

# STATE OF NEVADA BOARD OF OCCUPATIONAL THERAPY

## MINUTES BOARD MEETING

August 21, 2021

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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: Lea Case, Belz & Case Government Services, Abigail Swidergal, OTA, Sonny Heng, OT

Elizabeth Straughan, Chair, called the meeting to order at 10:05 a.m. A roll call confirmed a quorum was present. Phil Seitz joined the meeting at 10:15 a.m.

**Public Comments** – There were no comments

### **Educational Session – Presentation by National Board for Certification in Occupational Therapy**

Elizabeth Straughan welcomed Barbara Williams, DrOT, MS, OTR, Associate Director, External & Regulatory Affairs.

Ms. Williams thanked the Board for asking NBCOT to present their updates and programs. Ms. Williams provided a power point presentation covering the following topics: Overview of NBCOT mission, accreditation, and Board of Directors; Partnerships with Students, Certificants and Regulators regarding examination information and disciplinary actions over the previous 3 years; the OT Action Exchange explaining the purpose and features; NBCOT Navigator practice analysis study and new tools; and the benefits of certification.

Ms. Williams stated their mission is to serve public interest, incorporate evidence-based standards and work with regulatory boards; NBCOT is accredited by NCCA and ANSI and is governed by a Board of Directors. They regularly review and update the content of the NBCOT certification examination; have a voluntary disciplinary process and provide early determination reviews of criminal convictions for eligibility for certification. Ms. Williams provided examples of testing cases highlighting breaches in testing protocols and ethics violations and provided an analysis of cases by type of behavior and sanctions imposed.

Mel Minarik stated the university is experiencing similar issues at the graduate level.

Ms. Williams explained the OT Action Exchange which is a national repository for reporting disciplinary actions as a partnership with regulatory boards. The action exchange includes state and NBCOT actions.

The NBCOT Navigator tool is available to all NBCOT certificants at no cost and provides learning tools for specific practice areas, CEs for renewals and addresses competency requirements; new courses include burns, ethics, oncology, spinal cord injuries and provides digital certificates and self-assessment tools.

**Approval of the Minutes** - Elizabeth Straughan asked if there were any corrections, revisions, or other discussion of the minutes of the May 29, 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. Sol Magpantay seconded the motion. The motion carried.

**Disciplinary Actions, Complaint Case C21-04** – Elizabeth Straughan called on Loretta Ponton.

Ms. Ponton stated that after review of all documentation received, it was 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. C21-04 alleging unprofessional conduct, and violation of the Code of Ethics and Standards of Practice. Complainant alleged respondent documented treatments to clients/patients when not in attendance and/or which were not provided for the duration specified. It is recommended the Board approve dismissal of complaint case C21-04.

Liz Straughan called for a motion.

Mel Minarik made the motion, seconded by Allison Stone to dismiss complaint case C21-04. The motion carried.

**Criminal History Petition - Pre-Determination of Eligibility for Licensure; Sonny Heng, OTR**

Elizabeth Straughan called upon Loretta Ponton. Ms Ponton reported Mr. Sonny Heng has requested a pre-determination of eligibility for licensure due to a criminal conviction. Mr. Heng is currently licensed in California and has a misdemeanor conviction of Driving Under the Influence with property damage and is currently on probation. The details of the conviction have been provided to the Board. Mr. Heng is present to answer any questions by the Board.

Phil Seitz asked Mr. Heng to explain. Mr. Heng stated he was a traveling therapist; they were required to evacuate due to wildfires and he received notice he could return; he had had a few drinks which resulted in the accident. He stated he is still in California, but is not driving, he is walking to work; he made the decision not to drive.

Phil Seitz asked if Mr. Heng will work in Nevada. Mr. Heng responded he has conditionally accepted a position and found an apartment across the street from the facility, it's a full-time position with no travel. Phil Seitz asked if Mr. Heng has been working while on probation. Mr. Heng responded yes, consistently; he has learned to stay away from alcohol as there is a family history of alcohol abuse.

Mr. Heng was asked how long he will be on probation. Mr. Heng responded 3 years, August 2023; he has completed required DUI program and will have the Driver's Education program complete by the end of August 2021.

Sol Magpantay stated the circumstances of the fire evacuation is different than driving from a party.

Loretta Ponton explained this Board has been asked for a pre-determination on whether Mr. Heng would be eligible for licensure in Nevada or not based upon the criminal history.

Mel Minarik made a motion that Mr. Sonny Heng has been determined eligible for licensure in Nevada. Allison Stone seconded the motion. The motion carried.

**Biennial Budget - Fiscal Year 2022 Budget** – Loretta Ponton facilitated a review of the final FY 2022 Budget highlighting revisions and adjustments made as a result of more current financial information, licensing activity and anticipated expenses for the fiscal year.

Ms. Ponton explained revenue projections are budgeted at a conservative 2.27% increase in license fees based upon increased licensing activity at the end of FY 21. Also included in other income is the co-location revenue from the Board of Applied Behavior Analysis.

Ms. Ponton stated the contract for legislative services expires December 31<sup>st</sup> and is not funded for the remaining 6 months of the fiscal year as it is not anticipated a need for these services due to the lack of legislation impacting the Board at the 2021 session. The Budget does not contain any “set-asides” for legislative impacts. Funding is included for the costs of the Board Strategic Planning Session to be scheduled in April 2022.

Overall revenue is budgeted at a 2.46% increase and expenses are budgeted at a reduction of 11% from FY 2021.

Ms. Ponton directed the members to the budget vs prior years actual report and projected revenue, fee analysis, reserve funds report and explained the projected break-even point when Board funds will reach the planned level of \$500,000.

Mr. Seitz asked what Albertson Consulting was. Ms. Ponton responded the vendor for the licensing database program and website host. Mr. Seitz asked Ms. Ponton if she does the budget computations. Ms. Ponton responded yes that all financial information is prepared by herself.

Liz Straughan called for a motion to approve the Fiscal Year 2022 Budget.

Allison Stone made the motion, seconded by Sol Magpantay to approve the Fiscal Year 2022 Budget as presented. The motion carried.

**Personnel Policies and Procedures** – Elizabeth Straughan asked Loretta Ponton to facilitate.

Ms. Ponton presented revisions to the personnel policies and procedures to add a Remote Work option for employees, establish guidelines for remote work and update the compensation plan.

Ms. Ponton explained that remote work was required due to the state of emergency, there was no disruption to services and it has been found remote work can be efficient and cost effective.

Revisions are to the following Sections: 020 General Policies and Procedures – Added reference to remote work option; 040 Definitions – Added definition of “Remote Work”; 350 Remote Work – New Section; and Classification and Compensation Plan (pg 20).

Mel Minarik inquired whether the Board could operate totally remotely and close the office. Ms. Ponton responded that it is State law that requires a physical office location. It would be a possibility if the State legislature revised the law in the future. We have learned during the last year that traditional offices may not always be required.

The Classification and Compensation Schedule reflects a change in the Executive Director and Licensing Assistant Grade Equivalent and Salary Ranges. The Executive Director compensation range reflects the Executive Audit Committee Audit of Independent Boards, June 14, 2018, analysis of Executive Director salaries based upon their comparison of salary, qualifications, responsibilities, authority, and budget. The Executive Audit Committee report suggested top ranges for Executive Director Compensation should be between \$101,000 and \$132,000. The revised ED range reflects the recommendation of the EAC. The Licensing Assistant (vacant/part time) position wage range has been increased from a Grade 21 to Grade 23 to reflect competitive wage rates when the position is filled. With these two changes, a 10% deviation is established between the ending salary range and the beginning salary range of the next highest position: creating hierarchical equity between administrative positions.

Ms. Ponton stated the revision is to the authorized salary range, current positions remain within the range, no increases are requested at this time. The revision increases the starting and ending rates of pay for each position.

Phil Seitz asked when the ED retires, is it the Board's responsibility to hire or interview for a new Executive Director. Loretta Ponton responded the Board is responsible for the selection and hiring of their Executive Director. There would be a formal recruitment and the selection would be made by the entire Board at an open meeting of the Board. Ms. Ponton added that she would assist in the hiring process prior to her retirement.

Elizabeth Straughan called for a motion.

Phil Seitz made the motion, seconded by Allison Stone to approve the revised personnel policies and procedures and compensation schedules. The motion carried.

**Strategic Direction 2020 – 2022 Review** – Elizabeth Straughan requested Loretta Ponton facilitate the discussion.

Ms. Ponton stated the Board achievement of goals was significantly impacted by COVID-19; however, the Board should be proud of their efforts and achievements, under challenging conditions. Ms. Ponton directed the members to the summary of Strategic Priorities and explained each priority, action description and status of each priority.

Priority - Scope of Practice: *Survey & Data Collection for Specialties* – The OT Practice Survey was completed and issued in January 2020. A supplemental survey on Telehealth was conducted in April 2021.

*Ethics* – The Board sponsored seminars scheduled for April 2020 were cancelled due to COVID-19.

*Access to Evidence Based Practice* – On hold due to COVID-19.

Priority - Workforce Development: *Increase rural access to OT services* – The supplemental survey on Telehealth documented an increase to services delivered by telehealth.

Priority - Staff Initiatives: *Staff succession planning* – action to be determined; *Manage Risk of Government Over-regulation of Boards and Mitigate the Impact or Preempt Significant Changes* – Implemented the Administrative Collaborate of Professional and Occupational Licensing Boards, worked with Lobbyist to identify and address proposed legislation; *Develop and Implement new regulations or policies as a result of Legislation* – To be determined; SB 379 Data Collection Section 26 allows the Board to participate in the healthcare provider data collection system when developed.

Ms. Ponton stated Strategic Plans are fluid, the Board didn't just sit on their hands during this state of emergency; we remained pro-active and adjusted. Ms. Ponton asked for direction from the Board in planning for the April 2022 retreat; would the Board like to keep current priorities or build a new strategic direction for the future. Ms. Ponton made a recommendation for a theme for the April 2022 planning session: "Board Fiduciary Responsibilities" with emphasis on "protection of the public through regulation of practice". Additional sub-topics could include fiduciary responsibilities for internal operations, both financial and personnel and how an OT Compact may impact regulation of practice.

Allison Stone stated she liked the idea of board fiduciary responsibilities; including the responsibility to keep OTs and OTAs informed, there is still a lot of turmoil and confusion.

Phil Seitz agreed, stating newer licensees are not clear with regulations, more education is needed. There is also a public relations problem with the name of our profession, occupational therapy, when explaining to the public, what it is and what we do. More resources should be available such as on-line tools, to explain what OT is.

Sol Magpantay suggested more information should also be considered for clinical fellowships, level I and level II students, what are the supervising OT responsibilities such as billing w/students, and CMS. Loretta Ponton added supervision has been left to educational institutions to set guidelines, the Board may want to discuss this topic in more detail.

Elizabeth Straughan stated a program came out that provided training for clinical supervisors; AOTA/ULNV.

Mel Minarik suggested research/literacy on best practices for OT continuing education as a strategic initiative. Elizabeth Straughan suggested support for rural therapists is also needed.

Loretta Ponton asked whether the OT Compact should be included; the State Legislature has not been really open to compacts as evidenced by the Nursing and PT Compact failures. Should the Board include the OT Compact for discussion at the Planning Session or through on-going discussions at Board meetings.

Elizabeth Straughan asked whether the Board office has been contacted regarding the OT Compact. Loretta responded NBCOT and AOTA have provided support at the national level; 8 states have joined with 10 required for implementation. There are currently 2 compacts in Nevada, psychologists, and medical board. It is a long and drawn-out process requiring analysis of the benefits and costs, pros, and cons to compacts and necessary legislation required to become a compact member state.

Phil Seitz stated he would like to discuss the OT Compact at the strategic planning session; Allison Stone and Mel Minarik agreed.

**Executive Director's Report** - Loretta Ponton reported on licensure statistics with comparisons to prior year and current fiscal year by quarter.

*FY 2021 Financial Statements:* Ms. Ponton summarized the 4th Quarter Financial Statements reporting Revenue is 5.29% below budget due to a combination of fewer applicants and waiver of temporary license fees. Expenses are 9.62% below budget for the fiscal year due to cost savings in personnel and operating expenses. Net operating income/loss for the Fiscal Year is (\$37,096), 72.95% of budget.

*Administrative Collaborative:* - Ms. Ponton reported on the activities and meetings of the Administrative Collaborative and resource documents that have been developed and made available to all Administrative Collaborative participants.

*ABA Board Co-location:* Ms. Ponton reported the ABA Board has hired their Executive Director who will be physically on-site beginning October 1<sup>st</sup>.

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

Elizabeth Straughan called for a motion to approve the Executive Director's report and 4<sup>th</sup> Quarter financial statements.

Allison Stone made the motion, seconded by Phil Seitz to approve the Executive Director's report and financial statements for 4<sup>th</sup> quarter, FY 2021. The motion carried.

Loretta Ponton directed the members to the Legislative Report prepared by Belz & Case Government Services; Lea Case is present to answer any questions the Board may have.

Phil Seitz asked what happened to the consolidation bill that would take fees from the Board. Loretta Ponton responded the bill was referred to Finance and never received a hearing and died in committee. Ms. Ponton reported two bills will revise NRS 640A; SB 196 will prohibit pelvic examinations; AB217 adds applied behavior analysts as providers of health care exempt from licensure by this Board. The composition of the Legislature will be changing with legislators terming out or not running for re-election.

Lea Case thanked the Board for allowing them to represent the Board this last session.

**Report from Sr. Deputy Attorney General** – Henna Rasul stated she had nothing to report.

**Report from Board Chair and Members** – Elizabeth Straughan stated she would like to somehow provide a CEU sponsored event. The Ethics seminar was cancelled but perhaps we could offer the Ethics CE on-line or by other means.

*Meeting Schedule:* Ms. Ponton stated the Board regulation will be on the November 6<sup>th</sup> agenda for hearing and adoption; November will also be Sol Magpantay's last official meeting. The meeting will most likely be moved to ZOOM with the April Strategic Planning Session in person in Las Vegas if circumstances allow.

Elizabeth Straughan recommended outreach for northern Nevada board member to replace Sol. Ms. Ponton stated a recruitment announcement has been posted to the Board website with a statement that ideally the position should represent northern or rural Nevada.

Loretta Ponton added, a request for proposal has been issued for biennial audit services for fiscal years 2021 and 2022; the contract will be on the November agenda for consideration. Ms Ponton also informed the Board of State Administrative Manual changes that would require a formal State Board of Examiners approved contract for the licensing data system when the current agreement expires. The change removes the exemption from State BOE approval for licensing systems. More information will be forthcoming.

For information, Ms. Ponton reported she has agreed to be the Contract Manager for several small boards that do not have contract managers as a service through the Administrative Collaborative.

Elizabeth Straughan asked if there were any other future agenda items. There were none.

**Public Comment** – Elizabeth Straughan asked for public comments. There were no public comments.

**Adjournment** – Elizabeth Straughan adjourned the meeting at 12:15 p.m.