

STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

MINUTES BOARD MEETING & REGULATORY HEARING

February 8, 2020

Members Present: Elizabeth Straughan, Allison Stone, Sol Magpantay, Mel Minarik, Phil Seitz
Members Absent: None
Staff Present: Loretta L. Ponton, Executive Director, Stacey Whittaker, Executive Assistant, Henna Rasul, Sr. Deputy Attorney General
Public Present: Jeanette Belz, Linda Frasier, Shaina Meyer, Alyssa Gremban, Dorothy Palomo, Judy Ishibashi, Susan Kopy, Stephanie Schoen, Shannon Martin, Touro University Students: Jessica Mars, Annie Slater, Aleka Brock, Cecile Alvarez, Brittney Roberts, Justina Selim, Anna Redd, Ell Gunderson, Malysa Adams, Melissa Salcedo, Christy McWhorter, Ester Hammond, Christy Carmichael, Sara Gutner, Chris Daulton, Hannah Wood, Veronica Anduha, Rachel Taylor

Elizabeth Straughan, Chair, called the meeting to order at 9:06 a.m. A roll call confirmed a quorum was present. Liz Straughan stated that the Public Hearing is scheduled for 10:00 a.m.; agenda items may be taken out of order until 10:00 a.m.

Public Comments – Dorothy Palomo, COTA informed the Board of the concerns regarding reimbursement changes for COTA services that are affecting the livelihoods of practitioners. The elimination of reimbursement for treatments provided by a COTA is causing layoffs and elimination of positions. COTA's could become obsolete. There are not enough OT services being provided and realignment of duties by employers is jeopardizing the quality of services provided to the patients.

Judy Ishibashi, OTR commented there is a shortage of OT's in northern Nevada; if COTAs are not available the patients will not get appropriate care. OTRs are being asked to perform tasks normally delegated to a COTA affecting the health and safety of the clients.

Election of Chair and Vice Chair - Elizabeth Straughan stated the Chair and Vice Chair positions are open for appointment.

Sol Magpantay made the motion to appoint Liz Straughan to continue as Chair. Allison Stone seconded the motion. The motion passed with Liz Straughan abstaining.

Mel Minarik made the motion, seconded by Sol Magpantay to appoint Allison Stone as Vice Chair. The motion passed with Allison Stone abstaining.

Approval of the Minutes - Elizabeth Straughan asked if there were any corrections, revisions or other discussion of the minutes of the November 23, 2019.

It was noted Mel Minarik was present at the November 23rd meeting, however; she joined the meeting at 11:00 a.m. Ms. Straughan called for a motion.

Allison Stone made the motion to approve the minutes of the Board meeting of November 23, 2019 as revised. Sol Magpantay seconded the motion. The motion passed with Phil Seitz abstaining.

Disciplinary Matters - Ms. Straughan called on Loretta Ponton. Ms. Ponton stated that after review of all documentation received in regards to Complaint Cases C20-02, C20-03, C20-04, C20-05 and C20-06; it is recommended the Board formally dismiss the cases as referenced.

Four of the cases were as a result of one individual complainant who alleged unprofessional conduct, unethical conduct, falsification of records and failure to complete documentation timely. Case C20-03 alleged promotion of unethical behavior, instructing others to falsify documentation and creating a hostile workplace.

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

Allison Stone made the motion to dismiss Complaint Cases C20-02, C20-03, C20-04, C20-05 and C20-06. Sol Magpantay seconded the motion. The motion passed.

Operating Policies and Procedures - Liz Straughan asked Loretta Ponton to present. Ms. Ponton summarized the updates to the Operating Policies and Procedures and explained the addition of Section 9 that establish a process by which an individual can petition to the Board for an early review of potential criminal history that may disqualify the individual from obtaining a license. Ms. Ponton explained that AB 319 of the 80th Legislative Session requires all regulatory agencies to develop a process. Some Boards are creating a process by regulation, others by policy.

Liz Straughan stated she is impressed with the changes in policies and procedures and the work of the Executive Director to keep the Board processes up-to-date. Ms. Straughan asked if there were any questions. Hearing none, called for a motion.

Allison Stone made the motion, seconded by Mel Minarik to approve the Operating Policies and Procedures as revised. The motion passed.

Occupational Therapy Practice Survey Data - Liz Straughan asked Loretta Ponton to facilitate. Ms. Ponton stated the survey data publication is presented for comment and discussion as to where the Board would like the information disseminated. The overall response rate to the survey was 14% but does reflect the overall demographics of OT practice in Nevada.

Ms. Ponton recommended distribution to the higher education institutions and Legislative representatives; especially those with interests in workforce development, occupational and professional regulation and health care in general, including rural areas and veterans services.

Allison Stone suggested distribution to all schools, not just OT schools, NOTA, NBCOT and AOTA. Linda Frasier suggested high schools be included as they are career path opportunities. Judy Ishibashi agreed stating students do not know about OT as a career.

Mel Minarik stated the Ethics piece is good for studies, problem solving; there is movement in health services and there is a need for this type of information for didactic and practicums and with interdisciplinary groups.

Liz Straughan called for a motion.

Allison Stone made the motion to approve the survey publication and distribute to all parties as discussed. Mel Minarik seconded the motion. The motion passed.

Nevada Occupational Therapy Association - Liz Straughan welcomed the representatives of NOTA.

Linda Frasier, Alyssa Gremban and Shaina Meyer introduced themselves.

Linda Frasier, NOTA Treasurer, provided an update on the NOTA activities directing the members to the NOTA handout of events. NOTA's focus has previously been in the south. NOTA has been conducting outreach in northern Nevada, to promote membership, hoping to create a northern Nevada division of the Association.

NOTA is holding a conference in Las Vegas June 6th and is helping host a Western Regional conference in Las Vegas with the California Association.

Ms. Frasier reported there are about 200 members currently, membership cost \$50 per year, \$20 for students and members receive free continuing education and many other things.

Shaina Meyer, NOTA Legislative Chair, was asked if NOTA would be addressing the billing issues reported earlier. Ms. Meyer reported that the CMS regulations, Medicare and Medicaid, are the driving force for the billing issues reported earlier. The Association does not have an opportunity to fight CMS but is working with AOTA in this area to try to address these issues.

Mel Minarik stated NOTA may want to include the academic perspective, research adds value. Focus efforts on evidence based practice and look at outcomes.

Alyssa Gremban, Membership Chair reported on outreach efforts such as the NOTA Nuggets, reviews of OT practice and research evidence.

The NOTA members expressed their appreciation for being able to present to the Board and expressed interest in working cooperatively with the Board in the upcoming Legislative session.

Legislative Update - Jeanette Belz introduced herself and provided a background on her firm and legislative experience. Ms. Belz disclosed that she also represents the State Board of Cosmetology.

Ms. Belz reported on the history behind the focus on boards and commissions, including the executive branch audit committees June 2018 audit which covered the use of the Attorney General's Office; levels of reserve funds, contract approvals by BOE, government funding, and salaries of executive directors. A second June 2019 audit focused on recommendations for increased oversight, shared services and consideration of pulling boards under the Department of Business and Industry. These are recommendations at this point. It was identified that there may be a need for general fund appropriations. It is likely that there will be a Bill Draft in the next Legislative Session coming out of the Governor's Office.

Ms. Belz also reported on SCR 6, which authorized an Interim Study by the Sunset Subcommittee. Their first meeting was in January 2020; the interim study was not discussed. The Sunset Subcommittee selected some Boards for review, those that were originally reviewed in 2012. The Dental Board and Pharmacy Board have both been in the headlines and are both subject to additional audits.

Ms. Belz reported that she expects an active Legislative Session and she will work hard to distinguish the Board of Occupational Therapy.

Mel Minarik stated Loretta has done a great job, with integrity. Jeanette Belz stated that was a key deciding factor in contracting with this Board.

Liz Straughan called for 5-minute break at 9:53 a.m. The meeting reconvened at 10:01 a.m.

Regulatory Hearing - LCB File R105-19

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. R105-19, Chapter 640A of Nevada Revised Statutes. The proposed regulation revises provisions requiring a licensee to provide notification to the Board of Occupational Therapy after obtaining employment or changing employment status and revises provisions relating to continuing education requirements to conform to the 2-year license renewal period.

Ms. Ponton opened the hearing for public comments on the regulation.

Stephanie Schoen stated she had a question, not a specific comment. Ms. Schoen asked why the Board was requesting employment information, seems to be micro-management. The Nursing Board does not require this information, and asked whether other Boards are requiring this type of data.

Ms. Ponton responded that the information is necessary for data reporting and supervisory reporting. There are multiple instances where licensees are working for multiple employers; it is also used in disciplinary case reviews when trying to track down licensees when only an employer is identified by a complainant. Ms. Ponton added that reporting employment information is an on-line process and not burdensome to a licensee.

Judy Ishibashi commented that knowing employment information is in-line with the mission to protect the public.

Ms. Ponton asked if there were any further comments or concerns. Stephanie Schoen stated she is not in opposition with the information provided.

Ms. Ponton closed the hearing at 10:09 a.m.

Consideration of Public Comments on LCB File No. R105-19 - Ms. Straughan asked members if they had any concerns or additional comments for discussion. There were no concerns or comments for consideration.

Adoption of Regulation LCB File No. R105-19 - Elizabeth Straughan stated the Board has considered public comments and called for a motion.

Allison Stone made the motion to adopt LCB File No. R105-19 as presented with no revisions. Phil Seitz seconded the motion. The motion passed.

Board Work Session - Liz Straughan asked Loretta Ponton to facilitate. Ms. Ponton provided background information stating the Board work session topics are the result of the public comments and opposition and concerns expressed about regulating invasive procedures and the relationship to occupation based practice. Areas for discussion include dry needling, internal pelvic floor therapy, protocols for specialized practice in these areas and relationship to OT occupation based practice. Ms. Ponton explained the Board does not license establishments, but could develop protocols for specific procedures and identify areas that may need to be addressed such as what is appropriate for the practice of OT. The work session is an informational gathering session. Ms. Ponton stated she has received 10 letters from patients of Advanced Manual Therapy in Las Vegas who have received dry needling therapy, requesting that OT's be allowed to perform dry needling so they don't have to be referred to an

Acupuncturist and pay additional medical costs. Ms. Ponton stated Advanced Manual Therapy provides both OT and PT Services and that PT's are allowed to perform dry needling, if properly trained.

Ms. Ponton asked the members to consider whether dry needling is "occupation based" and whether referral is the appropriate thing to do.

Phil Seitz stated it is used in outpatient hand therapy, it is PT driven. Does it benefit patients - yes, but should OT's be doing it? Other modalities available can be used. Other states require certifications, which is not necessarily what we want to do; it can be a burden to the clinicians. There are also new modalities coming out.

Sol Magpantay stated that for PAMs, Florida requires CE and supervision be documented and submitted to the Board; California has modality certifications. Pelvic Floor Training for certification can be very invasive, OT's need to protect their license.

Liz Straughan stated that AOTA has not taken a stand on dry needling or pelvic floor therapy. She questioned whether individual licensees are getting training and performing them.

Shaina Meyer stated that it is a concern that it will be taken completely off the table.

Allison Stone asked what constitutes training/certification?

Linda Frasier stated these are very specialized areas, usually not covered in university curriculum. She stated we have not heard from enough practitioners, we do not want to restrict areas of practice; lymphedema certification also requires significant training.

Mel Minarik asked where is the research; dry needling vs acupressure?

Liz Straughan stated again that AOTA's stance is that we should not be doing it.

Stephanie Schoen stated that the practitioner is responsible for their education / certification. They need to protect their professional license in addition to the public. Perhaps they should send their certifications to the Board in case a complaint is filed. It was commented the Board would need to request certification for many modalities, not just dry needling.

Loretta Ponton reiterated the State Legislative Counsel Bureau Legal Opinion states dry needling must be within the scope of practice delineated in law; including the educational requirements. Ms. Ponton reported the PT Board was successful in including in their NRS scope of practice; however their regulation for educational requirements has not been approved; the Legislative Commission wanted more specifics in the regulation.

Ms. Ponton stated that if this Board feels they want more information/evidence, they would need to start now, as it would take legislative authority; it is too late for the 2021 Legislative Session so a target would be the 2023 Legislative Session.

Mel Minarik stated we could work with the PT Board; Ms. Ponton stated they have their National Association APTA's support; AOTA has not taken a stance.

Phil Seitz stated dry needling is not done in many settings - there is a limited scope. Sol Magpantay added mostly hand therapy and outpatient services.

Liz Straughan reiterated that we should refer to AOTA for guidance.

Mel Minarik asked what other states are doing. Loretta Ponton replied that many states said no, a few are recognizing dry needling for OT. Sol Magpantay added there is no evidence-based research right now.

Liz Straughan asked what the hand therapy association is recognizing.

Sol Magpantay again stated California requires specialty certification; should Nevada go this route?

Loretta Ponton explained that Nevada has historically chosen to be least restrictive in regulation; the OT should be responsible for obtaining the expertise necessary. Nevada requires appropriate training, proof of expertise and/or training would be requested if a complaint were filed. There is a fine line between protecting the public and restraining practice. The Board should not be imposing requirements that restrain practice. As the Board licensee base grows, more instances are being brought up. Maybe it is time to address areas in question.

Stephanie Schoen stated she supports the idea of treading cautiously, not micro managing which could be detrimental; focus on areas of concern.

Allison Stone stated the Board should focus on the more invasive areas.

Liz Straughan stated she was not hearing a general plan, that the Board needs more research.

It was suggested to utilize NOTA to do some of the research, which would save the Board time and money.

Allison Stone recommended obtaining more information on the following certifications:

- Dry Needling,
- Pelvic Floor, and
- Wound Care.

Loretta Ponton stated more research would be conducted in these three areas and it would be brought back to the Board for further discussion.

Ms. Ponton inquired about the use of CBD products in OT Practice. Allison Stone responded in her facility they cannot have an opinion or comment since it is not federally approved.

Executive Director's Report - Loretta Ponton reported on licensure statistics stating the total number of licensees as of December 31, 2019 was 1544, an increase of 14.1% and 191 licensees compared to the same period last year.

FY 2020 Financial Statements: Ms. Ponton summarized the financial statements, reporting that moving expenses totaled \$9,264 of which was less than the approved budget of \$12,500.

Revenue is at \$105,773 in licensing and other fees (57.29% of budget) with additional income from recaptured legal fees of \$14,437, interest income and cost sharing income of \$15,769 for a total of \$123,543 in revenue.

Expenses totaled \$148,695 (50.17% of budget) for a net loss of (\$ 27,153) as of December 31, 2019.

Balance sheet cash is \$667,223 with \$105,003 in deferred revenue.

Ms. Ponton reported the approved Budget does not include authority for the new Legislative Services contract, which will be \$12,000 during FY 20. Ms. Ponton proposed the Board formally approve a revision to the Budget increasing the Professional Fees category \$12,000.00.

Contract Awards: Contracts were awarded to JK Belz for Legislative Services and Haynie and Company for Audit Services.

The Legislative Commission approved regulation R067-19 on December 30, 2019. The new fee schedule became effective January 1, 2020.

Sponsored Seminar: Ms. Ponton reported a 4-hour Ethics seminar would be presented by Donna Costa in Las Vegas on April 18, 2020 and in Reno on April 25, 2020. Save the date emails have been sent to licensees.

Board Training: Ms. Ponton reported on three training opportunities for Board members; CLEAR Introduction to Regulatory Governance Webinar Series; Orientation for New OT Regulators in Chicago on April 2 offered by NBCOT and the NBCOT OT State Regulatory Leadership Forum May 12-13 in Atlanta, Georgia.

Phil Seitz and Mel Minarik stated they would be interested in the New OT Regulator's Training; Allison Stone and Sol Magpantay expressed interest in attending the NBCOT OT State Regulatory Leadership Forum.

Complaints: Ms. Ponton reported six (6) complaints are pending in various stages of investigation and negotiation. The Summary Suspension in Cases C20-07 / C 20-08 remains in affect pending Hearing.

Board Member Manual: Ms. Ponton directed the members to the new Board Member Manual provided to all the members. The manual will be utilized in addition to Board orientation and outside trainings and is intended as a tool for members in the performance of their duties and responsibilities on the Board.

Liz Straughan called for a motion to approve the Executive Director's report and FY 2020 Budget revision.

Allison Stone made the motion to approve the Executive Director's Report and FY 20 Budget Revision to increase the Professional Services line item by \$12,000 to fund the Legislative Services contract. Mel Minarik seconded the motion. The motion passed.

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

Report from Board Chair - Liz Straughan confirmed the proposed 2020 meeting schedule. The next meeting is scheduled for May 23, 2020 by teleconference. The August 15, 2020 meeting was changed to an in-person meeting in Las Vegas.

The proposed dates for Disciplinary Hearing were discussed. All members confirmed availability for a Hearing on Friday and Saturday, June 26 - 27, 2020 to be held in Las Vegas.

Future agenda items identified are a review of the strategic plan, legislative updates, approval of the FY 2021 Budget and report on research on modalities and specialties.

The members requested a presentation from PIMA University on the new COTA program in Las Vegas be added as a future agenda item.

A possible strategic planning session and legislative tour may be scheduled during the 2021 Legislative Session.

Sol Magpantay asked about the Occupational Therapy Model Compact initiative being supported by AOTA and NBCOT. Ms. Ponton stated that a compact will have costs associated, adds another layer of administration, will require a cross-state databank for disciplinary reporting and is intended to expedite or eliminate duplicate licensure in compact states. Compacts have not yet become effective; they require a minimum of 10 states to sign on. Legislation would be required to join a compact. Ms. Ponton stated that Nevada's licensing process already is expedited with on-line applications and 3-5 day maximum processing time. Some states take weeks or months to issue a license.

The OT Compact will be added as a future agenda item.

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

Adjournment – Elizabeth Straughan adjourned the meeting at 11:27 a.m.