

Minutes have not yet been approved and are subject to revision at the next meeting.

STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

MINUTES

REGULATORY HEARING, BOARD MEETING & PUBLIC WORKSHOP

November 23, 2019

Members Present: Elizabeth Straughan, Allison Stone, Sol Magpantay, Melissa Genovese,
Members Absent: Mel Minarik
Staff Present: Loretta L. Ponton, Executive Director, Stacey Whittaker, Executive Assistant,
Henna Rasul, Sr. Deputy Attorney General
Public Present: Sarah Adler, Paula Cook, Shaina Meyer, Aesa Jackson, Yvonne Randall, Amy
Butler, Jody Stafford, Joyce Mosely

Regulatory Hearing - LCB File R062-19

Loretta Ponton, Executive Director called the hearing to order at 10:01 a.m. Ms. Ponton stated the purpose of the hearing was to receive comments from interested parties regarding the adoption of LCB File No. R062-19, Chapter 640A of Nevada Revised Statutes. The proposed regulation revises provisions establishing certain fees charged by the Board of Occupational Therapy.

Ms. Ponton stated three (3) written comments were received, of which two were submitted at the public workshop and one additional comment in opposition of the fee increase for renewals was received. Ms. Ponton summarized the comments and asked if there were any other public comments on the proposed regulation.

Hearing no additional public comments, Ms. Ponton closed the hearing at 10:06 a.m.

Public Board Meeting

Elizabeth Straughan, Chair, called the meeting to order at 10:07 a.m. A roll call confirmed a quorum was present.

Public Comments – There were no public comments at this time.

Approval of the Minutes - Elizabeth Straughan asked if there were any corrections, revisions or other discussion of the minutes of the August 10, 2019 Board Meeting, the October 23, 2019 Board Meeting, or September 13, 2019 Public Workshop.

Hearing no comments or concerns, Ms. Straughan called for a motion.

Sol Magpantay made the motion to approve the minutes of the Board meetings of August 10, 2019, and October 23, 2019 and the minutes of the public workshop of September 13, 2019. Melissa Genovese seconded the motion. The motion passed.

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Consideration of Public Comments on LCB File No. R062-19 - Ms. Straughan asked members if they had any concerns or additional comments for discussion regarding the three written comments in opposition of the regulation. Melissa Genovese stated she had no concerns with the regulation, Allison Stone stated she also had no comments, Sol Magpantay stated she feels the fees are reasonable with a 2-year license and Liz Straughan concurred with the members' comments.

Adoption of Regulation LCB File No. R062-19 - Elizabeth Straughan stated that the Board has considered the comments in opposition to the regulation and called for a motion.

Allison Stone made the motion to adopt LCB File No. R062-19 as presented with no revisions. Sol Magpantay seconded the motion. The motion passed.

Disciplinary Matters - Ms. Straughan called on Loretta Ponton. Ms. Ponton stated that after review of all documentation received in regards to Complaint Cases C19-07, C19-09 and C20-01; it is recommended the Board formally dismiss the cases as referenced.

Case C19-07 & C19-09 alleged incomplete documentation in client records; Case C20-01 alleged falsification of client records and supporting documentation.

Ms. Straughan asked if there were any questions; hearing none called for a motion.

Sol Magpantay made the motion to dismiss Complaint Case C19-07, Case C19-09 and C20-01. Melissa Genovese seconded the motion. The motion passed.

Public Workshop

Elizabeth Straughan called upon Loretta Ponton to facilitate the workshop. Ms. Ponton explained the workshop is intended to solicit comments on proposed language for revisions to NAC 640A. Ms. Ponton stated that public comments would be taken in an open forum as the proposed language is discussed and asked individuals to state their name for the record prior to commenting.

Ms. Ponton stated that numerous written comments have been received from OT practitioners, AOTA, and the Nevada Occupational Therapy Association (Exhibit A) specifically in opposition to the proposed regulatory language on restrictions on practice, applicability to occupation-based practice, and references to dry-needling and invasive pelvic floor therapy. Ms. Ponton acknowledged the public members present and stated comments on this section will be heard after the other two proposed sections.

Ms. Ponton recommended moving forward with comments on the proposed language that addresses notification of employment of licensees and continuing education.

Ms. Ponton opened comment on the proposed new section on notification of employment of licensee. The purpose of this proposed regulation would require practitioners to report all new employment and termination of employment to enable to the Board to maintain current employment records and help in ensuring OTA's have valid supervision on record.

Shaina Meyer stated it seems OK in Nevada, she has seen problems in other states.

Paula Cook asked if there were consequences for not notifying the Board. Ms. Ponton responded there could be consequences if it became habitual; all non-compliance with Board law and regulations is subject to disciplinary action. Paula Cook stated supervision makes sense but communication of requirements needs to be better.

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Amy Butler asked if there was a timeframe for reporting. Ms. Ponton responded 30 days from the date of the change in employment. Ms. Butler stated that seems reasonable.

Hearing no further public comments, Ms. Ponton stated the proposed revisions to continuing education is open for discussion and comments.

Ms. Ponton explained NAC 640A.070 is intended to address the change in renewal period to a biennial renewal which currently retains the 12 hour per year CE requirements. The proposed revision is intended to align the CE period to the renewal period by changing the “12 per year” language to “24 hours per biennial renewal period”. This change does not revise the total number of CE hours required but allows the 24 hours to be completed within the renewal cycle. The new graduate waiver language has also been revised to require 12 hours for the first biennial renewal, thus keeping the concept of “new graduate waiver” for the first year of practice.

Paula Cook commented that in paragraph 4, it should be revised to indicate “once during each renewal period”. NAC 640A.090 also has language referring to limitations on “successive renewal periods” which would limit specific CE’s to once every 4 years instead of 2 years. It should be kept at once every 2 years.

Loretta Ponton stated conforming changes would be made, with a consensus of the Board in agreement.

Public comment on NAC 640A.090 regarding Level I fieldwork supervision was heard; requesting an increase in the number of hours allowed for Level I to 4 hours and Level II to 24 hours.

Liz Straughan commented that it is the intent to diversify CE activities, Level I is less in depth; fieldwork supervision should not be the only CE activity for a 2-year period.

Ms. Ponton proposed to increase Level I to 4 hours and Level II to 15 hours. Allison Stone commented that Level II is a 12-week rotation, that work should be recognized and she recommended 18-20 hours for Level II. Liz Straughan stated that 18 hours is reasonable. Sol Magpantay agreed that 18 hours is reasonable.

Paula Cook commented that an increase to 4 hours for Level I would be great.

Yvonne Randall commented that there should continue to be no restrictions on the number of students a practitioner can have; but does like the restriction on hours. Paula Cook agreed.

Loretta Ponton stated conforming changes to all continuing education sections would be made to address the “year” references.

Hearing no further comments on continuing education revisions, Ms. Ponton opened comments on restriction on practice section.

Ms. Ponton explained the Nevada Legislature legal counsel determined that specific authority must be approved in law for the practice of dry needling; specifically stating it is a form of healing limited to specific medical professions. The last legislative session, the PT and AT Boards received legislative authority to add dry needling to their scope of practice.

Upon review of the written comments and concerns, the Board may need to take more time to review the regulations and fine-tune them to ensure there is no unintended impact. Based upon state law, OT does

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not currently have authority to perform dry needling. Additionally, AOTA does not have guidelines addressing dry needling.

Ms. Straughan opened the floor for public comments.

Amy Butler, OT in out-patient setting, commented that dry needling in outpatient clinics are an effective treatment to reduce pain, acute and chronic, practitioners can be certified and there is evidence that it improves activities; it is a manual therapy technique. Ms. Butler stated she has had to refer patients to PT for dry needling.

Ms. Ponton requested Ms. Butler submit her concerns in writing.

Jody Stafford, Advanced Manual Therapy, commented trigger point release addresses functional mobility.

Ms. Ponton request Ms. Stafford submit her concerns in writing.

Shaina Meyer, OT representing NOTA commented on the term “occupation based practice” and thanked the Board for considering her statements.

Paula Cook, OT commented that tabling this discussion and conducting more research is an excellent idea; OT practice is very broad. Ms. Cook stated that the Association would be happy to work with the Board on any legislation, and stated that AOTA has not taken a position on dry needling.

Loretta Ponton requested clarification from the Board members on what they want to include in the regulation changes. Ms. Ponton made a recommendation to table changes on restrictions to practice at this time and that the Board consider holding more informational sessions to solicit input on the need for regulations in this area.

Liz Straughan asked for feedback from Board members. Allison Stone stated there are concerns with the language and the Board should absolutely table proposed regulations on restrictions to practice for future discussions. All members agreed.

Amy Butler asked if continuing education credit would be granted for courses in dry needling taken prior to the Board’s advisory notice. Ms. Ponton responded that it would be accepted.

Liz Straughan ask if NOTA would like to share their activities with the Board.

Paula Cook provided an update on NOTA stating outreach activities include distributing the proposed regulations to members, posting on the public site, AOTA regulatory affairs and tried out reach to stakeholders. NOTA is involved with the Western Regional Symposium conference that will include neuro expert Tim Wolf and panels for students. They are also trying “speed networking” with OT’s in April which is OT month in Nevada. Ms. Cook stated that NOTA is willing to work with the Board on proposed legislation and regulations.

Liz Straughan thanked Ms. Cook for the update.

Contracting for Professional Services - Ms. Straughan called upon Ms. Ponton to present.

Ms. Ponton presented the solicitation for Government Relations Services that was issued with proposals due by December 11, 2019 and the solicitation for Audit Services.

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Ms. Ponton stated the Board is required to have a biennial audit of the Board's financial statements. Due to the merger of the Board's audit firm with another firm, a new solicitation for audit services is necessary.

Ms. Ponton presented options for selection of vendors; in-person presentations by vendors with selection by entire Board, establish a sub-committee to review and select vendors or delegate the review and selection to the Executive Director and/or Chair.

After discussion of the three options presented, Liz Straughan called for a motion.

Sol Magpantay made the motion, seconded by Melissa Genovese to delegate the review and award of a contract for Legislative Services and Audit Services to the Executive Director and Board Chair. The motion passed.

Strategic Plan - OT Practice Survey - Liz Straughan directed the members to the OT Survey documents and requested Ms. Ponton review the information for the Board.

Loretta Ponton summarized the response results stating approximately 1500 practitioners were notified, continuing education was offered, 220 individuals completed the survey for a 14% response rate.

Ms. Ponton summarized each section of the survey results, highlighting areas of interest as follows:

Licensure Type: 77.2% of respondents were OT's, 22.8% were OTA's
Demographics: 11 of the OTA's reported having achieved higher education degrees;
6% of the respondents hold doctorate degrees;
91% have current NBCOT certification; 4% have no professional affiliations
32.6% have over 20 years experience in OT
27.7% were employed in Hospitals and 23.7% in Skilled Nursing Facilities
Rural Nevada Services: 74% are located in Las Vegas metro; 23% are in Reno area; 6.1% in rural areas
31% are interested in working in rural areas
Incentives - Higher wages, transportation assistance, & telehealth opportunities
Practice Competencies: Specialty Areas of Interest
52% Neuro Development Treatment
35% Workplace Ergonomics
35.9% Assistive Technology Professional
31.4% Physical Agent Modalities
Specialty Trainings of Interest
44.4% Splinting
32.3% Cranial Sacral Techniques
AOTA Certifications
90.1% None
4.5% Pediatrics and Physical Rehabilitation
Ethics: 47.7% High Caseload
40% Unrealistic Productivity
26.8% Pressure to extend OT services after goals are met
49.5% Report ethical dilemmas to Director of Rehab
53.2% Have NOT completed the Nevada Jurisprudence Exam

Sol Magpantay commented that on high caseloads, it is the law of supply and demand, they need more OT's but it is up to the employer to hire; reimbursement will affect hiring. Ms Ponton commented that school based practice is also very high with caseloads, not just the hospitals.

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All OT practitioners must take the jurisprudence exam every 5 years; comments were heard on doing outreach to remind licensees. Ms. Magpantay stated everyone should have to take the exam by next renewal cycle.

Ms. Ponton directed the members to the Strategic Direction document requesting guidance on next steps on the survey & data collection initiative. The Board is on-track with this initiative.

After discussion, Ms. Ponton was directed to develop a more formalized publication with the survey results for review at the next meeting. The publication can then be edited, if necessary and distributed and shared with the Universities and with the Legislature.

Ms. Ponton stated a distribution list and consideration of the next Board initiatives identified in the Strategic Direction, such as ethical practices and rural services could then be considered.

Sol Magpantay commented that perhaps the universities could add incentives to their curriculum such as scholarships for 1 year of work in rural areas. Ms. Ponton commented the Board might consider waiving fees for licensees working in rural areas.

Executive Director's Report - Loretta Ponton reported on licensure statistics stating the total number of licensees as of September 30, 2019 is 1509, an increase of 173 licensees compared to last fiscal year.

FY 2020 Financial Statements: Ms. Ponton summarized the financial statements, reporting Revenue of \$62,334 (33.76% of budget) with additional income from recaptured legal fees of \$14,437, interest income and cost sharing income of \$5,151 for a total of \$67,485 in revenue. Expenses totaled \$66,541 (22.45% of budget) for a net of \$944.00 for the period. Balance sheet cash is \$720,928 with \$131,579 in deferred revenue. Ms. Ponton stated that \$50,000 was transferred from the investment account to the operating account; with a balance of approximately \$550,000 remaining in the investment account.

Governor's Finance Office, Division of Internal Audits - Audit Report: Ms. Ponton reported on the Governor's Finance Office, Division of Internal Audits - Boards1 Audit Follow-Up Status Report was presented to the Executive Audit Committee on November 7, 2019. The status report stated all Boards are in compliance with the salary limitation on executive staff.

Ms. Ponton reported that at the EBAC meeting, Governor Sisolak addressed the press release made by the Dental Board, resulting in an announcement of the resignation of the majority of the members of the Dental Board, and the termination of the Executive Director and General Counsel.

Office Relocation - The administrative office officially relocated November 15th and is now operational.

Sponsored Seminar - Ms. Ponton reported a 4-hour Ethics seminar would be presented by Donna Costa in Las Vegas on April 18, 2020. The PDPM topic has been withdrawn due to a misunderstanding with AOTA on the delivery method.

Complaints: Ms. Ponton reported on status of complaints in process totaling five active cases in various stages of investigation and negotiation. One licensee has been issued a Summary Suspension in Case C20-07 and will be scheduled for disciplinary hearing.

Legal Report - Henna Rasul, Sr. DAG, stated she had no report.

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Report from Board Chair - Liz Straughan reported that Melissa Genovese has resigned from the Board as she has relocated out of state and thanked Ms. Genovese for her service stating she has been a great asset and has contributed extensively to the Board's meetings and strategic plan.

Ms. Straughan went over the proposed 2020 meeting schedule. The next meeting is scheduled for February 8, 2020 in-person in Reno. Members were polled as to their availability for a Disciplinary Hearing on Friday/Saturday - February 28/29, 2020. Ms. Ponton will follow up with members to confirm. The May meeting date was moved to May 23, 2020 as Allison was not available on May 16, 2020. The members discussed holding meetings during the week with consensus that weekday meetings would be feasible after 5:00 p.m.

Future agenda items were identified as update to the survey and review of the strategic plan, next steps; regulatory hearing and adoption of new regulation; and legislative updates and issues.

The members discussed holding a workshop on the scope of practice issues after the Board meeting in Reno on February 8th. There was consensus to wait and schedule a separate workshop so all interested parties could participate.

Public Comment - Elizabeth Straughan asked if there were any public comments. No comments.

Adjournment – Elizabeth Straughan adjourned the meeting at 12:35 p.m.