

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES OF PUBLIC MEETING

June 14, 2014

Reno, Nevada

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Members Present:	Eric Gerken, Ronald Tulak, Allison Stephens, Linda Frasier, Kittima Conrad
Members Absent:	None
Staff Present:	Loretta L. Ponton, Executive Director, Henna Rasul, Senior Deputy Attorney General
Public Present:	Paula Berkley; Crystal Hand, COTA

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The meeting was called to order at 10:35 a.m. by Eric Gerken, Chair. A roll call confirmed a quorum was present.

### **PUBLIC HEARING – LCB File No. R017-14**

Eric Gerken opened the Public Hearing. Loretta Ponton explained the purpose of the public hearing is to receive comments from interested parties regarding LCB File No. R017-14, proposed regulation of the Board of Occupational Therapy.

**Public Comment** – No public comments were submitted or heard.

The Public Hearing on LCB File No. R017-14 was closed at 10:38 a.m.

### **BOARD MEETING**

**Consideration of Public** Comments – LCB File No. R017-14 – No public comments were received or presented for consideration.

**Adoption of Regulations – LCB File No. R017-14** – Eric Gerken asked if there were separate charges for processing of an initial license as well as the license fee. Loretta Ponton responded there are two charges, the \$150 initial license processing fee is non-refundable and the license fee can be refunded if an applicant decides to withdraw their application.

Eric Gerken asked for clarification on page 8, paragraph 2 (b) regarding whether an occupational therapist must sign every note entered by an occupational therapy assistant. Loretta Ponton responded patient records, including notes, must be reviewed and signed by the OTR at least monthly; it was not the intent of the regulation to require every note to be signed independently. Ron Tulak added that it is not required by AOTA guidelines or industry practice; the skill and experience of the COTA would be taken into consideration; our regulations require documentation of supervision of at least one hour for every 40 hours worked. Eric Gerken stated the way it reads, it would be required; it says “each record” which could be interpreted to mean every entry.

Loretta Ponton advised the members that this paragraph was not revised in R017-14; the Board can make a change at this time if they wish. If the revision is non-substantial, as determined by the Legislative Counsel Bureau, the adopted regulation would move forward. If LCB determines the revision to be substantial, another public workshop and hearing would be required.

After further discussion, the language was revised to clarify the intent of the board; as a client record may be comprised of multiple entries, pages or documents. Sec 8 NAC 640A.250, 2(b) was revised to delete the word “each” and replace with the word “the” to read: “Ensure that ~~[each]~~ *the* record regarding a patient treated by the occupational therapy assistant or provisional licensee is ....”

Allison Stephens asked whether a late fee can be waived in hardship cases; Loretta Ponton affirmed circumstances are considered for financial hardships. Payment plans are the most common means to address financial hardships.

Loretta Ponton stated she has received several calls regarding spelling out the title on name tags and asked if the members would like to re-consider the language in Section 1. After discussion, it was determined that no changes would be considered.

Linda Frasier made the motion, seconded by Allison Stephens to adopt LCB File No. R017-14 as revised. The motion passed unanimously.

**Approval of Minutes** – Eric Gerken asked if there were any comments, revisions to the minutes of April 12, 2014. No revisions were noted.

Allison Stephens made the motion, seconded by Kittima Conrad to approve the minutes of the meeting of April 12, 2014 as presented. The motion passed with Ron Tulak and Linda Frasier abstaining.

**Fiscal Year 2015 Budget** – Eric Gerken asked Loretta Ponton to present. Loretta Ponton stated the budget was prepared based upon historical and projected revenue and expenses. There are some items that are non-reoccurring expenses which may require utilization of reserve funds, which has been included in the revenue budget. Revenue is projected to increase by approximately 10% due to the increased licensee numbers.

The budget includes a new contract with Paula Berkley and Associates for legislative services for two years; \$25,000 in FY 15 which covers the 2015 Legislative session at which the Board may be submitting a bill on telehealth or working in conjunction with others on telehealth issues, and \$10,000 for services in FY 16.

Loretta explained that operating expenses reflect an increase of 23% from FY 14, which includes the one-time costs of the office relocation, audit services and contract for legislative services. Loretta explained each line item and the detail of what comprised each expense item and answered questions from members on personnel expenses, lease expenses and moving costs; planned out of state travel and professional services.

Loretta reported that website IT services are pending as the current vendor has not provided documentation of compliance with state business licensing requirements. He has been notified his services will be discontinued as of July 1<sup>st</sup> and a solicitation for a new vendor will be conducted.

Eric Gerken asked Paula Berkley to explain what the legislative services contract includes. Paula explained that pre-filed bills begin in September; she will be reviewing all bills for applicability to the Board; representing the Board in contacts with Legislators regarding any issues that potentially arise. During the off session, she will follow several interim committees such as the Legislative Health Committee, Legislative Commission and sub-committee on regulations. Paula answered questions regarding how services would be billed explaining the proposal includes a flat rate for monthly services during the legislative session and hourly for actual services provided during the off year.

Allison Stephens made the motion to approve the FY 15 Budget including a 2 year contract with Paula Berkley for legislative services. Kittima Conrad seconded the motion. The motion passed unanimously.

**Legislative Report** – Paula Berkley reported she and Loretta attended the Health Interim Committee wherein a discussion was held on telehealth. The Committee has not forwarded the issue for a bill draft; however a bill on telehealth is being developed and sponsored by Mr. Oscarson, a copy of which is provided, which will be tracked to see if it would be appropriate for the Board to be included. In the meantime, a Board bill on telehealth will be developed and she will pursue a sponsor for the Board bill. Another option in the works is joining with the Nevada Hospital Association if they pursue a telehealth bill.

Eric Gerken asked if there is a potential that more than one bill on telehealth could be presented to the Legislature. Paula answered that there is a potential for four or five bills on telehealth.

Allison Stephens added that the Dean of the School of Medicine is also looking at the importance of telehealth; especially in the rural areas.

Discussion was heard regarding how multiple bills on the same issue are handled at the legislative session and how the Legislative Counsel Bureau incorporates new legislation into existing laws.

Allison Stephens stated that the words “telepractice” and “telerehab” are important; most definitions pertain to the medical profession. Discussion was held regarding the use of general terminology which would give more flexibility and that specificity is not always good as it is limiting. Loretta Ponton stated that “telehealth” seems to be the most common generic terminology.

Eric Gerken asked about the requirement for state licensure in the proposed language. Loretta Ponton explained the language is Mr. Oscarson’s and not the Board’s.

Ron Tulak questioned whether reimbursement plays a role and whether telehealth is being used by occupational therapists in this state. Discussion continued with Allison questioning whether reciprocity through a possible interstate consortium should be addressed in the legislation.

Paula stated that any issues that the Board wants to be addressed in a telehealth bill can be addressed in writing and submitted to LCB for determination for incorporation into a general telehealth bill.

After further discussion, there was a general consensus that the Board supports the concepts outlined in Mr. Oscarson's document on telehealth.

The meeting was recessed at 12:15 p.m. for lunch

The meeting reconvened at 1:35 p.m. A quorum was confirmed present.

**Policy 12 – Patient Abandonment** – Eric Gerken asked Loretta Ponton to present. Loretta Ponton stated a new policy was developed to provide guidance in determining whether actions by an occupational therapy practitioner constitutes patient abandonment. The policy would provide guidance to staff when investigating a complaint and determining whether there was a violation warranting consideration of disciplinary action by the Board. Loretta explained that several inquiries have been received regarding whether specific actions would be considered patient abandonment or the actions would be employment issues between an employer and employee. Research of other states and regulatory boards was conducted and the policy being presented represents what could be considered best practices based upon that research.

Discussion was heard regarding the differences between employment issues and activities that may result in patient safety concerns. There was a consensus that the policy adequately covered the differences between abandonment and employment issues; and provided safeguards for licensees and clients when allegations of patient abandonment are received by the Board.

Allison Stephens made the motion, seconded by Ron Tulak to adopt Policy 12 – Patient Abandonment as presented. The motion passed unanimously.

Eric Gerken stated the Executive Director's Report will be heard next as Mr. Cage will not arrive for another 30 minutes for his presentation.

### **Executive Director's Report**

**Final Contract Payment – Lorylynn Ltd.** – Loretta Ponton stated that the contract with Lorylynn Ltd will end June 30, 2014, two months prior to the original contract end date. The contract has provision for an annual performance award based upon the prior years' service. Since the contract is ending early and services have been provided for 10 months since the last award, Loretta requested the Board consider a final contract payment of one-month's base contract amount which is equivalent to a pro-rated 10% performance award for 10 months service; there is sufficient authority in the contract to cover the payment as the contract is ending early.

Eric Gerken stated the normal annual performance review process has not been conducted. Loretta explained the contract is terminating early, prior to the annual period; the last review was done in September 2013. Eric asked the members if a performance review should be done to document the reason for the award. There was consensus that a discussion at this meeting would suffice to document rationale for any decision.

Allison Stephens stated she is comfortable with the payment; the only reason for the request is that the position is changing to employee status instead of independent contractor; there have never been any issues with performance.

Ron Tulak stated it has been well documented in past reviews the excellent services Loretta has provided; she has always gone above and beyond the minimum and has stepped up to the plate to resolves issues or problems, and she keeps operations running smoothly. He approves the request.

Allison Stephens added today is a good example with the policy the Board approved today. Loretta identified an issue and took the initiative to conduct the research, determine best practices and then address the issues by development of a new policy that provides comprehensive guidelines and was approved without change. Allison stated Loretta is always proactive and everything is always well laid out; she believes in rewarding performance.

Eric Gerken asked if there were any other discussion. Hearing none, called for a motion.

Allison Stephens made the motion, seconded by Linda Frasier to approve a final contract payment of \$6,250, one month's base pay, in recognition of services rendered. The motion passed unanimously.

Executive Director's Report - Loretta Ponton directed the members to the written report. Loretta stated updated statistics on license renewal as of this date has 151 licenses pending, 41 have renewed since the report date. The late period for renewal has been extended through July; historically 75 to 100 do not renew annually. The original notice of license renewal sent by automated e-mail was not updated to reflect the extension of the late period; however reminder renewal notices have been sent to all licensees with the updated information.

The financial statements for the 3<sup>rd</sup> Quarter of FY 2014 were summarized; revenue is expected to exceed budget and expenditures will be below budget with the difference being made available to carry over for future years' costs. Two (2) CD's matured and have been reinvested.

Loretta Ponton reported on the pending move of the Board administrative office; the NBCOT conference to be held in Alexandria, Virginia confirming board member attendance stating she participated in the planning committee for the conference and that Eric Gerken will be a panel presenter at the conference; and recruitment for a COTA board member has been initiated.

Loretta stated that Linda Frasier and Allison Stephens terms are expiring December 31<sup>st</sup> and asked Linda to submit a letter to the Governor's Office if she is interested in reappointment. Allison is not eligible for reappointment having served two terms as the public member on the Board. Loretta asked members to help in the recruitment for a public member, stating they do not have to be from the health care industry, but it is helpful.

Eric Gerken stated it is great that Allison is involved in so many things; Loretta added that she has brought great diversity and knowledge to the Board.

Loretta stated that Ron Tulak has been the volunteer Board member for review of monthly financial information; when a new appointment is made, another member will be needed to

fulfill that function. After explanation of what is involved in the review, Kittima Conrad volunteered to take over the monthly financial review.

**Board Chair Report** – Eric Gerken asked if there were any ideas for future agenda items. Loretta Ponton asked that a discussion of a possible educational seminar for licensees be considered for the next agenda. The AOTA has recently updated the Practice Framework; the Board in prior years provided free continuing education training for licensees and this might be a good time to offer a training again. Linda Frasier stated she could help out with this subject also. Eric Gerken stated it may be useful to video and offer on the website to make it easy to access.

Eric Gerken stated the remaining Board schedule for the year has the next meeting on September 20<sup>th</sup> in Las Vegas; Loretta added November 19<sup>th</sup> is scheduled for teleconference to approve the audit report. After discussion, the first meeting in 2015 was scheduled for February 7<sup>th</sup> in Las Vegas.

**Board Member Report** – Eric Gerken asked if there were any comments from Board members. Kittima Conrad stated there was an article on telehealth in the OT Practice magazine.

Eric Gerken stated Shaun Conrad from NBCOT has asked him to be on a second panel discussion on how boards deal with character issues. Loretta explained that during the conference planning session, she asked that this topic be considered. The Board has seen an increase in applicants reporting legal issues or infractions such as DUI's, minor in possession and misdemeanor convictions on applications. Loretta stated she thought it would be interesting to see how other state Boards handle self-reported legal issues or previous infractions. The Board currently does not have guidelines or specifics on what needs to come before the Board. This could be a possible Board policy topic. Eric Gerken asked Loretta to contact Shaun Conway to determine what he specifically needs for this topic.

**Legal Report** – Henna Rasul stated she had nothing new to report.

Eric Gerken recessed the meeting for a short break at 2:25.

Eric Gerken reconvened the meeting at 2:35

**Presentation – Veterans Licensure Reciprocity and Data Efforts – presentation by Caleb Cage, Director of Military and Veterans Policy**

Eric Gerken welcomed Mr. Cage, Director of Military and Veterans Policy.

Mr. Cage gave a presentation on the initiative called The Year of the Veteran created to support the veterans that will be transitioning back into the community over the next three years and also an initiative designed to allow licensure reciprocity. The Governor's office is creating generic legislation allowing licensing bodies throughout the state to do what they can to recognize veterans experience. Part of the legislation will affect all professional licensing boards by requiring the boards to include questions on their licensing application to address veterans' affiliation. This information would then also be required to be reported to the state.

Loretta Ponton stated concerns that as one of several independent Boards who have electronic licensing and regulatory programs, those programs would require changes to capture additional

information. In addition, one of the challenges Boards face with legislative mandates is that we are not part of the state's IT system, intranet system, for reporting which creates additional operational issues. There are financial impacts to these changes and reporting.

Loretta Ponton stated the Board has taken action to support the Governor's Executive Order on veterans, and has expedited processing of new applications for military veterans and family, and strongly supports initiatives to support veterans and families.

Eric Gerken asked when this would be effective. Mr. Cage stated it most likely would be October 2015 or later.

Loretta stated that any reciprocity legislation that would affect eligibility for licensure would be of concern to the Board.

**Public Comment** – Crystal Hand stated she was visiting and had no public comment.

**Adjournment** –Kittima Conrad made the motion, seconded by Linda Frasier to adjourn. The motion passed. The meeting was adjourned at 2:50 p.m.