

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES OF PUBLIC MEETING

January 21, 2012  
Las Vegas, Nevada

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Members Present:	Elizabeth (Liz) Straughan, Eric Gerken, David Tanabe, Ronald Tulak, Allison Stephens
Members Absent:	None
Staff Present:	Loretta L. Ponton, Executive Director, Henna Rasul, Senior Deputy Attorney General
Public Present:	Paula Berkley, Yvonne Randall

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The meeting was called to order at 9:03 a.m. by Liz Straughan, Chair. A roll call confirmed a quorum was present.

**Public Comment** – No Public comments were heard.

**Approval of the Agenda** – Dave made a motion, seconded by Eric to approve the agenda. The motion passed.

**Approval of the Minutes** – Liz asked if there were any comments or revisions to the minutes of the meeting of September 10, 2011. No comments or revisions were heard.

Eric made the motion, seconded by Ron to approve the minutes of the September 10, 2011 meeting. The motion passed.

Liz asked for comments or revisions to the minutes of the meeting of November 22, 2011. No comments or revisions were heard.

Ron made the motion, seconded by Allison to approve the minutes of November 22, 2011. The motion passed with Dave abstaining.

**Election of Chair and Vice Chair** – Liz asked for discussion and volunteers for the Chair and Vice Chair positions. Discussion of the roles and responsibilities of each position were heard including the role of the Chair in disciplinary hearings and the Vice Chair assuming the role of the Chair if the Chair cannot serve. Henna explained the Board always has the assistance of legal counsel to provide guidance.

Dave made the motion to appoint Liz Straughan as Chair, seconded by Eric. The motion passed with Liz abstaining.

Allison asked if an elected official could remain on the Board as she has filed to run for office. Loretta stated that Annalyn of the Governor's office stated that would not be an issue. Allison stated she would support Eric as Vice Chair.

Dave made the motion to appoint Eric Gerken as Vice Chair, seconded by Ron. The motion passed with Eric abstaining.

**Legislative Report** – Liz welcomed Paula Berkley who presented the Legislative Report from the 2011 legislative session.

Paula stated this last session the number of bills increased significantly. Paula summarized the challenges faced in the session; there were a lot of bills addressing transparency issues and open meeting laws; due to term limits, the session also had new legislators and new chairmen without experience in the legislative process. In addition, experienced state level leadership is being depleted through retirements and positions are hard to fill due to budget issues which will carry-over into the next legislative session.

Legislation was approved to establish the Sunset Subcommittee with the first boards having been selected for review. There are a number of other interim committees that will also be watched.

Most of the recommendations contained in the report are being addressed by the Board; in proactively addressing revisions to NRS, the Board should consider including occupational therapy in the definition of “providers of health care” in the Healing Arts chapter.

Eric asked for clarification on AB289 relating to exemption of health care professions. Paula explained that because the Board is not listed in the Healing Arts definition of “providers of health care”, the Board needed to be listed specifically as exempt, in this bill it relates to the Board of Dietetics licensing requirements.

Eric asked how the Board should address the recommendation to watch agendas and legislative subcommittees. Paula stated there are six or seven subcommittees that might want to talk about board issues and she receives those notices. Paula would watch agendas and consult with the Executive Director if any issue would seem to apply to the Board.

Eric made the motion, seconded by Allison to accept the Legislative Report as presented. The motion passed.

**Legislative Services Contract** – Loretta explained that Paula has been under contract for legislative services; the contract was extended to June 30, 2012 at no additional cost. Loretta reported that she and Paula met and went over what would be necessary to move toward the next legislative session, the pre-session activities, NRS bill draft process and services necessary to monitor and move our bill through the session. The proposal for legislative services reflects the outcome of that meeting.

Loretta explained the breakout of the services, costs and timeline contained in the proposal. The contract would be amended to increase the amount and extend the end date to July 31, 2013.

Allison made the motion, seconded by Eric to approve the contract proposal with Paula Berkley and Associates in the amount of \$ 32,500 and to extend the contract through July 30, 2013. The motion passed.

**NRS Bill Request Priorities** – Liz asked Loretta to present. Loretta explained that she and Paula went through all possible revisions to NRS and prioritized those sections presented in the attachment. The priority in the review was to strengthen the role of the Board and address the structural revisions necessary to solidify the Board’s functions. In prioritizing, changes that would be considered substantial or that could invoke controversy were given less priority; including the change to the definition of Occupational Therapy.

Loretta summarized the NRS listing and discussion was heard on each section presented:

NRS 629.031 Provider of Health Care definition - Allison asked if inclusion as a “provider of health care” would add additional requirements. After discussion it was a consensus that the Board should look at all NRS statutes referencing that section prior to making a decision.

NRS 640A.080 Board Terms– Liz commented the proposed language would accomplish staggered terms.

NRS 640A.110 – Eric commented about the generality of the language in paragraph 7. Ron suggested adding reference to protecting the health and safety of the public.

No comments were heard on the updating of references.

NRS 640A.230 Supervision of Technicians – Allison asked if “directly supervise” should be defined. It was determined there is a definition in the regulations.

640A.170 Temporary Licenses – Discussion was heard regarding the clarification of temporary licenses to delineate two situations in which a temporary license may be obtained; a temporary provisional license for new graduates and a temporary license for traveling therapists licensed in another state. Allison suggested adding “and in good standing” to the requirement for a temporary license.

Ron commented that limiting supervision by OTR’s who are new graduates should be addressed. Liz stated that access to services in rural areas that have limited resources may be impacted if limitation requirements are considered; Allison added that it may be discriminatory if the individual has the same qualifications as an experienced OTR. After further discussion, it was a consensus to defer further discussion to another time.

NRS 640A.120 Fieldwork Experience – no comments were made.

NRS 640A.090, NRS 640A.100; NRS 640A.180 – no comments were made.

Clerical references and Definition of Occupational Therapy – Discussion was heard regarding the impact of changing the definition of OT. There was a consensus to include a draft revision of the definition of occupational therapy for consideration.

Allison made the motion, seconded by Eric to direct staff to move forward to prepare bill draft language for all NRS sections identified for consideration at the next Board meeting. The motion passed.

Liz adjourned the meeting at 10:50 a.m. for lunch break.

Liz called to the meeting back to order at 11:35 a.m. All members were present.

**Request for Waiver, Provisional Licensee Monique R. Davidson, COTA** – Liz recused herself from this item due to professional knowledge of the licensee and the supervising OTR and turned the meeting over to Vice Chair, Eric Gerken.

Loretta provided a summary of the circumstances which predicated the request for waiver. Discussion was held regarding provisional license requirements and the completion of probationary hours. Henna advised the Board the law and regulations do not have a provision for a waiver of completion of provisional hours.

Dave made the motion, seconded by Allison to deny the request for waiver. The motion passed with Liz abstaining.

**Disciplinary Matters** – Loretta explained the two cases were complaints filed with the Board. After review and consultation with legal counsel, the complaints were not found to be valid.

Ron made the motion, seconded by Eric to dismiss case files C 10-05 and C 10-06. The motion passed.

**License Application – Paul Vallarta, COTA** – Liz stated Mr. Vallarta will be participating by telephone. Mr. Vallarta joined the meeting by speaker phone.

Loretta provided a summary of the application submitted and Statement of Issues regarding Mr. Vallarta's application for licensure in Nevada. Loretta also stated an excerpt from the board's guidelines for disciplinary action regarding factors to be considered.

Liz asked Henna to provide the Board procedural direction for the review of Mr. Vallarta's application. Henna summarized the legal authority for the Board's review of Mr. Vallarta's application and read the provisions of NRS 640A.200; NRS 640A.350 and NRS640A.120.

Liz summarized the Statement of Issues listing of disclosed prior legal convictions and the denial of certification by the State of California. Liz also summarized the non-disclosure of a second denial of certification by the State of California and an additional misdemeanor conviction. Liz asked for comments or discussion from the Board.

Allison asked Mr. Vallarta why the Board should consider his license application. Mr. Vallarta stated he is committed to the profession and feels he has taken the appropriate actions to remediate the issues.

Liz asked if he has joined any remediation groups such as AA or counseling. Mr. Vallarta responded he has completed all the court ordered courses.

Ron asked Mr. Vallarta if his driver's license was revoked as a result of the 2010 DUI. Mr. Vallarta responded he has a current license.

Dave asked if he has practiced as an occupational therapy assistant. Mr. Vallarta responded he is working as a technician but truly wants to work as a COTA; he worked as a COTA prior to California requiring certification. Mr. Vallarta explained he didn't know about the requirement to become certified in 2003.

Dave asked about the omission of a misdemeanor; Mr. Vallarta responded the conviction was dismissed and he didn't believe it was required to be reported. Dave asked if Mr. Vallarta agreed this would warrant a concealment of a material fact.

Liz thanked Mr. Vallarta for his comments and asked the Board members if they have any further comments; stating Mr. Vallarta failed to disclose the misdemeanor conviction in 2001 and the second denial of certification by the California Board of Occupational Therapy.

Eric stated he sees a consistent pattern of mistakes and poor judgment. Allison stated she understands Mr. Vallarta's error in not including all pertinent information; however she is concerned with the pattern of poor judgment and repeat offenses. Dave expressed concern with poor judgment over a period of several years and was not comfortable with having Mr. Vallarta practice occupational therapy in Nevada. Ron stated a more current reference would have been helpful in supporting his application. Liz expressed concerns that Mr. Vallarta is on current probation and that alcohol is a disease process that needs a support system throughout the life-span. Liz continued that she does not see a demonstrated effort to address the issues outside of the court ordered interventions; and is concerned about the public's safety.

Eric made the motion, seconded by Dave to deny the license application of Paul Vallarta, COTA based upon the history of poor judgment reflected in the misdemeanor convictions and omission of pertinent information. The motion passed.

**Executive Director's Report** – Loretta directed the members to the written report in the board packet. Loretta provided as a hand-out additional financial reports as of December 31, 2011. There were no questions on the financial statements.

Licensure Statistics – Loretta summarized the license activities providing a comparison to the previous year statistics.

Monitoring – Loretta stated the two pending administrative complaints issued for non-compliance with CE requirements have been resolved. The on-line ability to update records has improved compliance with COTA and OTR supervisory requirements. Eric asked what is required to be submitted for the COTA and OTR audits. Loretta explained the supervisory log is required for the COTA audit and verification of supervisory status is required for the COTA and OTR audits. Loretta summarized the GL Suite automated audit selection process stating she also has the ability to add additional records for audit.

Disciplinary Actions - Loretta reported she has received one new complaint which is still in the investigative state.

Transitional Assistance – Loretta reported the Board of Examiners for Audiology and Speech Pathology has successfully moved their administrative office and has selected Lorylynn Ltd. to provide Executive Director Services.

Cost Allocation and Agreement – Loretta reported the Board of Examiners for Audiology and Speech Pathology is requesting permanent co-location with the Board administrative office. The Cost Allocation and Agreement represents a pro-rated fee for co-location at \$350.00 per month from February 1, 2012 through January 31, 2013. Loretta explained the rationale for the cost allocation, what is covered under the agreement and what direct costs would be the responsibility of each Board. Future periods will be assessed based upon actual costs and level of usage determined annually.

Allison made the motion, seconded by Eric to approve the Administrative Offices Cost Allocation and Agreement and the rate for the period February 1, 2012 through January 31, 2013. The motion passed.

Legislative Reporting – Loretta reviewed the AB-1 financial report submitted to the Legislative Counsel Bureau for the period April 1, 2011 through September 31, 2011.

Other Items – Loretta reported on the report to the Governor was submitted on December 15<sup>th</sup>. Loretta reported that Ron's reappointment to the Board has not been formalized; however, Annalyn at the Governor's office stated they have prioritized appointments and Mr. Tulak would serve until the official appointment can be made.

Loretta reported the GL Suite system is in process of being enhanced to allow the save and print of on-line renewal applications and also a new project is in process which will allow licensees to print their licenses and license cards online.

**Report from Board Chair** – Liz stated there is a conflict with the April 28<sup>th</sup> meeting date. Discussion of available dates was heard with a consensus that March 17<sup>th</sup> would be the next scheduled Board meeting in Reno; with the June 23<sup>rd</sup> meeting in Reno, and the September 15<sup>th</sup> meeting in Las Vegas.

Liz stated legal services were requested as a future agenda item. Loretta explained it was her understanding the board wished to discuss what services would be requested of the Attorney General's office and what legal services might be necessary to address other items such as NRS and NAC revisions.

Liz reported that investments were also requested to be placed on a future agenda item. Eric stated he requested this item as he has a contact that indicated there are other options available to the Board other than CD's that could provide a better return. Loretta stated one CD has just matured and another will mature early February. It was a consensus that a presentation on investment options would be beneficial.

Liz stated a presentation on the Open Meeting Law might also be beneficial with all the new changes. Henna stated she would contact George Taylor to inquire about scheduling a presentation; and possibly to invite other local boards to a presentation.

Eric asked if the recruitment of new members could be a possible agenda item.

**Report from Legal Counsel** – Henna stated she had nothing else to report.

**Public Comment** – Paula stated she was pleased to work with the Board.

**Adjournment** –Allison made the motion, seconded by Ron to adjourn. The motion passed and the meeting was adjourned at 1:45 p.m.