

STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

MINUTES BOARD MEETING

May 29, 2021

Members Present: Elizabeth Straughan, Allison Stone, Mel Minarik, Phil Seitz, Sol Magpantay
Members Absent: None
Staff Present: Loretta L. Ponton, Executive Director, Stacey Whittaker, Licensing Coordinator, Henna Rasul, Sr. Deputy Attorney General
Public Present: Sofia Long, Sr. DAG, Dee Menchavez Noble, OT, Zoe Studer, OTR, Lea Case, Belz & Case Government Services, Abigail Swidergal, OTA

Elizabeth Straughan, Chair, called the meeting to order at 10:02 a.m. A roll call confirmed a quorum was present. Mel Minarik jointed the meeting at 10:07 a.m.

Public Comments – Loretta Ponton announced the reappointment of Mel Minarik representing the public to the Board. There were no other public comments.

Approval of the Minutes - Elizabeth Straughan asked if there were any corrections, revisions, or other discussion of the minutes of the January 16, 2021, board meeting.

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

Allison Stone made the motion to approve the minutes of the Board meeting of January 16, 2021. Phil Seitz seconded the motion. The motion passed with Sol Magpantay abstaining.

Disciplinary Hearing, Complaint Case C21-03, Duchess Menchavez Noble, OT License #0796

Henna Rasul, Sr. Deputy Attorney General prosecuting the case; Sophia Long, Sr. Deputy Attorney General representing the Board. Duchess Menchavez Noble was present on ZOOM link.

Henna Rasul introduced the Petitioner's Index of Exhibits and Certificate of Service in Complaint Case C21-03. Sophia Long asked Dee Menchavez Noble if she had any objections to the viewing of documents. Ms. Menchavez Noble approved the viewing of documents.

Ms. Rasul entered into evidence Exhibit 1 Complaint and Second Notice of Hearing dated May 6, 2021 and Signed Proof of Personal Service and Exhibit 2 Complaint and Notice of Hearing dated April 6, 2021. Ms. Rasul stated the Exhibits are identical except for the time of the Hearing. Ms. Rasul summarized each of 6 Counts contained in the Exhibits: Count 1 alleges unprofessional conduct; Count 2 alleges failure to complete continuing education and provide proof of completion; Count 3 alleges failure to complete continuing education by the renewal cycle; Count 4 alleges failure to comply with continuing education requirements; Count 5 alleges failure to retain credentials in violation of AOTA Code of Ethics; and Count 6 alleges falsification of statements with renewal of a license.

Henna Rasul called Loretta Ponton to the stand. Ms Ponton was sworn in by Sophia Long.

Question: State your name and title.

Response: Loretta Ponton, Executive Director of the Board of Occupational Therapy.

Question: Are board files created for each licensee?

Response: Electronic records are created for each licensee which contains all licensing information, pertinent documentation, and correspondence.

Question: Is Ms. Menchavez Noble licensed with the Board; if so date of original licensure.

Response: Ms. Menchavez Noble is licensed as an Occupational Therapist, licensed for several years the exact date is not known at this time.

Question: Are you familiar with the details of the case, and can you explain?

Response: Yes, the case details are comprised of email and written correspondence, documented telephone contacts which are outlined in the Complaint.

Henna Rasul, Sr. DAG introduced Exhibit #3, Administrative Complaint; Exhibit #4 Notice of Complaint and Exhibit #5 Correspondence with Ms. Noble.

Ms. Rasul stated there were no further questions or objections.

Ms. Ponton provided additional emails from Ms. Noble as of 5/28/21 & 5/29/21 which transmitted additional CE hours as attachments stating Ms. Noble has submitted 23.5 hours with these credits, completed from November 2020 to May 28, 2021; she still needs ½ hour.

Henna Rasul requested approval of the additional exhibits provided by Ms. Ponton. Liz Straughan accepted the additional exhibits.

Henna Rasul opened for questions or objections to any of the Exhibits.

Sophia Long asked Ms. Noble if she had questions for Loretta Ponton. Ms. Noble responded she did not.

Ms. Noble stated she has been licensed since 2005, works in home health and has always been diligent with her continuing education. She was divorced in 2017, left alone to raise 2 boys with no family here and has barely been working with the pandemic and having to home school her kids. It was a real financial burden to do continuing education; she is picking up more work hoping things get better and asked the Board for consideration of the difficult year.

Phil Seitz asked what setting she worked in. Ms. Noble responded home health, off and on, had to cut back when kids were at home.

Sol Magpantay asked if she is current with NBCOT. Ms. Noble responded no; she cannot afford membership. Sol Magpantay asked if she had any CE carryover hours from 2018, any courses taken at work or has she taken the jurisprudence exam. Stacey Whittaker, Licensing Coordinator, commented that Ms. Noble had 1.0 hours carry over from 2018 and she has not taken the jurisprudence exam.

Phil Seitz stated she has been licensed a long time, had ample time to respond and turn things around, there are a lot of options for CE's. Ms. Noble responded most were in-service training, not eligible for CEs.

Loretta Ponton stated this Hearing is for violations of CEs for renewal period July 2018 – June 2020; the CE's completed are November 2020 to present; outside the time of the renewal period. The Board should determine if there was a violation, sufficient evidence and whether disciplinary action should be taken.

Sophia Long added there are also allegations regarding false statements; Ms. Ponton added that in evidence are conversations, she indicated it had been completed and she would send in.

Sophia Long asked if there were any further questions. There were none.

Henna Rasul proceeded with closing with the following recommendations:

- Find the respondent guilty in Counts 1 through Count 6 of the Complaint.
- Suspend the license through 2022.
- Lift the suspension if 24 hours of CE are submitted, place license on probation.
- Respondent to complete an additional 6 hours of CEs in Ethics within 6 months of date of probation.
- Responsible for all costs of CE's and send documentation of completion of CE within 30 days of completion.
- Maintain a license with the Board.
- License would be automatically revoked if terms are not met.
- License would be eligible for reinstatement after 2 years.
- Pay Board's attorney's fees, estimated to date \$1,150 plus \$154.36 per hour for today's hearing for both DAG's.

Loretta Ponton summarized for clarity the recommendations stating if the CEs are received then the suspension would be waived, the license would be put on probation effective that date; she would still be subject to attorney's fees and additional 6 hours of CE in Ethics and the other terms.

Sol Magpantay stated that with the 1-hour CE carryover and the Jurisprudence Exam that would be 25.5 hours. Liz Straughan asked if the CEs are current now. Ms. Ponton responded it is up to the Board to decide if the carry over CE and current CEs would count in determining disciplinary action; if so, they would not count towards the 2022 renewal requirement.

Sophia Long stated the Board should entertain a motion if there is a violation of all 6 counts, the motion should so state, and a violation of being short CE's and unprofessional conduct.

Allison Stone motioned that Duchess Menchavez Noble is guilty of violation of NRS 640A and NAC 640A continuing education requirements and unprofessional conduct as stated in Counts 1 through 6 of the Complaint. Phil Seitz seconded the motion. Motion carries with none opposed and no abstentions.

Board members discussed recommendations for disciplinary action as presented by Henna Rasul.

Phil Seitz commented that if the license is suspended, she would not be able to work. Liz Straughan commented she has one more credit to do, she is at 23.5 hours; Sol Magpantay stated she can take the jurisprudence exam for free.

Loretta Ponton recommended the Board might consider taking suspension off the table if she completes the jurisprudence exam for the needed 1.0 hour of CE.

Allison Stone made a motion to place Duchess Menchavez Noble, License #0796, on two (2) year probation, effective May 29, 2021, with the following terms:

- Completion of the Nevada Jurisprudence Exam by June 2, 2021
- Complete 6 hours of CE in Ethics within 6 months of date of probation; does not count toward renewal of license in 2022.
- Responsible for all costs of CE's; submit documentation within 30 days of completion.
- Pay the Board Attorney's fees and costs.
- Maintain current license.

- License to be revoked if terms of probation are not met; eligible for reinstatement after 2 years.

Sol Magpantay seconded the motion. Motion carries with none opposed and no abstentions.

Practice Without Current License, Application for Reinstatement of License, Zoe Morgan Studer, OTR, License # OT-2199

Loretta Ponton reviewed the reinstatement request and supporting documentation which identified that Ms. Studer had not renewed her license which expired in January 2021 and continued working until April 2021. A Cease-and-Desist letter was issued, Ms. Studer has not been practicing since issued.

Phil Seitz asked Ms. Studer to explain.

Ms. Studer stated she was waiting for an email to renew, assumed both her state license and NBCOT expired at the same time; it was an oversight on her part.

Phil Seitz asked if she was still working in hand therapy. Ms. Studer responded she was, but not since the cease and desist was issued.

Loretta Ponton explained this was her first renewal in Nevada; her employer speaks very highly of her, and this is her first offense.

Liz Straughan stated she agrees with approving a public reprimand and reinstatement.

Henna Rasul clarified that a public reprimand cannot be imposed on a non-licensee.

Loretta Ponton stated the Board should first consider the unlicensed practice, with the Board having the authority to assess an administrative fine; and second the reinstatement with or without conditions.

Henna Rasul added once the license is reinstated it can be disciplined.

Sol Magpantay stated the services provided during the 3 months of unlicensed practice cannot be charged. Zoe Studer responded her employer has already backtracked with Medicare patients.

Sol Magpantay suggested reinstatement with conditions, public reprimand, continuing education in ethics, jurisprudence exam. Ms. Magpantay added she needs to get back to work.

Phil Seitz stated it is her first violation, would not like to assess a fine.

Elizabeth Straughan called for a motion.

Sol Magpantay made the motion that Zoe Studer is guilty of practice without a current license; first offense with waiver of fine. Mel Minarik seconded the motion. Motion carried.

Allison Stone motioned to approve the reinstatement application of Zoe Studer, OTR, license #OT-2199, effective May 29, 2021; and issue a public reprimand for non-renewal of license. The motion was seconded by Phil Seitz. The motion carried.

Mel Minarik commented she felt the licensee handled herself professionally throughout the process.

Legislative Report, Lea Case, Belz & Case Government Services – Ms. Case was introduced to the Board representing Belz & Case Government Services, formerly J.K. Belz & Associates, Inc.

Ms. Case reported the Legislative Building is now open with the Session scheduled to end on June 1st. Legislation will continue to be monitored for amendments. Ms. Case summarized bills tracked during the session.

Loretta Ponton added it was a relatively quiet session, with no major impacts on the Board.

Biennial Budget Update, Fiscal Year 2022 – Loretta Ponton facilitated a review of the draft FY 2022 Budget stating revisions may be necessary depending upon the final impact of legislation, including passage of SB 217, Applied Behavior Analysis who wish to co-locate. They are interested in filling the vacant executive office for a cost of approximately \$5,300. The final budget will be presented at the August meeting for approval.

Ms. Ponton stated the contract for legislative services expires June 30th and is proposed for amendment to extend for 6 months. The Board is asked to consider approval of the amendment to extend the contract for 6 months under the same terms and costs.

Ms. Ponton explained revenue projections are reduced due to slow growth during the pandemic; there is a 2.5% reduction in total licensees; it is the first-time numbers have decreased. Reserve analysis shows over 30 months of reserve even with reduced revenue.

Overall expenses are projected to be down by 7% over the current fiscal year with the assistant position vacancy, and small adjustments to other line items.

Phil Seitz asked what was included in the professional fees line item. Ms. Ponton responded legislative services, and bookkeeping services.

Mr. Seitz asked if Ms. Ponton was still considering retiring. Ms. Ponton responded a definitive date has been put on hold.

Liz Straughan called for a motion on the contract extension with Belz and Case Government Services.

Allison Stone made the motion, seconded by Phil Seitz to approve the contract extension with Belz and Case Government services for six months, as presented. The motion passed.

COVID 19 Emergency Provisions – Elizabeth Straughan asked Loretta Ponton to facilitate. Ms. Ponton reported the Board office will be re-opening to the public June 1, 2021. The COVID-19 pandemic is easing, and the economy is improving.

The Board had implemented two (2) emergency provisions relating to temporary licenses and deferral of license renewal fees.

It is recommended the Board discontinue emergency temporary license provisions for new applicants, effective June 1, 2021. Temporary licenses will still be available with all required back up and payment of fees.

Ms. Ponton reported there are approximately 25 licensees who are still on deferral of renewal fees. It has now been over 1 year since deferral and coming to the end of the fiscal year. It is recommended the Board establish a due date of June 30, 2021, for payment of deferred renewal fees.

Elizabeth Straughan called for a motion.

Allison Stone made the motion to end the Emergency Provisions as presented, effective June 1, 2021. Mel Minarik seconded the motion. The motion passed.

Executive Director's Report - Loretta Ponton reported on licensure statistics with comparisons to prior year and current fiscal year by quarter. Ms. Ponton reported a total of 20 Emergency Temporary Licenses have been issued since April 2020 with 7 currently active.

Ms. Ponton reported the Board of Applied Behavior Analysis has indicated they would like to co-locate their Administrative Office at the Board's location, occupying the vacant executive office. Negotiations are in process to facilitate the co-location. Ms. Ponton added that she will be providing technical assistance to the ABA Board and their Executive Director in Board administrative processes and requirements. The ABA Board was previously under the Division of Aging Services and will now be an independent board.

FY 2021 Financial Statements: Ms. Ponton summarized the 3rd Quarter Financial Statements reporting Revenue is projected to be up to 5% below budget due to a combination of fewer applicants and waiver of temporary license fees. Expenses are below budget and are projected to be well less than budget for the fiscal year due to cost savings in personnel and operating expenses.

Phil Seitz asked what VOYA is and about the investments in CD's. Ms. Ponton responded that VOYA manages the State's Deferred Compensation program; there is approximately \$500,000 invested in tiered term CDs with two maturing each fiscal year; however, with interest rates so low, maturing CDs are being invested in short terms in hopes rates will increase. There is one remaining 5-year CD at 2.5% which will mature next fiscal year. Interest earned on the investments are not taxable and are rolled into the money market account.

Ms. Ponton continued reporting the Administrative Office will be re-opening to the public on June 1, 2021; work schedules will incorporate hybrid schedules combining remote work and on-site staffing.

A short telehealth survey was conducted to provide a baseline idea of the scope of telehealth practice in Nevada. The Touro University OTD program is now fully accredited, and they have withdrawn their master's program accreditation.

The CE audit has been completed with all in compliance except for the one complaint addressed earlier.

The Administrative Collaborative has met 3 times with the next meeting to be scheduled in June. The Model Board Member Manual will be presented for the collaborative's consideration. There are now 11 member Boards.

Complaints: Ms. Ponton reported one open complaint case in the investigative process.

Report from Sr. Deputy Attorney General – Henna Rasul announced she has received approval for permanent remote work.

Report from Board Chair and Members – Elizabeth Straughan stated she would like to resume in-person Board meetings. NBCOT will be presenting at the August 21st meeting and Board members were polled as to availability for that meeting to be held in-person in Reno, with consensus from the members.

Ms. Ponton stated the Board regulation should be ready for the regulatory hearing and adoption at the November 6th Board meeting.

The proposed meeting calendar for 2022 was discussed with agreement that a Strategic Planning Retreat should be held in Las Vegas. Calendar year 2022 meeting dates were confirmed for January 29th; April 29 and 30 for the Strategic Planning Retreat; August 20th and November 5th.

Ms. Ponton announced that Mel Minarik has been reappointed to the Board and that Sol Magpantay's term will be ending December 31, 2021. Recruitment for an Occupational Therapist will be needed.

Elizabeth Straughan asked if there were any other future agenda items the members would like to add. There were none.

Public Comment – Elizabeth Straughan asked if there were any public comments.

Abigail Swidergal asked that meetings continue to offer by ZOOM access for individuals who cannot travel. Ms. Swidergal stated sharing space with the Applied Behavior Analysis Board could be a conflict because of perspective; ABA follows conversion therapy with autistic patients. As a clinician, she does not like to see them joining forces and feels they need to keep the Boards separate.

Loretta Ponton commented the co-location is an administrative function, it is an efficiency measure to share physical and logistical resources, not practice resources. ABA is also a provider of health care.

Liz Straughan commented there is a strong demand by parents for ABA in schools, sees this as very positive.

Sol Magpantay commented it is strictly an administrative role.

Adjournment – Elizabeth Straughan called for a motion to adjourn.

Mel Minarik made the motion, seconded by Sol Magpantay to adjourn. The motion passed.

The meeting adjourned at 12:11 p.m.