

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

STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

MINUTES BOARD MEETING

August 15, 2020 - Teleconference

Members Present: Elizabeth Straughan, Sol Magpantay, Mel Minarik, Phil Seitz
Members Absent: Allison Stone
Staff Present: Loretta L. Ponton, Executive Director, Stacey Whittaker, Licensing Coordinator, Henna Rasul, Sr. Deputy Attorney General
Public Present: Jeannette Belz, JK Belz & Associates; Shaina Meyer, NOTA; Kristen Neville, AOTA; Joyce Mosely, OTR; Karen Picas, OTR; Teri Lawrence, Blake Piercy, OTR; Paula Cook, OTR; Jeannie Dwyer, DCSD; Denell Manthey, OTR, Karen Siran-Loughery, OTR; Rachel Martin, OTR; Robyn Kaiser, OTR

Elizabeth Straughan, Chair, called the meeting to order at 10:03 a.m. A roll call confirmed a quorum was present.

Public Comments – Teri Lawrence asked if this is the time to comment on the new NAC section on professional responsibility. She was informed the public workshop will be open for public comment. No other comments were made.

Approval of the Minutes - Elizabeth Straughan asked if there were any corrections, revisions or other discussion of the minutes of the May 23, 2020 meeting.

No revisions were noted. Ms. Straughan called for a motion.

Sol Magpantay made the motion to approve the minutes of the Board meeting of May 23, 2020. Phil Seitz seconded the motion. The motion passed.

License Application – Blake Piercy - Elizabeth Straughan called on Loretta Ponton. Ms. Ponton summarized the application and qualifications of Mr. Piercy stating the application is before the Board as Mr. Piercy disclosed a criminal conviction to which he pled guilty and is currently on probation.

Liz Straughan asked if members had questions for Mr. Piercy.

Sol Magpantay asked when the probation was ending. Mr. Piercy responded the paperwork has been sent in, he is waiting for approval.

Mel Minarik asked if he has taken any classes. Mr. Piercy responded he has taken classes and has a private counselor.

Phil Seitz asked what he has learned and what practice areas he is interested in. Mr. Piercy responded he has learned coping mechanism to deal with stressful situations. He is interested in hand therapy, and did his fieldwork in an ICU and school district. Both were very interesting.

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Mel Minarik asked if he foresees triggers in practice. Mr. Piercy responded he does not see that occurring in the workplace. He has learned to calm down and evaluate the situation, collect his thoughts and then plan to talk and not react.

Phil Seitz advised not to go into practice in special education as it is very high stress. Sol Magpantay added that home health would not be a good fit either, he should work in a setting with other OT's to be able to interact and mentor him has a new practitioner.

Liz Straughan asked if there were any other concerns; called for motion.

Sol Magpantay made the motion to approve the application for licensure and place the license on probation until documentation is received to verify completion of the criminal probation. Phil Seitz seconded the motion. The motion passed.

Reinstatement Application – Denell Manthey, OTR – Liz Straughan stated she has recommendations for consideration regarding this matter. Loretta Ponton summarized the application for reinstatement and history of events. Ms. Manthey was licensed with the Board as an occupational therapist; her license was not renewed and expired June 30, 2018. Ms. Manthey revealed on her reinstatement application that she continued to practice and was employed by the Douglas County School District continually since her license expired. A cease and desist letter was issued and Ms. Manthey was notified her reinstatement would be heard before the Board. Ms. Manthey has provided written explanation for the lapse in license and the supplemental information contains additional information with questions and answers relating to the circumstances.

Liz Straughan stated that after review of the materials she would recommend reinstatement of Ms. Manthey's license, a public reprimand for unprofessional conduct, an administrative fine of \$2,000, \$1,000 for each year of unlicensed practice, 6 hours of continuing education in ethics and that a copy of the Board Order be signed by her employer and returned to the Board.

Phil Seitz asked Ms. Manthey to explain what happened. Ms. Manthey stated she thought she had renewed; at the time she was having issues with her mother. Phil Seitz asked if she received the email renewal notices. Ms. Manthey responded yes, it was an old email and she was guilty of not checking it regularly. Ms. Manthey offered her apologies for not renewing her license, it was an oversight. She has practiced occupational therapy for over 20 years, 6 year with the Douglas County School District.

Jeannie Dwyer, Douglas County School District, stated Ms. Manthey is an exemplary employee, great with kids, staff and parents. It was an oversight that the school district did not follow-up and processes have been put into place to ensure this doesn't happen again.

Liz Straughan asked if the school district bills from notes. Ms. Dwyer responded that Douglas County School District does not bill Medicaid.

Mel Minarik stated that she supports the recommendations as presented; however, would like to propose the penalty be reduced to \$1,000, \$500 for each year of unlicensed practice. Sol Magpantay and Phil Seitz also stated concurrence with the recommendations and reduced penalty.

Liz Straughan called for a motion.

Mel Minarik made the motion, seconded by Sol Magpantay to approve the Reinstatement Application of Denell Manthey, assess a fine of \$1,000, \$500 per year of unlicensed practice, issue a public reprimand, assess legal fees and costs, amount to be determined by legal counsel, require 6 hours of continuing

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education in ethics and require that a copy of the Board Order be signed by her employer and submitted to the Board. Sol Magpantay seconded the motion. The motion passed.

Legislative Report – Liz Straughan called upon Jeannette Belz to provide the legislative report.

Jeannette Belz updated the Board on Interim Committee meetings that have met.

The Sunset Subcommittee meeting met June 23rd and June 30th. At the June 23rd meeting, Terry Reynolds, Director of the Department of Business and Industry provided an overview of the structure of his agency which oversees 23 boards/commission which are divided into three categories, independent authority created by statute, division authority with members appointed by the Division head and B & I appointed. If consolidated, the regulatory boards would loosely fall under the independent model; moving functions under one state agency.

Sol Magpantay asked if it would be like California, Department of Consumer Affairs.

Ms. Ponton responded yes, it has been proposed to move boards under Business and Industry, they provide staffing and support, the state would collect the licensing fees, the Boards would be primarily advisory, would review and propose regulations and would not actually administer anything.

Ms. Ponton added that it was estimated to cost in excess of \$200,000,000 in previous legislative discussion on consolidation of Boards. There have been no final decisions. Due to the lack of state funding, the legislature most likely will not consider or pass legislation this session. If passed, it would take a minimum of 4 years for full implementation.

Jeanette Belz added that there are a whole range of options out there.

Phil Seitz asked if we have a choice to stay as we are. Loretta Ponton responded the Board is legislatively created, the Board has no say but we can advocate. Jeannette Belz stated our job is to educate legislators.

Jeannette Belz continued, at the June 30th meeting, the summary of the special survey of regulatory boards was presented by committee staff. The final meeting of the Sunset Subcommittee is scheduled for August 31st where they will review bill draft recommendations.

The Legislative Committee on Health Care heard a presentation from John Packham, Co-Director of the Nevada Workforce Research Center at UNR. Mr. Packham is proposing to statutorily require licensing boards to collect standardized information for licensees that might include social and demographic characteristics, education and training, current employment and retirement plans. The committee will be meeting August 19th and on September 14th, to review bill draft recommendations.

Mel Minarik added that she participated on a task force @ UNR for a PT/OT training program. There was lack of data to support workforce planning.

Ms. Belz also reported on the 2020 primary election and 31st special session of the Legislature.

Nevada Occupational Therapy Association Report– Liz Straughan called upon Shaina Meyer.

Ms. Meyer provided a report on current activities of NOTA which included the annual conference to be held September 26, 2020; the successful call to action to retain funding for occupational therapy services, AB 3 of the 31st special session of the legislature; the creation of 2 new committees, Diversity and Legislative/Policy, and the availability of 3 micro grants.

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American Occupational Therapy Association (AOTA) Report – Liz Straughan called upon Kristen Neville, Manager State Affairs, AOTA.

Ms. Neville reported on the Draft OT Compact which is currently under review after having received stakeholder comments. AOTA has a Back to School Guide which she encouraged individuals to share with interested parties and school districts. Ms. Neville reported that AOTA has begun a new initiative coming soon to create a Diversity, Equity & Inclusion task force.

Regulatory Workshop – Liz Straughan stated Loretta Ponton would facilitate the workshop.

Loretta Ponton stated the workshop will be open for public comments and asked that each individual identify themselves prior to speaking. The workshop is being held to solicit comments from stakeholders regarding proposed revisions and additions to NAC 640A. Ms. Ponton explained this is a working document and anticipates there will be a second workshop before a hearing for adoption.

The first section NAC 640A.068, establishes an inactive license for retirees with reduced renewal fee, removes CE requirements for all inactive license renewals. The CE requirement would be required to convert from inactive to active status. Retirees would be required to pay the full renewal fee to convert to active status.

Kristin Neville suggested making separate sections for regular inactive and retired inactive status. Ms. Ponton responded the requirements are the same except for the fee.

Robyn Kaiser asked if an inactive licensee can practice in another state. Ms. Ponton responded that the inactive status pertains only to Nevada.

Karen Picas commented she likes the idea of keeping it less restrictive, inactive for retirement and also allows for maternity leave for example.

Loretta Ponton added an additional benefit is that current NBCOT is required for a new or reinstatement of a license; an inactive to active conversion does not require current NBCOT as there has been no break in licensure.

Revisions to NAC 640A.160 Fees creates the reduced fee of \$50.00 for renewal in inactive status. This section also reduces the conversion fee for a COTA to match the biennial renewal fee established for the standard license renewal.

There were no comments on this section.

Revisions to NAC 640A.250 regarding supervision requirements, removes the supervisory log requirement; no other state requires this level of documentation.

Kristen Neville comments that states are moving away from this detail and feels this is a good decision.

Paula Cook with NOTA commented that video-conferencing language should be added to the methods of supervision allowed. Robyn Kaiser stated it would need to be HIPAA compliant. Phil Seitz commented that a secure VPN is required, an employer must mandate and provide unless you're an independent contractor.

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Robyn Kaiser commented that supervision is questionable for independent contractors and home health. Zoom is not compliant unless you purchase an add-on. If added, the regulation should include HIPAA language.

Robyn Kaiser asked if it is appropriate for out-of-state licensees to supervise a COTA. She does not feel it is ethically appropriate, a supervising therapist should be in-state. Loretta Ponton responded if the OT is in Utah and the patient is in Nevada and services are being provided by telehealth why would that not be appropriate. Robyn Kaiser stated telehealth is OK, but not for direct treatments, the supervisor has to be in-state – it's not ethical and it has occurred. There is a COTA who has an OT supervisor who is not even in Nevada and does not practice in Nevada.

Karen Siran-Loughery commented that she knows of the situation, the Board needs to consider some language. Robyn Kaiser stated the language and details need to change.

Sol Magpantay commented there are numerous instances along the Nevada border, California, Truckee, Utah scenarios, where the practitioner lives out-of-state but works in Nevada.

Loretta Ponton stated more discussion needs to take place, and encouraged the commenters to contact her regarding the specifics of the concerns. If necessary, this will be brought back for more discussion.

Ms. Ponton stated new regulations are proposed regarding professional responsibilities in business ownership which supplements the AOTA Code of Ethics.

Kristin Neville commented that AOTA generally supports this change. The question is OTA functioning in Administrative roles, owns business and has more than one role; clinical vs. non-clinical. Another question is they can be licensed as both an OT and OTA, how would the Board enforce? Ms. Ponton responded there is a requirement in regulation to wear name tags that state the professional credentials when working in that role. Ms. Neville asked what defines an administrative role. Ms. Ponton responded the Board does not define as they regulate the profession; there can be a cross-over. A practitioner cannot use an administrative role to influence treatment of clients.

Robyn Kaiser asked if there were concerns with an OTA owned practice and hiring of their own supervisor. Ms. Ponton responded that the Board does not regulate businesses; this concern is addressed in requiring a “written plan of supervision” that meets the requirements addressed in section 3, the OTR is responsible for the client.

Robyn Kaiser asked if the Board sees an issue with an OTA paying their supervisor to work for them. Ms. Ponton reiterated that the Board cannot say an OTA can't own their own business, but we are saying it has to be done in an ethical manner.

Robyn Kaiser commented it might be better defined in roles/responsibilities of an OTA in a revision to regulation rather than as an ethical consideration. Karen Siran-Loughery added it could be added to NRS or NAC 640A.210 by adding a section defining roles and responsibilities. There is a conflict with the hire/fire/pay controls when an OTA is the owner, the HR person and pays the OT/supervisor. In California, PTA's are not allowed to own businesses.

Loretta Ponton responded that the Board is open to suggestions, please submit recommendations and suggestions in writing. The proposed new regulation is preliminary and we can work together to draft language.

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Robyn Kaiser added that proper representation, credentials need to be listed on websites, advertising and social media. Ms. Ponton responded there is a regulation on advertising, she will review and revise if necessary.

Karen Siran-Loughery commented that NAC 640A.205 adopts AOTA language, we don't need new regulation. You have to look at the cost to the Board to enforce. In section 1, sections b, c, d, e and f address credentials and mirror AOTA language.

Karen Siran-Loughery stated a small business impact statement is not there. Ms. Ponton responded we are not at that stage yet. There will be an additional workshop and revisions after this meeting.

Kristen Neville commented that feedback is appreciated and AOTA will look at their language as well.

Ms. Ponton continued with new language proposed to define “in-good-standing” when issuing a verification of license status. Ms. Ponton explained the need to define the term, most states require a report of license status but there has not been a consistent definition of what the term means. The definition would allow the Board a means to report non-compliance with administrative requirements such as changes to contact information and non-response to audit/monitoring requests without issuing an administrative complaint, which would require following the full complaint process and can be costly.

Phil Seitz asked what delineates “good standing”; what do other boards do? Ms. Ponton responded she doesn't know if other boards define the term. What is proposed is that the file would be flagged for non-compliance with NAC or NRS administrative requirements which would show on a license verification request as “not in good standing”. The individual would have the opportunity to contact the Board to clear the administrative issue and the Board could then reissue the verification with the updated information. Additionally, if the individual applied for reinstatement of the license, it would be flagged for Board review and approval.

Liz Straughan commented perhaps a checklist on the verification form could be added. Ms. Ponton responded the verification is generated from the data system. There is no way to add an individual checklist as those elements are not in the data system.

The public workshop was closed.

Executive Director's Report - Loretta Ponton directed the members to the written report and supplemental material. Ms. Ponton reported as follows:

Licensure Statistics: Statistics on current and prior year licensing data was reviewed as well as FY 19 / FY 20 statistics by quarter. The Board just completed the first 2-year renewal cycle. As of August 1st, 91 licenses with an expiration of June 30th were not renewed and 10 licensees renewed late.

Covid-19 provisions and Office Operations: Seventy-seven (77) licensees have deferred payment of renewal fees and 7 temporary licenses have been issued; staff are rotating with one person on-site in the office, and working remotely when not on-site. Long term, changes in standard operating process may be considered; discussion of concept of an administrative collaborative will be discussed later.

Liz Straughan asked when the deferred fees are due. Ms. Ponton responded September 30 or 60 days from the end of the emergency. An email reminder will be sent in early September. The Board may need to reconsider the COVID-19 provisions if the state of emergency continues; the option to defer is still available and adding to the accounts receivable.

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FY 2020 Financial Statements: The biennial audit of FY 19/FY 20 has begun. The unaudited 4th Quarter financial statements were summarized, with explanation on variances to budget in revenue and expense line items.

Total Revenue for the year was \$ 223,703.72; Expenses total \$288,966.52. Net income is (\$68,517.50). Balance sheet total cash available at June 30, 2020 is \$747,927.63 including cash in investments. The investments have been moved to Wells Fargo Advisors as of June 10th.

Liz Straughan inquired if there is enough money to carry the Board through the next 2 years. Ms. Ponton responded that yes, 65-70% renewed in June, there is cash coming in every month from new applicants and renewals, cash flow is good. Cash in the bank is down approximately \$150,000 but that was planned. There is sufficient cash for two fiscal years.

Phil Seitz asked if we are required to have a balanced budget like the state; what would happen if the Board goes upside down. Ms. Ponton responded the Board is independently funded by licensee fees and is not required to have a balanced budget. Over the years as licensees increased, the Board accumulated a high reserve cash balance and took action to reduce that balance by moving to the 2 year license without an increase in fees, providing an equivalent 1-year free license. This last year, the Board increased the renewal fee by approximately ½ which is reflected in the current cash balance. Phil Seitz asked who oversees the budgeting and finances. Ms. Ponton responded that it is the responsibility of the Executive Director.

Sunset Subcommittee: The Special Survey of licensing boards was compiled by LCB staff and presented to the Sunset Subcommittee. In response to the survey, additional statistics on license by endorsement was compiled and provided to LCB staff for inclusion in their report on compliance requested by the Sunset Subcommittee. Ms. Ponton added that five “hot topics” were identified as common themes amongst legislators; a “Legislative Hot Topics” summary has been compiled to highlight the Board’s compliance within each of the topic areas.

COTA Supervisory Audit: The supervisory audit has been completed, with two individuals not responding. It was determined one COTA left employment due to medical reasons and the other is out-of-state and appears to have never been employed in Nevada. Neither have renewed their licenses. Both individuals’ records have been flagged, requiring appearance before the Board if they reapply.

Board Training: Members were provided information on the FARB Conference opportunities, a virtual regulatory law conference in October and annual regulatory conference in January scheduled in Fort Worth, Texas.

Complaints: There are no open complaints in process.

Board Administrative Collaborative: Ms. Ponton concluded her report with an explanation of the draft concept of a proposed Board Administrative Collaborative and option for offering co-working space at the Board’s administrative office.

The concept would provide a means for regulatory Boards to improve communications and help each other to be in compliance with administration requirements. It is difficult to keep up with new administrative requirements, newer and less experienced Executive Directors begin with having a disadvantage in understanding the administrative roles and requirements for regulatory Board compliance with State and Legislative mandates. The State historically has provided little assistance and training in these matters - the Legislature has targeted Boards for "non-compliance" with their mandates and will be proposing new legislation regarding professional and occupational regulatory Boards.

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As an alternative and pro-active approach to addressing State and Legislative concerns, the draft concept to establish a formal Board Administrative Collaborative of regulatory leaders has been developed.

A second related concept of co-working space arrangements for smaller regulatory Boards is also proposed, utilizing the Board of Occupational Therapy administrative office space. The concept incorporates the new "remote working" scenario as a new and viable way of doing business in the long-term; while providing access to office resources as necessary, based upon each Board's actual needs for Co-Working space/offices. The Board has available office space to offer, similar to the co-location agreements but on a part-time, as needed basis. This concept would potentially be a very cost effective way for small boards to eliminate full-time dedicated physical offices and leases while maintaining compliance with "physical office" locations and hours; and for our Board to offset costs by utilizing existing office space.

If the Board agrees with the concepts, outreach to the other regulatory Boards would be conducted to see if there was interest in the Board Administrative Collaborative and the co-working space opportunities.

Liz Straughan commented that it is a wise thing to do, put the option out now. Phil Seitz stated he thinks it's a good idea, some businesses are not reopening until next year. Sol Magpantay stated it's OK with her, but will have to have COVID protocols in place.

Loretta Ponton commented there is one office empty, the speech board office and the ED office could be part-time. The office is conducive to social distancing at 6 feet apart. Ms. Ponton stated there may not be interest in co-working from other Boards, she's not sure.

There was consensus by Board members to support the concepts and that outreach should be done to see if there was interest by other regulatory Boards.

Adjustment to FY 2021/2022 Biennial Budget – Elizabeth Straughan called upon Loretta Ponton to present.

Ms. Ponton presented an adjusted biennial budget incorporating actual FY 20 data; the net adjustments result in (\$395.15) difference from the budget approved at the May 25, 2020 meeting.

Elizabeth Straughan called for a motion.

Phil Seitz made the motion to approve the adjusted Biennial Budget as presented. The motion was seconded by Sol Magpantay. The motion passed.

Report from Sr. Deputy Attorney General – Henna Rasul stated she had no report.

Report from Board Chair and Members – Elizabeth Straughan confirmed November 14, 2020 as the next scheduled Board meeting. The meeting schedule for calendar year 2021 will be moved to the November meeting agenda when the full board is present.

Loretta Ponton commented that she has contacted the Governor's office regarding Allison's eligibility for another term and that Mel's term also expires in December and she will need to reapply.

Future agenda items will include approval of the Biennial Audit in November and updates on COVID-19 impacts, and deferral of fees.

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Public Comment - Elizabeth Straughan asked if there were any public comments. There were none.

Adjournment – Elizabeth Straughan adjourned the meeting at 1:05 p.m.