



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

**Thursday, November 13, 2014**

### Board Member(s) Present

Richard Bookwalter  
Jeff Ferro  
Linda Florey  
Kathay Lovell  
Nancy Michel  
Denise Miller  
Sharon Pavlovich

### Board Staff Present

Heather Martin, Executive Officer  
Norine Marks, Legal Counsel  
Jody Quesada, Office Technician

### **9:00 am - Board Meeting**

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

The meeting was called to order at 9:06 am; all Board members were in attendance, and a quorum was established.

2. President's remarks.

President Denise Miller offered thanks to the Governor's Office for the recent appointments that resulted in a full Board. Ms. Miller also expressed her thanks to Executive Officer Heather Martin and Board staff for their efforts.

3. Board member updates/activities.

Kathay Lovell commented that her family's recent personal experiences with occupational therapists were remarkable and she gained an even greater level of appreciation for the profession.

Richard Bookwalter attended the Occupational Therapy Association of California (OTAC) conference and attended a great session on fall prevention.

Nancy Michel reported that she had been busy traveling.

Linda Florey reported that she had recently traveled to Africa.

Sharon Pavlovich attended the OTAC conference and attended a great session on telehealth offered by Tammy Richards. Ms. Pavlovich reported that she was also invited back to the Harvard Macy Institute to serve as a mentor.

Jeff Ferro reported that he had been doing a lot of traveling for work.

President, Denise Miller reported that she attended the OTAC conference and attended sessions on fall prevention, chronic heart disease and other chronic diseases.

President Miller welcomed the members of the public to the Board meeting.

Joyce Fries, occupational therapist (OT) and representative of the California Council of Fieldwork Educators.

Mary Evert, OT and past Board President, reported that she is enjoying retirement and meeting fellow occupational therapists all over the world.

Alberto Stevans, OT.

4. Approval of the amended February 6, 2014, Board meeting minutes.

Heather Martin reported the minutes were amended to reflect an updated list of Board members in attendance at the meeting.

Linda Florey asked that Board staff amend page 4, Item 10, to reflect that Dr. Guy McCormack is the Vice President of the Occupational Therapy Association.

Supervising Legal Counsel Norine Marks asked that Board staff amend page 5, Item 13, to read "Legal Counsel Norine Marks offered that the Board of Psychology has a two year timeframe in place for prohibition of a personal relationship after treatment."

- ❖ Linda Florey moved to approve the February 6, 2014, Board meeting minutes as amended.
- ❖ Nancy Michel seconded the motion.

Jeff Ferro, Kathay Lovell and Richard Bookwalter abstained.

No Public Comment

**The motion was adopted.**

5. Approval of the June 24, 2014, Board meeting minutes.

- ❖ Kathay Lovell moved to approve the June 24, 2014, Board meeting minutes as presented.
- ❖ Richard Bookwalter seconded the motion.

Nancy Michel abstained.

No Public Comment

**The motion was adopted.**

6. Report on Pending Rulemaking files, California Code of Regulations, Title 16, Division 39:
  - Section 4151, Hand Therapy and Section 4152, Physical Agent Modalities;
  - Section 4161, Continuing Competency; and
  - Section 4170, Ethical Standards of Practice.

Public Comment

Mary Evert suggested that “change of ownership” be added to “closure” or “sale” of a private practice as possible scenarios affecting patient record retention in the pending regulatory amendments: process not yet started section.

President Miller suggested that “inherited” be added as well.

7. Discussion and consideration of adopting proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.

Legal Counsel, Norine Marks asked the Board members to clarify whether the factors outlined in the proposed modified text in California Code of Regulations (CCR) Section 4170 (a)(1) could and would affect the way an occupational therapist practices.

The Board members decided to add “residence” back in to CCR Section 4170(a)(1) because it is important to the delivery of continued care.

Public Comment

Mary Evert commented that she was in favor of the proposed language.

Ms. Marks asked that the proposed modified text in CCR Section 4170(b)(2)(A) be reviewed by the Board members for grammatical reasons.

Public Comment

Mary Evert commented that the section in question would read clearer with additional punctuation.

The Board came to the consensus that CCR Section 4170(a)(1) should read as follows:

(1)An occupational therapy practitioner shall consider how a client’s or patient’s economic status, age, ethnicity, race, disability, sexual orientation, gender, gender identity, religion, residence, or culture, impact health care practices and incorporate these considerations in the provision of his or her services.

The Board came to the consensus that CCR Section 4170(b)(2)(A) should be separated in to two sections effectively making 4170(b)(2)(A) and 4170(b)(2)(B) subsequently renumbering the section that begins with the word “Bartering” to section 4170(b)(2)(C). At the direction of the Board the sections should read as follows:

(2)Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, or supervisor, and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity, including avoiding:

(A) Any sexual relationship or activity, even if consensual, with any recipient of service, including any family or significant other of the recipient of services, and

(B) Any sexual relationship or activity, even if consensual, with any student or research participant, under direct supervision, and

~~(B)~~ (C) Bartering for services or establishing any relationship to further one’s own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.

- ❖ Kathay Lovell moved to issue a fifteen (15) day notice of the proposed modified text as amended.
- ❖ Richard Bookwalter seconded the motion.

No Public Comment

**The motion was adopted.**

- ❖ Nancy Michel moved to grant authority to the Executive Officer to adopt the modified text in the absence of any negative comment and to make technical, non-substantive changes.
- ❖ Jeff Ferro seconded the motion.

No Public Comment

**The motion was adopted.**

8. Discussion and consideration of amending Title 16, CCR Section 4172, Standards of Practice for Telehealth.

Executive Officer Heather Martin asked the Board members to review the current language of CCR Section 4172 for clarity, keeping in mind the letter submitted by Mr. Allan D. Jergesen in which he asks for clarification on the term 'informed consent' as it relates to telehealth.

After a lengthy discussion, the Board members suggested amending CCR Section 4172(b) to read as follows:

(b) An occupational therapist shall inform the patient or client about the use of occupational therapy services via telehealth and obtain consent prior to delivering those services, consistent with Section 2290.5 of the Code.

- ❖ Richard Bookwalter moved to approve the amended language of CCR Section 4172(b).
- ❖ Linda Florey seconded the motion.

Public Comment

Mary Evert stated that simply removing the word 'informed' is clear enough.

Patricia Nagaishi stated the words 'use of' are not necessary.

**The motion was adopted.**

- ❖ Nancy Michel moved to not hold a hearing on the amended language unless a request from the public is made.
- ❖ Sharon Pavlovich seconded the motion.

No Public Comment

**The motion was adopted.**

9. Discussion and consideration of request to provide FAQs on the Board's website regarding providing occupational therapy services via telehealth.

The Board members reviewed the proposed telehealth FAQs provided by OTAC and suggested clarifying edits and removing some information altogether.

Public Comment

Patricia Nagaishi acknowledged the redundancy in the draft copy and stated that the document was meant to be a springboard for the Board's final product.

President, Denise Miller thanked OTAC for the document and directed Board staff to make the requested changes and add the information to the Board's website.

10. Discussion and consideration of request from California Fieldwork Council to increase the number of PDUs earned for supervising Level II students completing their Level II Fieldwork.

Heather Martin reviewed the correspondence submitted to the Board by the California OT Fieldwork Council regarding increasing the amount of professional development units an occupational therapist can earn for supervising a Level II fieldwork student.

Linda Florey and Sharon Pavlovich are in favor of an increase.

Public Comment

Joyce Fries suggested that the Board should adopt the National Board for Certification in Occupational Therapy (NBCOT) rule.

- ❖ Nancy Michel moved to increase the PDUs and delegate the Executive Officer to work with the Adhoc committee and bring back proposed language to the next meeting.
- ❖ Sharon Pavlovich seconded the motion.

Richard Bookwalter, Sharon Pavlovich and Joyce Fries volunteered to work on the proposed language. The meeting will be noticed as required to allow the opportunity for public input.

**The motion was adopted.**

11. Discussion and consideration of the possibility of AOTA/ACOTE amending the academic requirements of an educational program required for licensure.

Denise Miller requested mindful dialog from the Board members and reminded them that no position is required at this time.

Discussion ensued and it was recommended that developments be monitored, an Adhoc committee established and the topic be added to future Board meeting agendas for further discussion.

12. Discussion and consideration of Legislative Proposals for 2015 legislative session

- a) Amend Business and Professions Code section 2570.2

- ❖ Nancy Michel moved to approve the language as presented.
- ❖ Sharon Pavlovich seconded the motion.

**The motion and the second were rescinded.**

Public Comment

Patricia Nagaishi asked if the word evaluation should be included with assessment in Section (k) midway through the paragraph.

President, Denise Miller asked that Executive Officer, Heather Martin bring back the topics of Business and Professions Code Section 2570.2(k) and 2570.3(d) to a future meeting.

Alberto Stevans stated that he was not allowed to participate in a wound care seminar because he was told by a physical therapist that occupational therapists are not allowed to perform wound care.

Executive Officer, Heather Martin responded that the laws and regulations do not specifically state that an OT/OTA can perform wound care but it is implied in the California Code of Regulations(CCR) Section 4152.1, which states that an occupational therapist approved to use Physical Agent Modalities (PAMs) can use topical medications etc...”

Mr. Stevans requested that wound care be added to the scope of practice. Ms. Martin asked Mr. Stevans so submit his question(s) in an email to the Board and indicated that she would then respond to him by email.

b) Amend Business and Professions Code section 2570.32

Ms. Martin referenced the language in Business and Professions Code section 2570.32 and presented similar language from nine other healthcare boards, so the Board members can see how other boards address the issue of accepting a petition for reinstatement by a petitioner on court imposed probation. Discussion amongst legal counsel and the Board members ensued.

- ❖ Nancy Michel moved to direct staff to draft and bring back regulatory language for consideration that addresses the variables of when the petition would not be heard by the Board.
- ❖ Sharon Pavlovich seconded the motion.

No Public Comment

**The motion was adopted.**

c) Add Business and Professions Code sections 2570.33 and 2570.35

Ms. Martin discussed employers’ reluctance to report employees due to liability issues. The Board members indicated that this could be an important public protection tool.

- ❖ Nancy Michel moved to authorize Executive Officer, Heather Martin to find an author for the legislative proposals.
- ❖ Kathay Lovell seconded the motion.

Public Comment

Mary Evert commented on the difficulty of tracking a suspension or termination when it occurs in a different state. Ms. Evert stated that the Boards need to make an effort to be transparent and forthcoming in order to protect the public.

**The motion was adopted.**

**Member of the public, Susan Harris, OT, joined the meeting.**

13. Addition of policies to Board Administrative Manual: Board to hear a contested case when an individual has been denied a license based upon allegations that he or she has practiced without a license for a period of more than one year; Board to hear a contested case when

a licensee has been issued a citation for practicing on an expired license for more than one year; and mail-ballot policy to discuss decisions in upcoming closed session.

Heather Martin stated that she added this item to the agenda so that she could provide the policies in writing as a reference tool for the Board members as they were not included in the Board member administrative manuals that were recently sent to the new Board members.

14. Enforcement data and reports

- a) April 1 – June 30, 2014
- b) July 1, 2013 – June 30, 2014
- c) July 1 – September 30, 2014

Ms. Martin reviewed the supplied reports; the Board members had no questions.

15. Executive Officer's Report.

a) Operational Report

Ms. Martin reported that the Board staff continues participation in the mandatory BreEZe design and development meetings, there has been a surge in initial license applications received due to graduations, and the loss of an enforcement analyst resulted in the promotion of an internal candidate, effective December 1, 2014.

b) Budget Update

Ms. Martin reported the Fiscal Year 2013/14 closed with annual revenue in the amount of \$1.147m received and an annual expenditure in the amount of \$1.456m. The outstanding \$2m general fund loan was repaid along with an additional \$82k in interest. Ms. Martin stated that Board staff will request a deficiency to augment budget line items for the Attorney General's office and the Office of Administrative Hearings if and when needed.

c) BreEZe Update

Ms. Martin reported that Board staff signed off on the approval of Part 1 deliverable and Part 2 deliverable will be submitted to the BreEZe vendor on November 14, 2014.

Ms. Martin referred to the proposed survey for Health Licensing Entities and the Board members asked that changes be made to the 'work setting' section. The suggestions were that regional center, mental health, school systems, CCS and community based practice be added to the section.

d) Strategic Planning Update

Ms. Martin reviewed the Strategic Planning process. Ms. Martin informed the Board members that availability and timeframe would need to be decided during discussion of agenda item 16.

e) Other Informational Items

Ms. Martin provided performance measures for the last four fiscal years and she reported that the Board is on target.

16. Selection of 2015 meeting dates.

The tentative selections of Board meeting dates are as follows:

March 5-6, 2015

June 3-4, 2015  
September 17-18, 2015  
November 19-20, 2015

The Board members agreed to January 29-30, 2015, for the Strategic Planning session, to be held in Sacramento, subject to availability of DCA staff.

With the exception of the Strategic Planning meeting, the second day of each proposed Board meeting is firm and the first day will be on an as-needed basis for hearings.

17. Annual Election of Officers.

- ❖ Kathay Lovell moved to nominate Denise Miller for President.
- ❖ Nancy Michel seconded the motion.

**The motion and the second were rescinded.**

- ❖ Nancy Michel moved to nominate Denise Miller for President, Kathay Lovell for Vice President and Linda Florey for secretary.
- ❖ Richard Bookwalter seconded the motion.

There were no other nominations.

No Public Comment

**The motion was adopted.**

18. Discussion Regarding Proposed Agenda Items for a Future Meeting.

- Discussion and consideration of the process and procedures of Board staff when issuing administrative citations.
- Discussion and consideration of records retention requirement if a business is closed or sold or if the practitioner is no longer in private practice.
- Entry level OTD issue
- Discussion and consideration of amending Business and Professions Code Sections (BPC) 2570.2(k) and 2570.3(d).
- Draft language to implement provisions of BPC 2570.32.

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

Alberto Stevans, OT, asked if an aide working in a skilled nursing facility could treat HMO patients.

Sharon Pavlovich stated that aides cannot bill for the delivery of skilled services.

Richard Bookwalter stated that aides cannot progress or monitor progress of a patient.

20. The Board convened in CLOSED SESSION at 4:26 p.m., pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary matters.

21. The Board convened in CLOSED SESSION at 4:37 p.m., pursuant to Government Code Section 11126(a)(1) to discuss the annual evaluation of the Executive Officer.

The meeting adjourned at 5:07 p.m.