

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES OF PUBLIC MEETING

May 30, 2015

Reno, Nevada

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Members Present: Eric Gerken, Kittima Conrad, Linda Frasier, Deena Spaulding,  
Stacey Henderson  
Members Absent: None  
Staff Present: Loretta L. Ponton, Executive Director,  
Henna Rasul, Senior Deputy Attorney General  
Public Present: Paula Berkley

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The meeting was called to order at 11:02 a.m. by Eric Gerken, Chair. A roll call confirmed a quorum was present.

Eric Gerken welcomed Stacey Henderson as the new public member appointed to the Board, stating he has worked with Ms. Henderson in a previous employment and that she is a licensed physical therapist. Board members introduced themselves and provided a brief summary of their experience and practice areas.

**Public Comments** – No public comments were made.

**Board Orientation** – Loretta Ponton provided an overview of the structure of the Board including staffing and general operations; administrative requirements to include the State Administrative Manual, open meeting law, budget process and audits; Board policies; licensing and regulatory data collection system; roles and responsibilities of Board members referencing the Nevada Board and Commission Manual, Open Meeting Law Manual, administrative rule making process; explaining the difference between the Nevada Revised Statutes and Nevada Administrative Code. Loretta Ponton stated the Attorney General's Office provides a Board and Commission training annually and that all new members are encouraged to attend.

**Approval of Minutes** – Eric Gerken asked if there were any comments or revisions to the minutes of February 28, 2015. Hearing none, called for a motion.

Deena Spaulding made the motion, seconded by Kittima Conrad to approve the minutes of the meeting of February 28, 2015 as presented. The motion passed, with Stacey Henderson abstaining.

**Disciplinary Matters** – Eric Gerken asked Loretta Ponton to present.

Loretta Ponton stated the Board is requested to approve the Consent Decree in Case #AC14-01 with Ms. Madeleine Bodholdt, OTR License #0012. Ms. Ponton noted for the record that Ms. Bodholdt has executed a Waiver of Notice pursuant to the requirements of the Open Meeting Law.

The Consent Decree was distributed to members for review. Ms. Ponton explained that the terms of the Consent Decree were negotiated with the respondent; the initial complaint was filed by the Executive Director as a result of the findings of an audit of continuing education for 2014.

Linda Frasier made the motion, seconded by Kittima Conrad to approve the Consent Decree with Madeleine Bodholdt, License #0012, in Case No. AC14-01. The motion passed.

**Public Employees Retirement System** – Loretta Ponton stated that this item was being brought before the Board as an informational item, with possible action. The Board does not participate in the Public Employees Retirement System. There are approximately 15 licensing Boards that do participate and approximately 19 that do not per the listing on the PERS website.

The Attorney General's office forwarded correspondence received from PERS which indicates that state Boards' are required to be participating members, the AG's office indicated that "clients that aren't in PERS need to address the issue." There was no timeline provided, no direction has been provided by the AG's office and no correspondence or directive has been received from PERS regarding this issue.

The State Contractor's Board is the largest non-participating licensing Board and it is our understanding they do not agree with the determination. It is expected that the Contractor's Board would challenge any formal directive that they must participate.

Enrolling as a PERS participating employer would have financial impact to the Board; employer contributions are based on wages and range from 13.25% to 25.75% based upon whether the employer pays all or some of the retirement contributions. Contributions would be required for any employee working 1039 hours or more per year.

Other considerations are that Boards are self-supporting and not part of the state's budget and are exempt from the state personnel system; having authority to hire their own staff, establish their salaries and benefits. An additional consideration is that the decision to offer PERS benefits is not revocable; and there are numerous other public entities that are not participating employers.

Loretta stated it is her recommendation to wait and see and not make a change in personnel benefits to include PERS, to wait for a directive, other guidance or legal resolution.

Eric asked if the Board wished to offer PERS in the future, could they choose to do so. Loretta responded that yes, it is a Board decision which can be made at any time, or in the future. Loretta added that there is a case, the Dispensing Opticians Board, that opted into PERS and then after a couple of years tried to revoke that decision; and lost having to pay all the back contributions on behalf of their staff.

Eric stated that it appears there is a lot of things unclear in this regard, there has not been any directive. Discussion was heard regarding the impact on small boards; there was consensus that until this issue is clearer, it would prudent to not take any action at this time.

After discussion, Linda Frasier made the motion, seconded by Stacey Henderson to take no action at this time and retain the existing benefits for Board personnel. The motion passed.

**Fiscal Year 2016 Budget** – Eric Gerken asked Loretta to present the 2016 Budget. Loretta provided an overview of the line item expenditures; costs are included for Board sponsored seminars to be held in September. A detailed line item budget breakout and a comparison to FY 2015 budget.

Eric Gerken requested clarification on the out-of-state travel line item; Loretta responded it represent \$2,000 for 4 members for participation in any conferences they deem appropriate; Eric noted the reduction in the cost for the licensing software subscription which Loretta stated had been negotiated at a lower rate. Eric asked for clarification on the FY 15 net deficit of \$17,000; Loretta responded the Board approved using reserve funds, if necessary. The budget is the “authority” level for maximum expenses for the year. Historically, the Board has received sufficient funds to cover expenses and has not needed to use reserve funds.

Loretta directed the members to the cost sharing income line item indicating the amount represents the costs allocated to the Board of Examiners for Audiology and Speech Pathology; the amount represents shared costs; the cost allocation is based upon the state’s leasing services base for one FTE staff position.

Kittima Conrad made the motion to approve the FY 2016 Budget as presented; seconded by Deena Spaulding. The motion passed.

**Legislative Report** – Eric Gerken and the Board members recognized Paula Berkley and Loretta Ponton for their successful work in the 2015 Legislative Session and in particular their contributions to passage of AB 292 allowing practice by telehealth for Occupational Therapists.

Paula reported on the meetings that were held on telehealth and concerns that were heard which resulted in the telehealth bill - AB 292; the Board had their own bill in case there were problems with AB 292 being passed or if amendments were made that would affect occupational therapy. Dr. Hardy was the sponsor of the Board bill and he made several political moves to keep the bill alive.

Paula continued with a summary of the main provisions of the telehealth bill and also reported on the Legislative Session in general and the challenges faced due to new legislators political “anti-government” sentiments that affected the process.

Eric Gerken, stated he would like to move the Board Chair Report, discussion of the Board Retreat as the next agenda item prior to lunch.

**Board Chair Report** – Eric Gerken stated that he and Loretta have been discussing the Board Retreat and asked Loretta to summarize the ideas that have been discussed.

Loretta reported that the emphasis of the retreat would be Productivity Issues faced by Occupational Therapists and the end outcome would be to draft some guidelines for our practitioners which would be posted on our website. It is an issue facing all the therapies; an invitation has been extended to the Physical Therapy Board to participate with us in these discussions at our retreat; two members have agreed to participate. In invitation will also be made to the Speech Pathology Board.

Eric Gerken added that building on the national consensus statement would be good.

Loretta asked the members if they would like to have the retreat one day or two; mentioning that it is Hot August nights in the Reno area which may impact availability of rooms. Also a team building event would be nice as an after-hours activity.

Discussion of different venues was heard including an over-night option to hold the retreat at Lake Tahoe. The item was tabled until after lunch.

The meeting recessed for lunch at 12:35 p.m. and Eric Gerken reconvened the meeting at 1:48 p.m. A quorum was confirmed present.

Eric Gerken asked the members and staff to introduce themselves to Stacey Henderson and give a brief history of their practice and/or experience.

**Work Session - Continuing Education Regulations** – Eric Gerken asked Loretta Ponton to lead the work session.

Loretta Ponton provided an overview of CE Requirements throughout the US stating that seven (7) states do not require CE for Occupational Therapy practice. Also provided was a list of State of Nevada regulatory boards with CE requirements. Written comments submitted by Liz Straughan for consideration were also referenced.

Loretta Ponton directed the members to the Continuing Education Regulation Revisions; stating the revisions were developed based upon the Board's comments, written comments and issues the administrative office identified that needed clarification. The revisions are for review and discussion; the Board may make any changes they deem appropriate; upon approval of the language, the regulations would be submitted to LCB for formal drafting, a formal public workshop and hearing would be required prior to adoption by the Board.

Kittima Conrad asked for clarification on the written comments which referenced NBCOT continuing education requirements and certification cycles. Loretta Ponton explained that NBCOT requires 36 hours of CE every 3 years to retain certification; the purpose of this review of state regulations on CE is not intended to try to mirror NBCOT requirements; the focus should be on what Nevada should require for continuing education. Nevada does not require continued NBCOT certification after initial licensure.

Discussion was held regarding the increase of CE requirements to 12 hours. Loretta stated that currently up to 10 hours can be carried over to the following year so a licensee could complete 20 hours of CE in one year and apply those to meet two years requirements; by increasing the hours to 12, at least two (2) hours would be required each year.

Deena Spaulding asked if there were any limitation on on-line courses; Loretta explained there are no limitations and the rationale is that there are limited resources for CE in the rural areas.

Eric stated he agreed with all the proposed changes, the changes to clarify fieldwork supervision and the increase in hours for credit for participation as board members were good.

Loretta Ponton explained the rationale for elimination of language in NAC 640A.090, removing mentorship agreement and writing in a professional capacity as these activities have not been used and there is another regulation that allows an individual to request approval of any activity not listed. This revision is intended to clean up the regulation by making it shorter.

Eric Gerken asked how we would decide on how many hours we would approve if a written request was submitted; Loretta Ponton stated it would be evaluated based upon the written request. Linda Frasier add that in her experience, CE is required by category, you don't want all your CE's to be in one category. Loretta explained that the Board does not have a CE category requirement like NBCOT. Discussion was heard with a consensus to retain the writing in a professional capacity activity but adding a limitation of a maximum of 12 hours.

Loretta Ponton continued with explaining the clarifications made to existing language; comments were made regarding the words of "proof of completion" with recommendation to revise to more accurately clarify that a "list of CE activities" is required when completing on-line renewals.

Deena Spaulding made the motion, seconded by Kittima Conrad to accept the proposed regulations as discussed and revised for submittal to the Legislative Counsel Bureau for drafting. The motion passed.

**Expiration Date of License; proration of fee** – Loretta Ponton explained that the Board law was changed in the 2008 which allows the Board to set the expiration date and term of a license. The Board never took formal action to establish a different term or expiration date after that time.

Loretta explained that the Board now has about 1,000 licensees who all renew at one time, currently new licenses are pro-rated by quarter with the fee being calculated by quarter since all licenses expire on June 30<sup>th</sup>

Loretta Ponton stated she is proposing to retain the one-year term but change the expiration date to one year from date of licensure effective for new licenses issued July 1<sup>st</sup> forward. This would facilitate the licensing and renewal process and would eventually result in spreading the license renewals throughout the year. Loretta Ponton explained that licensees are confused by the proration of fees resulting in incorrect fees being received; complaints have also been received from individuals who are issued licenses in the April – June period who are required to immediately renew that license.

Discussion was heard regarding when renewal notices are sent to licensees and any changes to the process that may be necessary.

Kittima Conrad asked whether this applied to travelers; Loretta Ponton responded that travelers have a temporary license. Eric asked how many times they can renew a temporary license; Loretta explained the temporary license can only be renewed for one 6 month period; continuing education is not required so there must be a break of at least 6 month break before they can apply for another temporary license.

Linda Frasier made the motion to establish the expiration date on new active licenses to be “one year from the date of issuance” for new licenses issued effective July 1, 2015 and eliminate the pro-rated fee schedule; seconded by Stacey Henderson. The motion passed.

**Executive Director’s Report** - Loretta Ponton directed the members to the written report and attachments. Loretta Ponton summarized the current licensure statistics; historical licensing statistics were provided for the eight year period 2006 through 2014, as of December 31 of each year which documents a 56% increase in licensees in eight (8) years. Current licensing numbers were reviewed with an increase of over 6% over the previous year.

Loretta Ponton reported that the College of Southern Nevada COTA Program accreditation has been voluntarily withdrawn and the program has been discontinued. It was noted that Pima College out of Arizona will be opening a program in Las Vegas. Linda Frasier stated they are still looking for a Director to begin the accreditation process.

The financial statements for the 3rd Quarter of FY 2015 were summarized; Eric Gerken asked if the website costs coverage reflected the new website; Loretta responded it was and the cost was approved by the Board but not included in the budget. There were no other questions on the financial statements.

The Board sponsored seminars registration will be opened in July and will be offered on-line. The seminars will be held in September in Las Vegas and Reno; logistics are in process.

Loretta Ponton reported there are four (4) pending complaints in process. Kittima Conrad asked if that included the one heard today. Henna Rasul stated no, and explained the process when a respondent hires legal counsel.

Kittima Conrad made the motion, seconded by Deena Spaulding to accept the Executive Director’s report and financial statements. The motion passed.

**Board Chair Report** – Eric Gerken asked for any additional input on the proposed retreat; there was a consensus that the retreat should be held at Lake Tahoe and conceivably stay close to the water or together in a cabin. Eric Gerken also stated that the team-building event could be the Shakespeare on the Lake event, Romeo and Juliet is playing. Loretta Ponton stated she will research the venues and events and make the appropriate arrangements.

Eric Gerken confirmed the retreat topic as Productivity topic; Loretta is going to provide an outline to work from; another topic for future discussion may be to find out what other Boards are doing to be pro-active and support practitioners within the purview of the Board. Perhaps an option is a future seminar to discuss productivity issues and ask employers to attend in an open forum.

Discussion was heard regarding the concerns voiced on productivity and ethical issues; Eric stated blogs and links on these issues are available on the AOTA website.

Another future agenda item may be looking at regulations to implement the telehealth provisions of the new law and other legislation that passed that affects the Board.

**Legal Report** – Henna Rasul stated there was nothing new to report.

**Public Comment** – There were no public comments.

**Adjournment** – Deena Spaulding made the motion, seconded by Linda Frasier to adjourn. The motion passed. The meeting was adjourned at 3:15 p.m.