



State of Nevada Board of Occupational Therapy

Board Member Training

August 12, 2022

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THE BOARD

Mission Statement

To protect the public health, safety and welfare by ensuring that only competent occupational therapy practitioners are licensed in the state and that those licensed practitioners maintain the highest level of professional conduct. This includes ensuring the competency of occupational therapy practitioners and / or providing the public with a means by which they can pursue administrative legal recourse.

Boards are statutorily created governmental bodies and their powers are authorized by the legislation under which they are established. The specific duties and responsibilities of a board member are generally not detailed in an occupational therapy practice act.

Individual board members are charged with the responsibility of regulating the profession by carrying out the duties specifically set forth in statutes and regulations.

The Board adopts regulations establishing standards of practice and any other regulations necessary for carrying out the provisions of NRS Chapter 640A.

The Board, through regulation, establishes reasonable fees for licensure. Fees are set in an amount to reimburse the Board for the cost of carrying out the provisions of the law. All expenses of the Board must be paid from the fees received by the Board.

The Board may hold hearings and examine witnesses, take disciplinary action for unprofessional conduct for violation of law or regulations; may refuse to issue or renew a license, or may impose conditions upon that license.

The Board, as a whole, performs their fiduciary responsibilities through open public meetings in accordance with the Nevada Open Meeting Law.

THE BOARD MEMBERS

Duties and Responsibilities – Protection of Public Health

The sole responsibility of the Board is the protection of the public health, safety and welfare.

It is the duty of the Board to license only those persons seeking to enter the profession who meet the legal competency standards necessary to practice occupational therapy, and to discipline those licensed occupational therapy professionals who fail to follow legal and professional standards of practice.

Members of the Board, as public officials, must apply the statutes and regulations in an unbiased manner. All actions taken by a board member and board are subject to scrutiny by the profession, the legislative and judicial branches of government, and the public, and to be valid and enforceable, must be based upon an objective consideration of legal evidence and application of relevant laws or regulations.

Conflict of Interest – Disqualification

Board members must be constantly aware of and avoid conflicts of interest.

A board member must conscientiously avoid any attempt to regulate the economics of the profession through the establishment or enforcement of board laws and regulations, or through any selective applicability of such laws and regulations to any particular professional or group of professionals. A board member must consistently apply laws and regulations in an objective, unprejudiced manner for the protection of the public.

Board members may be active members of one or more associations. There is no reason why a board member should not retain these memberships; however, members should avoid serving as officers in an associations, and on association committees that develop policies that could unduly influence the Board in their decision making.

Board members should abstain or disqualify themselves from participating in board proceedings involving any relevant areas or topics they feel may have been prejudiced by activities related to their professional practice, employment setting or personal activities or knowledge.

it is not easy in many instances to readily ascertain whether a conflict is serious enough to require disqualification. If any doubt exists, a board member should consult the Attorney General's office. The important factor is to be aware of these areas of possible conflict.

Board Member Liability

Under normal circumstances, a board member acting under legislative directive, in good faith, within the scope of his or her authority, who neither knew nor should have known that an act of that board member may have been in violation of the practice act or in deprivation of the constitutional rights and privileges of the affected party, will be protected from personal liability.

Board members should understand that even while acting in their official capacity, irresponsible activities could lead to possible personal liability on the part of the board member.

Tort Liability

The board members should insist that facts alleged against an occupational therapy practitioner be substantiated to the greatest extent possible to avoid any allegations that a claim is so frivolous as to constitute gross negligence on the part of a board member and cause that board member possible liability.

The Board contributes to the State Tort Liability Fund, which is utilized to protect the State and the Board's interests.

Decision Making with Conviction

If an individual accepts appointment to the Board, it becomes the duty of that individual to carry out responsibilities that include making decisions, which in many instances involve the livelihood of an occupational therapy practitioner or an applicant seeking licensure into the profession. These decisions must be made fairly and fearlessly.

Finally, a board member should be inquisitive and should not succumb to past practices of a particular board without knowing why certain procedures are being followed. New board members provide a fresh, independent view of the board's practices and procedures. They should not be reluctant to ask questions to better understand the individual functions of board members.

Board Members and Officers

Board Members and Officers

Board Member

Purpose

A Board Member is responsible for ensuring that the Nevada Board of Occupational Therapy fulfills its mission by planning for the future, monitoring operations, and evaluating the Board's performance. A Board Member must fulfill the fiduciary responsibilities of the Board, making decisions that protect the public interest.

Key Responsibilities

- Advance the mission of Nevada Board of Occupational Therapy.
 - Actively promote the mission of Nevada Board of Occupational Therapy, contributing ideas and expertise.
 - Keep up-to-date on developments in the Nevada Board of Occupational Therapy's field.
 - Be informed about the Nevada Board of Occupational Therapy's mission, services, policies, and programs; inform others about the Nevada Board of Occupational Therapy, and work to enhance the Nevada Board of Occupational Therapy 's public image.
- Select the Executive Director through an appropriate process.
 - Provide ongoing support and guidance for the executive staff.
 - Annually review performance.
- Ensure effective Nevada Board of Occupational Therapy planning.
 - Determine and monitor the Nevada Board of Occupational Therapy's programs and services.
 - Participate in the review of a strategic plan to accomplish the mission and evaluate its success.
- Actively participate in all Board activities.
 - Attend in person, by video conference, or by phone all Board meetings.
 - Review agenda and supporting materials prior to Board and committee meetings.
 - Serve on a committee and periodically take on special assignments.
 - Assess the Board's performance.
- Ensure adequate resources.
 - Manage resources effectively.
 - Carry out the fiduciary responsibilities of the Board, such as reviewing the Nevada Board of Occupational Therapy's annual financial statements, and receiving the auditor's report.
- Follow conflict-of-interest and confidentiality policies.

Appointed by

Governor

Term Length

3 Years per NRS; 2 consecutive terms

maximum

Time commitment

Quarterly meetings; additional time may be required.

Chair of the Board

Function

Assure that the Board fulfills its responsibilities to the Nevada Board of Occupational Therapy.

Responsibilities

- Chair meetings of the Board.
- Call special meetings if necessary.
- Preside over formal Hearings before the Board.
- Work in partnership with the Executive Director to achieve the mission of the Nevada Board of Occupational Therapy.
- Assist the Executive Director in preparing the agenda for Board meetings.
- Annually focus the Board's attention to an assessment of its own structure, role, and relationship to management.

Vice Chair of the Board

Function

Stand in for the Chair if he/she is unavailable.

Responsibilities

- Attend Board meetings.
- Understand the responsibilities of the Chair of the Board and be able to perform these duties in the chair's absence.

Financial Reviewer for the Board

Function.

Serves as the financial reviewer of all financial transactions for the Nevada Board of Occupational Therapy.

Responsibilities

- Attend Board meetings.
- Review Board minutes.
- Review monthly financial statements and documentation for the Nevada Board of Occupational Therapy.

LAWS

The Nevada Legislature is the entity that creates and approves statutory authority through law. The Nevada Legislature meets every two years. Any changes or revisions to the Nevada Revised Statutes requires a Bill to be introduced and passed by both the Assembly and the Senate. The Governor makes the final determination as to the passage of a Bill when it is signed into law or vetoed.

The laws found in Chapter 640A of the Nevada Revised Statutes were originally enacted on June 18, 1991. They formed the basis for how occupational therapy is practiced in the State of Nevada. All actions of the Board are governed by authority contained in NRS 640A.

The laws cover the following areas:

- a) General Provisions – NRS 640A.010 to NRS 640A.070
- b) Board of Occupational Therapy – NRS 640A.080 to NRS 640A.115
- c) Licensing – NRS 640A.120 to NRS 640A.190
- d) Disciplinary and Other Actions – NRS 640A.200 to NRS 640A.220
- e) Prohibited Acts; Penalties; Enforcement – NRS 640A.230 to NRS 640A.250

The Board is also subject to Nevada Revised Statutes, Title 54 Professions, Occupations and Businesses, Chapter 622 General Provisions Governing Regulatory Bodies.

Additionally, Occupational Therapists are designated “providers of health care” and are also governed by NRS 629 Healing Arts.

The Life of a Legislative Bill

The Life of a Legislative Bill

Ideas for Bills

Ideas for legislation come from government agencies, elected officials, businesses, organizations, and citizens.

Drafting

Requests for Bill Drafts (BDR's) may be made by legislators, legislative committees, the Governor, state agencies, boards and commissions, and local governments. A staff attorney for the Legislature prepares a formal draft of a bill.

The Board will have the opportunity to review the Bill Draft and request changes if the language does not capture the intent of the Board.

Board Timeline

NRS review and possible revisions identified, language is developed

- May / June - preceding a legislative session
BDR's are submitted to the Budget Division through electronic submission; Budget division reviews the BDR request, prepares fiscal statement, submits to Legislative Counsel Bureau for drafting into Bill format.
- Completed bills are numbered and Pre-filed by listing on the Legislative website
- **If a BDR does not meet the submission deadline and clear the Budget Division, it will require a Senate or Assembly member to sponsor the bill before it can be introduced at a Legislative Session.**

Introduction and First Reading - Legislative Session

A bill is submitted through the Governor's office or by a Senate or Assembly member, numbered and read for the first time, assigned to committee, and printed. A bill may be introduced in **either** the Senate or the Assembly (house of origin) and co-sponsors in the other house may be listed on the front of the measure.

Action in the House of Origin

Committee

A committee holds a hearing to take testimony and gather information about the bill. It may recommend that the bill be passed as written or pass it with amendments.

- The Board may participate in hearings and provide testimony in support of or opposition to a bill.

If a committee thinks the bill requires further consideration, it may recommend that the legislative house amend the bill and re-refer it to the same committee or to another committee.

A committee may vote to "Indefinitely Postpone" consideration of a bill, effectively killing it, or may take no action at all, which also will kill the bill.

Second Reading Before the Full House

A bill given a "Do Pass" recommendation is read a second time and placed on General File for debate and vote. A bill that is given an "Amend and Do Pass" recommendation is read a second time, amended and reprinted before being placed on the General File for action.

Floor Debate and Vote by the Full House

Bills are read a third time and debated. A roll-call vote follows. For passage of bills that require a constitutional majority, 11 votes are needed in the Senate and 22 in the Assembly. **Bills with tax or fee increases** require a two-thirds majority (14 votes in the Senate and 28 in the Assembly). A measure that does not receive at least the required number of votes is defeated. Any member who casts a vote on the prevailing side may serve notice of reconsideration to request a second vote. All bills that are passed by the first legislative house are then forwarded to the second legislative house where the process begins again.

Action in the Second House

First Reading

Bill is read for the first time and referred to committee.

Committee

Procedures and possible actions are identical to those in the first legislative house.

Second Reading Before the Full House

If passed by committee, the bill is read a second time and placed on the daily file (agenda) for debate and vote.

Floor Debate and Vote by the Full House

The procedure is identical to that in the first house. If the second house to consider a bill passes it without amendment, it is returned to the first legislative house for enrollment and transmittal to the Governor.

If the second house amends a measure, it is returned to the house of origin for consideration of the amendments.

Resolution of Differences (if necessary)

Consideration of Amendments

The house of origin decides whether to accept the second house's amendments. If it accepts the amendments, the bill goes to the Governor.

If the amendments are rejected, the bill is returned to the second house for a decision whether to withdraw the proposed changes (recede). If the second house does not recede, the bill is referred to a conference committee that includes members of both houses.

Conference

The conference committee attempts to reconcile the differences and presents its recommendation in the form of a conference report. If both houses accept the report, the bill goes to the Governor. The bill dies if the members of the conference committee fail to agree.

Role of the Governor

Generally, the Governor must act on a bill within 5 days after he receives it if the Legislature is still in session (Sundays excepted). However, if there are fewer than 5 days remaining in session, or if the bill is delivered after the session has ended (adjourned sine die), the Governor has until 10 days after sine die to act.

The Governor may sign the bill into law, allow it to become law without a signature, or veto it. A vetoed bill returns to the house of origin for a possible vote on overriding the veto. An override requires a two-thirds majority of both legislative houses. If the Governor vetoes a bill after session ends, it returns to the next legislative session.

Measures become effective on October 1st following the end of the legislative session, unless otherwise specified in the bill.

REGULATIONS

Regulations are created, enacted and implemented by the Board. All regulations must conform to and be directly related to the authority granted by law to govern the practice of Occupational Therapy. The process for creating regulations is governed by the Nevada Administrative Procedures Act.

The regulations found in Chapter 640A of the Nevada Administrative Code were originally enacted on 12/23/1992, with implementing provisions added on 5/23/95. The regulations are regularly reviewed and updated as necessary. They provide the details on how occupational therapy is to be practiced in the State of Nevada.

The regulations cover the following areas:

- a) General Provisions – Definitions NAC 640A.010 to NAC 640A.018
- b) Licensing – NAC640A.020 to NAC 640A.170
- c) Standards of Practice - NAC 640A.195 to NAC 640A.320
- d) Disciplinary Action - NAC 640A.340 - NAC 640A.370

Regulations must be approved by the Legislative Commission and are then codified into the Nevada Administrative Code (NAC). The following Board regulations adopted and approved by the Legislative Commission have not as yet been codified by the Legislative Council Bureau but are legally effective:

LCB File No. R062-19	Biennial Fees
LCB File No. R105-19	Biennial Continuing Education and Reporting
LCB File No. R001-21	Treating OT, Retired Status Renewal, Fees
LCB File No. R076-21	General Updates, removing obsolete provisions

Creation of a Regulation

Creation of a Regulation

Regulations (NAC) supplement and clarify the methods and processes by which the Board will implement the **Law (NRS)**. The Law (NRS) provides the parameters and establishes minimum requirements - Regulations provide the details and are the method by which the Board identifies the specifics of licensing, professional conduct, scope of practice, disciplinary actions and other related processes – the How To – of protecting the public.

A Regulation must be tied directly to the Law which provides the authority to create the regulation.

The administrative process utilized to develop, review and adopt regulations is established through a statutory legislative process – the **Administrative Procedures Act**.

Types of Regulations – There are three (3) types of regulations: Permanent, Temporary and Emergency, each with different procedural requirements.

“Permanent” regulations have specific procedural requirements for the review, solicitation of public comment, and adoption. Temporary regulations follow the same process with the exception of submitting to LCB for review and approval prior to adoption.

“Temporary” Regulations are adopted between ***July 1 of an even-numbered year (2022) and July 1 of the succeeding odd-numbered year (2023)***- legislative years. These regulations do not require Legislative Counsel Bureau (LCB) approval prior to adoption. Temporary regulations ***expire on November 1st*** of the odd-numbered year (2023).

To continue a temporary regulation as permanent, the regulation must be approved by the Legislative Council Bureau and the entire process must be repeated including a second workshop and public hearing.

“Emergency” regulations are rare and are effective for 120 days only, requiring Governor’s approval.

Steps in the Regulatory Process

Creating a Regulation – Role of the Board (B) – Role of Staff (S)

(B) & (S) Identify Issues - The Board reviews existing regulations to identify necessary additions, revisions or deletions to the current regulatory language. The content and purpose of the regulation is discussed during this process.

Staff may conduct the initial review and provide the Board with recommendations and proposed language for regulatory changes.

(S) Submit to LCB – Proposed language of regulation submitted to LCB for review. LCB may change specific language, reword sections however, may not change the intent of the regulation. Staff works with LCB to facilitate the final regulatory language approval.

(S) Small Business Impact Statement – Determine whether there is an impact on small business; staff prepares small business impact statement if appropriate.

(B) & (S) Workshop – Conduct at least one Workshop open to the public to solicit comments from the public and interested parties. Staff sends notices to all interested parties or individuals who may be impacted by a regulation. The Workshop may be held prior to drafting language or after language has been drafted.

(S) – Notice of Intent to Act Upon Regulations – Staff prepares and issues the Notice at least 30 days prior to a scheduled Public Hearing. The Notice cannot be issued until at least 30 days after the regulation is submitted to LCB for review and approval.

(B & S) Public Hearing – All interested parties must be allowed to provide public comment. The notice issued by Staff must contain deadlines for submittal of written comments. Minutes of the Hearing must be kept and made available to the public upon request.

(B & S) Consideration of Comments – The Board must consider comments prior to taking action on the proposed regulation. Changes to the regulation can be made at this point to address comments received from the public. Substantive changes are submitted to the LCB for review and approval; minor changes do not require LCB review prior to approval.

(B) Final Adoption - The Board takes action at a Public Meeting (Board meeting). This may immediately follow the public hearing or be scheduled at a separate time, and must be posted pursuant to Open Meeting Law requirements.

(S) Submittal to Legislative Commission – Staff prepares the informational statement and other required documents and submits to the LCB to be placed on the agenda of the Legislative Commission.

Filing with Secretary of State – Upon approval of the Legislative Commission the regulation is filed by LCB with the Secretary of State.

Effective Date – Date of filing with the Secretary of State.

Time Line for Creation of a Regulation

Identifying Issues: One (1) to Six (6) Months; can be longer depending on scope of review

Submit to LCB: Must review and respond within 30 days of receipt; LCB will assign a file number such as LCB 12-122 to track the regulation.

One (1) to Three (3) months; staff works with LCB staff to clarify and revise – may require additional review by the Board after LCB makes changes.

Workshop: 15 Day Notice - Schedule after LCB Review preferred; however, may hold workshop before LCB review to solicit comments to proposed regulation.

Public Hearing: 30 Day Notice – Notice of Intent to Act Upon Regulation

Comments: Can be considered in conjunction with the Public Hearing; if substantive changes are necessary based upon public hearing comments; the changes must go back to LCB for review.

Adopt Regulation: Public meeting can be held after Public Hearing, with non-substantive changes. A separate Board meeting may be held to adopt the regulations.

Legislative Commission Placed on agenda one (1) to three (3) months.

Effective Date: Upon approval of Legislative Commission and filing with Secretary of State

Codified into NAC: Indefinite time – can take several years

COMPLAINT / HEARINGS

Complaint hearings heard by the Nevada State Board of Occupational Therapy are similar to a courtroom hearing. The procedures and operating processes are outlined below.

All documents and other information filed with a complaint are:

1. Confidential, unless the person filing the complaint wishes for them to be made public;
2. The charging document filed with the Board to initiate disciplinary action pursuant to Chapter 622A and all documents and information considered by the Board when rendering a decision on the case is confidential.
3. The Board shall share the documents and files with any other board that is investigating the case.

Any person who becomes aware that a person practicing occupational therapy in this State has become engaged in conduct which constitutes grounds for initiating disciplinary action may file a complaint. Complaints may be filed anonymously. Any anonymous complaints may not be processed if the complaint is found to be impossible or unfair to the person who is the subject of the complaint.

Formal Hearing in a Complaint Case is held before the Board for a determination of whether the respondent / licensee has violated any provision of Nevada law or regulation. A Formal Hearing is presided over by the Board Chair who serves as the Hearing Officer. The Hearing is subject to the Open Meeting Law and is open to the public (limited exceptions). Evidence in the Hearing is presented through testimony of Witnesses and Exhibits; all documentation is confidential until introduced as evidence.

Complaint Process Formal Hearing Process

Board Policy Manual - Complaints

05:04 Complaint Process

A formal complaint must be submitted in the writing on the Complaint Form provided by the Board available on the Board website or upon request from the Board office.

Sufficient information and/or documentation must be provided to make a determination as to the validity of the allegations.

05:041 Anonymous Complaints

Complaints may be submitted anonymously and will be accepted but will not be processed if there is insufficient evidence or documentation of an alleged violation of law or regulation. Anonymity of the Complainant may make it impossible to process.

05:042 Complaint Review

Complaints are reviewed by the Executive Director upon receipt for determination of potential violation of law and regulations, and assigned a complaint case number. The Complainant is contacted if additional information or clarification is needed to make a determination.

Based upon the severity of the allegations and nature of the complaint, legal counsel may be consulted.

05:043 Determination of Validity

Administrative Dismissal - The complaint may be dismissed without further processing if:

- it is incomplete and/or unsubstantiated and no further documentation or evidence is available from the Complainant, or
- the Board has no authority over the alleged action and referral to another regulatory agency is not appropriate.

The Complainant will be notified by letter and the case will be closed.

Referral - If the complaint is clearly not under the authority of the Board, but appears to be within the authority of another regulatory body, the complaint will be referred to the appropriate regulatory body and the Complainant will be notified of the referral.

Complaints from Outside Sources - If the complaint alleges actions within the scope of the practice of occupational therapy and under the authority of the Board, an informal investigation will be opened to determine whether sufficient evidence has been presented to proceed with a formal investigation.

05:044 Formal Complaint Processing

Due Process - When a formal investigation is warranted, the Respondent is notified that a complaint has been received with a summary of the allegations contained in the Complaint and potential violations of law and/or regulations.

- The Notice of Complaint will be sent by US Mail, certified, regular delivery and by email
- The Respondent has 20 days from date of receipt to submit a response to the allegations

- The Respondent may obtain legal counsel for representation in the matter

Formal Investigation - No information on an active investigation will be released. The Investigator will issue a report upon conclusion of the investigation with findings. In consult with the Board counsel, the Executive Director will make recommendations for further action or resolution based upon the investigative report.

Response to Complaint - If the Respondent has obtained legal counsel, all further correspondence will be initiated through the Board's legal counsel who will consult with the Executive Director during the duration of the Complaint process.

Settlement and Consent Decrees - The Respondent may agree with the allegations in the Complaint in full or in part and may enter into a Consent Decree during any phase of the complaint process. The Consent Decree is negotiated by the Board legal counsel in consultation with the Executive Director. A Consent Decree will be considered by the Board at a public hearing or meeting of the Board. A Consent Decree is an agreed to disciplinary action and becomes a public record.

Formal Hearing - If sufficient evidence is determined to substantiate a violation of law and/or regulations, a Formal Hearing will be scheduled. Case documents and details will remain confidential until released during the Formal Hearing process.

The Formal Hearing is held before the Board; the Board Chair presides. The Board legal counsel and assigned prosecuting attorney will prosecute the Complaint Case. Testimony will be heard from all parties; both sides may provide witness testimony, and present evidence to support their case.

Board members may ask questions and request additional clarification during the Formal Hearing.

Disciplinary Determination - The Board may take any combination of the following actions upon conclusion of the legal presentation and consideration of the evidence presented:

- Dismiss
- Impose Disciplinary Action as determined by the Board
- Suspend a License for a period of up to 1 year
- Revoke a License for a period of up to 5 years
- Deny a License in a case of practicing without a license

05:045 Reporting of Disciplinary Action

All formal disciplinary actions are reported to:

- National Practitioners Data Bank;
- Nevada Legislative Counsel Bureau Disciplinary Action reporting system;
- AOTA;
- NBCOT; and
- Any other state regulatory agencies in which the licensee holds a current license.

FORMAL HEARING

OUTLINE OF PROCEEDINGS

The Board Chair acts as the Hearing Officer and has control of the proceedings.

The Attorney General's Office will assign a Deputy Attorney General to represent the Board and provide advise as to process; the Board attorney (DAG) will be the prosecutor for the case.

1. Call the Matter

The Board Chair will call the Matter for Hearing.

2. Ask for appearances from the State and Respondent.

a. Is Respondent represented by an attorney?

If the Respondent is not present with an attorney, ask him if he knows he is allowed to have an attorney if he chooses to hire one. If he answers "yes", then ask him if he is prepared to go forward without one.

3. Explain how the hearing will proceed:

a. Opening Statements

Statements may be made by both parties. If the Respondent is not represented by an attorney, explain to him that the Opening Statement is just a summary of the evidence intended to be shown.

Prosecutor proceeds first and puts on her/his case by offering evidence through witnesses and/or documents;

Respondent is allowed to cross-examine any witnesses offered by the Prosecutor;

Respondent proceeds following the Prosecutor and can offer evidence in the form of witnesses and/or documents and/or his own testimony;

b. Closing Statements

Both parties may be given an opportunity to make closing arguments, at the discretion of the board.

Closing statements are helpful because they identify the evidence actually submitted that supports each side's argument.

4. **Ask if there are any preliminary matters that need to be addressed first.**

If none, ask the Prosecutor to proceed.

5. **WITNESSES**

a. **Ask the parties if they want the witnesses to be excluded from the hearing.**

If the witnesses cannot hear the other witnesses testimony, they cannot change their testimony prior to testifying.

b. **Swear in witnesses prior to them testifying.**

“Do you solemnly swear to tell the truth, the whole truth and nothing but the truth in the testimony you give in these proceedings, so help you God?”

c. Have Respondent sworn in if he is not represented by counsel and he wants to explain certain facts or evidence.

d. Examination of witness occurs as follows:
Direct examination by party offering the witness;
Cross-examination by opposing party;
Re-direct examination on the matters raised in cross-examination;
Cross-examination only on that matter raised during second direct examination.

e. **Board members** may question each witness upon conclusion of their testimony.

f. After no further examination of the witness, the witness may be excused.

6. **EXHIBITS**

Procedure for use of documentary evidence is as follows:

a. **Mark Exhibit.**

When an attorney wants to question a witness about a document, the document is marked as an Exhibit with a number or letter depending on the party. The party who will be offering the exhibit can have the Exhibit pre-marked or marked at the time of the hearing. The Exhibit is marked only for identification purposes. It does not get admitted until it is authenticated and the Chairman rules on any objections to admission.

b. **Question witness regarding Exhibit.**

The party asks the witness to identify the document and whatever he wants about the Exhibit.

c. **Admit Exhibit into Evidence.**

If the party wants the Exhibit to become a part of the record and used in the consideration of the case, then he must offer to have the Exhibit admitted into evidence. The Chairman determines if the evidence is to be admitted.

d. **Keep a list of the Exhibits offered and admitted.**

At conclusion, review list of Exhibits offered.

Sometimes a party may forget to ask to have an Exhibit admitted after he is done questioning a witness about it or a party representing himself will not know that he has to do so. The best thing to do is, at the end of the hearing, review the Exhibits that have been offered and admitted and ask if there are any others that did not get admitted that the parties wanted admitted. This will make a clean record.

7. CLOSING ARGUMENTS

After the parties have submitted all their evidence, they are given an opportunity to make closing arguments, at the discretion of the Board. This is the time designated for each party to argue how the evidence presented supports his or her position and to persuade the Board to rule in that party's favor. The prosecutor must argue and demonstrate how the evidence supports the elements of his or her case. The prosecutor has the burden of proof, which means each element of the violation must be proved by substantial evidence. Substantial evidence is evidence which a reasonable person might accept as adequate to support a conclusion. The Respondent will argue his defense and how the evidence supports his defense or that the evidence does not support the violation.

After closing arguments, ask if there is anything more. If not, then the case is submitted for consideration.

8. DELIBERATION

a. **Discuss Evidence**

At this time, the **Board deliberates on the record.** They discuss the evidence and make determinations about the facts of the case. The facts must support the conclusion there is a violation or there is not a violation. If a violation is determined to have occurred, then further deliberation must be made on the penalty to be imposed. The possible penalty is determined by statute and generally consists of a revocation, suspension, probation, limitation or condition of the license or in some cases public reprimand. The penalty chosen should correspond with the seriousness of the violation and crafted to best serve the public interest.

9. ACTION/ MOTIONS

a. Make Motion.

After the Board has deliberated, which is just the discussion phase, the Chair asks if anyone wants to make a motion. The motion will be either to find that a violation occurred or that a violation did not occur.

If a majority of the Board votes to find a violation, then the motion is carried and a second motion must be made regarding the penalty. The penalty may consist of a revocation, suspension, limitation or condition of the license. Make separate motions regarding guilty or not guilty on the violation and then a second motion regarding the penalty for the violation(s).

If a majority of the Board finds that no violation occurred, then the complaint must be dismissed, so a motion must be made to that effect.

OPEN MEETING LAW

The Nevada Open Meeting Law (OML) was enacted in 1960 to ensure that the actions and deliberations of public bodies be conducted openly. The Nevada Open Meeting Law is codified in Chapter 241 of the Nevada Revised Statutes.

The Nevada Open Meeting Law Manual is available from the Nevada Attorney General's Office.

Board members may not discuss Board business outside of an official Board meeting.

All communications with the Board are to be directed to the Board Administrative Office for response by the Executive Director.

The Executive Director will communicate to Board members by email, blind copy, or directly by telephone.

The Nevada Attorney General's Office provides Boards and Commission training annually which includes the Open Meeting Law requirements. Members are strongly encouraged to attend this training.

Open Meeting Law Summary

Applicability of the Open Meeting Law – Nevada Revised Statutes Chapter 241

The Board of Occupational Therapy is subject to the Nevada Open Meeting Law.

- The Open Meeting Law (“OML”) applies to meetings of public bodies. NRS 241.016(1)
- A “public body” is any administrative, advisory, executive or legislative body of the State or a local government consisting of **at least two persons** which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue...” NRS 241.015(4).
- Legislature declared in statute that it is the intent of the law that public bodies take action openly and that their deliberations be conducted openly. NRS 241.010(1)

What is a Meeting?

- A “meeting” is defined as “the gathering of members of a public body at which a **quorum** is present, ... to deliberate toward a **decision** or to **take action** on any matter over which the public body has supervision, control, jurisdiction or advisory power”. NRS 241.015(3).
- **Quorum:** a simple majority of the membership of a public body. NRS 241.015(5).
- **Deliberate:** collectively examine, weigh, and reflect upon the reasons for or against an action. NRS 241.015(2)
- **Action:** a decision, commitment, or promise made by a majority of the members present during a meeting. NRS 241.015(1)

Serial Communications - A meeting also includes serial communications.

- What is a serial communication?
 - A series of gatherings of members of a public body;
 - Less than a quorum is present at any individual gathering;
 - The members of the public body attend one or more of the gatherings which collectively would constitute a quorum; and
 - The series of gatherings was held with the specific intent to avoid the provisions of the OML.
 -

Exceptions NRS 241.015(3)(b): The definition of a “meeting” does not include:

- **Social Functions** where there is no deliberation or action taken on any matter over which the public body has supervision, control, jurisdiction, or advisory power;
- **Attorney-client litigation session** to receive information from the body’s attorney regarding potential or existing litigation matter over which the public body has supervision, control, jurisdiction, or advisory power;
- **Training regarding legal obligations** of the public body

Meeting Notice and Agenda Requirements - NRS 241.0920

- Written notice must be given at least **3 working days** before the meeting, which requires:
 - Time, place and location of meeting;
 - List of locations where the notice was posted;
 - Name, contact information and business address from whom a member of the public may request supporting materials, the location where the materials will be available to the public or information about how the material can be found on the internet;
 - An agenda.
- Agenda must consist of a **clear and complete statement** of the topics scheduled for consideration;
 - A higher degree of specificity is necessary for topics of **substantial public interest**
 - Does the topic generate public comment, debate among members or media interest/coverage?
- Action items must be clearly denoted as “for possible action”;
- Public comment periods at the beginning / end of the meeting or before any action on an item;
- If any portion will be closed to consider the character, alleged misconduct, or professional competence of a person, the name of that person;
- Notification that items on the agenda may be taken out of order, may be combined for consideration, and may be removed from the agenda or delayed for discussion at any time.

Minimum Public Notice – NRS 241.020(4)

- A copy of the Notice must be posted no later than 9:00 a.m. of the 3rd working day before the meeting:
 - At the principal office of the public body;
 - On the internet website of the public body if the meeting is held using remote technology and has no physical location;
 - Official notice website of the State; and
 - Provided to any person who has requested a notice of meetings.
- Additional notice requires for consideration of character, misconduct, competence, or physical or mental health: 5 days personal service or 21 days certified mail. NRS 241.033

Additional Requirements:

- Must make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1)
- Must make reasonable efforts to ensure facilities for the meeting are large enough to accommodate the anticipated number of attendees. NRS 241.020(2)
- At least one copy of the notice, agenda and supplemental materials must be made available to the public at the meeting. NRS 241.020(7)

Emergency Meetings – may only be called where the need to act upon a matter is **truly unforeseen** and circumstances dictate that **immediate action is required**.

Closed Meetings, NRS 241.030 – may be held by any public body to:

- Consider character, alleged misconduct, professional competence, or the physical or mental health of a person, with some exceptions;
- Prepare, revise, administer, or grade examinations administered on behalf of the public body;
- Consider an appeal by a person of the results of an examination.

Closed sessions may not be held:

- To discuss the appointment of any person to public office or as a member of a public body;
- To consider the character, alleged misconduct, professional competence of an elected member of a public body, or a person who is an appointed public officer or who services at the pleasure of a public body as a chief executive or administrative officer or in a comparable position.

Public Comment - restrictions on public comment must be specified on the Notice.

- Restrictions must be reasonable “time, place and manner” restrictions NRS 241.020(d)(7)
- Unauthorized restrictions include:
 - Halting comment based on viewpoint of speaker;
 - Halting comment upon belief defamation is occurring; or
 - Halting comment critical of a public official.
- The presiding officer may halt comments that:
 - become unduly repetitive or that stray from the scope of a specified agenda topic for which comment is offered, or
 - are willfully disruptive.
- The OML does not prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical. NRS 241.030(4)(a)

Teleconferencing and Videoconferencing – NRS 241.023

A public body may conduct a meeting via teleconference or videoconference if:

- There is a quorum present either in person or by electronic means; and
- Either:
 - There is a physical location where the public is permitted to attend and participate; or
 - They can hear and observe the meeting, participate in the meeting by telephone, and provide live public comment during the meeting.
- The public body must make reasonable efforts to ensure that the members and the public can hear and observe each other.
- Meetings conducted exclusively by means of remote technology must:
 - Have an internet website; and
 - Post to the website the Notice, Agenda and all supporting materials.

Meeting Records – NRS 241.035

- A public body shall keep written minutes of each meeting, including:
 - Date, time and place of meeting
 - Roll call of members
 - Substance of all matters proposed, discussed or decided;
 - Substance of remarks, or if written remarks are prepared, a copy of the remarks if submitted for inclusion in the minutes.
- Meeting minutes shall be approved within 45 days after the meeting or at the next meeting;
- Minutes are public records.

Violations – action taken in violation of the OML is void. NRS 241.036

- The Office of the Attorney General has statutory enforcement powers under the OML and the authority to investigate and prosecute violations.
- If a violation is found, the public body must include an item on its next agenda which acknowledges the OAG’s findings and the OAG’s opinion must be treated as supporting material for the item.

Violations Corrective Action

- The public body should make every effort to promptly correct the apparent violation;
- Corrective action requires the public body to engage in an independent deliberative action in full compliance with the OML;
- Corrective action must be clearly denoted by placing the term “for possible corrective action: next to the appropriate agenda item.

Members of a public body may be subject to criminal and civil penalties for willful violations.

No criminal or civil penalty may be imposed against a member if there was reliance on legal advice provided by an attorney of the public body.

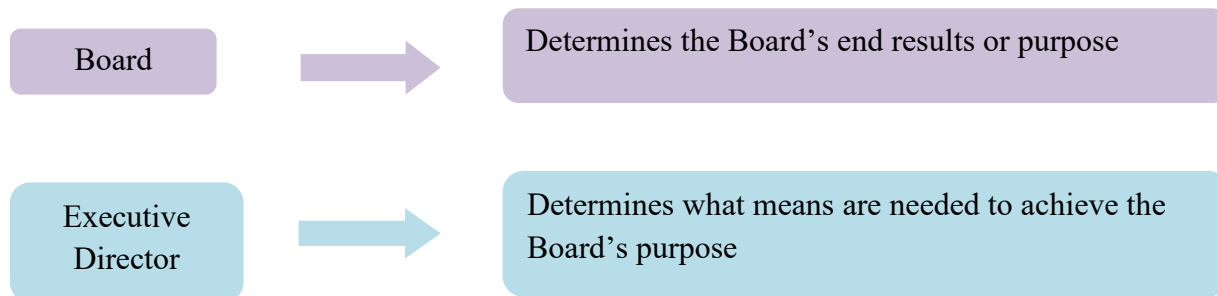
GOVERNANCE

Introduction

The Nevada Board of Occupational Therapy is effective when clear responsibilities are established. Forming an effective Board requires the Board to have a clear answer to this question:

What benefits (or end results) are we providing to whom?

In addition to answering this question, the Board needs to establish a single point of administrative authority. This person is responsible for using whatever means are necessary to accomplish these desired ends, within legal means or limitations established in advance by the Board.



The Nevada Board of Occupational Therapy will be able to make better decisions more quickly and use the talents of its Board Members and the Executive Director if the Board:

- Is clear about its role
- Approves procedures for how the Board is going to operate and
- Establishes a partnership with the Executive Director to take actions needed to accomplish the Board's intended end results.

Board Members should be people who are interested in **governing** the Nevada Board of Occupational Therapy and not in performing hands-on activities, especially, not in a management role.

Role of the Board and Executive Director

Clear authority makes the Nevada Board of Occupational Therapy more agile.

If a responsibility belongs to the Executive Director, the Board should discuss if the Executive Director should bring information about that function to the Board, and in what form and frequency.

BOARD AND EXECUTIVE DIRECTOR RESPONSIBILITIES

BOARD OPERATIONS

Activity	Responsibility
Develop, approve and modify Board administrative structure	Board
Establish written policies and procedures for Board operations	Executive Director
Appoint committees and hold them accountable	Board
Establish and enforce expectations for attendance at Board/committee meetings	Board
Train Board members	Executive Director
Plan agenda for Board meetings	Joint
Take minutes at Board meetings	Executive Director
Plan and propose committee structure	Board
Prepare exhibits, materials, and proposals for the Board and committees	Executive Director
Sign or delegate the signature on legal documents	Board
Follow-up to insure implementation of Board and committee decisions	Executive Director

PLANNING

Establish mission and strategic plan	Board
Articulate a vision for achieving goals	Executive Director
Approve long range goals	Board
Provide input to long range goals	Joint
Formulate objectives	Joint
Direct the operational planning process	Executive Director
Prepare performance reports on achievement of goals and objectives	Executive Director
Monitor achievement of goals and objectives	Joint

FINANCIAL PLANNING, MANAGEMENT, AND OVERSIGHT

Prepare operating budget	Executive Director
Finalize and approve budget	Board
Ensure that expenditures are within budget	Joint
Approve expenditures outside authorized budget levels	Board
Provide for periodic audits and financial reviews	Executive Director
Develop financial policies and procedures	Executive Director
Approve financial policies and monitor that policies are being followed.	Joint
Ensure that there is adequate segregation of financial duties so that no one person is involved in all aspects of financial transactions	Executive Director
Receive, review and approve audit reports	Board
Ensure compliance with State administrative requirements	Executive Director

PERSONNEL

Hire and discharge Executive Director	Board
Establish executive compensation	Board
Ensure succession planning	Executive Director
Establish performance expectations/agreement and evaluate the ED	Board
Develop Personnel Policies, Procedures and Compensation Plan	Executive Director
Approve Personnel Policies, Procedures and Compensation Plan	Board
Direct the work of the Board of Occupational Therapy	Executive Director
Hire, supervise, evaluate and discharge staff other than the ED	Executive Director
Handle complaints against the ED by a staff member or public	Board

MARKETING/COMMUNITY RELATIONS:

Interpret Nevada Board of Occupational Therapy law and/or regulations to stakeholders	Executive Director
Develop marketing plan, materials, and awareness campaigns	Executive Director
Outreach and delivery of information to stakeholders / community / interested parties	Joint

LEGISLATIVE / REGULATORY:

Review Board of Occupational Therapy law and/or regulations	Executive Director
Develop proposed law and/or regulatory language	Executive Director
Review and approve proposed law and/or regulations	Board
Monitor legislative and regulatory activities	Executive Director

Board Self Assessment

A Board assessment process can help Board Members:

- Reflect on their experience.
- Explore how comfortable, enjoyable, and meaningful participation on the Board is to the Board Member
- Understand individual expectations for preparation time, how the meetings are run, and how decisions are made.
- Identify different perceptions and opinions among Board Members about the Board’s role.
- Identify and remove obstacles to increased Board effectiveness.

The self-assessment points to issues that need Board discussion and clarification.

Mark with an “x” the column that best represents your agreement or disagreement with the statement.

	Statement	Strongly agree	Agree	Disagree	Strongly disagree	Not sure or can't rate
1.	I feel the meetings focus on important Board of Occupational Therapy matters.					
2.	I am clear about my responsibilities as a member of the Board.					
3.	Materials related to significant decisions are given to the Board far enough in advance of the meeting.					
4.	The amount of material I need to read prior to the meetings is reasonable.					
5.	It is clear to me how urgent matters are handled between meetings.					
6.	I feel I have a clear understanding of the mission and activities of the Board of Occupational Therapy.					
7.	When I was new to the Board, I was given sufficient information to allow me to make a contribution to the Nevada Board of Occupational Therapy quickly.					
8.	I receive financial information that is understandable and gives me a clear sense of the Board’s financial position.					

	Statement	Strongly agree	Agree	Disagree	Strongly disagree	Not sure or can't rate
9.	There is good follow-up on tasks delegated to the Executive Director.					
10.	I feel that other members listen to my opinions.					
11.	I feel I can comfortably say when I disagree with another member or with staff.					
12.	The Board gives honest feedback to the Executive Director.					
13.	It is clear to me how the Board will be involved in important decisions.					
14.	Board members understand that they do not have authority to act on behalf of the Board unless specified through a Board decision.					
15.	The Board has a clear process for making important decisions.					
16.	The Board sets performance measures for the Executive Director and evaluates performance against these measures.					
17.	The Board uses a formal and approved method of ED performance evaluation.					
18.	The Board sets clear goals that are realistic and relevant to the strategic plan.					

In thinking about your service and role on the Board:

How satisfied are you with the work of the Board overall (circle your answer)

VERY SATISFIED SATISFIED NOT SATISFIED

In thinking about the administrative services and role of the Staff of the Board:

How satisfied are you with the administration of the Board overall (circle your answer)

VERY SATISFIED SATISFIED NOT SATISFIED

Please list the three areas where you would like to see the Board improve its **performance focus** in the next two (2) years. Be as specific as possible.

1.

2.

3.

Please list the three areas where you would like to see the Board **focus its attention** in the next two (2) years. Be as specific as possible.

1.

2.

3.

Please provide any other comments, concerns or other topics you feel the Board should address or consider.