

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES OF PUBLIC MEETING

August 10, 2019

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Members Present: Elizabeth Straughan, Allison Stone, Sol Magpantay, Melissa Genovese, Mel Minarik

Members Absent: None

Staff Present: Loretta L. Ponton, Executive Director, Stacey Whittaker, Executive Assistant, Paula Berkley, Board Lobbyist, Henna Rasul, Sr. Deputy Attorney General

Public Present: Santila Terry, Patrick McIntosh, Kathleen Murphy Jones, Karen Siran-Loughery, Deana Yates, Teri Lawrence

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Elizabeth Straughan, Chair, called the meeting to order at 10:06 a.m. A roll call confirmed a quorum was present. Elizabeth Straughan turned the Chair over to Allison Stone.

**Public Comments** – No comments.

Allison Stone stated Mel Minarik would be joining the meeting soon and agenda items will be taken out of order pending the arrival of Ms. Minarik.

**Approval of Minutes** - Allison Stone asked if there were any comments or revisions to the minutes of the meeting of May 25, 2019. Hearing none, called for a motion.

Sol Magpantay made the motion, seconded by Melissa Genovese to approve the minutes of May 25, 2019 as presented. The motion passed.

**Disciplinary Actions - Recommendation for Dismissal** - Allison Stone called on Loretta Ponton. Ms. Ponton stated that after review of all documentation received, it has been determined that there is insufficient evidence to file a formal complaint for hearing before the Board and the facts set forth in the accusations are insufficient to establish a violation of Chapter 640A of the Nevada Revised Statutes or the Nevada Administrative Code.

Case No. C19-02 alleged practice outside of scope of practice; Case No. C19-06 alleged failure to maintain records, document service and adhere to OT review and approval of notes.

Allison Stone called for a motion. Sol Magpantay made the motion, seconded by Elizabeth Straughan to dismiss Complaint Case No. C19-02 and Complaint Case No. C19-06. The motion passed.

Mel Minarik joined the meeting at 10:18 a.m.

**Strategic Plan Status and Reports** - Allison Stone directed the members to the Data Collection Survey Questionnaire. Loretta Ponton commended Melissa Genovese for her work on the survey questionnaire and suggested the Board delegate the finalization and distribution of the survey to staff. There was consensus that the survey questions and topics were adequate and ready for finalization.

Allison Stone called for a motion. Mel Minarik made the motion, seconded by Sol Magpantay to authorize the Executive Director to finalize and distribute the data survey in a format acceptable for compilation and data analysis. The motion passed.

Elizabeth Straughan reported on her attendance at the National Occupational Therapy Association Conference stating the conference was well attended and there were many very informative sessions in which to participate.

**Disciplinary Actions - Consent Decrees** - Allison Stone confirmed members had received and reviewed the Consent Decrees.

Sol Magpantay disclosed that she knew Vanessa Piggott, OTR as they had previously worked for the same employer. Henna Rasul, Board Counsel, asked if Sol could be impartial in considering the consent decree. Ms. Magpantay stated in the affirmative.

Melissa Genovese disclosed that she also has previously worked with Vanessa Piggott, OTR and stated she could be impartial in considering the consent decree.

Allison Stone directed the members to the Consent Decree in Complaint Case No. C17-03 & C19-03, Karen Siran-Loughery, OTR, License No. 0571, asking if there were any questions or discussions. Hearing none, called for a motion.

Sol Magpantay made the motion to approve the Consent Decree in Complaint Case No. C17-03 & C19-03, with Karen Siran-Loughery, OTR, License No. 057. Mel Minarik seconded the motion. The motion passed.

Allison Stone directed the members to the Consent Decree in Complaint Case No. C18-04, Vanessa Piggott, OTR, License No. 12-0243, asking if there were any questions or discussion. Hearing none, called for a motion.

Melissa Genovese made the motion, seconded by Elizabeth Straughan to approve the Consent Decree in Complaint Case No. C18-04 with Vanessa Piggott, OTR, License No. 12-0243. The motion passed.

Allison Stone directed the members to the Consent Decree in Complaint Case No. C19-11 & C19-12, David Bockhorn, COTA, License No. 12-1167, asking if there were any questions or discussion. Hearing none, called for a motion.

Sol Magpantay made the motion, seconded by Elizabeth Straughan to approve the Consent Decree in Complaint Case No. C19-11 & C19-12 with David Bockhorn, COTA, License No. 12-1167. The motion passed.

**Hearing for Determination of Violation of Consent Decree - Santila Terry, OTR** - Allison Stone called on Loretta Ponton and Henna Rasul, Board Counsel.

Ms. Ponton confirmed that Ms. Terry was provided notice of the hearing pursuant to NRS 241.033. Henna Rasul directed the Board on the issue to be heard, determination of violation of consent decree, pursuant to the Consent Decree, dated May 26, 2018.

Ms. Ponton provided evidence obtained and submitted to the Board regarding the employment of Santila Terry at Desert View Home Health, stating the evidence indicates a possible violation of paragraphs 1 and 5 of the consent decree. Ms. Ponton stated that Ms. Terry did not report her employment at Desert View Home Health to the Board, did not disclose her disciplinary action to her employer, did not have her

employer sign a copy of the consent decree, and has not adhered to the reporting requirements pursuant to the laws and regulations of the Board.

Ms. Terry was provided the opportunity to refute the allegations and provide information regarding the circumstances of her employment with Desert View Home Health. Ms. Terry acknowledged that she did not report her second job at Desert View Home Health to the Board; it was only a per diem position. Ms. Terry also acknowledged that she did not disclose the disciplinary action on her employment application; but stated it was an oversight as she was rushed to complete on-boarding with the company. She indicated that she was not trying to hide anything, and stated that she had given a copy of the consent decree to an associate in HR during the on-boarding process but did not follow up with obtaining a signed copy back from the employer.

Ms. Terry answered questions posed by members regarding her legal name and failure to disclose disciplinary action on her application. Ms. Terry responded that she prefers to use her middle name and signed the application as such, she emphasized she was not trying to hide anything. Ms. Terry reiterated that she was rushed completing the application and it was not intentional when she did not disclose the disciplinary action.

Ms. Terry answered questions regarding completion of the Nevada jurisprudence exam, and adherence to requirements for reporting employment and contact information. Ms. Terry responded that she did take and pass the jurisprudence exam and that she attempted to update the employment but was confused by the website reporting process. When asked if she tried to contact the Board, she stated she had not. Ms. Terry also stated she was not aware of the other reporting requirements.

Ms. Ponton stated that Ms. Terry has an approved payment schedule for the costs due to the Board; payments have not been regular with a balance of \$2,851.29 remaining.

The Board members discussed the allegations, evidence and testimony, citing a continuing history or trend of non-compliance and/or falsification of information.

Allison Stone called for a motion. Elizabeth Straughan made the motion, seconded by Melissa Genovese, that there was sufficient evidence that Santila Terry, OTR violated the terms of the Consent Decree dated May 26, 2018. The motion passed.

Allison Stone called for a motion on the term of suspension. Melissa Genovese made the motion to suspend Santila Terry's OTR License No. 16-0743 for a period of one (1) year. Elizabeth Straughan seconded the motion. The motion passed.

Allison Stone called for a motion on any terms if Ms. Terry were to reapply for licensure.

Elizabeth Straughan made a motion as follows:

- Ms. Terry would be eligible to reapply immediately upon termination of her suspension on August 10, 2020;
- Ms. Terry would have to apply as a new applicant, meeting the licensure requirements at that time;
- The balance of \$2,851.29 in outstanding legal and investigative costs must be paid in full;
- If the application is approved, the license would be placed on probation for 2 years;
- A copy of the Order must be signed by any employer within 30 days of employment; and
- Ms. Terry would be required to complete 4 hours of continuing education in Ethics within the first year of licensure.

Mel Minarik seconded the motion. The motion passed unanimously.

Allison Stone called a recess. The meeting reconvened at 11:57 a.m.

**Legislative Report** - Allison Stone called on Paula Berkley to report.

Paula Berkley directed the members to the written report of the 2019 Legislative Session, which contained detailed summary of actions on all bills tracked during the session. Ms. Berkley reported on specific outcomes and lessons learned from the legislative session, detailing bills of interest including efforts to increase Board fees, results of efforts to create new regulatory boards, scope of practice issues relating to oriental medicine and physical therapy, data collection initiatives and interim study of professional and occupational licensing boards.

**Fiscal Year 2020 Budget** - Allison Stone called upon Loretta Ponton to present.

*Reserve Funds* - Loretta Ponton presented an analysis of fund reserves, pursuant to Board Policy 15. Ms. Ponton stated the policy establishes reserve fund balance as a minimum of two (2) years and a maximum of four (4) years' operating expenses. As shown in the analysis the Board has approximately \$113,548 in excess of 2 years' operating expenses. Operating expenses are approximately \$300,000 per year.

*FY 2020 Budget* - Ms. Ponton presented the Fiscal Year 2020 Budget for consideration. Ms. Ponton discussed the detailed line item calculations, adjustments to personnel salaries and benefits, and identified variances from the previous FY 2019 budget.

Ms. Ponton stated that, as planned with the move to a 2-year licensure term, budgeted revenue is approximately \$100,000 below projected expenses and cash balances will have decreased by approximately \$200,000 by the end of FY 2020.

After review and discussion, Allison Stone called for a motion.

Mel Minarik made the motion to approve the Fiscal Year 2020 Budget as presented. Sol Magpantay seconded the motion. The motion passed

**Executive Director's Report** - Loretta Ponton reported on licensure statistics stating the total number of licensees as of June 30, 2019 is 1421, an increase of 100 licensees compared to last fiscal year.

*FY 2019 Financial Statements:* Ms. Ponton summarized the unaudited financial statements, reporting Revenue of \$201,907 and expenses of \$327,925 for a net loss of approximately \$120,906. Balance sheet cash is \$748,263 with \$145,227 in deferred revenue. Ms. Ponton stated that funds would be transferred from the investment account to the operating account to ensure sufficient cash is available for Board operating expenses through the fiscal year end.

*Governor's Finance Office, Division of Internal Audits - Audit Report:* Ms. Ponton reported on the Governor's Finance Office, Division of Internal Audits - Boards2 Audit Report that was presented to the Executive Audit Committee on June 25, 2019. The audit contains two (2) recommendations: to establish oversight of Boards under the Department of Business and Industry and establish standards for regulatory, financial and administrative operations through the Department of Business and Industry. If enacted, it would move all licensing Boards under an umbrella state agency, which will require substantial legislative action and may require general fund contributions. Ms. Ponton stated she would monitor and assess any actions to initiate legislation or create a new state oversight agency or division.

Paula Berkley added that she would meet with the Administrator of the Division of Internal Audits to discuss the findings and recommendations. She will attempt to educate the auditors and provide information on the pitfalls that will be faced if all the recommendations are pursued. Paula stated it is important to be proactive and try to alleviate their concerns and/or reduce the impact on the State and the Boards who are working well. Ms. Berkley also stated she would try to meet with and/or educate the members of the Executive Committee prior to their next meeting.

*Sponsored Seminar* - Ms. Ponton presented a proposal from AOTA to utilize their PDPM Specialty Conference materials. AOTA is offering the Board a discounted rate to purchase the course materials in bulk to provide an on-site seminar or to provide the materials at a 70% discount to licensees for direct purchase. AOTA offers 6.5 CE's for completion of the entire package. Ethics will be the second topic for the seminar to be presented by Donna Costa.

After discussion, the Board was in consensus to offer the discounted AOTA courses for direct purchase to all licensees for self-directed study and provide an on-site Ethics seminar, possibly using the Zoom platform to videoconference statewide.

*Continuing Education Audits* - Ms. Ponton reported the CE Audit is in process; licensees have been confused with the coordination of the 2-year renewal cycle and annual CE requirements. Ms. Ponton stated staff is reviewing the CE reporting process in relation to the renewal cycle and will bring recommendations back to the Board to make the CE reporting/audit process more efficient.

*Complaints*: Ms. Ponton reported on status of complaints in process totaling two active cases, excluding the cases considered at this meeting.

**Proposed Regulation** - Allison Stone called upon Loretta Ponton to present the draft proposed regulation revising NAC 640A.190, Fees.

Ms. Ponton reported the move to a 2-year license term has affected both reserve funds and "cash balance" as planned. The current reserve balance complies with Board Policy 15; this fiscal year; however, next year, Fiscal 2021, beginning July 1, 2020, projected cash balance/reserve will be at or below the minimum 2 year operating expense level.

A change in fees requires a revision to regulations, specifically NAC 640A.190, which must go through the administrative procedures for adoption of regulations. Ms. Ponton recommended that the Board consider raising fees to increase the "biennial" renewal fees to match the initial license fees of \$250 for an OTR and \$175 for a COTA, with corresponding proportional increases in inactive renewals, conversions and reinstatements, with no proposed increase for new applicants.

The proposed renewal fees would still be less than that charged for two renewals prior to moving to the 2-year term.

With the proposed fees, the Board would realize a gradual increase in revenue and cash beginning with FY 2021. The fee increase would be effective with renewals beginning April 2020 for fiscal years 2021 and 2022.

With a conservative 5% increase in licensee base per year and an average of \$300,000 in operating expenses per year the breakeven point for revenue to cover expenses would be in FY 2025. This gradual increase in revenue would result in an overall reduction of reserve funds of approximately \$387,000 by FY 2025.

There was Board consensus to move forward with the administrative rule making process and schedule a public workshop for consideration of the proposed regulation.

**Deputy Attorney General Report** - Henna Rasul stated she had nothing to report.

**Report from Board Chair** - Board members and staff presented Paula Berkley with an award for service to the Nevada professional and occupational licensing boards. Members expressed their appreciation for the last 10 years of service as the Board's lobbyist and congratulated Paula on her retirement.

Allison Stone directed the members to the meeting calendar.

Loretta Ponton stated she is proposing a Workshop on the regulation early October by teleconference, adding a quorum of the Board is not required for a workshop. The members were in agreement with scheduling a workshop.

Allison Stone and Mel Minarik stated they are not available on November 16<sup>th</sup> for a Board meeting. After discussion, the next meeting date was moved to November 23, 2019 by teleconference.

The calendar year 2020 proposed meeting schedule was reviewed and found to be acceptable, with the sponsored seminar to be held in April 2020.

**Public Comments** – Allison Stone asked if there were any public comments. There was no public present at this time.

**Adjournment** – Allison Stone adjourned the meeting at 2:05 p.m.