns at the next committee meeting.

Beata Morcos stated that since the concerns were addressed at the current Board meeting that it would not be a good use of the committee's time and it should be left at the Board level.

l) Senate Bill (SB) 53 (Wilk), Open Meetings.

The Board acknowledged that SB 53 had been referred to the Assembly Committee on Appropriations.

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

The Board acknowledged that SB 163 had been referred to the Committee on Appropriations.

President Bookwalter reported that Ada Boone Hoerl who is a member of the Legislative and Regulatory Affairs Committee and Program Coordinator and Professor with Sacramento City College's Occupational Therapy Assistant (OTA) program, reported that she was satisfied that the language of SB 163 would allow an OTA to be a provider and it was not unreasonable to ask for 40 hours of training and supervision.

President Bookwalter stated that there was a pathway and threshold for OTs and OTAs and the bill is thoughtful and clear from the Committee's perspective. Therefore, the Committee recommended the Board support the bill.

Denise Miller expressed work force development concerns and asked the committee to take a deeper dive in that regard. Ms. Miller stated that her position would be to 'watch' the bill because she needs additional information and clarification regarding which paraprofessional(s) can provide behavioral health treatment.

Vice President Sharon Pavlovich appreciated that the committee addressed her concerns for OTAs but supported Denise's request for further clarification.

A discussion ensued regarding how it was too late in the legislative process to write a letter seeking the clarification Denise sought.

President Bookwalter preferred to continue to 'watch' this bill instead of writing a letter that was not going to make any difference at this point in the process.

Beata Morcos stated that it was her belief that nothing would change at this point no matter what the Board submitted.

Laura Hayth agreed that the time to do something had passed.

- Sharon Pavlovich moved to reject the committee's recommended position of 'support'.
- Laura Hayth seconded the motion.

Public Comment

Domenique Hendershot-Embrey gave an example of a situation where she noticed a recruitment for a part time occupational therapist position and a recruitment for three full time Behavioral Health Specialists at the same company. Ms. Embrey is of the opinion that occupational therapists are being pushed out and she agreed that the Board should show their constituents that they are aware of what is going on even if they are unable to change the bill.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Absent	<u>Laura Hayth</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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The motion passed.

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

The Board agreed to keep their current position of ‘watch’ on SB 425.

- o) SB 697, (Caballero), Physician assistants: scope of practice.

The Board acknowledged that SB 697 had been re-referred to the Committee on Appropriations and that they would continue their position of ‘watch.’

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

- a) Assembly Bill (AB) 476 (Low), Professions and vocations: regulatory fees.

(This bill was brought before the Board for the first time.)

President Bookwalter and Vice President Pavlovich directed Board staff to ‘watch’ AB 476.

- b) AB 1076 (Ting), Criminal records: automatic relief.

(This bill was brought before the Board for the first time.)

President Bookwalter stated that AB 1076 imposed a requirement upon the Department of Justice (DOJ) to grant automatic relief to an eligible person, without requiring they submit a petition or motion to the court, in order to reduce barriers for persons with past convictions.

Denise Miller asked about convictions resulting from sex crimes.

Legal Counsel Reza Pejuhesh stated that persons required to register as sex offenders are not eligible for the automatic relief offered by AB 1076.

Executive Officer Heather Martin clarified that the bill makes clearing one’s record automatic instead of the individuals having to petition the court and demonstrate their rehabilitation.

Mr. Pejuhesh stated that part of the opposition of the bill revolved around the DOJ’s information being imperfect and not up to date and that ‘relief’ is already available to those who wish to request it. Also, opponents of this bill indicate it would place a substantial expense and burden on the DOJ.

Some of the Board members voiced their concern that this bill does not assist in consumer protection.

Beata Morcos was adamant that the Board should oppose the bill. Ms. Morcos stated that the passing of AB 2138 was bad enough and that the Board should not make things easier for people who commit crimes and further burden the DOJ in the process.

Vice President Pavlovich suggested that all of Mr. Pejuhesh's examples be placed in a letter of opposition.

Ms. Miller suggested the use of the word 'automatic' have emphasis placed on it in the opposition letter. Ms. Miller stated that this burden should not be placed on the boards.

President Bookwalter stated that he is of the belief that people can change and they should have the opportunity to go to school and find a career and start again. Mr. Bookwalter stated that he is also passionate about consumer protection and he is torn between that and the provisions of this bill.

Laura Hayth stated that she felt that the Board had more control in the protection of the consumer with the current process and with the passage of AB 2138 and now the introduction of AB 1076, it makes it more difficult for the Board to protect the public and have input in the evaluation of ones fitness for licensure.

- Beata Morcos moved to oppose AB 1076 and send a letter of opposition outlining the Board's concerns.
- Laura Hayth seconded the motion.

Public Comment

There was no public comment.

VOTES	Richard <u>Bookwalter</u> Y	Sharon <u>Pavlovich</u> Y	Jeff <u>Ferro</u> Absent	Laura <u>Hayth</u> Y	Denise <u>Miller</u> Y	Beata <u>Morcos</u> Y
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The motion passed.

9. 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 added for a future meeting.

10. Consideration and possible action of approving proposed regulatory language to amend California Code of Regulations (CCR), title 16, section 4127 (Inactive License) and section 4130 (Fees).

Ms. Martin stated that during her review of the fund condition she noticed a downward trend due to the fact that the Board's expenditures exceed the revenue collected.

Ms. Martin also brought to the Board’s attention the fact that the Board’s current renewal fees are still comparatively lower than they were 10 years ago when the renewal fee was \$150 every year. Ms. Martin stated that the Board cannot afford to lower the inactive fee and that would be her recommendation to the Board.

- Denise Miller moved to not change the inactive fee and watch legislation surrounding this issue.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

VOTES	Richard <u>Bookwalter</u> Y	Sharon <u>Pavlovich</u> Y	Jeff <u>Ferro</u> Absent	Laura <u>Hayth</u> Y	Denise <u>Miller</u> Y	Beata <u>Morcos</u> Y
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The motion passed.

11. Discussion and consideration of the issue of multiple failed attempts to pass the licensure examination.

Executive Officer Heather Martin reported to the Board that California Business and Professions Code 2570.14 of the current law requires an applicant that hasn’t practiced in the occupational therapy field in the past five years to complete 40 hours of continuing education to ensure that they are current in their practice. Ms. Martin then asked if the same standard should be imposed on an applicant that incurred a large lapse in time between graduation and becoming licensed due to having to take the NBCOT exam many times.

President Bookwalter asked the Board members if they wished to impose continuing education on an applicant that had an extended period of time between their qualifying education program and passing the entry-level exam and if so, what timeframe were they comfortable imposing.

After further discussion, the Board asked staff to present language similar to BPC 2570.14, requiring additional education if a specific amount of time (tbd) had passed between graduation and passing the NBCOT exam.

The Board members then discussed and decided that the timeframe should match provisions for those who have not practiced in the occupational therapy field, which is 5 years.

Public Comment

Domenique Hendershot-Embrey stated that 5 years seemed fair to her. She said that students are financially strapped and she felt there should be a commitment from the schools to help/assist high test takers.

12. Discussion and consideration of the consequence when the holder of a Limited Permit fails the licensure examination, which currently subjects such permit issued by this Board to cancellation, under CCR, title 16, section 4123(c).

Chuck Willmarth, Associate Chief Officer, Health Policy and State Affairs, American Occupational Therapy Association (AOTA) attended a previous meeting and asked that the Board address the topic and possible alternatives to the limited permit being canceled after the failure of the NBCOT exam.

Board staff gathered limited permit process information from most every state and presented it in the Board materials.

Vice President Sharon Pavlovich divulged that on average two students per graduating class use the limited permit and that most never ask about it.

Denise Miller and Ms. Pavlovich agreed the current language is appropriate.

The Board thanked staff for gathering and presenting the research on this topic.

Public Comment

Dominique Hendershot-Embrey stated that the limited permit was not commonly used by Samuel Merritt graduates until the last two years.

CONVENE CLOSED SESSION

- The Board will meet in closed session pursuant to Government Code section 11126(a)(1) to discuss the executive officer salary.
- The Board will meet in closed session pursuant to Government Code section 11126(c)(3) to deliberate and vote on disciplinary matters.

The Board convened in Closed Session at 2:29 p.m.

RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 3:11 p.m.

13. Recess for the day.

The meeting adjourned at 3:12 p.m.

Friday, August 16, 2019

9:30 am - Board Meeting – San Francisco

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

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

The meeting was called to order at 9:32 a.m., roll was called, a quorum was established.

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

President Bookwalter welcomed all in attendance and offered the opportunity for members of public to introduce themselves at will.

Domenique Hendershot-Embrey, OT, Academic Fieldwork Coordinator at Samuel Merritt University introduced herself.

Karen Nelson, Assistant Deputy Director, Office of Board and Bureau Services introduced herself.

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

Domenique Hendershot-Embrey asked if a Capstone mentor could earn professional development units. She stated that NBCOT added language to allow this and wanted to know if CBOT would as well.

President Bookwalter thanked Ms. Hendershot-Embrey for bringing her question in front of the Board because the Board had yet to discuss that.

17. Discussion and consideration of giving different treatment to and/or imposing limitations on professional development units earned online or through other technological means versus those earned in person.

Ms. Martin gave an overview of the included handout that Board staff put together regarding whether other states impose a limit on online continuing education.

Denise Miller and Jeff Ferro stated that they were not comfortable with 100% of continuing education being completed online.

President Bookwalter expressed that he was mindful of remote cities and that those practitioners residing in those cities may have limited or no access to in person courses.

Laura Hayth commented that we live in an online world and that the Board should not make things harder on licensees by imposing new barriers.

The Board instructed Board staff to reach out to other Department of Consumer Affairs health care boards and bring back information on whether there are limits placed on online course submissions.

Ms. Martin reported that a large population of OTs and OTAs have a hard time completing the 24-hour requirement and keeping record of their courses.

Ms. Miller suggested that the topic be made part of outreach opportunities.

Ms. Pavlovich asked if BreEZe had an option in which a licensee could upload their certificates during their renewal process for easier record keeping.

Public Comment

There was no public comment.

18. Discussion and consideration about the future of license portability/licensure compact.

President Bookwalter reported that he and Executive Officer Heather Martin were invited to participate in the Occupational Therapy Interstate Compact Advisory Group. The work group would discuss what would be required to establish a Licensure Compact. Mr. Bookwalter stated that the trip would be of no cost to the Board but that an approval from the Department of Consumer Affairs was still needed.

Public Comment

There was no public comment.

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

President Bookwalter stated that this topic was a verbal to inform the Board that there would be a Practice committee, however the requirements for potential appointees still needed clarification at the Department level. The required forms are numerous and the members cannot be reimbursed for their time.

Public Comment

There was no public comment.

20. Discussion and consideration of reducing education and training requirements for licensees demonstrating competence in advanced practice areas.

President Bookwalter stated that he would delegate this topic to the Practice committee.

Mr. Bookwalter asked Ms. Hendershot-Embrey if the program at Samuel Merritt incorporated more Advanced Practices content in their current curriculum.

Public Comment

Ms. Hendershot-Embrey stated that Samuel Merritt absolutely incorporated more Advance Practice in their curriculum and students commonly ask how prepared they will be for Advanced Practice upon graduation.

21. Executive Officer's Report.

a) Operational and budget reports.

Ms. Martin reviewed the included handouts for the 2018-19 12-month projection, memo regarding Attorney General (AG) hourly rate increases, and 2019-20 Budget Act fund condition with the fee increase made effective 1/1/2021 and alternately made effective 7/1/2020.

Ms. Martin reported that due to lack of revenue and expenditure information and budget uncertainty, two positions had been left vacant to ensure fiscal solvency. Now that the Board has additional information, recruitment will begin in the fall. Ms. Martin added that even with negative rent funding, over expenditure in enforcement and the move to a larger office the Board still under spent the budget. Board staff has submitted a budget change proposal for additional staffing and included a timeline as supporting documentation that shows new OT and OTA programs will begin graduating students in 2020-21 and 2021-22. These schools combined will be graduating roughly 300 students.

The Board members expressed disappointment that although the last rate increase was publicized and Board staff held five (5) outreach opportunities in various California cities, participation was almost nonexistent but the negative feedback following the rate increase effective date was considerable.

Ms. Martin reported that the outreach in Chico had the most participants and following their review of the pie charts and handouts their consensus was that the licensing population should not bear the costs of those practitioners on probationers. Ms. Martin informed the Board that language was added to a regulatory submission but that could be 3 years off.

Ms. Martin reminded the Board that prior to 2007 the renewal was \$150 per year which totaled \$300 biennially and over 10 years later the biennial renewal is still lower.

A very robust discussion ensued surrounding the need for another fee increase and adding it to a future meeting agenda so that an invitation can be extended to OTAC and AOTA which would hopefully result in the licensees attending outreach opportunities for this topic.

b) BreEZe updates.

Ms. Martin reported that a BreEZe release where system enhancements or fixes are deployed occurred July 17, 2019, and the next release would be on October 16, 2019.

The July 17, 2019, release included the following:

- On-line application: name change to applications
- Renewal questions are now required on-line
- One-page renewal reminder being sent in place of the standard four-page renewal, effective May 15, 2019. Four-page renewal upon request only.

c) Pending rulemaking files.

The pending rulemaking summary was included in meeting materials.

d) Presentation of licensing and enforcement data.

The standard reports were provided in the meeting materials.

e) Update on workforce study

As of August 6, 2019, 470 OTA responses had been received and the OT survey would be sent out soon.

f) Future agenda items.

- Practice Committee's recommendation on records retention requirement for an occupational therapy business that closes or is sold or if the practitioner is no longer in private practice.
- Practice Committee's review of suture removal.
- Practice Committee's review of ACOTE Guidelines and consider reducing advanced practice education and training requirements for students graduating after a certain date (date TBD).
- Practice Committee's review of education and training requirements for licensees demonstrating competence in advanced practice areas and consideration of reducing education/training hours needed.
- Appoint ad hoc committee members to the internship/clinical experience completed as part of a Doctor of Occupational Therapy (OTD) and discussion about OT Practice Act requirements relative to OTD and consider possible to the OTD language.
- Make appointments to other committees, as appropriate.
- Update of the Board's Disciplinary Guidelines and proposed enforcement-related regulatory amendments due to passage of AB 2138. (Goal: July 1, 2020)
Review/update of Board Member Disciplinary Resource Manual (once DGs are updated).
- Discussion and consideration of reducing education and training requirements for licensees demonstrating competence in advanced practice areas.

g) Other informational items.

There were no informational items provided.

22. Selection of 2020 meeting dates.

The 2020 Board meeting locations were not finalized; however, the dates are as follows:

- February 27-28, 2020
- May 7-8, 2020
- August 13-14, 2020
- November 5-6, 2020

23. Suggested agenda items for a future meeting.

There were no additional agenda items suggested.

Adjournment.

The meeting adjourned at 11:29 a.m.