



BOARD OF OCCUPATIONAL THERAPY
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CALIFORNIA BOARD OF OCCUPATIONAL THERAPY TELECONFERENCE BOARD MEETING MINUTES

Thursday, March 3, 2011

Board Members Present

Mary Evert, President
Linda Florey
Luella Grangaard
Kathay Lovell
Nancy Michel
Bobbi Jean Tanberg

Board Staff Present

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

NEW BOARD MEMBER(S) SWORN IN

1. Introductions

Since the Board's last meeting on November 4, 2010, two new members have been sworn in to serve on the Board.

Luella Grangaard is a licensed occupational therapist at Dwight D. Eisenhower Medical Center in Rancho Mirage, California, and has worked there since 1987. Ms. Grangaard previously served on the California Board of Occupational Therapy. She was the first President and served on the Board from 2001 to 2007. Ms. Grangaard was also past President of the Occupational Therapy Association of California.

Kathay Lovell, a public member, has served on the South Lake Tahoe city council since 2002 and was the former mayor for a third term from 2009 to 2010. Ms. Lovell's executive business background is in the Telecommunications field.

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

President Evert called the meeting to order at 9:15 am. Secretary Nancy Michel called the roll. A quorum of the Board was established.

3. President's remarks. (M. Evert)

Ms. Evert reported that she participates in monthly teleconferences with Heather Martin, Executive Officer, along with the Presidents and Executive Officers of other Boards within the Department of

Consumer Affairs (DCA). The conference calls provided information on the transition in the administration, state budget, and DCA efforts in protecting the health, safety, and welfare of California consumers.

Administrative Hearing

At 9:20 am the administrative hearing for Lourdes Delmo's Petition for Early Termination of Probation commenced. It was determined that Board Member Bobbi Jean Tanberg would not participate in the discussion or deliberate since she was not physically present at the hearing in Sacramento. Ms. Delmo represented herself in this matter.

CLOSED SESSION, upon conclusion of Administrative Hearing

At 10:08 am the Board convened in closed session to deliberate on the above matter.

RESUME OPEN SESSION

At 10:45 am the Board returned to open session. Ms. Evert announced that the Board had voted to grant Ms. Delmo's Petition for Early Termination of Probation.

4. Board member updates/activities.

Bobbi Jean Tanberg reported that she and Ms. Evert had the opportunity to meet with the President of the Korean Association of Occupational Therapists to discuss issues that face the profession.

Kathay Lovell reported she is honored to serve on the Board and looks forward to working with everyone. Ms. Lovell indicated she is familiar with occupational therapy and the profession has special meaning to her.

Luella Grangaard reported it is good to be back. Ms. Grangaard remarked that it would be interesting to see what has changed and what has not changed since she last served on the Board.

Nancy Michel indicated the Enforcement Committee had met and she will be providing a report in agenda item #8.

Linda Florey reported she attended Board Member orientation training in December and will be reporting on agenda item #7 regarding the two Practice Committee meetings.

5. Approval of the November 4, 2010, Board meeting minutes.

- ❖ Nancy Michel moved to approve the November 4, 2011, Board Meeting Minutes.
- ❖ Linda Florey seconded the motion.

Roll Call Vote

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|--------------------|---------|
| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Abstain |
| Kathay Lovell | Abstain |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

❖ The motion was adopted.

6. Director's Report - Representative from Department of Consumer Affairs

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

Kim Kirchmeyer, Deputy Director of Board and Bureau Relations, appeared on behalf of the Department of Consumer Affairs (DCA). Ms. Kirchmeyer encouraged the Board to move forward with regulations that would allow the Executive Officer to expedite investigation and prosecution processes.

Ms. Kirchmeyer reported the Department had been gathering and posting Enforcement Performance Measures of the various Boards and Bureaus within DCA on the Department's website. Ms. Kirchmeyer encouraged Board Members to view the data and compare its performance with other agencies within the Department. Ms. Martin advised the Board that the Performance Measures were included in the meeting materials under Agenda Item 11, Other Informational Items and would be referenced later.

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

Ms. Kirchmeyer thanked the Board for moving forward with the Uniform Standards for Substance Abusing Healing Arts licensees. Ms. Kirchmeyer reported the CBOT will be the first agency within the Department to submit their amended Disciplinary Guidelines incorporating the Uniform Standards to the Office of Administrative Law.

C. Other Items of Interest

Ms. Kirchmeyer reported that Brian Stiger has been asked to remain on as DCA's Acting Director during the Administration transition.

Ms. Kirchmeyer reported that on February 15, 2011, Governor Brown ordered a statewide hiring freeze. Ms. Kirchmeyer indicated that mission critical positions may qualify for exemptions. Once more clarification and information is obtained from the Department of Finance, the information will be disseminated to all boards.

Ms. Kirchmeyer indicated DCA implemented a plan to comply with the Governor's recent Executive Order to reduce the State's cellular telephones by 50% by the end of the fiscal year. Ms. Kirchmeyer thanked the Board for turning in its cellular telephones to comply with the Executive Order.

Ms. Kirchmeyer reported that the DCA's Legal Office has determined that individuals who serve as experts in qualification review, enforcement, and examination development matters are required to

be under contact. DCA will be working with the various boards and bureaus to make certain contracts are in place for all experts and ensuring prompt payment for them. To facilitate timely processing, DCA will be providing training and delegating authority to allow Board staff to process their own contracts.

Ms. Kirchmeyer reported the comprehensive licensing and enforcement information technology project called “BreEZe” is on track. The Department anticipates a vendor will be in place in August and the first of three roll outs will occur in December 2012.

Ms. Kirchmeyer thanked the Board for putting its agenda and meeting material on its website.

7. Practice Committee Report. (L. Florey)

A. Consideration of board-approved legislative proposal to amend definition of Occupational Therapy, contained in Business and Professions Code Section 2570.2(k), and recommendation to the Board of possible changes.

- ❖ Linda Florey moved for the Board to accept the Practice Committee recommendation to edit proposed legislative language to Section 2570.2(k).

Discussion ensued, Ms. Florey indicated the proposed edits are more explicit, stronger, and provide a richer description of occupational therapy. Luella Grangaard suggested that all references to “assessment” be struck and replaced with “evaluation”. Ms. Grangaard indicated the word “assessment” is very limiting whereas the word “evaluation” is broader in range. Ms. Grangaard indicated the first sentence in 2570.2(k)(1) needed to be constructed better. Jennifer Snyder for the Occupational Therapy Association of California sought clarification where the Board incorporated language from AOTA’s Model Practice Act. Ms. Snyder was advised the first paragraph of the proposed legislative changes in Section 2570(k) mirrored AOTA Model Practice Act proposed revisions. Ms. Evert summarized this legislation is important, it is needed, and even though AOTA has not finalized its revisions of the Model Practice Act, the Board can move forward with its own language.

- ❖ Luella Grangaard moved to amend the Practice Committee’s recommended language by striking the words “assessment”, replace with “evaluation”, and strike “and limitations” from Section 2570.2(k)(1).
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

Norine Marks, Legal Counsel, suggested the Board consider editing Section 2570.2(k)(2) to make it tighter. The intent of the Section is to clarify the variety of roles and functions occupational therapists and assistants perform which require a license. Ms. Marks indicated emphasis should be placed on the functions performed as opposed to a title that someone might use.

- ❖ Luella Grangaard moved to strike “The licensed occupational therapist or occupational therapy assistant may assume a variety of roles in their profession, including but not limited to,…” and replacing it with “Occupational therapy includes, but is not limited to, performing as…”
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

- ❖ Linda Florey amended her initial motion for the Board to accept the Practice Committee’s recommendation to incorporate the edits voted on above.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

B. Discussion of Section 4184, California Code of Regulations (CCR), Delegation of Tasks to Aides and Section 2570.2(a), Business and Professions Code (BPC), regarding responsibility for documentation.

Ms. Florey indicated CCR Section 4184 pertains to delegation of tasks to aides. It states that documented client related services shall be cosigned by the supervising occupational therapist. However, BPC Section 2570.2(a) states that the occupational therapist is responsible for documenting the client’s record for delegated client-related tasks performed by the aide.

- ❖ Linda Florey motioned for the Board to seek a regulatory amendment to strike subsection (d) from Section 4184, Delegation of tasks to Aides, without scheduling a hearing unless requested.

Bobbi Jean Tanberg sought clarification if this would mean that an aide would be able to document client records without a co-signature from the supervising occupational therapist. It was clarified the proposed regulatory action would prohibit an aide from documenting client records. Only an occupational therapist or occupational therapy assistant would be authorized to document client records.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

❖ The motion carried unanimously.

C. Discussion and overview of process to review advanced practice post-professional educational courses.

Ms. Florey reported Practice Committee members were provided an overview of the process for reviewing post-professional (advanced practice) courses submitted by providers. Members were also given an opportunity to review actual courses and ask questions regarding the course review process.

D. Discussion and consideration of prohibition of teaching continuing education courses when a practitioner's license is on probation.

Ms. Florey reported the Practice Committee was tasked to look into whether it would be appropriate for an individual that had been placed on probation to teach continuing education (CE) coursework. The Committee reviewed regulatory language that the Board of Behavioral Sciences (BBS) implemented (1) includes a requirement that instructors possess an unrestricted license and (2) that prohibits a BBS probationer from teaching CE when on probation. Before making a recommendation, the Committee wants to review the regulations of other Healing Arts agencies to see if this is common practice. A Committee recommendation will be brought forth at a later date. This matter is also being reviewed by the Enforcement Committee.

E. Discussion and consideration of adding new Business and Professions Code Section requiring registration of occupational therapy aides.

Ms. Florey reported that the Committee was provided information regarding other states and their regulations of aides. However, due to time constraints at the January 27, 2011, meeting this matter was not discussed by the Committee. Public comment was provided by Shawn Phipps, President, Occupational Therapy Association of California, who expressed concern regarding the Board's consideration of registering aides.

Discussion ensued with Board Members regarding the pros and cons of requiring aides to register. Ms. Martin indicated registration of aides would protect the public and facilitate complaint investigations. President Evert indicated that she would like to have this matter referred to the Enforcement Committee for consideration.

F. Approval of the October 19, 2010, Committee meeting minutes.

Ms. Florey referenced the minutes from the meeting for Board Members to review.

G. Approval of the January 27, 2011, Committee meeting minutes.

Ms. Florey referenced the minutes from the meeting for Board Members to review.

H. Selection of 2011 Practice Committee meeting dates.

The Committee selected April 7, 2011, as their next meeting date. It was agreed that at that meeting, the Committee would select meeting dates for the remainder of the year.

8. Enforcement Committee Report (N. Michel)

Nancy Michel reported that the Enforcement Committee met on February 9, 2011. Other Committee Members present were Margaret Fuller, Claudia Peyton, and Bill Levandowsky.

A. Review and discussion of Enforcement Committee's Roles and Responsibilities and consideration of recommending changes to the Board.

Ms. Michel reported the Enforcement Committee reviewed and discussed its role and responsibilities. The Committee will maintain this as an open agenda item for future discussion.

B. Discussion and consideration of prohibition of teaching continuing education courses when a practitioner's license is on probation.

Ms. Michel reported the Committee reviewed language from BBS that requires course instructors to have an unrestricted license and prohibits a BBS licensee from being a continuing education course instructor while on probation. Language for standards and qualifications of continuing education instructors of several other health care boards was also reviewed, this included: the Speech-Language Pathology and Audiology Board, Board of Registered Nursing, and Board of Vocational Nursing. Ms. Michel reported the Committee likely will provide a recommendation to the Board after its next meeting.

Kim Kirchmeyer asked that if the Board takes steps to implement this regulatory change into its Disciplinary Guidelines it should also consider editing or modifying its continuing education requirements for instructors likewise. Ms. Kirchmeyer also asked that the Committee or Board consider prohibiting a probationer from teaching CE for the full term of the probation term, not just the first year of probation.

C. Review of pending amendments to the Board's Disciplinary Guidelines and consideration of recommending changes to the Board.

Ms. Michel reported the pending amendments to the Board's Disciplinary Guidelines were reviewed and tabled for discussion at a later date.

D. Selection of 2011 meeting dates/locations.

Ms. Michel reported the Enforcement Committee likely would be meeting again in April; an exact date would be determined.

9. Education/Outreach Report (B. Tanberg)

Ms. Tanberg reported the committee met on February 24, 2011, and the meeting materials have been provided to Board Members to review. Committee Members in attendance were Diane Mayfield, Danielle Meglio, and Deedee Clark.

A. Review and discussion of the Education/Outreach Committee’s Roles and Responsibilities and consideration of recommending changes to the Board.

Ms. Tanberg stated the Committee reviewed its roles and responsibilities and will keep this as an open item for future discussion.

- ❖ Ms. Tanberg moved to accept the Education/Outreach Committee’s “Roles and Responsibilities” document as presented.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

B. Discussion regarding development of marketing plan and materials to increase participation in Expert Reviewer and Expert Witness Programs.

Ms. Tanberg reported that the Committee discussed increasing awareness of the Expert Reviewer and Expert Witness programs and strategies to increase participation by practitioners. One strategy is to establish a service period to alleviate any concerns by a candidate that serving in this capacity would be too time-consuming. Another strategy is to provide information on the Board’s website that would educate and clarify what an expert’s role is, explain that an expert can decline cases, and an expert would not be asked to render an opinion on a friend/colleague. Ms. Tanberg also indicated that Committee Members can work with staff on a case-by-case basis to identify potential candidates that possess the experience necessary to render an opinion on a particular case.

- ❖ Ms. Tanberg moved to decrease the years of experience required for an Expert Witness from 15 years to 10 years.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

Ms. Tanberg indicated the title “Expert Reviewer” needed clarification. Ms. Tanberg reported that the Committee was unaware that Expert Reviewers evaluated applications for advanced practice approval and review post-professional coursework submitted for approval by educational providers.

- ❖ Ms. Tanberg motioned for the Board to change the title “Expert Reviewer” to “Advanced Practice Reviewer”.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

Ms. Tanberg indicated the Committee also believed that the hourly pay for Advanced Practice Reviewers should be the same as Expert Witnesses. The rationale behind the recommendation was that an increase may help get more practitioners interested in providing this vital function and both roles require experience, education and specific expertise.

- ❖ Ms. Tanberg moved to increase the hourly pay for Advanced Practice Reviewers from \$45 to \$75 to match the rate of Expert Witnesses.

Roll Call Vote

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| Mary Evert | Aye |
| Linda Florey | Aye |
| Luella Grangaard | Aye |
| Kathay Lovell | Aye |
| Nancy Michel | Aye |
| Bobbi Jean Tanberg | Aye |

- ❖ The motion carried unanimously.

C. Discussion and development of consumer-related informational brochures.

Ms. Tanberg reported that the Committee reviewed several documents, including other OT licensing boards and other California healthcare boards. The committee agreed that rather than starting from scratch Ms. Tanberg would contact the American Occupational Therapy Association (AOTA) to see if an arrangement can be made for information be provided to the Board or link information on AOTA’s website to the Board’s website.

Ms. Tanberg indicated that at its next meeting the Committee will be developing a document on the role of the licensing Board in protecting consumers.

Ms. Evert suggested that the Committee might want to look into the possibility of linking with other national websites that are occupational therapy related.

D. Discussion regarding holding Board and committee meetings that are accessible and informative.

Ms. Tanberg indicated that due to time constraints, this item was tabled for the next Education/Outreach Committee meeting.

E. Selection of 2011 meeting dates/locations.

The Committee selected the following meeting dates for the remainder of the year: June 2, August 3, and November 10. All future meetings will be held via teleconference rather than in-person.

F. Agenda items for next meeting.

Ms. Martin to provide information on podcasts, draft Facts Sheets and FAQs regarding the Expert (Advanced Practice) Reviewers and Expert Witnesses, provide data regarding the number of cases sent for review by Expert Witness and the number of cases that went to court, and provide the Committee a copy of the Board's Disciplinary Guidelines.

10. Discussion regarding Moscone-Knox Professional Corporation Act and the implication regarding healing arts licensees being employed by professional medical corporations.

The Professional Corporations Act identifies health care licenses that can form professional corporations. Ms. Martin indicated the material provided is informational and occupational therapists are not included in the Act. Ms. Martin reported that DCA will be providing a legal opinion about this issue. Ms. Martin indicated she will have more information after a meeting that is scheduled with DCA on March 11, 2011.

11. Executive Officer's report. (H. Martin)

A. Revenue and expenditure information.

Ms. Martin provided a newly formatted Executive Officer report that will be provided in the Board meeting materials. This included current revenue and expenditure information and a 10-year fund condition.

B. Personnel updates.

Ms. Martin reported the Board currently has only 10 staff. Vacancies include 1.5 permanent positions, 1.0 limited term positions, and 3.0 vacant two-year limited positions that cannot be filled due to the hiring freeze.

C. Legislation update.

Ms. Martin indicated she will be seeking an author(s) for the Board's legislative proposals.

D. Other informational items.

Ms. Martin reported unlicensed practice remains an issue. Ms. Martin indicated she has been in contact with the Department of Education to try and coordinate a joint letter that will educate school administrators to check the licenses of individuals providing occupational therapy services in the schools. Board Members were advised of a law that requires them to attend Sexual Harassment Training. Ms. Martin, Mary Evert, and Luella Grangaard will work on updating the Board's Strategic Plan to bring to the Board at a later date. Ms. Martin referenced material provided regarding the Patient Protection Affordable Care Act. Ms. Martin referenced memo from DCA regarding the

implementation of AB 2699 which allows practitioners from another state to serve as volunteers at certain free health care events; proposed regulatory language will be prepared and brought before the Board for approval. Ms. Martin referenced the Enforcement Performance Measures reported to DCA for the period October 1 - December 31, 2010.

12. Regulations Update. (H. Martin)

- A. Title 16, Division 39, CCR Section 4123 - Limited Permit; 4125 - Representation.**
- B. Title 16, Division 39, CCR Section 4141 - Assessment of Administrative Fines; 4145 – Public Disclosure.**
- C. Title 16, Division 39, CCR Section 4150 - Definitions; 4151- Hand Therapy; 4152.1 - Use of Topical Medications; 4153 - Swallowing Assessment, Evaluation or Intervention; 4154 - Post Professional Education and Training; and 4155 - Application for Approval in Advanced Practice Areas**
- D. Title 16, Division 39, CCR Section 4147 - Disciplinary Guidelines.**

Ms. Martin referenced the Regulation Update Report tracking the status of the above-mentioned proposed Regulations. Ms. Martin also presented a report that was sent to the Office of Administrative Law regarding the implementation of regulations for statutes passed in 2010 and for statutes passed prior to 2010.

Jennifer Snyder asked for information on the regulatory approval process. Ms. Snyder then asked that the Board place CCR 4123 – Limited Permit; 4125 – Representation on a future agenda to discuss methods the Board will disseminate information regarding the use of the initials “OTR”.

13. Enforcement data and reports. (H. Martin)

Ms. Martin referenced the Enforcement Statistical Report, Citation Report, and Probationer Roster. Board members had no questions.

14. Public comment session for items not on the agenda.

There was no public comment pertaining to items not on the agenda.

15. Agenda Items for Next Meeting – Thursday, June 16, 2011

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

At 2:04 p.m. the Board entered into Closed Session to deliberate on two disciplinary decisions.

At 2:29 p.m. the Board returned to Open Session.

16. Adjournment.

At 2:30 p.m. the Board Meeting was adjourned.