

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

400 R Street, Suite 5400
Sacramento, CA 95814
Phone: (916) 322-3394; FAX: (916) 445-6167
E-mail: cbot@dca.ca.gov; Web: www.bot.ca.gov

State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
November 14, 2003
Oakland, California**

A. Call to Order, Roll Call, Establishment of a Quorum

Board president Luella Grangaard called the meeting to order at 11:10 a.m. and secretary Roberta Murphy called the roll.

Board Members Present

Luella Grangaard
Christine Wietlisbach
Roberta Murphy
Cynthia Burt
Hugh Smith

Board Member Absent With Excused Absence

Margaret Cunningham

Board Member Absent With Unexcused Absence

Suzanne Sampson

Staff Present

Gretchen Kjose, Executive Officer
Norine Marks, Legal Counsel
Jeff Hanson, Staff Services Analyst

B. President’s Remarks

Ms. Grangaard welcomed the audience and thanked them for attending. She commented that one of the Board’s public members has not attended a meeting since September 2002 and asked staff to contact the Department of Consumer Affairs’ Board Relations Office to find out what can be done about the situation. Hugh Smith suggested that the current Administration be notified that this board member has not been carrying out her duty to represent consumers. Gretchen Kjose stated that she would contact Board Relations to determine the process to follow.

C. Approval of the July 14, 2003 and August 19, 2003 Board Meeting Minutes

The Board reviewed the July 14, 2003 Board meeting minutes, making two corrections to the Executive Officer’s report. Cynthia Burt noted that the word “submits” was missing from the first

paragraph of the report and also advised that the National Board for Certification in Occupational Therapy's (NBCOT) examination development committee meets four (not five) times annually and then conducts one item bank development meeting in conjunction with the Item Writer's Institute.

- ◆ **Roberta Murphy moved to approve the July 14, 2003 Board meeting minutes as amended.**
- ◆ **Hugh Smith seconded the motion.**
- ◆ **The motion carried unanimously.**

The Board reviewed the August 19, 2003 teleconference Board meeting minutes.

- ◆ **Roberta Murphy moved to approve the August 19, 2003 teleconference Board meeting minutes.**
- ◆ **Cynthia Burt seconded the motion.**
- ◆ **The motion carried unanimously.**

D. Executive Officer's Report

Gretchen Kjose reported that the Board began Fiscal Year (FY) 2003/04 with a budget appropriation of \$672,000 that included \$327,735 for personal services. She noted that earlier this year, Governor Davis ordered all state agencies to reduce personal services and instructed the State Controller's Office to abolish all positions that were vacant on June 30, 2003. The Board had one program technician position that was vacant on June 30th because of the hiring freeze and consequently, the position was abolished and the Board's personal services appropriation was reduced by \$34,978.

Ms. Kjose advised that the Board's first newsletter was mailed to all OTs, OTAs, and limited permit holders on November 10th. She updated the Board on the status of the Older Californian Driver Safety Task Force indicating that one recommendation made thus far was to improve the ability of health care providers to assess traffic safety risk and minimize the impact of health impairments on safe mobility. She said that since OTs are in a unique position to identify, minimize, or correct impairments that may interfere with safety in a traffic environment, an article was included in our newsletter asking OTs and OTAs to contact the Board if they practice in driver rehabilitation, with the goal of developing a directory of California-based driver rehabilitation programs for consumers who may be in need of this service.

Ms. Kjose indicated that NBCOT would hold its annual conference for state regulation in Orlando, Florida from April 23-24, 2004. However she advised that, although the Board had money budgeted for out-of-state travel, authority had not been granted by the Administration to travel beyond bordering states. Therefore, Board members wishing to attend would probably have to do so at their own expense.

She announced that the American Occupational Therapy Association's (AOTA) annual conference was scheduled for May 20-23, 2004 in Minneapolis, Minnesota but that the same travel restrictions would apply.

Ms. Kjose reported that Senate Bill 1076 would become operative January 1, 2004, amending Occupational Therapy Practice Act (OTPA) section 2570.5 by exempting persons from California's licensing requirements so long as they are licensed in another state, work no more than 45 days in California in a calendar year, and they work in association with an occupational therapist licensed under this chapter.

She advised that the Department of Finance (DOF) had refused to sign the Board's proposed regulations on Disciplinary Guidelines, Fees, and Limited Permits because there was an estimated fiscal impact in application fees the Board was given authority to collect last year. DOF felt the Board's fund condition did not support the need for additional fees. She stated that staff had requested that the application fee be deleted from the rulemaking file so that regulations for disciplinary guidelines and limited permits could proceed. However, she noted that this change would require approval by the director of the Department of Consumer Affairs (DCA) and the State and Consumer Services Agency before the regulations could be approved by the Office of Administrative Law (OAL).

Ms. Kjose stated that the Board's continued competency, supervision, and advanced practice regulations were approved by the director of DCA, but not yet approved by the State and Consumer Services Agency or the DOF. Although staff requested that these regulations be given high priority, recent changes in Administration had slowed the process. She advised that since there is a one year deadline to complete a rulemaking file from the time it is originally noticed, if the continued competency and supervision regulations are not filed with OAL by November 26th, they will have to be withdrawn, re-noticed and resubmitted.

Ms. Kjose reported that, as of November 6, 2003, 7,253 OTs and 1,307 OTAs had been licensed/certified and 211 limited permits had been issued; 349 enforcement cases had been opened, 328 closed, and 21 were pending; 17 applications had been denied, 9 of which were granted probation, 4 had been appealed and were pending administrative hearings; one accusation had been filed with a stipulated settlement in the works; and one Writ of Mandate was scheduled for December 19, 2003.

Finally, she advised that the advanced practice provisions of OTPA sections 2570.2 and 2570.3 would become operative on January 1, 2004, after which the Board would have authority to issue advanced practice certifications to those who qualify. She said that new pocket licenses would be issued reflecting the area(s) for which the practitioner had been certified and the information would also be available on the web site.

E. Practice Committee Report

1. Iontophoresis and Phonophoresis

2. OTA Supervision of Rehabilitation Aides

Janet Jabri, chair of the practice committee summarized the committee's recommendations on these issues as follows:

1. The committee recommended that, in the interest of consumer protection, the Board collaborate with the Pharmacy, Physical Therapy, Medical, and Nursing boards to clarify their positions and concerns about occupational therapists applying topical medications via

iontophoresis and phonophoresis. Until more information is available, both are physical agent modalities that require advanced practice certification after January 1, 2004.

2. The committee felt the questions received thus far regarding OTAs supervising rehabilitation aides were too vague to answer and they suggested that future questions be more clearly defined as to the OTA's relationship with the aide in specific settings so that the Board could accurately respond to the issue.

- ◆ **Hugh Smith moved to accept the report and recommendations of the Practice Committee.**
- ◆ **Roberta Murphy seconded the motion.**
- ◆ **The motion carried unanimously.**

F. Review of Proposed Regulations to Amend Title 16, California Code of Regulations Sections 4120, Renewal of License or Certificate – Forms and 4130, Fees

Ms. Kjose explained that the OTPA requires licenses/certificates to be renewed and that the renewal period and fees (established by regulation in 2002) were currently set at \$150 annually, the maximum allowed by law. She advised that with over 8,500 OTs and OTAs now licensed/certified, the Board's fund condition has stabilized to the point that it could reduce fees and still have sufficient money to fund its licensing and enforcement programs.

Ms. Kjose gave an overview of projected workload and corresponding fund conditions for fiscal years 2004/05 through 2006/07 and said that, based on current renewal/delinquent fees, the Board's fund condition for 2004/05 would be \$1,273,918, leaving the Board with a 22.3-month reserve. She provided projected fund conditions that would result from renewal/delinquent fee reductions to \$100/\$50 and \$75/\$37.50 respectively.

She advised that, historically, the Department of Finance (DOF) has recommended that boards within DCA maintain a 3-month reserve. However, due to the State's budgetary crisis and its need to borrow money from Special Fund agencies, DOF has asked boards to maintain higher reserves. At the same time, DOF has not been granting additional spending authority to agencies to cover workload increases, but has been instructing agencies to redirect funds to cover critical programs.

Ms. Kjose said that the Board's enforcement program has been increasing rapidly and additional workload has been realized with advanced practice certifications. She reminded the Board that its request for additional expenditure authority to cover enforcement costs in FY 2004/05 had been turned down by DOF and noted that money would have to be redirected to cover costs associated with the enforcement program and advanced practice certification. She explained that the Board would need to submit future budget change proposals to get additional spending authority to cover these costs. However, she explained that to be granted additional spending authority, sufficient funds have to be in the reserve before DOF would even consider the request. She also noted that DOF had indicated they would borrow another one million dollars from the Board in 2004/05. Therefore, she recommended that the Board reduce its license/renewal fees to \$100/50 rather than \$75/\$37.50 beginning July 1, 2004. She commented that once the State's fiscal crisis has been resolved and the Board has historical data on its

annual enforcement costs, the Board might be able to further reduce fees if the fund condition supported such action.

- ◆ **Roberta Murphy moved to amend the Board's regulations to reduce renewal fees to \$100 and delinquent fees to \$50 annually, beginning July 1, 2004.**
- ◆ **Cynthia Burt seconded the motion.**
- ◆ **The motion carried unanimously**

G. Review of Proposed Regulation to Amend Title 16, Division 39, California Code of Regulations Section 4141, Assessment of Administrative Fines

Ms. Kjose explained that Business and Professions Code section 125.9 gives boards within DCA authority to issue citations and administrative fines for violations of law. She indicated that Senate Bill 362 amended the law to increase the maximum fine from \$2,500 to \$5,000 effective January 1, 2004. She advised that the Board should amend its regulations to reflect this change by raising its maximum fine for a Class A violation to \$5,000.

- ◆ **Roberta Murphy moved to accept staff's recommendation to amend California Code of Regulations section 4141 by increasing the maximum fine to \$5,000 and set it for hearing.**
- ◆ **Hugh Smith seconded the motion.**
- ◆ **The motion carried unanimously.**

H. Discussion of Future Legislation

- 1. Supervision of Occupational Therapy Assistant Limited Permit Holders by Occupational Therapy Assistants (OTPA section 2570.5)**
- 2. Procedures for Applicants not Engaged in Practice for over Five Years (OTPA section 2570.14)**

1. Ms. Kjose stated that OTPA section 2570.5 requires OT and OTA limited permit holders (OTALP) to be supervised by an OT. She indicated that when the Board developed its proposed supervision regulations, it included a provision that OTAs could supervise OTALPs. However, since a regulation cannot conflict with law, this provision was deleted from the proposed regulations. At its August teleconference meeting, the Board agreed to discuss this issue at its next meeting to consider changing the law to allow OTAs to supervise OTALPs.

Ms. Grangaard commented that an OTA always works under the supervision of an OT and she felt OTAs should not be able to supervise an OTALPs. Ms. Murphy said that if an OTA is able to supervise OTA students, it seems reasonable that they should be allowed to supervise OTALPs. Ms. Burt stated that it would be inconsistent to permit OTAs to supervise OTALPs when they aren't allowed to supervise aides. A discussion followed about the difference between students and limited permit holders, the outcome of which was that students are still in an educational setting, whereas limited permit holders are essentially temporarily licensed individuals who are able to bill for services. Since OTAs are required to work under the supervision of an OT, OTALPs should be as well. Ms. Murphy agreed and commented that the relationship between an OTA and OTALP would be more of as a mentor rather than a

supervisor. The Board agreed that the intent of the law was to require OTALPs to be supervised by OTs and that no change was needed.

2. Ms. Kjose advised that, effective January 1, 2003, applicants for licensure/certification who have not practiced within the five years prior to application are required, pursuant to OPA section 2570.14, to either complete a reentry program approved by the Board, take and pass the national licensing examination, or complete continuing education requirements if any are in effect at the time of application. She explained that, at the present time, there are no reentry programs in existence, nor have any providers contacted the Board requesting approval to start one. Therefore, she recommended that this part of law be repealed. Should any programs begin in the future, they would fall under the continuing education provision of this section. Following a brief discussion, the Board agreed with this recommendation.

- ◆ **Christine Wietlisbach moved to pursue legislation to repeal OPA section 2570.14(c).**
- ◆ **Roberta Murphy seconded the motion.**
- ◆ **The motion carried unanimously.**

I. Appointment of Advanced Practice Review Committee

Ms. Kjose indicated that the Board had begun receiving portfolios from individuals seeking advanced practice certification that must be reviewed for compliance with the law. She noted that Ms. Grangaard and Ms. Murphy are completing portfolio assessment workshops through the Council for Adult Experiential Learning and asked them to explain the process.

Ms. Grangaard reported that the workshops are taken online and the goal is to be able to review an adult learner's life experiences in educational settings to develop criteria as to how you can take these learning experiences and grant college credit. She stressed that it's important that the learner be able to communicate what they have learned and how they applied it to their job and she indicated she and Ms. Murphy would be attempting to translate the training they are receiving to assessing advanced practice portfolios. Ms. Murphy commented that the Committee's job will be to identify what will be required of individuals that demonstrates they have analyzed their experiences and are able to communicate that what they have learned is at a level comparable to having taken a college course. She noted that the workshops will give the Committee tools to see how people go through that process.

Ms. Grangaard said they would take the requirements set in law/regulation and develop standards against which to judge the portfolios. Norine Marks advised the Board to keep in mind that, if more than two Board members are on the Committee, review sessions will have to be noticed as Board meetings. Further, should an individual be denied certification, he/she would not be entitled to an appeal under the Administrative Procedure Act but rather review by a superior court.

Richard Bookwalter, the Occupational Therapy Association of California's Governmental Affairs representative, commented that he had received many questions from OTs regarding who would be reviewing their portfolio and what their qualifications would be. Ms. Grangaard suggested that the Committee be comprised of experts in each area, as well as one staff person. After discussion, Mary Kasch, director of the Hand Therapy Certification Committee

and Deborah Morawski, an expert in dysphagia, were appointed to the Committee. Others who will serve as consultants are Linda Botten for physical agent modalities and Pam Roberts for dysphagia.

J. Schedule of Future Meetings

The Board scheduled the following dates and locations for 2004:

January 26, 2004 – San Diego
April 16, 2004 – Sacramento
July 19, 2004 – Los Angeles
November 15, 2004 - San Francisco

K. Election of Officers for 2004

Ms. Grangaard suggested that election of officers be held over to the January 26, 2004 meeting because two board member appointments expire in December 2003, and it was not clear whether they would be re-appointed prior to the change in Administration.

- ◆ **Christine Wietlisbach moved to hold over the current officers until the first meeting in 2004.**
- ◆ **Roberta Murphy seconded the motion.**
- ◆ **The motion carried unanimously.**

L. Public Comment Session

There were no public comments under this agenda item.

M. Adjournment

The meeting adjourned at 1:25 p.m.