

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES OF PUBLIC MEETING

June 9, 2012

Incline Village, Nevada

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Members Present:	Elizabeth (Liz) Straughan, Eric Gerken, David Tanabe, Allison Stephens
Members Absent:	Ronald Tulak
Staff Present:	Loretta L. Ponton, Executive Director, Henna Rasul, Senior Deputy Attorney General
Public Present:	George Taylor, Senior Deputy Attorney General, Paula Berkley

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The meeting was called to order at 11:15 a.m. by Liz Straughan, Chair. A roll call confirmed a quorum was present.

**Public Comment** – Liz welcomed Paul Berkley and George Taylor. No public comments were made.

**Approval of the Agenda** – Liz asked that Item 5. Open Meeting Law Presentation be considered next on the agenda. Loretta stated Item 7, Consideration of the License Reinstatement of Mr. Andrew Locke, is withdrawn from the agenda at this time to be heard at a later date.

Allison made a motion, seconded by Eric to approve the agenda as amended. The motion passed.

**2012 Open Meeting Law Presentation** – Mr. George Taylor provided the Board a summary presentation on the changes approved by the 2011 Legislative session affecting the Open Meeting Law and Board activities.

Paula Berkley stated that in regards to the legislative session and interim committee meetings, they don't always start on time and so a public member wanting to provide comment may not be able to until after the item has been voted on. Mr. Taylor suggested concerns be sent to the Attorney General as they have a committee.

**Approval of the Minutes** – Liz asked if there were any comments or revisions to the minutes of the meeting of March 17, 2012. No comments or revisions were heard.

Eric made the motion, seconded by Allison to approve the minutes of the March 17, 2012 meeting. The motion passed.

**HEARING** – Case No. C12-02 and C12-05, Holly Price, OTA/L License No. 10-1005.

Attached as Exhibit A

**Disciplinary Actions – - Case No. 12-04** – Loretta stated Complaint C12-04 is recommended for dismissal. The complaint was received, investigated and found to be unsubstantiated. It is brought before the Board for formal dismissal. Liz called for a motion.

Eric made the motion, seconded by Allison to dismiss Case No. C12-04. The motion passed.

**FY 2013 Budget** – Loretta presented the FY 13 budget, noting the revenue projections are higher than in previous budgets reflecting the increased licensing activities. Loretta summarized the differences in expenditure line items, stating the office lease has been negotiated by State building and grounds and includes the addition of maintenance, repairs, utilities and janitorial with offsetting reductions in those line items. The biennial audit for FY 11 – FY 12 is included as a line item in this budget. Out of state line item reflects board attendance at the NBCOT conference. There were no questions, Liz asked for a motion.

Dave made the motion, seconded by Eric to approve the FY 2013 Budget as presented. The motion passed.

**Executive Director’s Report** – Loretta directed the members to the written report in the board packet.

Licensure Statistics – Loretta summarized the license statistics and license renewal activities. Loretta reported that with the exception of 7 mail-in renewal applications, all renewals were submitted online. Positive feedback was received on the enhancements to the online renewal including the ability to print their renewal licenses immediately. Renewal ID cards were not mailed to licensees renewing online; saving time and mailing costs.

Dave commented that if a person has Adobe X Pro and not Adobe Reader, the online ID cards could be saved and were not read only. Loretta stated technology and software upgrades make it difficult to add security levels; however there is a statement on the ID Cards to verify the status online. There is also a watermark that runs across the card. Falsification or revision of the ID Cards would be grounds for disciplinary action.

Liz asked how many renewed early as opposed to the last minute. Loretta stated about 450 renewed in late May, about half, with early renewals being about 25%. There are 96 licensees who have not yet renewed; second notices are being emailed and mailed to those who have not yet renewed.

Discussion was heard regarding CE’s and submittal of certificates at renewal. Loretta stated the certificates are not required to be submitted until the CE Audit is done. Dave stated it would be great to have an online “CE Bank” where certificates could be stored and tracked. Loretta responded that may be possible as an enhancement to GL Suite and she would pursue that idea. Dave stated it would be great if the CE’s could pre-populate the renewal application.

Financial Reports – Loretta summarized the financial reports as of March 31, 2012; stating the increased licensing activity, investment income and cost sharing will generate more revenue than budgeted; expenditures are anticipated to remain within budget. There were no questions on the financial statements.

Bill Draft Request Update – Loretta reported the bill draft was submitted to the budget division electronically on June 6th. The Bill Draft was approved at Budget and has been sent on to the Governor’s office for consideration. A copy of the full BDR report was provided to Board members.

Liz asked when we would know if the BDR is included in the Governor’s submittal. Loretta responded it most likely will be at least 3 months or more and she will follow up as necessary.

Governor’s Executive Order 2012-11 – Loretta reported the executive order was issued to facilitate expedited licensure for military spouses. A review of the Board’s law and regulations was conducted and a determination was made that the provisions of the executive order are not prohibited by statute. The Board’s license application has been revised to capture the necessary information to meet the requirements of the executive order.

Dave asked if an applicant is coming from a state that doesn’t have licensure, Colorado doesn’t license COTA’s, would they automatically qualify in Nevada. Loretta responded that we don’t have true “reciprocity”; by completing the application and signing the certification we provide expedited processing; they are attesting they have requested all the required documentation. A temporary license would be issued; then upon receipt of all the documents, the temporary license would be converted to a full active license. They would have to be licensed in another state to qualify for the military spouse expedited processing. What the executive order is saying is that we should accept them at face value and issue the temporary license if they so request. A temporary license is good for six months only. That is more than enough time to receive and verify the required documentation that is necessary to complete the application.

Conferences – Loretta confirmed board member attendance at the NBCOT regulatory conference on October 26-27 in Alexandria, Virginia and reported she will be attending the GL Suite user conference in Bend, Oregon in August. Discussion was heard on the benefits of attending the NBCOT conference and the applicability of the subjects covered.

Lobbyist Report - Loretta directed the members to the status report regarding the Sunset Commission prepared by Paula Berkley.

Complaints – Loretta reported she has four (4) pending complaints in process. Loretta stated the complaint processing has increased significantly this last year. Loretta stated she feels it is a positive that potential violations are being reported.

Eric asked for clarification on the proposed BDR regarding removing the sentence on the number of times a person can take the examination and also the section to add occupational therapist as a “provider of health care”. Loretta replied that NBCOT establishes the exam requirements including how often the exam can be taken; the provider of health care section would hold the OT’s to the same standards as other health care providers and also establishes the profession in response to the new health care law as health care providers, particularly in Medicare and Medicaid regulations and billing processes.

Liz asked at what point we would do Public Workshops or Hearings on the revisions. Loretta responded we are not required to hold public meetings; however, we are not precluded from

soliciting public comment. Liz stated she feels it would be beneficial to have public comments before it is considered at the legislature. Discussion was heard of the possible venues for notifying the public and making the law changes known to include posting on the website, sending to NOTA and TOURO in addition to posting at Board meetings. Loretta suggested having an educational session open to the public where the bill can be explained.

Dave asked if we have the correct references in the bill regarding the accreditation requirements for fieldwork experience. After discussion, it was determined the references are correct, ACOTE is the accrediting entity which is part of AOTA.

Allison suggested having a power point presentation posted on the website where everyone has access.

Allison asked for clarification on the military spouse requirements, whether documentation of the military status was required. Loretta responded documentation is not required; it would not be in the interest of expedited processing as we would be adding more documentation than already exists. By signing the application, the applicant is attesting to the correctness of the information; falsification would be grounds for licensure revocation.

**Report from Board Chair** – Liz stated there is a conflict with the September 15 meeting date. Discussion of available dates was heard with a consensus that Sunday, September 30<sup>th</sup> would be the next scheduled Board meeting to be held in Las Vegas. The November meeting is tentatively scheduled as a teleconference to consider the Audit report.

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

**Public Comment** – No public was in attendance at this time.

**Adjournment** –Allison made the motion, seconded by Eric to adjourn. The motion passed and the meeting was adjourned.

Exhibit A

STATE OF NEVADA  
BOARD OF OCCUPATIONAL THERAPY

DISCIPLINARY HEARING  
Case No. C12-02 and C12-05  
Holly Price, OTA/L License No. 10-1005

Saturday, June 9, 2012

**BEFORE:**

Elizabeth Straughan, OTR/L, Chair  
David Tanabe, OTR/L, Vice Chair  
Eric Gerken OTR/L, Member  
Allison Stephens, Public, Member

**ALSO PRESENT:**

Loretta L. Ponton, Executive Director  
George Taylor, Senior Deputy Attorney General  
Paula Berkley, Public

**TRANSCRIBED BY: Karen Wolfe**

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## EXHIBITS

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## PROCEEDINGS

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CHAIRMAN STRAUGHAN: So now we're on number 6, it's a disciplinary action, noted a hearing of case number C12-02 and C12-05 for possible action. I need the appearance from the state and the respondents.

ATTORNEY RASUL: Henna Rasul, Senior Deputy Attorney General on behalf of the Board and the respondent is not here.

CHAIRMAN STRAUGHAN: Very well. The other party is not in attendance.

ATTORNEY RASUL: And the other party.

CHAIRMAN STRAUGHAN: Yes. Do you have any opening statements?

ATTORNEY RASUL: I do.

MS. PONTON: Okay. I'm going to explain how the hearing will proceed. Opening statements are made by both parties. In this case we have one party present. The prosecutor will go first, which is Henna. The respondent's allowed to cross examine. The respondent is not present so when Henna is finished she can offer into evidence witnesses, documents and testimony which she will do. And then she will make a closing argument.

ATTORNEY RASUL: And there are no preliminary matters at this time. So I will begin. I present to you my opening statement. Okay. I've never said your last name before. Is it Straughan?

CHAIRMAN STRAUGHAN: Straughan.

ATTORNEY RASUL: Chairwoman Straughan, and members of the Board. I represent, I know you know, but I represent the State of Nevada in this matter and the state has filed a complaint that was subsequently amended to discipline Ms. Holly Price regarding her provisional occupational therapy assistant license.

Ms. Price, well, I had currently, but I found out she is expired now, but she held an OTA in the State of Nevada. I believe it expired May ---

MS. PONTON: 10<sup>th</sup>.

ATTORNEY RASUL: --- 10<sup>th</sup> of this year. Anyway. Having held the license while these alleged violations occurred she is now charged with a certain series of responsibilities as specified in both the occupational therapy practice act, and its corresponding regulations as well as the occupational therapy code of ethics and standards of practice for occupational therapy.

The evidence that I will present to you today will show that Ms. Price failed to meet these responsibilities when she was under the influence of alcohol and/or a controlled substance, and also by failing to pass a drug screen at two separate places of employment.

The state has filed a complaint alleging that grounds of disciplinary action exist, apart from any other compliance with the occupational therapy standards of conduct against Ms. Holly Price.

The first ground, and you are welcome to look at the --- it's in the complaint and that's Exhibit Number 1.

(Exhibit 1 marked for identification.)

ATTORNEY RASUL: As alleged in the amended complaint includes Ms. Price's failure to act with responsibility. Respondent, while a licensed occupational therapy assistant engaged in the practice of occupational therapy when unable to do so with reasonable skill and safety to patients because she was using alcohol and/or a controlled substance.

The second allegation the state is making alleges that Ms. Price failed to, 1) deliver occupational therapy services in accordance with AOTA standards, policies and guidelines and state and federal requirements relevant to the practice and service delivery; 2) to abide by the AOTA occupational therapy code of ethics; 3) to provide a --- failed to provide a safe and effective occupational therapy service under the supervision of, and in partnership with the occupational therapies, and in accordance with the laws and regulations and AOTA documents; and finally 4) she failed to --- or she intentionally --- or failed to intentionally refrain from actions that cause harm by taking appropriate actions to remedy personal problems that might harm the recipient of services and avoid any undue influence such as alcohol or drugs that may compromise the provision of occupational therapy services.

There is also a third allegation that states that Ms. Price failed to submit within 30 days after receipt of notification of the original complaint a complete set of her fingerprints that would subsequently be submitted to the Nevada State Repository, records of her history and for submission to the FBI. But since that time she has remedied that and she did provide us with her fingerprints.

So that is my opening statement. So at this time I will go ahead and call my first and only witness.

CHAIRMAN STRAUGHAN: Okay. And I get to swear her in. And who would your witness be?

ATTORNEY RASUL: I would like to call Ms. Loretta Ponton, Executive Director to the Board of Occupational Therapy.

CHAIRMAN STRAUGHAN: Okay.

WHEREUPON, LORETTA PONTON, HAVING BEEN FIRST DULY SWORN TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY ATTORNEY RASUL:

Q. Good afternoon, Ms. Ponton. Could you please state your name and

- spell your last name for the record?
- A. Loretta Ponton, P-O-N-T-O-N.
- Q. And Ms. Ponton, what is your occupation?
- A. Executive Director for the Board of Occupational Therapy.
- Q. And could you please tell us how long you've been employed with the Board?
- A. Since September 1st, 2006, approximately five and a half years.
- Q. Okay. And as an executive director, could you please tell us what your responsibilities are?
- A. Board operations, administration, review, investigation of complaints and other duties as appropriate for the Executive Director.
- Q. And are you responsible for maintaining the licensing files of persons licensed by the Board?
- A. Yes, I am.
- Q. Okay. And do you create a Board file for each occupational therapist ---
- A. Yes.
- Q. --- and/or occupational therapy assistant?
- A. Yes, I do.
- Q. And have you had an opportunity to review Ms. Price's files?
- A. Yes.
- Q. When did you last review the files?
- A. Friday, June 8<sup>th</sup>, which was yesterday.
- Q. And do you have her files with you this morning?
- A. Yes, I do.
- Q. And for the record is Ms. Price currently licensed by the Board?
- A. She holds an expired license by the Board.
- Q. Okay. And what is that license?
- A. It's an occupational therapy assistant provisional license.
- Q. Okay. And do you recall when she was licensed by the Board?
- A. November 10<sup>th</sup>, 2011.
- Q. And could you please tell us the Board process that you follow when you see the complaint against a licensee?
- A. Sure. When a complaint is received by the Board it is reviewed for potential allegations, researched. The respondent is provided notification of the allegations in the complaint and allowed 45 days to respond to that complaint. An informal investigation is conducted which could involve interviews with the complainant and any other individuals. Supporting documentation is maintained. Upon receipt of the response from the respondent, it is reviewed. And if it appears there could be a substantiation of allegations it is consulted with the Deputy Attorney General and move forward to hearing.
- Q. And did you follow that process in this instance?

A. Yes, I did.

Q. Okay. Could you please turn to Exhibit 2? And could you identify this exhibit for us?

(Exhibit 2 marked for identification.)

A. This is the first complaint received by the Board in this case.

BY ATTORNEY RASUL:

Q. And to your knowledge, is this a true and accurate copy of the first complaint filed by --- with the Board? Sorry.

A. Yes, it is.

Q. Okay.

ATTORNEY RASUL: At this time I would like to submit into evidence Exhibit Number 2.

CHAIRMAN STRAUGHAN: So submitted.

BY ATTORNEY RASUL:

Q. And could you please turn to Exhibit Number 3 and identify that exhibit for us?

(Exhibit 3 marked for identification.)

A. This is the letter to the complainant acknowledging the complaint.

BY ATTORNEY RASUL:

Q. And is that your signature at the bottom?

A. It is.

Q. Okay. And to your knowledge is this a true and accurate copy of the letter you sent to the complainant?

A. Yes, it is.

ATTORNEY RASUL: Okay. At this time I would like to submit Exhibit Number 3 into evidence.

CHAIRMAN STRAUGHAN: So accepted.

BY ATTORNEY RASUL:

Q. Okay, Ms. Ponton, could you please turn to Exhibit Number 4 and identify that exhibit?

(Exhibit 4 marked for identification.)

A. This is the letter sent to the respondent, Holly Price, notification that a complaint has been filed, summarizing the allegations and allowing, notifying her of her responsibilities or --- to submit a response to the allegations.

BY ATTORNEY RASUL:

Q. Okay. And is that your signature on page number 2?

A. Yes, it is.

Q. And do your knowledge is this a true and accurate copy of the letter that you sent to Ms. Price?

A. Yes, it is.

Q. Okay.

ATTORNEY RASUL: At this time I would like to submit into

evidence, Exhibit Number 4.

CHAIRMAN STRAUGHAN: Exhibit Number 4 accepted.

BY ATTORNEY RASUL:

Q. Ms. Ponton, did Ms. Price respond to this first letter? This first one?

A. Yes, she did.

Q. Okay. Could you please turn to Exhibit Number 5 and identify that exhibit?

(Exhibit 5 marked for identification.)

A. It is the response received from Ms. Price to the first complaint.

BY ATTORNEY RASUL:

Q. And do your knowledge is this a true and accurate copy of Ms. Price's response?

A. Yes, it is.

ATTORNEY RASUL: At this time I would like to submit Exhibit Number 5 into evidence.

CHAIRMAN STRAUGHAN: Exhibit Number 5 is accepted.

BY ATTORNEY RASUL:

Q. Were there any other complaints filed by the public?

A. Yes.

Q. Could you please turn to Exhibit Number 6 and identify that exhibit?

(Exhibit 6 marked for identification.)

A. It is the second complaint received by the Board against Holly Price with similar allegations.

BY ATTORNEY RASUL:

Q. And to your knowledge is this a true and accurate copy of the second complaint you received regarding Ms. Price?

A. Yes, it is.

ATTORNEY RASUL: At this time I would like to submit Exhibit Number 6 into evidence.

CHAIRMAN STRAUGHAN: Exhibit Number 6 is admitted.

BY ATTORNEY RASUL:

Q. And Ms. Ponton, could you please turn to Exhibit Number 7 and identify that exhibit?

(Exhibit 7 marked for identification.)

A. This is the letter sent to Holly Price notifying her of the second complaint number 1205 received by the Board with notification of the complaint allegations and her right to respond.

BY ATTORNEY RASUL:

Q. And to your knowledge is this a true and accurate copy of the response?

A. Yes, it is.

ATTORNEY RASUL: At this time I would like to submit Exhibit Number into evidence.

CHAIRMAN STRAUGHAN: And Exhibit Number 7 is admitted into evidence.

BY ATTORNEY RASUL:

Q. And my final question to you, Ms. Ponton, is do you receive a response from Ms. Price regarding the second complaint?

A. No, I did not.

ATTORNEY RASUL: I have no further questions for Ms. Ponton, so I'm going to leave Ms. Ponton to the Board if the Board has any questions of her.

CHAIRMAN STRAUGHAN: Does the Board have any questions?

MS. STEPHENS: First question, so does count three, does that remain because it still was after the 30 days that she submitted fingerprints or are we ---?

ATTORNEY RASUL: Typically --- it's remedied now, we won't pursue that, we're not going to pursue that.

CHAIRMAN STRAUGHAN: Okay. At this time we have all seven exhibits admitted into evidence.

ATTORNEY RASUL: Correct. And just for formality purposes I would also like to submit Exhibit Number 1 into evidence. It's just a formal charging document.

CHAIRMAN STRAUGHAN: Okay. So Exhibits Numbers 1 through 7 have been admitted into evidence. So we're on the closing arguments?

MS. PONTON: Questions from the Board.

CHAIRMAN STRAUGHAN: Questions from the Board, still? Any?

ATTORNEY RASUL: You can ask her about any of the exhibits.

QUESTIONS BY THE BOARD

MR. TANABE: So she had drug tests (inaudible) exhibits.

ATTORNEY RASUL: Yeah, so take your time and go through them and then --- it's good to kind of put discussion on the record and ask her questions about the documents if you need clarification.

CHAIRMAN STRAUGHAN: So do people want a few minutes just to read and flip during the discussion at this point?

MR. TANABE: Sure.

BOARD REVIEWS EXHIBITS

MR. TAYLOR: This is George Taylor. For purposes of this part of your meeting you need to identify yourself before you speak, for the record.

QUESTIONS BY THE BOARD

MS. STEPHENS: Sure. This is Allison Stephens. I just want to

clarify just because there are references to her having medical --- multiple medical conditions, including something to do with some sort of pain issue, scoliosis and also a psychiatric issue with depression. It says that she's now on an antidepressant, I just want to make sure that there's no possible way that this is in any way a prescription medication that would have been in her system.

A. The second complaint filed and copy of the testing results indicated that the tester interviewed the respondent as part of their review and that would have shown if there were any mitigating circumstances.

MS. STEPHENS: I'm sorry. So this is Allison speaking again. So we're looking at Exhibit 2, in this packet?

MR. TAYLOR: Identify it.

MS. STEPHENS: This is part of where she says that she has nerve damage causing tick like movements and also was recently diagnosed with scoliosis which can cause, just based on my knowledge, some inconsistent types of movements and pain. So that's why --- that's part of why ---.

A. That was in her response?

MS. STEPHENS: Yes.

A. In the second complaint where she was drug tested again.

MR. TAYLOR: Identify yourself.

A. This is Loretta Ponton, Executive Director. If you will turn to the third page of the complaint form in Exhibit 6. Okay, it's a copy of the drug test and it does indicate, I believe this is the one that indicates that she was interviewed. Let me find it. This is the first one. I see it there, let me see the first one. Excuse me, that was in the first complaint under Exhibit 2, the drug testing conducted by Heinen Medical Review. It does indicate that she was interviewed, to rule out prescription medicines. I'm making a presumption.

MS. STEPHENS: What are our options, despite disciplinary action? What is it specifically that would ---?

MR. TAYLOR: Identify yourself.

MS. STEPHENS: This is Allison Stephens.

ATTORNEY RASUL: That will come later, in my closing.

MS. STEPHENS: Okay. Great. Thank you.

CHAIRMAN STRAUGHAN: This is Liz Straughan. Did she ever call the office and talk to you about the complaint?

A. Yes, I've talked with her several times after the first complaint was filed. This is Loretta Ponton. Several times after the first complaint was filed, I did speak with her. I did not have any correspondence with her after the second complaint.

MS. STEPHENS: This is Allison Stephens. Is it appropriate to ask Loretta what her impression was of Ms. Price when she spoke or had interactions with her?

A. I had met with her, Loretta Ponton, I met with her in person and several

times by telephone and my impression was as stated in the complaints, that she was erratic. She changed her story quite a few times and that's it.

MR. TANABE: This is David Tanabe. A question, if these complaints were in December (inaudible), the activity happened in December and the complaints were filed in January. The conversations were held with the --- what do you call the person, the accused?

ATTORNEY RASUL: The respondent.

MR. TANABE: Respondent, thank you. Was it not serious enough to have some sort of summary suspension of her license or any action ---?

A. Allegations, I did not have facts--- through the investigative --- this is Loretta Ponton. Through the investigative process I was able to obtain copies of the drug test and the supporting statements to support the allegations at the time I spoke with her and, you know, until this hearing, they are, were only allegations and therefore didn't warrant any --- she wasn't employed at the time I was speaking with her. But she did obtain a second employment in the interim and that resulted in the second complaint.

MS. STEPHENS: This is Allison Stephens. I just wanted to clarify, when was the last time that you witnessed her --- that you interacted with her, Ms. Ponton, to witness the erratic behavior? And I say that because somewhere in here, which now I'm lost there's a statement by one of the people who made a complaint that they --- after her erratic behavior they noticed that she had improved, like the following week it was like she --- by the beginning of her second week we noticed a decline in the previously observed behaviors.

A. I spoke with her after the first complaint was received. This is Loretta Ponton. After the first complaint was received is when she came to the office to discuss the matter.

CHAIRMAN STRAUGHAN: Are there further questions? If there are no further questions at this time then we will move on to deliberation ---.

MS. PONTON: Closing.

CHAIRMAN STRAUGHAN: Closing argument.

ATTORNEY RASUL: For the record, Henna Rasul, Senior Deputy Attorney General. Members of the Board, thank you for your time this afternoon. I would just briefly like to take a moment to summarize what we've heard from the witness and what you reviewed in the exhibits. Ms. Ponton, the custodian of records personally told us that she had personal interactions with Ms. Price. That Ms. Price is no longer licensed effective May 10<sup>th</sup> by the Board, but she was licensed during the time she engaged in the alleged violative behavior.

That the events giving rise to this matter were discovered after

two separate formal complaints from two separate employers regarding the same violating behavior came in. And that the accusations and complaints were set forth in letters sent by the Board to Ms. Price on or about February 1<sup>st</sup>, 2012 and March 21<sup>st</sup>, 2012. That Ms. Price responded to the Board's first letter via letter on or about February 20<sup>th</sup>, 2012 addressing the allegations, but failed to address the second letter regarding the second complaint.

Consequently it is the state's position that there is sufficient evidence to establish that Ms. Price is in violation of NRS 64A.200, subsection 1, NAC 64A.350, subsection 11, NAC 64A.361, the Occupational Therapy Code of Ethics and the Stands of Practice for Occupational Therapy. So based on the foregoing I would ask that the Board find Ms. Price guilty of counts 1 and 2 as specified in the amended complaint. And I further ask that the Board take the following actions against Ms. Price: suspend Ms. Price's expired license pursuant to NRS 654.200 for a minimum of three years, recovery of attorney's fees and costs in the amount the Board deems appropriate pursuant to NRS 622.400. I'm not sure that we have ---.

MS. PONTON: It's approximately an \$1,100 at this point.

ATTORNEY RASUL: And I would probably add an additional 1.5 hours because I will be preparing the order as well, which my rate is --- I think rate is \$144, so maybe \$500 in addition. The third thing I would request is report any actions taken by the Board to any and all pertinent recording banks and any national data banks required by law. Further, at the expiration of the three years, should she reapply for licensure or reinstatement of her license after this period I would graciously ask that she A, or 1) meet all licensing requirements in effect at the time she reapplies and this would include, but it's not limited to current certification by the National Board for Certification, 2) provide proof to the Board from a forensic psychiatrist or a forensic psychologist that she is fit to act as an occupational therapy assistant, 3) provide proof of a physical examination and drug testing conducted within 30 days prior to the application to confirm the competency of Ms. Price and health, 4) after meeting the requirements of licensure I would also, in addition to that, recommend placing Ms. Price on probation for an additional one year with the following requirements.

Eight hours of CEs related alcohol and drug abuse in the workplace and also regarding safety of clients, an ethics course, random biological testing and a requirement that she abstain from the use alcohol, controlled substances and dangerous drugs. In addition to this requirements, prior to reinstatement I would ask that the Board require that she have paid all her legal fees associated with the order that will be executed and regarding this matter, that will resolve the two complaints, 12-02 and 12-05.

CHAIRMAN STRAUGHAN: Thank you. And we're moving on to deliberation. At this point we can discuss evidence and make determinations about the facts of the case. The facts must support the

conclusion that there's a violation or there's no a violation. So that's the first thing. And then we look at the possible penalty that's determined by the statute and this could be revoking, suspending a license, probation limitation or conditional licensing, and possible reimbursement of fees that were expended.

The penalties should correspond to the seriousness of the violation and crafted to best serve the common interest.

ATTORNEY RASUL: But in this case, your Board, you're one of the Boards that's not authorized to penalize and assess a fine. You don't have that authority.

CHAIRMAN STRAUGHAN: So it's just getting --- okay.

ATTORNEY RASUL: Attorney fees and costs. Yeah.

CHAIRMAN STRAUGHAN: So the discussion and deliberation is open.

MR. GERKEN: This is Eric Gerken. So it appears that she is in violation of being on drugs and of positive results which is against our bylaws. I would say that the recommendations sound appropriate.

ATTORNEY RASUL: And how I would recommend, as far as how you would do your motions, I would look at the complaint that was Exhibit Number 2 and first make a decision regarding the facts. You can do that as a whole or you can do it one by one. It's up to you guys. And then I would recommend doing a motion separately on each count one and then two. And then after that I would recommend doing a motion regarding all my recommendations.

MS. STEPHENS: So should we do the deliberation separately? Deliberate regarding the facts first? Do a motion and then move to the next step and move --- okay.

ATTORNEY RASUL: You can certainly do that.

MS. STEPHENS: So I'm in agreement. I don't think there's any question based on the facts that have been presented. This is Allison Stephens, that Ms. Price was in violation of the statutes and administrative code that have been presented. Let me say NAC.

CHAIRMAN STRAUGHAN: So you want us to take them one by one?

ATTORNEY RASUL: But you want to do the fact section first. So you want to look at the facts of the ---. So you can do the fact section one by one, like each, 1, 2, 3. Or you can put them all together and say that 1 through 7, well actually not 7, 7 is just the law. But 1 through 6 have been (inaudible).

CHAIRMAN STRAUGHAN: Okay. So ---.

MS. STEPHENS: So specifically the acceptance of a public --- this?

MS. PONTON: So you're starting with 1, that she was licensed at the time that this occurred.

ATTORNEY RASUL: Right. You can do them separately. Right. So you can do --- it's easier to just go 1 through 5 because those are the facts that I've alleged. And if you feel comfortable that I proved those facts, then you would rule that --- you would accept the facts, if not then you don't need to accept those facts.

MS. PONTON: And they can do them all as one motion?

ATTORNEY RASUL: If you want to, or you can go on each separately.

CHAIRMAN STRAUGHAN: Okay. So one fact number one is there any discussion or is there an agreement that Ms. Price was a licensed occupational therapy assistant from what we've heard and seen before us, when the actions happened?

MR. GERKEN: Do we need a motion?

ATTORNEY RASUL: Yeah, you do.

MR. GERKEN: Are we going to do --- can we present other facts and then move that they are correct?

MR. TANABE: Yeah.

MR. GERKEN: Let's do that.

CHAIRMAN STRAUGHAN: So that was a motion?

MR. GERKEN: I move that we --- this is Eric Gerken and I move that ---.

CHAIRMAN STRAUGHAN: No, not yet. We have to put it on record. She was licensed as an occupational therapist, therapy assistant on or about November 10<sup>th</sup> through the present, through May, what is the date today? May 10<sup>th</sup>.

MS. PONTON: She still holds the license.

CHAIRMAN STRAUGHAN: Oh, she still has the license.

MS. PONTON: It's just expired.

CHAIRMAN STRAUGHAN: And then the next one is accusations against Price filed on January 24<sup>th</sup> and March 20<sup>th</sup>. The January 24<sup>th</sup> accusation alleges that while employed at Life Care Center, Reno she was under the influence of alcohol or a controlled substance and failed to pass a drug screening. And on March 20<sup>th</sup>, 2012 the accusation alleges that while employed at Renowned Health she was under the influence of alcohol or a controlled substance and again failed to pass a drug screening. So those are the facts that we have been presented.

MR. GERKEN: This is Eric Gerken. I move that we accept the facts as presented in the case.

CHAIRMAN STRAUGHAN: Is there a second?

MR. TANABE: I'll second. David Tanabe, second.

CHAIRMAN STRAUGHAN: Is there any further discussion from anybody? All those who agree?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved that a decision is that all facts 1 through 5 are correct.

ATTORNEY RASUL: And now you just do each count.

CHAIRMAN STRAUGHAN: The first count is conduct violated NAC 640A.350-1, which states that an act constituting unprofessional conduct and engaging in the practice of occupational therapy when unable to do so with reasonable skill and safety to patients because of the licensee's use of alcohol or any controlled substance or because of any mental or physical condition or illness suffered by the licensee.

MS. PONTON: So do we discuss?

ATTORNEY RASUL: Yeah, you may speak. You take the facts that you've accepted and basically do those facts for a violation for this section.

CHAIRMAN STRAUGHAN: So the facts that we agreed are in evidence. We're looking at if this does support count 1. Any discussion? Ready for a vote? Ready for a motion?

MR. GERKEN: I'm confused, what's a motion need to say?

ATTORNEY RASUL: That count 1 has been permitted.

MR. GERKEN: Okay.

ATTORNEY RASUL: Or not.

MR. GERKEN: This is Eric Gerken. I make a motion that the facts support count 1.

MS. STEPHENS: Second.

CHAIRMAN STRAUGHAN: Is there any further discussion or comments? All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved that the facts and the evidence on 1 through 5 support count 1.

Okay. Count 2. That the conduct violated NAC 640A.350-11, which states that an act constituting unprofessional conduct is a violation of a provision of the Occupational Therapy Code of Ethics and/or the standards and practices for occupational therapy. Do I need to go into each section, or does that cover it as a global statement? So is there any discussion on this count, looking at the facts in 1 through 5?

MS. STEPHENS: I move that the facts support and prove count

2. Yeah.

CHAIRMAN STRAUGHAN: Name.

MS. STEPHENS: I'm Allison Stephens.

CHAIRMAN STRAUGHAN: Is there a second?

MR. TANABE: I'll second. David Tanabe.

CHAIRMAN STRAUGHAN: So there's no further discussion.

All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: (Inaudible) for the count.

Moving on to count 3, disciplinary action.

ATTORNEY RASUL: Um ---.

CHAIRMAN STRAUGHAN: Go ahead.

ATTORNEY RASUL: We're not --- no longer is it applicable to pursue that.

CHAIRMAN STRAUGHAN: So count 3 then is removed.

MS. STEPHENS: I move to dismiss count 3 based on her response since the publishing of this document. This is Allison Stephens.

MR. GERKEN: This is Eric Gerken, I'll second.

CHAIRMAN STRAUGHAN: Is there any further discussion?

All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved to dismiss count 3.

ATTORNEY RASUL: Okay.

CHAIRMAN STRAUGHAN: Now, we're looking at the recommendations (inaudible). Okay. So if as the discussion and deliberation has indicated the facts as supported counts 1 and 2. And there have been recommendations about disciplinary process. So the first recommendation was consideration of suspending Ms. Price's expired license pursuant to NRS 640A.200 for a minimum of three years. Any discussions, thoughts, comments?

MR. GERKEN: Question, how long has the respondent been ---?

Sorry.

ATTORNEY RASUL: Actually it would be a revocation.

CHAIRMAN STRAUGHAN: What?

MS. PONTON: Revocation of license.

ATTORNEY RASUL: Revocation for a total of one year.

CHAIRMAN STRAUGHAN: Okay.

ATTORNEY RASUL: It's revocation.

CHAIRMAN STRAUGHAN: So the first step would be to revoke the current expired license. That's the recommendation.

MR. TANABE: David Tanabe, I have a question. How long has the respondent been practicing?

MS. PONTON: In Nevada for less than six months.

MR. TANABE: Prior to that?

MS. PONTON: Prior to that she didn't work between 2006 and her license expired in Utah in 2007. She graduated from college in 1994. She worked at St. Mark's Hospital in Utah ending in January of 2007. Her personal history shows that she has worked from 1994 to 2007.

MR. TANABE: So you can't say that she's inexperienced or unfamiliar with AOTA or NBCOT or code of ethics or anything like that.

MS. PONTON: And she has prior job experience.

MR. TANABE: Yes.

CHAIRMAN STRAUGHAN: So (inaudible) ---.

MS. STEPHENS: I have a question.

CHAIRMAN STRAUGHAN: Go ahead.

MS. STEPHENS: This is Allison Stephens. Where did we come up with the number of three years?

ATTORNEY RASUL: It was just something that we came up with together. I mean, this is just a recommendation. So if you want to do less, you can.

MS. STEPHENS: I just want to get a hand --- just the thought process so I can know, you know, why not five, why not two. Just like ---.

MS. PONTON: This is Loretta, Loretta Ponton for the record. And looking at the possible disciplinary actions I did kind of look at our disciplinary guidelines, looking at the mitigating circumstances, you know, attempts for rehabilitation. I didn't see there was any attempt. One year I didn't feel was long enough, five years was really too long and that's where we came up with the three year period, giving her. You know, our intent is to allow the individual to rehabilitate themselves, not just punish them. I felt that was a sufficient time frame to prove rehabilitation.

CHAIRMAN STRAUGHAN: This is Liz Straughan. I have a question about is she still living in Nevada as far as we know?

MS. PONTON: As far as we know she is no longer in Nevada. Her mailing address is in Utah. The notice of the second complaint was sent by certified mail to her Utah address was returned as unclaimed. However the same address was utilized to transmit the amended complaint requiring the finger prints, certified mail was not returned to my understanding. But there

was also sent regular mail and since she did respond with the finger prints, we're assuming she is at that address in Utah.

CHAIRMAN STRAUGHAN: So ---.

MS. PONTON: No phone contact, no returned messages.

CHAIRMAN STRAUGHAN: So my question to the Board is should --- is there any discussion about revoking --- is there an issue about revoking an expired license? Is everyone on the same page? Is there discussion about revoke or not to revoke?

MR. TANABE: Revoke. David Tanabe. I'm okay with revoking.

MR. GERKEN: This is Eric Gerken. Does revocation allow for reinstatement at some point?

MS. PONTON: Yes, it does. Revocation according to the administrative procedures is for a minimum of one year. There are specific requirements also for reinstatement, in addition to our requirements that she would have to fulfill to reinstate a revoked license.

CHAIRMAN STRAUGHAN: And would you, Loretta, inform us on suspension would mean what, compared to revoking?

ATTORNEY RASUL: Well, suspension is under a year.

CHAIRMAN STRAUGHAN: Okay.

ATTORNEY RASUL: It's the same thing, it's just the time.

CHAIRMAN STRAUGHAN: It's a different time frame. Okay. So if the Board is clear about their feelings about revoking then the next question I see is the recommendation was three years. Is that an issue, does that need to be discussed?

MR. GERKEN: This is Eric. I think a case could be made that two years is sufficient, but three years sounds reasonable as well.

CHAIRMAN STRAUGHAN: This is Liz. I guess I would tend to go for the three years given it was twice in two different employers for the same cause, that I'm thinking that two years might not be long enough. Also taking in consideration it appears that the former licensee or current expired licensee is now possibly out of state.

MS. STEPHENS: This is Allison, I am with Eric on this. I think it could be either way. I'm not opposed to three years. Two years would -- I mean, had you presented, had Henna presented two years I would have gone with that. So if there's a strong feeling that it needs to be three or two. You know, I'm open to either one.

CHAIRMAN STRAUGHAN: David, what do you think?

MR. TANABE: David Tanabe. I find the recommendation to be acceptable.

CHAIRMAN STRAUGHAN: So basically if our discussion, if everyone has what they're thinking and it's time for a motion? Or ---?

ATTORNEY RASUL: I think that we --- if you ---.

CHAIRMAN STRAUGHAN: You want to do it all at once?

ATTORNEY RASUL: Yeah, because then you'll have it all at once and then I can relay it to --- you can do it piecemeal, but it's --- I don't know if it can be. I think you want to go through each of these things and then as a whole ---.

CHAIRMAN STRAUGHAN: That's a lot to remember.

ATTORNEY RASUL: I'll write it up in my orders.

CHAIRMAN STRAUGHAN: So, my summary is, what I'm hearing is that there could be --- that there is a look toward revoking and a possible two or three year period of time.

ATTORNEY RASUL: Well, you want to set that right now and then move on to the next one and then make a motion at the end regarding all of it.

CHAIRMAN STRAUGHAN: Okay. So, I thought the motion was what set it.

MR. TANABE: I said two or three.

CHAIRMAN STRAUGHAN: Okay. So we haven't decided it yet.

MR. GERKEN: Excuse me, your recommendation was two or three years?

ATTORNEY RASUL: No, just three.

MR. GERKEN: Okay. I'm acceptable with three years.

MR. TAYLOR: You could just ask for a motion for three years.

ATTORNEY RASUL: Yeah, you could do that too.

MR. TAYLOR: And if it passes fine, if it doesn't then you ask for a recommendation of two years.

CHAIRMAN STRAUGHAN: So would someone like to make a motion?

MR. GERKEN: This is Eric Gerken. I move that we accept the recommendation for a three year revocation of Ms. Price's license.

CHAIRMAN STRAUGHAN: Is there a second?

MR. TANABE: David Tanabe, I second.

CHAIRMAN STRAUGHAN: Further discussion? All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved. Okay. I didn't hear you ---. So number two, there is a recommendation to recover attorney's fees and costs, which at this time I heard was \$1,100 and probably \$500 more will be added to that, so about \$1,600. Discussion, thoughts, comments?

MS. STEPHENS: This is Allison Stephens. So I am perfectly comfortable with recovering the attorney's fees at whatever amount they come to. I would be open to, depending on how the other Board members feel and the feedback that I receive, making that due upon the completion of the probationary license period.

MR. TANABE: She doesn't have a probationary license.

MS. STEPHENS: That's the next recommendation.

ATTORNEY RASUL: No.

MS. STEPHENS: Isn't it?

ATTORNEY RASUL: That one was ---.

MR. TANABE: Only if she reappplies.

MS. PONTON: If she reappplies.

ATTORNEY RASUL: Basically if she wants to reapply she has to have all these things done.

MS. STEPHENS: Right, that's what I'm saying.

CHAIRMAN STRAUGHAN: But what if she --- if the motions keep going and now we're saying we're revoking her license for three years, then next would come, does she cover those costs that she has incurred to the Board?

MS. STEPHENS: Right. My understanding was, this is Allison, that that was somehow tied to her ability to reapply. That it was stated --- am I wrong, Henna, that you said those needed to be paid before she could reapply for her license?

ATTORNEY RASUL: That's right. And you can combine that.

MS. STEPHENS: That's what I'm asking.

ATTORNEY RASUL: You can combine that if you want to. The separate thing I added at the end, but you can combine that with that because it's related.

MR. TAYLOR: You can make it conditional.

ATTORNEY RASUL: Absolutely. Yeah.

MR. TAYLOR: Before she can reapply she has to pay the fees.

MS. STEPHENS: Okay.

CHAIRMAN STRAUGHAN: This is Liz. And my feeling on that is that, we've already spent \$1,100 to \$1,600 with this case. If the respondent is not intending to move back here and never intends to reapply we don't get to recover those costs, if we link it to if she reappplies as part of her probation. So if we feel that that monetary fee might be helpful in rehab or anything else, or if we need to account to the public that we've responsibly recouped our costs, then we would have to link it through the revocation. Thoughts, comments?

MR. GERKEN: This is Eric Gerken. Well, if she's not working where does she come up with \$1,600. Because I assume that's where the discussion is coming from. So, is there a problem with having her pay her fine

after she's been working for a while?

ATTORNEY RASUL: You could just --- I mean, you could do it ---. I see what you're saying, just to keep it separate, so that she actually does owe it, but then do a separate thing and in the event she wants to reapply if those fees aren't paid then she's not going to be able to do that. And that's --- I think that's what she's saying, don't link them together. I mean, ---.

MR. GERKEN: Don't link what together?

ATTORNEY RASUL: The fees or the costs of the attorney's fees and conditioning that with the reinstatement.

MS. PONTON: Yeah, it could be reactivation.

ATTORNEY RASUL: Whatever it is.

MS. PONTON: It's really three things. One's the revocation. Two is costs of this case.

ATTORNEY RASUL: Flat out she owes it, right.

MS. PONTON: And if --- the third is, if she ever wants to come back to Nevada she has to reapply and the condition of that is she has to be in good standing with the State of Nevada which means she would have already paid the fee. We don't want to say she doesn't have to pay it, link it to reinstatement, or reapplying because then she won't pay it, unless she wants to come back to Nevada. It's not part of reapplication process. It's part of this case. Related to this case.

CHAIRMAN STRAUGHAN: So what I'm hearing you say is that we can say, yes, she owes us for the fees that were incurred, and that she at this time may choose to pay or not choose to pay it, but if she wants to reapply, she would have to repay it.

MS. PONTON: Right.

MS. STEPHENS: This is Allison Stephens. So can we do a motion. I think that all of us, my perception is that all of us would agree right now that we could have a motion that says she owes the money. And then we could separately deal with the time frame or however she's going to pay it and make a separate motion for that and say when is she going to pay it.

MS. PONTON: This is Loretta. My recommendation would be that we're not going to make anything that --- conditions for payment of it. She's going to owe the money one way or another, whether she comes back to Nevada or not, it will be on record that she owes the money.

MS. STEPHENS: Okay.

MS. PONTON: Then if she comes back to Nevada that would just be one factor we would look at when evaluating her application, has she paid up, is she in good standing with the State of Nevada? Did she pay her fee? If not then she has to pay that before we would consider her license.

MS. STEPHENS: That's the part where I'm concerned. So we're saying that she has to pay. One let me just state for the record, I don't think she's going --- if she doesn't intend to ever come back to Nevada, she's

not going to pay it regardless.

MS. PONTON: Right.

MS. STEPHENS: The only way she's ever going to pay it, I mean, let's lose that, you know, pipe dream, the only way she's ever going to pay it is if she plans to come back and is somehow going to apply for a license. At which point my question is, where is she coming up with the \$1,600 if she's not working.

MS. PONTON: But that's not our concern.

ATTORNEY RASUL: That's not our concern. And you want that in the order. You just want in the order, a legal document, she owes this money.

MS. PONTON: She owes us money for processing two complaints.

ATTORNEY RASUL: And by statute you're allowed to recover such.

MS. STEPHENS: Right, I got that part. That was the first part I said, I think we all agree that she owes the money. It's just do we make it. Because I know for sure I heard you say that it was going to be a condition of her being able to reapply for a license and that's the part where I'm sticking.

MS. PONTON: We would look at her application.

ATTORNEY RASUL: That would be one of the --- that would be one of many things that we would require before we would even allow her to be reinstated. That's what it is.

CHAIRMAN STRAUGHAN: It would just be like an unpaid bill.

ATTORNEY RASUL: It would be that. She would also have to have a psych eval, you know, other things too. This is just another thing that we would look at to see if she even qualifies to reapply.

CHAIRMAN STRAUGHAN: And this is Liz Straughan. And knowing where you're coming, or assuming I know where you're coming from, it's a bill that may or may not get paid. It's an unpaid bill she can also submit evidence of why it might be unpaid that could be considered at the time that she would like to get her license.

MS. STEPHENS: Okay. So that we need to state because that's not what was just said. And I think my concern is, I think we have a better chance of getting paid if we said, yes, you can reapply, we're going to take this into consideration, you're only going to get a provisional license anyway. If you haven't figured it out by the time we let you have a provisional license, then you're not going to move forward. I just don't see how we're ever going to recoup the money at all.

MS. PONTON: But we're not worried about that.

ATTORNEY RASUL: But this is --- they are not worried about that. And also it's a public safety issue and you have to understand --- I actually

dealt with this with another Board, and I wasn't there when they did the order, I was another attorney. Basically this order where it states she owes us, if that's going to be a separate thing. This is going to be a public record. And it's going to be on a national database, so if she's trying to get licensed in any other state, they can call Loretta and say, did she pay this? And this happened with one of my boards. And the person didn't pay, so that board in the other state was like well you're not in compliance with the order of another, you know, Nevada. So it's another thing.

MS. STEPHENS: Okay. I'm satisfied, I'm fine.

CHAIRMAN STRAUGHAN: Comments, Dave or Eric?

MR. GERKEN: This is Eric and I agree with the sentiment that it seems pretty prohibitive of somebody even having a chance of being re-employed sometime. If they rehabilitate themselves, if we have some exorbitant fee that they have to pay while they haven't been working and paying for all the other things. However, that's fine, I understand. Penalties, so that's a penalty.

ATTORNEY RASUL: But it's not.

CHAIRMAN STRAUGHAN: I was going to say, is that what, two months' rent?

ATTORNEY RASUL: Penalties are separate and you don't need to have penalties.

MS. PONTON: He didn't mean it in that content.

ATTORNEY RASUL: I just want to make it ---.

MR. GERKEN: It's a hardship.

CHAIRMAN STRAUGHAN: Dave, what do you think? Or do you have thoughts?

MR. TANABE: I'm okay with recovering the fees and the costs to perform this investigation.

MR. GERKEN: And we can move on.

CHAIRMAN STRAUGHAN: If there's no further discussion do we want to do a motion?

MR. TANABE: Are we approving piecemeal now?

CHAIRMAN STRAUGHAN: I would, it makes it easier.

MS. PONTON: There's only three.

MR. GERKEN: This is Eric. I move that we accept the recommendation for recovering the legal fees of approximately \$1,600.

MR. TAYLOR: This is George. So is your motion then that there would be --- should Ms. Price ever apply for reinstatement that an attempt to recover the fee, or reimbursement for the cost of investigation at that time?

MR. GERKEN: I don't believe so. The motion is that she be assessed legal fees and costs.

MS. PONTON: Legal fees and costs.

ATTORNEY RASUL: Actual legal fees and costs. Because

that way --- don't put an amount because we don't know what the actual ---.

CHAIRMAN STRAUGHAN: Okay, actual.

MR. GERKEN: Okay, can we go with that?

CHAIRMAN STRAUGHAN: Would you like to start over?

MR. GERKEN: Not really. I move that we charge the legal fees to Ms. Price.

CHAIRMAN STRAUGHAN: Is there a second?

MR. TANABE: Do we need to say actual?

MR. GERKEN: No, we were told not to.

ATTORNEY RASUL: No, say actual, don't say the actual amount.

MR. GERKEN: Yeah, fees, say actual.

MR. TAYLOR: It's costs. Reimbursement for the cost of the investigation.

MS. STEPHENS: I move that --- are we seconding? I thought we had to restate it. I move that we recover the actual legal costs and fees from Ms. Price.

CHAIRMAN STRAUGHAN: Is there a second?

MR. TANABE: Dave Tanabe, I second.

MS. STEPHENS: And I was Allison Stephens.

CHAIRMAN STRAUGHAN: Is there any further discussion?

If not we can move to the vote. All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed.

(No response)

CHAIRMAN STRAUGHAN: Abstentions.

(No response)

CHAIRMAN STRAUGHAN: So moved to recover actual legal fees and costs. Recommendation number four is to report any actions taken by the Board to all of the pertinent reporting boards and as required by law.

MS. STEPHENS: I move that we report these.

MS. PONTON: That's a legal requirement and doesn't require a motion.

CHAIRMAN STRAUGHAN: Okay.

ATTORNEY RASUL: That doesn't require a motion.

CHAIRMAN STRAUGHAN: So does anybody have any discussion about that, it's required, so there's no way out. Then there is a suggestion that we put into play a re-application process?

ATTORNEY RASUL: Reinstatement. Condition of reinstatement.

CHAIRMAN STRAUGHAN: Okay. Reinstatement or reapplication for a license. We might want to have that in place. And the notes that I have indicate that she meet the requirements for licensure, be currently

certified by NBCOT, have a forensic psychologist or a psychiatric evaluation that she is able to come to work as an occupational therapy assistant, that she have testing for alcohol or drugs 30 days prior to the application and I would assume that she passes that, and that we consider a probation of one year on any license that would be issued, which might include eight CEU units on drug and alcohol, one on ethics, perhaps and also have random testing for drug and alcohol use.

ATTORNEY RASUL: And abstinence.

CHAIRMAN STRAUGHAN: I didn't hear?

ATTORNEY RASUL: Abstaining from the use.

CHAIRMAN STRAUGHAN: And not use anything. Does that make sense? And the last one was to pay any legal costs that were incurred during the investigation.

MR. TAYLOR: You can ask and someone can just say so moved.

MR. GERKEN: So moved.

MS. STEPHENS: Well, I have a question. I just really, really quickly, so is alcohol and controlled substances, that's just standard language? Because there's no alcohol involved, I'm just asking.

MS. PONTON: Apparently it is.

MS. STEPHENS: So we would test her for alcohol? If she had a beer last night, no go?

MS. PONTON: She gets a drug test. If she gets a positive result, this is Loretta. If she has a positive result for alcohol or drugs, it's a no go. It's all one test.

MS. STEPHENS: I just wondered. So moved.

CHAIRMAN STRAUGHAN: Any further discussion? All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved to accept the recommendation. Okay. The time is 1:15 and we are going to adjourn for a short lunch break.

LUNCH BREAK TAKEN

CHAIRMAN STRAUGHAN: Okay. Reconvening Board of Occupational Therapy at 2:05.

MS. STEPHENS: My name is Allison Stephens I would like to make a motion before we begin.

CHAIRMAN STRAUGHAN: Hang on. I just want to mention that we have no public in attendance at this point, Mr. Taylor and Paula Berkley

left during our lunch break and no one has shown up as other public to comment at this point or attempt to attend.

And you want to do something before we move on to Item Number 7?

MS. STEPHENS: Yes, I'd like to reopen Agenda Item Number 6 because I would like to make a motion.

CHAIRMAN STRAUGHAN: Okay.

MS. STEPHENS: I need to move to do that or no?

MS. PONTON: That's the disciplinary hearing.

MS. STEPHENS: Uh-huh (yes). Yeah.

ATTORNEY RASUL: I would have the Board motion to reopen it.

MS. STEPHENS: I move to reopen disciplinary hearing Agenda Item Number 6.

CHAIRMAN STRAUGHAN: Can you tell us what section? Like did you want to talk about ---?

MS. STEPHENS: The disciplinary portion of the disciplinary hearing for Agenda Item Number 6.

MS. PONTON: Number three, the third item.

MS. STEPHENS: Number three in Agenda Item Number 6.

MR. GERKEN: Second.

MS. PONTON: Who is the second? Eric.

CHAIRMAN STRAUGHAN: All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: All those opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstention?

(No response)

CHAIRMAN STRAUGHAN: So moved to open Item Number 3 in the disciplinary process section. Go ahead, Allison.

MS. STEPHENS: I would like to make a motion that Ms. Price have the opportunity, to within 45 days of the conclusion or the execution of the order to contact the State Board of Occupational Therapy to make payment arrangement towards, you know, the completion of her, the costs of --- actual costs of legal and attorney costs and fees.

MR. TANABE: Discussion?

CHAIRMAN STRAUGHAN: Discussion?

MR. GERKEN: Forty-five (45) days and then after the 45 days no payment arrangement are made?

MS. STEPHENS: Then we move forward. But I think at least we can demonstrate that we are giving her an opportunity and she does have the opportunity to make payment arrangements within the 45 days. There's a shot at it if she wants to try to actually pay this back, do the right thing.

MR. GERKEN: (Inaudible).

ATTORNEY RASUL: Usually it's determined.

MS. PONTON: Yeah. I would negotiate it with her, based on her financial situation.

MS. STEPHENS: Okay.

CHAIRMAN STRAUGHAN: And I have a question, Allison. Are you thinking from the date the decree happens?

MS. STEPHENS: Yes.

CHAIRMAN STRAUGHAN: It's only 45 days then or are you also including should she at some time want to reinstate her license and meets all of the rest of the requirements that she is also allowed to?

MS. PONTON: Uh-uh (no).

MS. STEPHENS: No, just from 45 days of the execution of this order and it's my understanding, I could be wrong, but to put it on record that this is pretty standard language that other boards use and so I think we might as well add that on in accordance with that.

ATTORNEY RASUL: I would add that this board does have it included in their consent decrees.

CHAIRMAN STRAUGHAN: Now, would that normally occur on all of ours or do we always have to move for that kind of an adjustment?

ATTORNEY RASUL: You don't have to do it. It's up to you, but you have to state.

MS. PONTON: It has to be stated on record.

ATTORNEY RASUL: It has to be stated on the record.

CHAIRMAN STRAUGHAN: It has to be stated on the record for it to automatically occur?

MS. PONTON: For it to occur.

CHAIRMAN STRAUGHAN: Okay. Are there more thoughts? Second?

MR. GERKEN: Your other comment was that should she want to reapply she could be apply before she makes full payment. If she pays \$50 a month, that's 36 months and if 12 months from now she wants to reapply she's going to have to pay.

MS. PONTON: She can't reapply for three years.

MS. STEPHENS: And I think like I said, if she does it within the 45 days, she has the opportunity, I think if she comes back and tries to reapply and hasn't paid it, and never responded to us within that 45 day period to make payment arrangements she kind of doesn't have a leg to stand on, you know. If she chooses not to take advantage of this then when it comes time to reapply, no. She would have to come up with the money, lump sum before we would ever consider it. But I don't know, at least we can say, and if it's standard and other boards do it, I just figure at least we can say we gave you the opportunity to make a payment plan, you chose not to do it, you're going to

have to pay this.

MR. GERKEN: You said this to the respondent in a certified letter, never accept it. How does that ---?

ATTORNEY RASUL: I think it's sent both ways.

MS. PONTON: Yes, they send it US mail and certified.

ATTORNEY RASUL: And her mail's never come back. We just have to by law send it certified, but we also send it US mail, just because a lot of people don't pick up their certified mail. And we deem it delivered if we don't get a return of the US mail.

MR. GERKEN: Okay. So if it doesn't come back we assume --

MS. PONTON: She received it.

MR. GERKEN: I understand.

ATTORNEY RASUL: Because in essence it's her duty to apprise the Board of where she is at. And if that's the last known address we've fulfilled the due diligence with that. And you know, Loretta, like a couple of the directors she's very diligent in the sense that she'll contact me to find out where a person is and I'll have the investigation office find out (inaudible).

CHAIRMAN STRAUGHAN: So is there a second to the motion, further discussion?

MR. GERKEN: Second. That was Eric.

CHAIRMAN STRAUGHAN: All those in favor?

(Chorus of ayes)

CHAIRMAN STRAUGHAN: Opposed?

(No response)

CHAIRMAN STRAUGHAN: Abstentions?

(No response)

CHAIRMAN STRAUGHAN: So moved to add that 45 day option for financial arrangement.

MS. PONTON: Got it.

CHAIRMAN STRAUGHAN: And that would conclude Item Number 6.

\* \* \* \* \*

HEARING CONCLUDED

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