



## **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY BOARD MEETING MINUTES**

**November 4, 2010**

### Board Members Present

Mary Evert, President  
Linda Florey  
Nancy Michel  
Bobbi Jean Tanberg  
Julia Tsai

### Board Staff Present

Heather Martin, Executive Officer  
Norine Marks, Legal Counsel  
Jeff Hanson, Staff Services Manager

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

At 9:03 President Evert called the meeting to order. Secretary Michel called the roll. A quorum of the Board was established.

### **2. President's remarks.**

Ms. Evert thanked the University of St. Augustine for allowing the Board to use their conference room for this event. Ms. Evert briefly explained to those in attendance about the Public Meeting Act, its intent for transparency in government, and protocol for public comments on agenda items.

Ms. Evert reported that she attended the Annual Conference of the Occupational Therapy Association (OTAC) in Pasadena October 14-15, 2010. She reported that she also worked at the Board's exhibit booth. Ms. Evert thanked Bobbi Jean Tanberg and Linda Florey for also working at the Board's booth at the conference.

### **3. Board member updates/activities.**

Bobbi Jean Tanberg and Linda Florey reported they both represented the Board and worked at Board's exhibit booth at OTAC's Annual Conference.

Linda Florey also reported the Practice Committee met on October 19, 2010, at Rancho Los Amigos National Rehabilitation Center (Rancho Los Amigos) in Downey, California. More information is contained in agenda item #6.

Ms. Martin reported that there are currently three Board member vacancies; however, the Board could potentially have two of the positions filled by December 31, 2010.

#### **4. Approval of the July 28-29, 2010, Board meeting minutes.**

- ❖ Nancy Michel moved to accept the July 28-29, Board Meeting Minutes with several grammatical edits.
- ❖ Julia Tsai seconded the motion.
- ❖ The motion passed unanimously.

#### **5. Director's Report**

Ms. Martin introduced Mr. Gil DeLuna, representing Board and Bureau Relations with the Department of Consumer Affairs (DCA).

##### **A. Enforcement Reform: Consumer Protection Enforcement Initiative (CPEI)**

Mr. DeLuna reported DCA's Consumer Protection Enforcement Initiative (CPEI) was moving forward.

The CPEI establishes additional positions for Boards and Bureaus within DCA to improve the effectiveness and processing times of complaints and disciplinary actions. In regard to the Governor's hiring freeze, Mr. DeLuna reported he was hopeful allowances or exemptions would be granted for CPEI positions since they relate to public safety. Mr. DeLuna indicated DCA has been gathering statistical data from the Boards and Bureaus regarding enforcement activities and is posting the information on-line for accountability and transparency.

Mr. DeLuna reported the information technology project "Breeze" which is part of CPEI is on target. DCA anticipates that in July 2011 a vendor contract will be in place for the project.

##### **B. SB 1441 - Uniform Standards (SB 1441) Regarding Substance Abusing Healing Arts licensees**

Mr. DeLuna recognized and thanked the Board for its ongoing efforts to incorporate the Uniform Standards Regarding Substance Abusing Healing Arts licensees into regulation. The standards were developed by the Substance Abuse Coordination Committee that was formed pursuant to SB 1441 and chaired by DCA Director Brian Stiger and included the Executive Officers of Healing Arts Boards.

##### **C. Federal Healthcare Reform**

Mr. DeLuna reported that Teri Broughton, Senior Program Officer for the Health Reform and Public Programs Initiative, with the California Healthcare Foundation has provided presentations to various agencies regarding the Patient Protection and Affordable Care Act (PPACA). The presentation is designed to inform policymakers, the healthcare community, and public about approaches to expanding public and private coverage. If the Board was interested in scheduling a presentation, Board and Bureau Relations could help coordinate a presentation.

#### **D. Other Items of Interest**

Mr. DeLuna reported that the Office of Public Affairs now has two mobile units available for web-casting, and encouraged the Board to avail the office of these services.

Mr. DeLuna reported that DCA is working on providing statistical data on California's healthcare workforce to the Office of Statewide Health Planning and Development (OSHPD).

Mr. DeLuna reported that DCA supports the Board moving forward with regulations that are designed to ensure a consumer knows the identity and profession of the healthcare practitioner that delivers their services.

Mr. DeLuna thanked Executive Officer Martin and her staff for posting the Board Meeting materials on-line to enhance public access and transparency in government.

#### **6. Practice Committee Report.**

Ms. Florey reported that the Practice Committee met on October 19<sup>th</sup> at Rancho Los Amigos and identified the Committee members in attendance: Richard Bookwalter, Mary Kay Gallagher, Didi Olson, Sharon Pavlovich; absent were Luella Grangaard and Barbara Rodrigues.

Ms. Martin clarified that, in the future, meeting dates would be coordinated to allow enough time for the meeting highlights or committee meeting minutes to be included in the Board meeting packet.

The Board discussed whether they would vote on the Practice Committee recommendations as a whole or individually. After consulting with Legal Counsel, it was decided that the Board would hear the report in its entirety and then make a decision whether they would vote on them as a whole or separately.

Ms. Florey reported as follows:

##### **A. Practice Committee's Roles and Responsibilities and recommended changes to the Board.**

Committee members reviewed the Roles and Responsibilities document approved by the Board in 2006, however, felt that they were too new to recommend any changes. Therefore, no revision or changes were being recommended regarding this item. Since the Committee may want to recommend modifications in the future, they requested this item be kept on the Practice Committee agenda as an on-going item.

**B. Board-approved legislative proposal to amend definition of Occupational Therapy, Business and Professions Code Section 2570.2(k), and recommendation to the Board.**

Ms. Florey referenced several items in the Board's meeting materials that were provided at the Practice Committee meeting, including: the legislative proposal to amend Business and Professions Code (BPC) Section 2570.2, approved by the Board at its July 29, 2010, meeting that would amend the definition of occupational therapy; a letter from the American occupational Therapy Association (AOTA) requesting feedback on the proposed Definition of Occupational Therapy Practice; and the AOTA white paper, "Occupational Therapy Research Agenda."

Committee members expressed concern with seeking an amendment to Section 2570.2(k) since it is easy to lose control of legislative amendments and could allow amendments suggested by other healthcare professions. Committee members had differing concerns and opinions on the legislative amendments that seek to define various roles that constitute practice, particularly in the area of research.

The Committee's recommendation was for the Board to table its legislative proposal to amend Section 2570.2(k) in order to allow the Practice Committee more time to review the language and bring back recommendations to the Board.

**C. Discussion of specialized occupational therapy skills acquired post entry-level recognition of various certification organizations, and recommendation to the Board.**

Committee members discussed recognizing 'specialty' areas of practice acquired post-professional or skills beyond entry-level. Committee members agreed that they did not want any new areas to be considered advanced practice and would, in fact, like to see approval of advanced practice areas to go away completely.

**D. Discussion and consideration of amending Title 16, Division 39, Section 4161, Continuing Competency, and recommendation to the Board.**

The Committee discussed language that was presented that would update and align the PDU requirement with biannual renewals; further clarify and define activities and coursework that are applicable toward the requirement; clarify that coursework taken as part of a subsequent degree program could be applied toward the requirement; and set limits on activities in subsection (c) that could be applied toward the requirement. Several edits were made to the language that was presented.

The Committee recommends that the amended language move forward in the regulatory process.

**E. Selection of 2011 Practice Committee meeting dates.**

The Practice Committee selected the following dates for their meetings: January 27<sup>th</sup>, February 17<sup>th</sup> (if needed) and April 7<sup>th</sup>.

- ❖ Bobbi Jean Tanberg moved to accept the Practice Committee Report and recommendations with the exceptions of items B and C.
- ❖ Julia Tsai seconded the motion.

- ❖ The motion passed unanimously.

Discussion ensued regarding the Practice Committee's recommendation for the Board to table legislation seeking amendments to Section 2570.2(k), item B. Ms. Martin asked Board Members if they still wished to pursue the legislation that they voted on in July. Bobbi Jean Tanberg indicated she liked terminology used in the American Occupational Therapy Association (AOTA) model practice act but questioned whether incorporating the language into the proposed legislation outweighs the need and relevance of taking action at this stage in the legislative cycle. Ms. Evert indicated clarity for consumers and practitioners is the motivating force behind the legislative amendment. Ms. Evert also reported the AOTA model practice act that was being considered is only a draft and has not been ratified; thus, the language may change. Didi Olson felt that the Board's proposed language was good but also thought language from AOTA should be included. Ms. Olsen reiterated the committee's concern that the scope of practice could be exposed to input from various stakeholders. Shawn Phipps, OTAC President, supported the Board's efforts to clarify roles that constitute practice but asked that they accept the Practice Committee's recommendation. Nancy Michel indicated that as proposed legislation makes its way through the bill making process edits and modifications are common so it may be possible to tweak or modify language as the proposed legislation moves forward.

- ❖ Linda Florey moved for the Board to reconsider its decision to seek legislative amendments to Section 2570.2(k) approved in July 2010.

*(Note: The Motion to accept a Committee report does not require a Second.)*

The Board members further discussed the issue.

Vote:

Aye

Linda Florey

Nay

Mary Evert

Nancy Michel

Bobbi Jean Tanberg

Julia Tsai

- ❖ The motion did not carry. Thus, the Board will continue to seek an author to amend Section 2570.2(k) as approved in July 2010 and the Practice Committee can further discuss the issue and report back to the Board.

Discussion ensued regarding the Practice Committee's recommendation to not recognize any specialty areas or other post-professional certifications. Ms. Martin briefed everyone the reason agenda item 6C was assigned to the Practice Committee. Since there are many different post professional certifications that are available to practitioners and the course content between providers can differ dramatically, a question was posed whether the Board should regulate these areas (e.g., lymphedema, traumatic brain injuries, etc.) to ensure that the post-professional coursework is adequate. The Board also discussed whether it would be appropriate for the practitioners to market themselves as experts in specified specialty areas.

Ms. Evert opined that she originally raised this concern, however, was not suggesting the Board establish any new 'advanced practice' areas. Ms. Evert emphasized practitioners are ethically obligated to accurately represent their credentials, qualifications, experience and training; Ms. Florey concurred with Ms. Evert. Shawn Phipps, OTAC President, agreed indicating it would be too much for the Board to review all post professional credentialing courses.

- ❖ Bobbi Jean Tanberg moved to accept the Practice Committee's recommendation to not recognize any post-professional certifications or specialty areas of practice.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

**7. American Occupational Therapy Association's request that Board reconsider regulatory language to amend Title 16, Division 39, California Code of Regulations (CCR) Section 4123, Limited Permit, and add section 4125, Representation, adopted at July 28<sup>th</sup> Board meeting.**

Ms. Martin reported that after the Board adopted the language to amend CCR Section 4123 and add Section 4125 at its July meeting, she was contacted by Jennifer Snyder, lobbyist with Capitol Advocacy, to discuss the language. Ms. Snyder facilitated a conference call between Ms. Martin and representatives from AOTA and OTAC. Ms. Martin explained that while the conference call was after the close of the public comment period, she participated in the call and clarified to AOTA and OTAC representatives that the intent of the representation language was not to verify current registration with the National Board for Certification in Occupational Therapy (NBCOT) for current licensees. Ms. Martin expressed continued concern with those practitioners that maintain current registration with NBCOT but fail to acquire a license in California, which is a violation of the Practice Act.

Ms. Martin referenced the copy of the letter in the meeting materials, whereby AOTA requests the Board to revisit, modify, and publicize the intent of the proposed regulation.

Linda Florey noted an absence of any comment from NBCOT on this agenda item. Ms. Evert indicated she did not understand why the issue was being brought forward because the Board had clarified the intent of the regulation.

- ❖ Linda Florey moved to put the matter before the Board to reconsider the regulations adopted by the Board in July 2010.
- ❖ Nancy Michel seconded the motion.

The Board members further discussed the issue.

Vote:

Aye

None.

Nay

Mary Evert

Linda Florey

Nancy Michel

Bobbi Jean Tanberg

Julia Tsai

❖ The motion failed unanimously.

Jennifer Snyder referenced a letter from the American Occupational Therapy Association (AOTA), and requested the Board reconsider text of the regulation or absent that to provide a letter clarifying the intent of the proposed regulations or provide an updated Question/Answer document on its website per to clarify the issue of 'representation' to licensees.

Norine Marks, Legal Counsel, reminded the Board members that the Executive Officer can respond to public comments in the final rulemaking file, and the comments can be accepted or rejected. Ms. Marks also suggested that the Board wait to take any action on Ms. Snyder's request until such time as the regulations are adopted by the Office of Administrative Law (OAL).

- ❖ Nancy Michel moved to await any further action by the Board's Executive Officer, until the regulations are approved by OAL, and then bring the issue of posting additional information on the Board's web site back to the Board for consideration.
- ❖ Bobbi Jean Tanberg seconded the motion.
- ❖ The motion passed unanimously.

#### **8. Discussion and consideration of adding Title 16, Division 39, CCR Section 4171, Notification to Consumers.**

Ms. Martin referenced BPC Sections 138 and 680 which contain verbiage regarding disclosure requirements. BPC Section 138 requires the Board adopt regulations that its licensees provide notice to clients that the individuals is licensed and BPC 680 requires healthcare practitioners to disclose, while working, his or her name and license status on a name tag in 18 point font.

Ms. Martin briefed members that proposed regulatory language to implement Section 680 was discussed at the July meeting. Ms. Martin and Nancy Michel had been tasked with finding a solution or developing language to cover situations where an employer had developed, designed, and had long established identification badges that does not meet the 18 point font requirement.

Ms. Martin referenced a copy of AB 583 which recently added Section 680.5 to the BPC effective January 1, 2011, which expands the requirement set forth in Section 680.

Ms. Martin asked for time to review the new legislation to see if it provided exclusions or allowances regarding the concerns that were expressed in the July meeting. Ms. Martin indicates she will bring a proposal or recommendation to a future meeting.

## **9. Regulations Update.**

Ms. Martin referred to the Regulation Update Report providing the status of proposed regulations.

Ms. Martin indicated that notices regarding modified language for proposing amendments to regulations for Citations and the Board's Disciplinary Guidelines would be mailed and emailed to all interested parties on December 6, 2010.

Ms. Martin reported Board staff will be noticing proposed regulations for Ethical Standards of Practice, and Definitions and Delegation of Functions, Retired Status, and amendments to the supervision and continuing competency regulations, in early January so that the 45-days comment period is aligned with the Board's next meeting in March. Board Members had no questions.

## **10. Legislation Update.**

A. Consideration of adding new Business and Professions Code Section requiring registration of occupational therapy aides.

Ms. Martin requested that the Board delegate the issue of requiring registration of occupational therapy aides to the Practice Committee for consideration.

Ms. Martin indicated that aides are sometimes the subject and witnesses of alleged misconduct and without registration it is sometimes difficult to locate them. Ms. Martin indicated the primary focus of the legislation is to ensure public protection by requiring aides to submit to criminal background checks and for the Board to be able to locate and contact them if the need arises.

Ms. Martin reported the Speech Language Pathology Board (SLPB) registers aides. Ms. Martin indicated her proposal would require that the occupational therapy aides be responsible for registering themselves as opposed to an occupational therapist being responsible for the registration, like SPLB does.

Shawn Phipps, OTAC President, expressed concern that registering aides could become a cumbersome task for the Board and thought responsibility was being shifted from licensees. Ms. Evert indicated this item merely reflects a willingness to explore registering aides.

- ❖ Bobbi Jean Tanberg moved for the Practice Committee to consider developing legislation to register aides by the description of the occupational therapy services they provide rather than the various job "titles" that may be used in facilities.
- ❖ Nancy Michel seconded the motion.
- ❖ The motion passed unanimously.

B. Any other bills of interest to the Board.



Ms. Martin referenced a printout of bills that were signed or vetoed by the Governor during the 2010 legislative session. The Board members had no questions.

## **11. Executive Officer's report.**

### **A. Revenue and expenditure information.**

Ms. Martin briefed the Board on the Revenue and Expenditure report. Ms. Martin indicated that because of the budget delay some bills had not been paid but would be hitting the books soon so the report are somewhat skewed. Ms. Martin indicated that by the next Board meeting the report will be normalized. Board Members had no questions.

### **B. Personnel updates.**

Ms. Martin indicated she is working with the DCA to achieve more than \$60,000.00 in salary savings in fiscal year 2010/11. Ms. Martin reported that this is an especially challenging goal for such a small agency with the current makeup, age, and service time of current staff.

Ms. Martin indicated that Board had hired limited-term staff whose terms had expired on September 30, 2010, one of which had been recently been hired by the Sacramento Police Department. The plan was to move the remaining limited term staff into the CPEI positions that had recently been approved. However, the hiring freeze has forced a change. This would have extended the limited term period of the positions by another two years, which would give Ms. Martin time to make the positions permanent. All in all, the Board will not net any additional positions.

### **C. Other informational items.**

Ms. Martin did not have any other additional informational items.

## **12. Enforcement data and reports.**

Ms. Martin referenced the standard enforcement reports in the meeting materials. Some discussion ensued regarding the number of Records of Arrest and Prosecution (RAP) reports that the Enforcement Unit receives for both applicants and licensees. Linda Florey asked if 99 open investigations would be considered normal. Ms. Martin reported that last summer the Board had approximately 300 open investigations. Bobbi Jean Tanberg indicated the statistics are surprising to her and other therapists and it underscores the importance of the Board. Nancy Michel suggested that if employers were mandated to report misconduct, the statistics would be even higher and the Board should continue to seek legislation in this area.

## **13. Public comment session for items not on the agenda.**

Shawn Phipps, OTAC President, indicated he shared the telemedicine legislative proposal approved by the Board last July with AOTA's Committee on Practice and they provided some feedback. He asked that Tammy Richmond, who chairs OTAC's Tele-rehab committee be allowed to work with the Board's Practice Committee regarding this legislation. Ms. Evert commented that since the language was approved last July that the Board staff is continuing to seek an author. Mr. Phipps commented that while he thought

the language was good, a few more tweaks could improve it. Thus, Mr. Phipps requested that telemedicine/telerehabilitation be placed on the March 3, 2011, agenda for further consideration.

Mr. Phipps also sought clarification of legislation that was proposed in the July meeting regarding Sections 2570.3(k) and 2570.16 that would authorize the Board to require an application and submission of renewal fees for providers of advanced practice courses. Mr. Phipps indicated OTAC would be opposing efforts to amend Section 2570.3(k) and adding Section 2570.16, as this would be cost-prohibitive.

#### **14. Discussion and consideration of future agenda items at March 3, 2011, meeting.**

Ms. Martin reminded members that March 2 and March 3 were selected as the next Board meeting dates in Sacramento. She indicated that she will advise members in January whether the meeting will be a two-day meeting or whether the agenda supported a one-day meeting.

The following items will be on the next meeting agenda:

- Practice Committee recommendations regarding the legislative proposals to amend the definition of occupational therapy.
- Practice Committee recommendations on registering aides.
- Regulatory language regarding Notice to Consumers,
- Telemedicine/tele-rehabilitation legislation.
- Proposed legislation Section 2570.16 regarding fees for advanced practice education providers.
- Regulatory Hearings

Members requested no additional items be added to the agenda.

#### **15. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(a)(1) for the Evaluation of the Executive Officer.**

At 1:01 p.m. the Board went into closed session to discuss the annual Evaluation of the Executive Officer. At 1:20 the Board adjourned from Closed Session.

#### **16. The Board will convene in CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on Disciplinary Decisions.**

At 12:25 p.m. the Board went into Closed Session to deliberate on Disciplinary Decisions. At 1:00 p.m. they adjourned.

#### **Return to Open Session & Adjournment.**

At 1:21 the Board returned to Open Session and immediately adjourned.