

Agenda Item 6

REVIEW AND VOTE ON APPROVAL OF THE FEBRUARY 27-28, 2020, BOARD MEETING MINUTES.

The meeting minutes are attached for review.



BOARD MEETING MINUTES - CSU, Dominguez Hills

February 27-28, 2020

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Jeff Ferro – Board Member
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, February 27, 2020

9:30 a.m. - Board Meeting

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

The meeting was called to order at 10:01 a.m., roll was called, a quorum was established.

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

President Bookwalter thanked CSU Dominguez Hills (CSUDH) Occupational Therapy Department staff for their hospitality and efforts. Mr. Bookwalter introduced Executive Officer Heather Martin, Board staff Jeff Hanson and Jody Quesada along with Department of Consumer Affairs (DCA) Legal Counsel Reza Pejuhesh.

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

Two students from the CSUDH Occupational Therapy (OT) program introduced themselves as did Heather Kitching, OTD, President of OTAC, CSUDH faculty member and Teri Nishimura, OT and Chief Executive Officer of the nonprofit Pediatric Therapy Network.

Mr. Bookwalter congratulated Sharon Pavlovich on her successful defense of her dissertation for her Doctoral degree.

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

Vice President Pavlovich thanked everyone for the congratulations and well wishes.

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

There was no public comment from the attendees that were present.

President Bookwalter read all 3 public comments submitted by email or letter and announced he received a fourth via telephone. He reminded the Board members that the discussion was to be brief and only to decide whether they wanted to bring any of the comments to a future agenda for Board discussion.

Written Public Comment #1 – Unethical Practices by the owner of a Skilled Nursing Facility (SNF) in relation to the new Patient-Driven Payment Model regulations.

President Bookwalter expressed his concern regarding the allegations and the fact that the Board doesn't have jurisdiction over the owner of a SNF or any other facility unless that owner happens to be an Occupational Therapist (OT), so even if the Board members wanted to add this topic to a future agenda, he was concerned that the Board would not be able to take any action.

Jeff Ferro voiced his concern that our licensees were in facilities that are allegedly acting fraudulently and asked Executive Officer Heather Martin if there was anything the Board could do.

Ms. Martin stated that any time Board staff receives a complaint out of their jurisdiction, the complaint is forwarded to the appropriate state agency that provides oversight for the entity involved. Ms. Martin said that Board staff forwarded this complaint to the California Department of Public Health.

The Board members asked that Ms. Martin send a letter to the licensee on their behalf informing her that the Board has no jurisdiction, her comment will not be placed on a future meeting agenda, however, Board staff has forwarded her complaint to the appropriate state agency.

Written Public Comment #2 – Insurance companies not considering sensory a therapeutic need and the report that sensory is being carried out by Applied Behavior Analysts (ABAs) in place of Occupational Therapists (OTs) and Occupational Therapy Assistants (OTAs). The licensee feels there is an inadequate delineation between ABAs and OTs/OTAs.

President Bookwalter recalled SB163 that was written to establish practice but was vetoed last year. Mr. Bookwalter said that he was not looking to take on establishing what an ABA should or should not be doing.

Denise Miller emphasized her concerns regarding workforce and asked that the Board not take on the charge but utilize the opportunity to partner with the Association to get the word out and highlight that the new integrated models of service are going to other

professions. Ms. Miller stated that the occupational therapy profession needs to lock arms with the ABAs and delineate what services each profession can deliver.

In-Person Public Comment

Teri Nishimura said that this is a critical issue even though it may not be in the purview of the Board. Ms. Nishimura reported that denial from funders is real and is happening.

The Board members asked Ms. Martin to respond to the licensee informing her that the topic was briefly discussed and will be placed on a future agenda for an in-depth discussion.

Written Public Comment #3 – President Bookwalter stated that public comment submitted would be discussed under agenda item 11 and SB 803.

Telephonic Public Comment #4 – Dry needling; requesting the Board take a position on whether an OT/OTA can perform.

Mr. Bookwalter said that it is his belief that OTs and OTAs do not have statutory authority to perform dry needling.

Ms. Pavlovich stated that this service is not in the scope of the occupational therapy practice.

In-Person Public Comment

There was no additional public comment.

The Board asked Ms. Martin to acknowledge receipt of the verbal public comment and inform the licensee that the Board declined to add the topic to a future meeting at this time due to a lack of clarity on the issue. The Board requested the licensee submit her concerns and any relevant information so that the Board can have a better understanding of the issue when deciding whether to add the topic to a future meeting agenda.

5. Review and vote on approval of the August 15-16, 2019, Board meeting minutes.

Denise Miller referred to page 10 of the minutes and asked if Domenique Embreys' question regarding a Capstone mentor being allowed to earn professional development units would be addressed by the Board or by a committee.

President Bookwalter said that he would task a committee to look in to this and bring a recommendation before the Board.

- Beata Morcos moved to adopt the August 15-16, 2019, minutes.
- Sharon Pavlovich 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> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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6. Review and vote on approval of the November 14-15, 2019, Board meeting minutes.

- Jeff Ferro moved to adopt the November 14-15, 2019, minutes.
- 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> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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7. Review and vote on approval of the December 18, 2019, teleconference Board meeting minutes.

- Sharon Pavlovich moved to adopt the December 18, 2019, minutes.
- 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> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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8. Review and vote on approval of the January 30-31, 2020, Board meeting minutes.

The Board asked Board staff to verify and correct the times on page 3.

- Beata Morcos moved to adopt the January 30-31, 2020, minutes following the completion of the non-substantive corrections.
- Sharon Pavlovich 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> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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9. Discussion and consideration of application process flowchart and checklist.

President Bookwalter reported that the need for an application process flowchart and checklist availability was suggested by licensees and presented during the Strategic Planning session.

Mr. Bookwalter reported that it was brought to his attention that the flowchart and checklist were and have been available online. In order to be responsive, the Board asked staff to include both the flowchart and checklist in the meeting materials for the Board to review.

Public Comment

Mr. Bookwalter asked the CSUDH student in attendance for her thoughts on the provided flowchart and checklist.

The student responded that it looked clear to her.

Discussion ensued regarding the addition of more 'yes' and 'no' options being added for clarity, indicators that return the customer to the next step and emphasis on the 'License Issued' at the end.

Legal Counsel Reza Pejuhesh stated that considering the effective date of AB 2138 the applicant checklist will have to be updated to remove the checkbox titled 'Applicants with a Criminal History' and update the header to reflect the current Governor.

Mr. Pejuhesh stated that he and Executive Officer Heather Martin would work out the legalities of AB 2138 and subsequently update all forms and checklists to reflect compliance.

10. Review and vote on draft Strategic Plan.

Denise Miller asked whether the Board has a description of what it means to be an Expert Reviewer.

Ms. Martin replied that there is a page on the Board's website devoted to recruitment and it includes a description along with a video.

President Bookwalter confirmed that he has reviewed what is offered on the Board's website and stated that it was comprehensive and great.

Ms. Miller asked that Expert Reviewer recruitment be added to future agendas as a place holder so that the Board can assure the Strategic Plan 'Outreach' request is met.

Mr. Bookwalter said that he thought it was a great topic for the Education and Outreach committee to discuss.

Legal Counsel Reza Pejuhesh suggested a few technical changes and updates to the draft Strategic Plan that would make it a more comprehensive document.

The Board members decided that the Strategic Plan should be valid for 4 years and they requested a few technical, non-substantive changes.

Ms. Martin stated that Board staff would make the requested changes and bring the updated copy to the May Board meeting.

11. Discussion and consideration of the following bills:

- a) Legislative report on pending bills.

Board members noted the 'at a glance' reference page of each bill to be discussed.

- b) Assembly bill (AB) 613 (Low), Professions and vocations: regulatory fees.

Following a brief discussion, the Board decided to 'Watch' this bill.

Public Comment

There was no public comment.

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

Ms. Miller expressed her appreciation of the bill and its privacy implication. Ms. Pavlovich said that this bill would prove very important coming up. The Board decided to maintain their position of 'Watch' for this bill.

Public Comment

There was no public comment.

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

Following a brief discussion, the Board decided to maintain their previous position of 'Support' for this bill.

Public Comment

There was no public comment.

- e) AB 1263 (Low), Contracts: consumer services: consumer complaints.

Following a brief discussion, the Board decided to 'Watch' this bill.

Public Comment

There was no public comment.

- f) AB 1616 (Low), Department of Consumer Affairs: boards: expunged convictions.

The Board decided to refer this bill to the Legislative Regulatory Affairs committee for a recommendation to the Board.

Public Comment

There was no public comment.

- g) AB 1965 (Aguiar-Curry), Family Planning, Access, Care, and Treatment (Family PACT) Program.

The Board decided to 'Watch' this bill and bring it back only if the language is amended and impacts the occupational therapy profession.

Public Comment

There was no public comment.

h) AB 2028 (Aguiar-Curry), State agencies: meetings.

Legal Counsel Reza Pejuhesh commented that the requirement that only materials made available online 10 days prior to the meeting would be eligible for Board discussion would not be ideal for Board staff and prove very challenging.

Ms. Miller stated that she would oppose this bill because it would limit the Board's work and the ability to make timely decisions.

President Bookwalter said that he did not feel comfortable with a 'knee jerk' opposition and suggested an 'Oppose Unless Amended' position as long as there was an allowance to add materials.

Beata Morcos said that it was important to submit the Board's opposition right away because the author would need to know where the Board stands.

Sharon Pavlovich expressed her opposition and agreed with Ms. Morcos' suggestion to act immediately.

Jeff Ferro said that reasons for the opposition must be given in order to be fair to the author.

Ms. Martin informed the Board that all materials are required to be made compliant with the Americans with Disabilities Act (ADA) prior to being posted. Ms. Martin said there would be a dollar amount associated with making materials ADA compliant and that it involves participation from other groups within the Department of Consumer Affairs which further increases the amount of time it takes for successful completion.

Mr. Ferro stated the reasons for opposition are that the bill does not ensure greater protection to the consumer, the Board would incur unnecessary costs and other groups could impact the Board's ability to meet the timelines on posting materials.

- Richard Bookwalter moved to take a position of 'Oppose' on AB 2028 for the reasons stated by Mr. Ferro and directed the Executive Officer to write a letter to the author on behalf of the Board.
- Denise Miller 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> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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Ms. Miller asked Mr. Pejuhesh if he could explore whether the Board could add language to the Board's website and agendas disclosing how the public can obtain a copy of the materials.

Mr. Pejuhesh agreed.

Ms. Martin informed the Board that there would be a need for an additional Board meeting to discuss case transcripts from a previous discipline case that were ordered at the Board's request and to discuss considerable amendments made to the Board's Enforcement regulations that require a Board vote. Ms. Martin suggested that a teleconference would be challenging due to the volume of meeting material.

i) AB 2042 (Wood), Medi-Cal: covered benefits: continuous glucose monitors. Following a brief discussion, the Board decided to 'Watch' this bill.

Public Comment

There was no public comment.

j) AB 2185 (Patterson), Professions and vocations: applicants licensed in other states: reciprocity

Following a discussion, the Board agreed to 'Oppose' AB 2185 on the grounds that a Licensure Compact would ensure greater public protection and is a better mechanism because there is an additional layer of requirements, California has higher standards of education and training and there is no way to verify 3 years of practice in the last 5 years.

- Jeff Ferro moved to take a position of 'Oppose' on AB 2185 for the reasons stated above and directed the Executive Officer to write a letter to the author on behalf of the Board and have the Board President review prior to sending.
- Sharon Pavlovich seconded the motion.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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Public Comment

OTAC President Heather Kitching expressed her full support of the licensure compact rather than this bill.

k) Senate Bill 803 (Beall), Mental health services: peer support specialist certification.

President Bookwalter read a public comment submitted regarding a licensee's support of SB 803 that would establish a peer support specialist certification program.

Ms. Miller stated that she did not feel like there was enough information for her to take a position.

President Bookwalter suggested the Board take a position of 'Watch' and bring the public comment back to a future discussion of this bill.

Public Comment

Heather Kitching thanked the Board for addressing the public comment because she suggested the licensee contact the Board.

12. Update on 2019 chaptered bills.

Board staff agreed to provide the most recent version of the Chaptered bills, provide a summary and bring to the May Board meeting.

13. Discussion of other California healthcare boards and whether they impose limitations on the number of on-line courses that may be taken to satisfy continuing competence/continuing education requirements for license renewal.

Executive Officer Heather Martin presented the requested information that displayed language other Boards and Bureaus under the Department of Consumer Affairs are using to address limitations of on-line courses.

The Board discussed the burden that therapists who live remotely will endure if limits are placed on on-line continuing education and whether courses can be validated for content and validity.

Vice President Pavlovich stated that she is a promoter of technology but feels there should be a balance of on-line and in-person due to the spectrum of OT.

Denise Miller stated that she liked the way the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board laid out their requirement which used both mechanisms but limited the on-line courses.

Beata Morcos questioned why in-person should be required because she was under the impression continuing education was to “brush up” and in-person should not be required for a “brush up.”

President Bookwalter stated that the Board should not place limitations when what the Board currently has in place is working.

Mr. Ferro said that he was in favor of a balance between in-person and on-line continuing education.

Public Comment

Lisa Hiestand, OT and Treasurer of OTAC said that she didn't see the need to limit on-line continuing education.

Terrri Nishimura expressed her appreciation for the ability to do on-line courses when she needed it.

The Board decided to not take any action at this time.

14. Update and discussion on the occupational therapy licensure compact.

President Bookwalter reviewed the included draft from the OT Compact Advisory Group which included an outline of the Compact Commission and how the Commissioner would be appointed by the OT Licensing Board, the Universal Requirements, Discipline that included language outlining that practitioners with an encumbered license would be

barred from participation, Special Provisions that include telehealth and military spouses, and a Compact Data System amongst other things.

Mr. Bookwalter touched on the fact that the compact needs 10 states to agree to participate in order to start the compact. Mr. Bookwalter also stated that California is the only state that has not signed on to participate in any compact at the present time.

Vice President Pavlovich expressed her concern regarding planning and preparing for the workload that the CBOT would have to take on in order to participate.

Mr. Bookwalter responded that the Board could review the compacts of other professions to get a better idea of what a working compact looked like. Mr. Bookwalter reminded the Board that there were plans for getting stakeholder input.

Public Comment

Heather Kitching asked for confirmation of whether California was the only state that did not participate in the SARA agreement.

Heather Martin confirmed that California did not participate.

15. Discussion and evaluation of per diem policy, process for requesting per diem and review of the form to calculate time spent.

Following a lengthy discussion by the Board members, Board staff was asked to bring the following to the May Board meeting:

- A list of types of cases and amounts of review time for each.
- Per diem language of other boards/bureaus, including the form used and who signs the form.
- The relevance of start/stop time on the CBOT form unless it can be replaced with overall time spent.

Public Comment

Terri Nishimura asked if there was language provided by the State for this topic.

Ms. Martin informed her that each Board/Bureau acts separately.

CONVENE CLOSED SESSION

- The Board will meet in closed session pursuant to Government Code Section 11126(a)(1) to conduct the annual evaluation of the Executive Officer.

The Board convened in Closed Session at 4:15 p.m.

RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 5:05 p.m.

16. Recess for the day.

The meeting adjourned at 5:05 p.m.

Friday, February 28, 2020

9:30 a.m. - Board Meeting – CSU Dominguez Hills

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Jeff Ferro – Board Member
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

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

The meeting was called to order at 9:48 a.m., roll was called, a quorum was established.

18. President's Remarks – Informational only; no Board Action to be taken.
President Bookwalter welcomed all in attendance and thanked CSU Dominguez Hills Occupational Therapy department for the accommodations and their hospitality.

Mr. Bookwalter offered the members of the public in attendance the opportunity to introduce themselves at will.

Two first year occupational therapy students from the CSUDH Occupational Therapy (OT) program introduced themselves as did Heather Kitching, OTD, President of OTAC and CSUDH faculty member and Faith Moy, OT, CSUDH faculty.

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

There was no public comment.

President Bookwalter informed the Board and the public audience that agenda item 20 would be addressed following Agenda Items 21 and 22.

20. Update on status on Committees and next steps.

Ms. Martin apologized for the delay and stated that the 'Welcome' letter had been drafted and the extensive packet of forms and training modules was prepared. Ms. Martin said that she wished to send a follow-up email to both the Capstone and Practice committee volunteers to verify whether they were still willing and able to volunteer prior to mailing the packet of forms to them.

Public Comment

There was no public comment.

- 21. Presentation by Baird Cowan, Chief Technology Officer, Department of Consumer Affairs' Office of Information Services on subscription *Box* service available for downloading meeting materials.

Executive Officer Heather Martin introduced Mr. Cowan and thanked him for his willingness to make the trip.

Mr. Cowan presented a slideshow on the *Box* service that outlined its capabilities. Mr. Cowan demonstrated how Board staff could utilize the *Box* to deliver the meeting materials to the Board members and how to make additions and updates to the materials as needed.

- 22. Discussion on moving forward with *Box* subscription service for meeting materials.

Following a question and answer session with Mr. Cowan and a discussion regarding *Box* subscription costs and tablet purchase cost vs. mailing costs, staff costs, duplication cost and copier warranty cost, the Board decided to move forward with the *Box* subscription.

Ms. Miller summarized that due to the uptick in upcoming discipline cases that was mentioned the previous day and the saving of staff time, mailing costs and duplication costs, the cost of tablets and the *Box* subscription should be offset by the end of summer.

Ms. Miller asked that Board staff begin tracking cost savings to be able to show the benefit and volunteered to assist in calculations if needed.

Ms. Martin said that Board staff could show hard costs like FedEx, paper etc.... However, the soft costs like staff time would be very difficult.

- Sharon Pavlovich moved to ask Board staff move forward on obtaining the *Box* subscription and the purchase of tablets for Board meeting materials.
- Denise Miller seconded the motion.

VOTES	<u>Richard Bookwalter</u> Y	<u>Sharon Pavlovich</u> Y	<u>Jeff Ferro</u> Y	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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Public Comment

Heather Kitching wished the Board good luck as she was aware of how difficult the process can be to purchase technology.

- 23. Discussion on Board action being taken with respect to permitting surrender of licenses on probation.

Legal Counsel Reza Pejuhesh gave a quick brief of the legalities surrounding practitioners currently on probation wanting to surrender their license rather than serve

out probation. Mr. Pejuhesh informed the Board that the only way to surrender a license on probation is for the Deputy Attorney General to open a pleading which is the result of a probationer violating their probation. Probationers have informed Board staff that they do not want to have to knowingly violate their probation in order to surrender.

Mr. Pejuhesh informed the Board that the situation at hand pertains to probationers with older orders because newer probation orders include language that allows surrender without a violation of probation but does count as disciplinary action and shall become part of the practitioner's license history with the Board.

Ms. Martin stated that Board staff has always included language that said "no modification or early termination of probation" in Stipulations and if the Board no longer wants that type of language included, they would have to give Board staff direction.

Mr. Bookwalter verified that 'surrender' was considered disciplinary action.

Mr. Pejuhesh answered affirmatively and said the reason for that is because a practitioner that decides to surrender cannot just have their slate wiped clean.

Ms. Pavlovich liked the idea of adding language allowing surrenders on the new orders and keeping 'no modification of probation.'

Ms. Miller agreed.

- Richard Bookwalter directed Board staff to continue including 'surrender' language in the new Stipulations and to add a term waiving the right to early terminate except for a voluntary surrender of their license which will be considered discipline.
- Sharon Pavlovich 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> Not Present	<u>Denise Miller</u> Y	<u>Beata Morcos</u> Y
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24. Executive Officer's Report.

a) Operational and budget reports.

Ms. Martin reported that recruitment efforts included redirecting one vacant position from Enforcement to Licensing, filling two positions in Licensing and recruiting for a Legal Desk analyst in Enforcement. Budget change proposals were submitted to fund 2.5 additional Licensing positions due to a projected increase in applications from new schools.

Ms. Martin informed the Board that the budget looks more promising than last year and if fiscal matters remain the same, the Board will have approximately \$167,000 in excess to add to the reserve.

b) Update on office move.

Ms. Martin reported that the tentative move date is the week of March 16.

President Bookwalter asked Ms. Martin if the funding for the move was being held in reserve from previous years. Ms. Martin replied “Yes, I have been saving for three fiscal years.”

President Bookwalter applauded Ms. Martin’s fiscal management. Vice President Pavlovich agreed.

c) BreEZe updates.

Ms. Martin reported that recent BreEZe updates included adding the Board’s new logo to various pre-loaded letters, re-naming the applications in the drop-down box to reduce errors, added ITIN to applicant information collected and making responses to renewal questions required before the licensee can proceed in the renewal process and adding an insert for the licensees expiring in April about the Board’s upcoming address change.

d) Pending rulemaking files.

Ms. Martin referred the Board to the included Report on Pending Rulemaking Files that she included as a handout.

e) Update on legislation.

There were no further updates.

f) Presentation of licensing and enforcement data.

The standard reports were provided in the meeting materials.

Public Comment

A CSUDH student asked what PC23 meant?

Ms. Martin explained that a PC23 or Penal Code 23 is when the Board requests that a Deputy Attorney General who represents the Board attend the criminal proceedings of a licensee and ask the judge for a ‘Cease Practice’ order to piggyback the criminal case and help the Board ensure public protection.

g) Future agenda Items.

Ms. Martin listed the items below in addition to the need for an April 15, 2020, meeting to discuss changes to the Disciplinary Guidelines and to discuss an Enforcement case:

- Practice Committee’s consideration of the following:
 - Suture removal
 - Review of ACOTE Guidelines and consider reducing advanced practice education and training requirements for students graduating after a certain date (date TBD).
- Review of education and training requirements for licensees demonstrating competence in advanced practice areas and consideration of reducing education/training hours needed.
- 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.

- OTD ad hoc committee members to consider the internship/clinical experience completed as part of a Doctor of Occupational Therapy (OTD) and the OT Practice Act requirements; discussion regarding multiple examination attempts by new graduates.
- Make appointments to other committees, as appropriate.
- Review/update of Board Member Disciplinary Resource Manual (once DGs are updated).

h) Other informational items.

Ms. Martin said that she included a Venn diagram showing the difference in the responsibilities of the Board Members and the Executive Officer.

25. Suggested agenda items for a future meeting.

In addition to the list included in the Executive Officer report, Ms. Martin added the scheduling of a meeting on April 15, 2020, to discuss changes to the Disciplinary Guidelines and the case transcripts requested by the Board regarding a previous enforcement case.

Public Comment

There was no public comment.

26. Election of 2020 Officers.

Following a show of interest, the Board elected Richard Bookwalter as President, Sharon Pavlovich as Vice President and Denise Miller as Secretary.

All parties accepted.

Adjournment.

The meeting adjourned at 12:21 p.m.

AGENDA ITEM 7

REVIEW AND VOTE ON APPROVAL OF THE MAY 7, 2020, BOARD MEETING MINUTES.

The meeting minutes are attached for review.



BOARD MEETING MINUTES

Teleconference - WebEx

May 7, 2020

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Jeff Ferro – Board Member
Denise Miller – Secretary
Beata Morcos – Board Member

Board Staff Present

Heather Martin – Executive Officer
Jody Quesada – Analyst
Jeanine Orona - Analyst
Reza Pejuhesh – Attorney III
Helen Geoffroy – Attorney III
Clay Jackson – Attorney III

Thursday, May 7, 2020

9:30 a.m. - Board Meeting

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

The meeting was called to order at 9:30 a.m., roll was called, a quorum was established.

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

President Bookwalter welcomed all in attendance and commented on the state of the COVID-19 crisis and the resulting uncertainty surrounding the occupational therapy practice settings. Mr. Bookwalter recognized the struggle of workplaces; small business and the challenges Board staff are facing. Mr. Bookwalter commended Executive Officer Heather Martin and her staff on the recent office move and ensuring social distancing and sanitization in the workplace.

Finally, President Bookwalter thanked the California Business, Consumer Services, and Housing Agency, the Department of Consumer Affairs and the SOLID team for their hard work and swift action in making the WebEx platform available for Board meetings.

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

There were no remarks from the Board members.

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

American Occupational Therapy Association (AOTA), Manager of State Affairs, Kristen Neville offered assistance should the Board need help or access to AOTA's resources.

President Bookwalter thanked Ms. Neville.

5. Discussion and consideration of proposed amendments to California Code of Regulations, Title 16, Division 39, Section 4101, Delegation of Certain Functions, Section 4110, Application, Section 4141, Assessment of Administrative Fines, Section 4146, Definitions, and Section 4147, Disciplinary Guidelines; and addition of newly proposed Section 4146.1, Substantial Relationship Criteria, Section 4146.7, Rehabilitation Criteria for Applicants, Section 4146.8, Rehabilitation Criteria for Licensees, Section 4147.7, Probation Monitoring Costs, Section 4149.6, Petitions for Modification of Penalty, and Section 4149.7, Petitions for Reinstatement; and renumbering of various sections for formatting purposes.

Attorney Reza Pejuhesh explained to the Board that they previously approved the regulation package before them with changes that arose from the passing of AB 2138, however, there were further revisions for consideration and approval. Mr. Pejuhesh informed the Board that some of what will be presented has trickled down from other Boards/Bureaus because all are working on similar revisions.

Executive Officer Heather Martin asked that the items be addressed in order and section by section.

Amend Section 4101, Delegation of Certain Functions

- Jeff Ferro moved to accept proposed edits to Section 4101 as written.
- Denise Miller seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter:	Yes
Sharon Pavlovich:	Yes
Beata Morcos:	Yes
Jeff Ferro:	Yes
Denise Miller:	Yes

Amend Section 4110, Application and Section 4141, Assessment of Administrative Fines

- Jeff Ferro moved to accept the proposed edits to Sections 4110 and 4141 as written.
- Beata Morcos seconded the motion.

Public Comment

Ms. Neville asked that the reference to the American Occupational Certification Board in Section 2 be stricken since it is now defunct.

Executive Officer Heather Martin responded that the reference to the American Occupational Certification Board (AOTCB) is consistent to what is in Statute and it is still valid because some of the practitioners took the exam under AOTCB. Ms. Martin noted that the use of and reference to AOTCB will eventually age out.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

Amend the title of Article 5.5 and Section 4146, Definitions

- Jeff Ferro moved to accept the proposed edits to the title of Article 5.5 and Section 4146 as written.
- Sharon Pavlovich seconded the motion.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

Public Comment

There was no public comment.

Add Section 4146.1, Substantial Relationship Criteria

Following a discussion on punctuation and placement of the word “evidences”, the Board chose to add a comma under Section (a), sentence 5, following the word “practitioner.”

- Jeff Ferro moved to accept the proposed edits to Section 4146.1 as modified.
- Sharon Pavlovich seconded the motion.

Public Comment

Ciara Cox of Samuel Merritt University thanked the Board for their time and informed the Board that her Advanced Leadership class had joined the meeting. President Bookwalter thanked Ciara and her class for their attendance.

Renumber Section 4146.5, Effective Dates of Decisions

Executive Officer Heather Martin explained that the renumbering of this item has been done for formatting purposes and no vote would be needed.

Add New Section 4146.7, Rehabilitation Criteria of Decisions

Ms. Martin explained that Rehabilitation Criteria language was “buried” at the end of the Boards’ Disciplinary Guidelines and this new section was created so that the Rehabilitation Criteria would be clear and transparent to all parties when added as a new section in the regulations.

The Board members had a discussion surrounding the grammar of this new section and the addition of a comma in Section (a), sentence 4, following the word “rehabilitation.”

DCA Attorney Clay Jackson informed the Board that there was legal reason for the use of certain language and altering that language may delay approval by the Office of Administrative Law (OAL).

Secretary Denise Miller clarified with Mr. Jackson that it was acceptable to add punctuation but was unacceptable to alter negotiated language. Mr. Jackson confirmed.

The Board members expressed their frustration that the language was negotiated by DCA and OAL prior to coming before them for consideration.

Attorney Reza Pejuhesh informed the Board that they do have some discretion but in the interest of saving time, the attorneys have learned about “sticking points” with OAL and they have adapted the language to make the process easier for all.

After further discussion, the Board came to consensus to only add a comma following the word “rehabilitation” in Section (a).

- Beata Morcos moved to accept Section 8 as modified.
- Sharon Pavlovich seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes

Denise Miller: Yes

Add New Section 4146.8, Rehabilitation Criteria Rehabilitation Criteria for Licensees

- Sharon Pavlovich moved to accept Section 9.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

Amend Section 4147, Disciplinary Guidelines

Executive Officer Heather Martin explained that no vote would be needed for Section 10 because it was previously approved by the Board.

Add new section 4147.7, Probation Monitoring Costs

Mr. Jackson explained that the section was added to make it easier for people to understand.

- Sharon Pavlovich moved to accept the language in proposed Section 4147.7.
- Jeff Ferro seconded the motion.

Public Comment

There was no public comment.

Renumber Section 4148, Mental or Physical Examination of Fitness for Licensure

Renumber Section 4149, Other Actions Constituting Unprofessional Conduct

Renumber Section 4149.1, Revocation for Sexual Contact

Add Article 5.6, Petitions for Modification of Penalty and Reinstatement of Licenses

Add new section 4149.6, Petitions for Modification of Penalty

Add new section 4149.7, Petitions for Reinstatement

Executive Officer Heather Martin explained that no vote would be needed for the remaining the sections that were renumbered for formatting purposes and changes and Sections 4149.6 and 4149.7 were previously approved by the Board.

- Richard Bookwalter moved to authorize the Executive Officer and DCA Attorneys to make any needed technical, non-substantive changes and approve all language for noticing.
- Jeff Ferro seconded the motion.

Public Comment

There was no public comment.

CONVENE CLOSED SESSION

The Board convened in Closed Session at 11:09 a.m.

RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 2:47 p.m.

Adjournment of meeting.

The meeting adjourned at 2:47 p.m.



TELECONFERENCE BOARD MEETING MINUTES

June 24, 2020

Board Member(s) Present

Richard Bookwalter – President
Sharon Pavlovich – Vice President
Jeff Ferro – Board Member
Denise Miller – Secretary
Beata Morcos – Board Member

Board Staff Present

Jeff Hanson – Staff Services Manager 1
Jody Quesada – Analyst
Jeanine Orona – Analyst
Demetre' Montue - Analyst
Helen Geoffroy – Attorney III
Clay Jackson – Attorney III

Wednesday, June 24, 2020

2:00 p.m. - Board Meeting

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

The meeting was called to order at 2:09 p.m., roll was called, a quorum was established.

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

President Bookwalter welcomed all in attendance and stated that Jeff Hanson, Staff Services Manager 1, would be the acting Executive Officer for the purpose of the meeting. Mr. Bookwalter stated that all public comment would be capped at 3 minutes per comment. Mr. Bookwalter then welcomed the members of the public to introduce themselves at will.

No members of the public introduced themselves.

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

There were no remarks from the Board members.

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

There were no public comments.

5. Discussion and consideration of proposed amendments the Board's Disciplinary Guidelines.

DCA Attorney Clay Jackson explained that the DCA Legal Counsel team and Executive Officer Heather Martin had a discussion regarding items throughout the document that were vague or unclear and how they could be made clearer and more consistent. Mr. Jackson informed the Board members that the day's discussion would pertain to items in color from their meeting materials.

Mr. Jackson highlighted some of the changes as follows:

- "Board" and "Respondent" were capitalized throughout.
- Pronouns were revised to be the actual noun that is being discussed.
- "Will" was changed to "Shall" for consistency and to advise of mandatory compliance.
- "In writing" was added throughout because it is the Board's practice to write letters to licensees explaining specific actions taken by the Board.

There was discussion regarding the variance in years of revocation for different probation violations. President Bookwalter remarked that the decisions were based on the severity of the violation.

Board members agreed with the presented changes from pages 1-24. The Board members asked that the second to the last line of page 25 be updated to the" instead of "their."

Board members agreed with the presented changes on pages 26-42.

Page 43 brought about a lengthy discussion on whether "Violation of Probation" should be added back to the list of provisions that should remain in effect for a tolled probationer.

DCA Attorney Helen Geoffroy thought it to be duplicative but mentioned that it was difficult for her to make a recommendation without being involved in previous cases brought before the Board in which this provision would have proven to be critical.

The Board ultimately decided to amend item 16 on the list of provisions to read:

"Notify the Board of any violation of probation within five (5) business days of the violation."

President Bookwalter asked for any public comment surrounding this discussion.

Public Comment

There was no public comment.

Board members agreed with the presented changes on pages 44-46.

On page 47, Item 18 “action” was added to the second to last sentence between “disciplinary” and “against.”

President Bookwalter noticed that “costs” is referred to differently on page 47 and page 48 and asked that a change be made to make language used in reference to “costs” be prescriptive and consistent. It was decided that “All costs” will be used on pages 47, 48 and throughout the entire document for consistency.

Board members agreed with the presented changes on page 49.

DCA Attorney Clay Jackson reported that the addition of Sexual Abuse/Addiction Therapy on page 50 would be discussed at a future meeting.

President Bookwalter asked that Item #1 under Group Meeting Facilitator Qualifications and Requirements on page 51 be updated to add “addiction and/or abuse” on line 2 and that Item #1 at the bottom of page 51 utilize the same phrase on line 2 for consistency.

Board members agreed with the presented changes on pages 52-55. Page 56, Section 36. Other Violations of Probation, Item #9 on the list should read (term 24).

Board members agreed with the presented changes on pages 57 & 58.

There was no further Board discussion.

- Denise Miller moved to approve the proposed amendments pursuant to the day’s discussion of the Board’s Disciplinary Guidelines and authorize Board staff and Executive Officer to work with DCA Legal Counsel on non-substantive changes to the Guidelines and approve the proposed text for noticing.
- Beata Morcos seconded the motion.

Following input from the DCA Attorneys regarding additional language to be included in the motion, Denise Miller agreed to amend her motion and Beata Morcos agreed to second the amended motion.

- Denise Miller moved to adopt the proposed amendments pursuant to the day’s discussion of the Board’s Disciplinary Guidelines and authorize Board staff/Executive Officer to work with DCA Legal Counsel to approve technical, non-substantive and grammatical changes and approve the regulation for noticing.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

6. Discussion and consideration of proposed amendments to California Code of Regulations, Title 16, Division 39, Section 4101, Delegation of Certain Functions, Section 4110, Application, Section 4141, Assessment of Administrative Fines, Section 4146, Definitions, and Section 4147, Disciplinary Guidelines; and addition of newly proposed Section 4146.1, Substantial Relationship Criteria, Section 4146.7, Rehabilitation Criteria for Applicants, Section 4146.8, Rehabilitation Criteria for Licensees, Section 4147.7, Probation Monitoring Costs, Section 4149.6, Petitions for Modification of Penalty, and Section 4149.7, Petitions for Reinstatement; and renumbering of various sections for formatting purposes.

President Bookwalter asked that there be clarification within the document when “the code” is used.

Attorney Clay Jackson verified that “the code” is defined as the Business and Professions code in the beginning of the regulations.

Mr. Jackson informed the Board that he would be making non-substantive changes to the order of the sections listed in the second paragraph at the top of the page as well as information displayed in the footers throughout the document.

Mr. Jackson informed the Board that a Section 100 change motion would be needed in reference to Item 2 on page one, the application (form) incorporated by reference in section 4110.

Board members did not have any changes to pages two through four.

Mr. Bookwalter referred to page five, Section 4146.1, Substantial Relationship Criteria, and requested consistency in reference to “code” being uppercase or lowercase throughout the document. Mr. Jackson agreed to do so.

Board members did not have any changes to pages six through 10.

- Jeff Ferro moved to approve the language in the proposed regulatory revisions and authorize Staff to move forward with the actions necessary to file the proposed regulatory revisions with the Office of Administrative Law, including working with Board legal counsel, the Office of the Director of the Department of Consumer Affairs, and Agency to make any non-substantive technical or grammatical revisions to the text.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

- Beata Morcos moved to authorize Board Staff and Legal Counsel to take all actions necessary to comply with the July 1, 2020, deadline and file the Section 100 revisions to the Board Application form.
- Denise Miller seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

Richard Bookwalter: Yes
Sharon Pavlovich: Yes
Beata Morcos: Yes
Jeff Ferro: Yes
Denise Miller: Yes

CONVENE CLOSED SESSION

There were no Closed Session items for discussion.

ADJOURNMENT OF MEETING.

The meeting adjourned at 4:50 p.m.

AGENDA ITEM 8

REVIEW AND VOTE ON APPROVAL OF THE JUNE 24, 2020, BOARD MEETING MINUTES.

The meeting minutes are attached for review.