

AGENDA ITEM 8

REVIEW AND VOTE ON APPROVAL OF THE AUGUST 13, 2020, BOARD MEETING MINUTES.

The meeting minutes are attached for review.



BOARD MEETING MINUTES

Teleconference Meeting Held Via WebEx

August 13, 2020

Board Member(s) Present

Richard Bookwalter – President
 Lynna Do: – Board Member
 Denise Miller – Secretary
 Beata Morcos – Board Member

Board Staff Present

Heather Martin – Executive Officer
 Jeff Hanson – Staff Services Manager 1
 Jody Quesada – Analyst
 Helen Geoffroy – Attorney III

Thursday, August 13, 2020

9:15 am - Board Meeting

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

The meeting was called to order at 9:21 a.m., roll was called, a quorum was established.

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

President Bookwalter informed the Board that Senator Toni Atkins recently appointed Board member Lynna Do. Mr. Bookwalter welcomed Ms. Do and stated that he looked forward to her introducing herself under Agenda Item 4.

Denise Miller and Beata Morcos welcomed Ms. Do.

President Bookwalter regretfully informed the Board of the sudden and devastating passing of Capitol Advocacy Lobbyist for the Occupational Therapy Association of California (OTAC) and the American Occupational Therapy Association (AOTA), Ivan Altamura. Mr. Bookwalter stated that Executive Officer Heather Martin would be attending Ivan’s Memorial Service and accepting donations on behalf of the Board and Board staff to honor him.

3. Petitioner Hearing

9:30 am - CIRIGLIANO, Michelle – Petition for Early Termination of Probation

CLOSED SESSION

The Board convened in to Closed Session at 10:08 a.m. to discuss the Petition for Early Termination of Probation.

The Board concluded the Closed Session discussion at 10:53 p.m.

12:30 pm RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 12:32 p.m., roll was called, a quorum was established.

Board Member(s) Present

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

Board Staff Present

Heather Martin – Executive Officer
Jeff Hanson – Staff Services Manager 1
Jody Quesada – Analyst
Helen Geoffroy – Attorney III

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

President Bookwalter reintroduced Senate appointed Board Member Lynna Do, repeated the tragic news regarding the loss of friend and colleague, Ivan Altamura and further thanked Executive Officer Heather Martin and Board staff for their continued efforts to keep the essential function of Consumer Protection, a priority during these unprecedented and challenging times.

Board member Lynna Do stated that she was honored to be appointed to the California Board of Occupational Therapy (CBOT). Ms. Do said that she has a background in Politics, Psychology and Public Administration, has worked on various Boards and Commissions and her main goal is to give back to the community and make a difference. Ms. Do said that she works for Lan Do & Associates, a firm that serves as a broker for interpretation and translation services owned and founded by her mother. Ms. Do expressed her enthusiasm to serve on the CBOT board.

Board member Jeff Ferro welcomed Ms. Do and expressed his excitement to have another Public member to contribute outside experience to the CBOT Board.

Vice President Sharon Pavlovich also welcomed Ms. Do and expressed her excitement to have Ms. Do on the team.

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

There were no public comments for items not on the agenda.

6. Review and vote on approval of the February 27-28, 2020, Board meeting minutes.
- Jeff Ferro moved to accept the minutes as written.
 - Beata Morcos seconded the motion.

President Bookwalter noticed that the term “Expert Reviewer” was used throughout the document. Executive Officer Heather Martin confirmed that “Practice Reviewer” should have been used and the document would be updated to reflect this change.

Denise Miller asked if a previous inquiry pertaining to whether a Capstone mentor would be allowed to earn Professional Development units had been addressed.

Mr. Bookwalter replied that it had not been addressed because the committees have not yet met to discuss any of the topics.

Ms. Martin acknowledged that reaching out to the potential committee members had been put on hold due to the pandemic. Ms. Martin committed to reaching out to the potential committee members to inquire about their continued interest in serving on the committees.

Jeff Ferro agreed to amend his motion and Beata Morcos agreed to amend her second.

- Jeff Ferro moved to accept the minutes and allow Board staff to make technical non-substantive changes.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

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

The motion carried.

Following the motion and vote, Mr. Bookwalter discovered that a vote was missing on page 14, under Agenda item 22, following the motion and Public Comment section.

Ms. Martin explained that there was in fact a vote following the Public Comment section. However, when checking the document to ensure it met Americans with Disabilities Act (ADA) compliance requirements and subsequent required fixes to the document, the vote was inadvertently removed.

Mr. Bookwalter asked Board Attorney Helen Geoffroy if making the above-mentioned fix would be looked upon as non-substantive.

Ms. Geoffroy confirmed that it would be a non-substantive change.

7. Review and vote on approval of the May 7, 2020, teleconference Board meeting minutes.

- Beata Morcos moved to accept the May 7, 2020, meeting minutes.
- Jeff Ferro seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

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

The motion carried.

8. Review and vote on approval of the June 24, 2020, teleconference Board meeting minutes.

- Jeff Ferro moved to accept the minutes and allow Board staff to make technical non-substantive changes.
- Beata Morcos seconded the motion.

Public Comment

There was no public comment.

Board Member Votes

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

The motion carried.

9. Update and discussion of the occupational therapy licensure compact.

President Bookwalter reported that the Compact Commission was near the end of the period for stakeholders to provide comments on the Occupational Therapy Licensure Compact. Mr. Bookwalter apologized for not forwarding an email that informed stakeholders that public comments were being accepted but reported that the good news was that public comment period was still open.

Vice President Sharon Pavlovich asked if there was a website that could be accessed for updates.

Executive Officer Heather Martin confirmed that Board staff would send an email to the Listserv recipients that would include a Summary document, the draft Compact and provide the email address that could be used to send comments if they chose to do so.

Denise Miller inquired as to whether the fingerprinting and criminal background check concerns were satisfied to Ms. Martin's and Mr. Bookwalter's comfortability level.

Ms. Martin clarified that she would state her position as a Consumer and not as Board staff.

Ms. Martin went on to state that she was not satisfied with there being only a federal background check required. Ms. Martin said that a background check is only as good as the reporting agency and not all states perform fingerprinting. Ms. Martin is concerned that applicants will apply in a state that has the least requirements, get licensed and then have a way to practice in all states participating in the Compact. Ms. Martin said that she is not satisfied from a consumer protection standpoint.

Mr. Bookwalter mentioned that Adverse Action section of the compact does not include application denials that could have been based on important or pertinent information that was discovered by another state.

Ms. Miller summed up the answers to her question by stating that it seems there are still loopholes.

Mr. Ferro stated that he shares Ms. Martin's reticence due to possibility of potential Compact applicants seeking out a state(s) with lower standards as a way in to other states that are a part of the Compact.

Mr. Bookwalter said that he personally feels the Compact offers more oversight than what is being required during this pandemic. Mr. Bookwalter stated though there were a lot of examples of standards within the Compact that were lower than what California is accustomed to but there are many positives like the benefit for military families and healthcare accessibility.

Vice President Sharon Pavlovich stated that she would be submitting a comment as a practitioner and/or educator but would not and has never mentioned her service as a Board member when submitting comments or position standpoint.

Denise Miller agreed and confirmed that she conducts herself in the same manner.

Board Attorney Helen Geoffroy pointed out that some of the proposed Compact language would likely cause legal pause at the California Legislature level because the language as written would supersede California laws.

Vice President Pavlovich commented that it seemed as if the Board was not prepared to take a position.

Denise Miller commented that it was too soon to submit a position.

Beata Morcos stated that she was of the opinion to wait and see what position is taken by the Legislature so that the Board can have additional information when taking a position.

The Board agreed that it would be a good idea to send individual position letters if each member felt compelled to do so.

10. Executive Officer's Report.

a) Operational and budget reports.

Executive Officer Heather Martin reported that recruitment for a full time Analyst position and a full time Office Technician position had begun and Board staff was on the second set of interviews. Ms. Martin reported that the approval of a Budget Change Proposal brought authorization for an additional 2.5 positions to the Board and 1.5 of those positions were effective July 1, 2020, and the remaining position will be effective January 1, 2021.

Ms. Martin reported that she underspent the Board's budget, or saved, \$100,000 plus with preliminary year-end expenditure information.

b) Update on office move.

Ms. Martin reported that the office moved to its new location on April 15-16, 2020, following several postponements.

c) BreEZe updates.

Ms. Martin reported that recent updates to BreEZe included revisions of the applications in order to be compliant with the requirements of AB 2138, clarification of verbiage regarding fingerprint cards for out-of-state applicants, adding new 'discipline' codes and adding a 'Covid' waiver for renewing licensees, as specified. Ms. Martin anticipates extensions for the current waivers.

d) Update on pending rulemaking files.

There was no information provided.

e) Update on legislation.

There was no information provided.

f) Presentation of licensing and enforcement data.

Ms. Martin reviewed the included data and charts which provided overview of Application/Licensing data, Pending Complaint/Enforcement case information, Citation data and a listing of current Probationers.

g) Future agenda Items.

Ms. Martin repeated to the Board the list of future agenda items that emerged from the meeting were as follows:

- Reach out to the potential committee members again to verify whether they are still able and/or interested, report back in November.
- Board staff to send an email to the stakeholders on the Listserv regarding the Compact and opportunity to provide comments.
- Formulate and begin execution of an Outreach plan regarding the January 2021 fee increase and report progress to the Board at the November meeting.
- Review/update of Board Member Disciplinary Resource Manual (once DGs are updated).

h) Other informational items.

Vice President Sharon Pavlovich stated that she had students that expressed interest in helping with Board functions and she wanted to know if that was permissible.

Ms. Martin said that she thought committee members needed to be licensed but would review the Board Administrative manual and report to Ms. Pavlovich the requirements of being a volunteer.

President Bookwalter commented that it would be a good idea to also encourage the students to reach out to OTAC and AOTA.

11. Selection of 2021 Board Meeting dates.

Denise Miller asked when the Sunset Review would be due.

Ms. Martin reported that the Board received a one-year extension due to COVID and that there would be Sunset committee meetings before the new due date.

The Board members agreed to select Board Meeting dates for 2021 at the November meeting.

CONVENE CLOSED SESSION

There were no matters to discuss in Closed Session.

ADJOURNMENT.

The meeting was adjourned at 3:03 p.m.

DRAFT

AGENDA ITEM 10

REVIEW AND DISCUSSION OF *TERM 5. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR EXTENSION OF PROBATION FOR IN-STATE NON-PRACTICE*, IN THE BOARD'S DISCIPLINARY GUIDELINES, AND THE PHRASE "UNLESS BY BOARD ORDER."

5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice.

In the event rRespondent should leave California to reside or to practice outside the State for more than thirty (30) days, rRespondent shall notify the Board or its designee, in writing, within five (5) days of the dates of departure and return. All provisions of probation shall be held in abeyance, other than the following provisions that shall remain in full effect during the period of tolling:

- Obey all Laws
- Maintain an Active license
- Abstain from Controlled Substances and Alcohol
- Submit to Biological Fluid or Specimen Samples
- Comply with an Examination by a Physician
- Comply with a Psychological Evaluation
- Comply with a Clinical Diagnostic Evaluation
- Comply with Licensure Examination Requirement
- Comply with Education Requirements
- Pay Ordered Cost Recovery
- Pay All Probation Related Costs
- Pay Ordered Restitution
- Submit Quarterly Reports
- Make All Personal Appearances,
- Notify Board of Changes of Employment/Address
- Notify the Board of any violation of probation within five (5) business days of the violation
- Requesting License Surrender

~~the quarterly report requirements, examination requirements, education requirements, address change and cost recovery requirements, shall be held in abeyance until respondent resumes practice and/or residence in California.~~

All provisions of probation shall recommence on the effective date of resumption of practice in California, and the period of probation shall be extended for the period of time rRespondent was out of state.

Unless by Board order, in the event rRespondent is not engaging in the practice of occupational therapy while residing in California, rRespondent shall notify the Board or its designee in writing within five (5) days of the dates of cessation of practice and the expected return to practice. All provisions of probation shall remain in effect, and the period of probation shall be extended for the period of time rRespondent was not engaged in the practice of occupational therapy as required by other employment requirement of this order.

Respondent's cumulative, total time of non-practice while on probation shall not exceed two (2) years. Absent a showing of good cause to the Board, a cumulative period of non-practice exceeding two (2) years constitutes a violation of probation.

A Board-ordered suspension or Cease Practice Order shall not be considered a period of non-practice for the purpose of calculating the aforementioned cumulative period of non-practice.

6. Tolling for Ceased Practice

The term of probation shall be extended by any period of time during which Respondent is ordered to cease practice. Respondent's cumulative, total time of ceased practice, while on probation, shall not exceed two (2) years. A cumulative period of ceased practice exceeding two (2) years constitutes a violation of probation and subjects the Respondent's license to revocation.

7. 8. Employment Requirements and Limitations

During probation, Respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than forty (40) hours per month.

While on probation, Respondent shall not work for a registry, placement agency, third party employer, in home health settings, as a traveler, a contracted employee, or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in advance and in writing, by the Board.

~~If respondent is unable to secure employment in his or her capacity, is issued a cease practice order, or his or her license is temporarily suspended, the period of probation shall be extended for that period of time.~~

AGENDA ITEM 11

DISCUSSION AND CONSIDERATION OF PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 16, DIVISION 39, SECTION 4147, DISCIPLINARY GUIDELINES (DEPENDING UPON OUTCOME OF DISCUSSION OF AGENDA ITEM 10, ABOVE).



§ 4147. Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall consider and apply the Disciplinary Guidelines [~~October 2013~~ July 2020] (which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; or evidentiary issues.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports, "Quarterly Written Report (4/2011)" ; and "Work Performance Evaluation (02/2011)"; shall be obtained from the Board and are hereby incorporated by reference.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, 475, 480, 481, 482, 490, 496, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Section 11425.50(e), Government Code.