

1 **Texas Board of Occupational Therapy Examiners**
2 **BOARD MEETING MINUTES**
3 **February 2, 2018**
4 333 Guadalupe, Suite #2-510
5 Austin, TX 78701
6 9:00 AM
7

8 **Members Present:** Stephanie Johnston, OTR, FAOTA, Chair
9 Todd Novosad, OTR, Vice Chair
10 DeLana Honaker, OTR, PhD, CLT, FAOTA, Secretary
11 Amanda Jean Ellis, Public Member
12 William N. Hale, Public Member
13 Pamela D. Nelon, Public Member
14

15 **Members Absent:** Jennifer B. Clark, COTA
16 Sally Harris King, COTA
17

18 **Counsel Present:** Kara Holsinger, Assistant Attorney General
19

20 **Staff Present:** John Maline, Executive Director
21 Amy Carter, Investigator
22 Michael Briscoe, Licensing Manager
23 Ralph Harper, Senior Accountant
24 Sandy Lewis, Accountant II
25 Lea Weiss, OT Coordinator
26

27 **Public Attendees:** Delaney Domino, Intern, Office of the Attorney General
28

29 **1. Call to Order**

30 The meeting was called to order at 9:02 AM by Stephanie Johnston, Presiding Officer. She
31 called the roll and announced that a quorum existed.
32

33 **2. Discussion and possible action on excusing board member absences**

34 **Motion:** To approve the excuse of Jennifer B. Clark and Sally Harris King for their
35 absence at the February 2, 2018 Board meeting

36 **Made by:** DeLana Honaker

37 **Second by:** Pamela D. Nelon

38 **Motion passed.**
39

40 **3. Public comment**

41 There was no public comment.
42

43 **4. Approval of Minutes of November 3, 2017**

44 **Motion:** To approve the minutes as written

45 **Made by:** DeLana Honaker

46 **Second by:** Todd Novosad

47 **Motion passed.**
48

49 **5. Discussion and possible action on the Executive Director's Report concerning**
50 **fiscal and budgetary matters, performance measures, ongoing projects, agency**
51 **personnel matters, Executive Council activity, and other agency business**

52 John Maline noted that Ralph Harper, Senior Accountant, and Sandy Lewis, Accountant II,
53 would speak during this agenda item regarding agency travel policies and procedures for board

54 members. Ralph Harper and Sandy Lewis addressed the members regarding such. Next, John
55 Maline briefed the Board on fiscal and budgetary matters, performance measures, ongoing
56 projects, agency personnel matters, Executive Council activity, and issues relevant to agency
57 business. He noted, furthermore, that he has been in contact and had conversations with the
58 staff of the Governor's Appointments Office, but that as of this report, no new appointments or
59 reappointments to the Board had been made. The Board discussed the agenda item. No
60 action was taken.

61

62 **6. Investigation Committee Report**

63 **A. Review and possible action on Agreed Orders for Case #s: 16-122; 18-
64 007; 18-034; 18-058 and 18-062**

65 Amy Carter presented agreed orders for the following case numbers: 18-034; 18- 007; 18-062;
66 and 18-058.

67

68 The Board reviewed and ratified the agreed orders for case numbers: 18-034; 18-007; 18-062;
69 and 18-058.

70

71 **Motion: For case number 16-122, the Investigation Committee proposes the
72 immediate emergency suspension of the COTA's license to practice under
73 454.305 of the Act as "the continued practice by the licensee constitutes a
74 continuing or imminent threat to the public health or welfare."**

75 **Made by: Investigation Committee**

76 **Second by: None required.**

77 **Motion passed.**

78

79 **B. Discussion and possible action on the Investigation Committee meeting of
80 January 11, 2018**

81 Amy Carter reported that forty four cases were reviewed at the January 11, 2018 meeting,
82 resulting in the Investigation Committee's issuance of five Agreed Orders. Two informal
83 conferences were held.

84

85 **C. Discussion and possible action on investigative activities to date**

86 Amy Carter reported on performance measures and on-site investigations since the last Board
87 meeting, in addition to continued work on a disciplinary action matrix to include administrative
88 penalties, which will be presented to the Board at a future meeting. She also reported on
89 continuing work regarding implementing fingerprint-based criminal history background checks of
90 applicants and licensees.

91

92 The Board recessed at 9:55 AM and reconvened at 10:08 AM.

93

94 **7. Discussion and possible action on adopting changes to proposed §362.1.
95 Definitions, §372.1. Provision of Services, and §367.2. Categories of Education,
96 and proposed new §363.3. Negotiated Rulemaking, §363.4. Alternative Dispute
97 Resolution, and §367.4. Process for Selecting a Peer Organization to Evaluate and
98 Approve Continuing Education Courses**

99 Lea Weiss reviewed the proposed amendments to §362.1, Definitions, and §372.1, Provision of
100 Services, and noted the following:

101

102 The amendments to §362.1 were proposed to cleanup and clarify the section and to revise the
103 Board's definition of telehealth.

104

105 Cleanups and clarifications pertain to amending a reference to the Occupational Therapy
106 Practice Act under the definition of examination and to adding to the definition of jurisprudence

107 examination that such is an online examination and that the passing score is at least seventy
108 percent.

109
110 The definition of telehealth in the proposed amendment had been revised to more closely align
111 it with the current definition of telehealth service in Occupations Code, §111.001, Definitions, as
112 amended by SB 1107 from the 85th Legislative Session (Regular).
113

114 The amendments to §372.1 were proposed to cleanup and clarify the section in general and to
115 revise and clarify the section's regulations regarding occupational therapy services provided via
116 telehealth and modifications to the plan of care.
117

118 The amendments to the section would remove the requirement that the initial evaluation for a
119 medical condition must be conducted in person and may not be conducted via telehealth. New
120 language instead would include that the occupational therapist is responsible for determining
121 whether any aspect of the evaluation may be conducted via telehealth or must be conducted in
122 person. The amendments would also remove current language that the occupational therapist
123 must have real time interaction with the client during the evaluation process either in person or
124 via telehealth to instead include that the occupational therapist must have contact with the client
125 during the evaluation via telehealth using synchronous audiovisual technology or in person.
126 The amendments would also add that other telecommunications or information technology may
127 be used to aid in the evaluation but may not be the primary means of contact or communication.
128

129 The amendments, in addition, would remove that the occupational therapy practitioners must
130 have real time interaction with the client during the intervention process either in person or via
131 telehealth and instead would include that the occupational therapy practitioners must have
132 contact with the client during the intervention session via telehealth using synchronous
133 audiovisual technology or in person. The amendments would add, as well, that other
134 telecommunications or information technology may be used to aid in the intervention session
135 but may not be the primary means of contact or communication. The amendments would,
136 additionally, include that except where otherwise restricted by rule, the occupational therapy
137 practitioner is responsible for determining whether any aspect of the intervention session may
138 be conducted via telehealth or must be conducted in person.
139

140 Concurrent with these changes, the provision requiring that the occupational therapist is
141 responsible for determining whether any aspect of the provision of services may be conducted
142 via telehealth or must be conducted in person has been removed in the proposal.
143

144 The amendments to §372.1 would also remove language that the occupational therapist and an
145 occupational therapy assistant may work jointly to revise the short-term goals, but the final
146 determination resides with the occupational therapist and that revisions to the plan of care and
147 goals must be documented by the occupational therapist and/or occupational therapy assistant
148 to reflect revisions at the time of the change. The amendments would add instead that
149 modifications to the plan of care must be documented.
150

151 The amendments include further cleanups and clarifications including adding the phrase
152 "discontinuation of occupational therapy services" under applicable provisions regarding a
153 discharge.
154

155 Lea Weiss noted that no comments were received regarding amendments to §362.1,
156 Definitions, and that comments were received regarding §372.1. The Board discussed the
157 proposed amendments and discussed and responded to the comments.
158

159 **Motion:** To adopt the amendments to 362.1. Definitions and §372.1. Provision of
160 Services with an effective date of March 1, 2018 or as soon as possible
161 thereafter

162 **Made by:** Pamela D. Nelon

163 **Second by:** DeLana Honaker

164 **Motion passed.**

165

166 Lea Weiss reviewed the proposed amendments to §367.2. Categories of Education, and noted
167 the following:

168

169 The amendments to §367.2 were proposed to clarify, cleanup, and revise the section regarding
170 continuing education requirements.

171

172 The proposed amendments to §367.2 include a cleanup regarding the continuing education
173 documentation for home study courses, educational teleconferences, Internet-based courses,
174 and video instruction to include that such may include a letter of verification. The amendments,
175 furthermore, clarify the continuing education documentation requirement for presentations by
176 licensees to include that documentation shall include verification of presentation. In the
177 amendments, a reference to documentation for this activity including a brochure or conference
178 guide has been removed. Another revision is to remove the reference to TBOTE, the Texas
179 Board of Occupational Therapy Examiners, from a provision regarding participation in volunteer
180 activities related to occupational therapy for the purpose of tangible outcomes such as official
181 documents, publications, and official reports.

182

183 Lea Weiss noted that the Board received one comment regarding §367.2. The Board discussed
184 the proposed amendments and discussed and responded to the comment.

185

186 **Motion:** To adopt the amendments to §367.2. Categories of Education with an
187 effective date of March 1, 2018 or as soon as possible thereafter

188 **Made by:** Todd Novosad

189 **Second by:** DeLana Honaker

190 **Motion passed.**

191

192 Lea Weiss reviewed proposed new §363.3. Negotiated Rulemaking, §363.4. Alternative Dispute
193 Resolution, and §367.4. Process for Selecting a Peer Organization to Evaluate and Approve
194 Continuing Education Courses.

195

196 New rules §363.3 and §363.4 were proposed in order to comply with statutory amendments to
197 §454.108 of the Occupational Therapy Practice Act during the 85th Legislative Session
198 (Regular) regarding establishing a policy on Negotiated Rulemaking and Alternative Dispute
199 Resolution.

200

201 Proposed new rule §367.4 would establish a process for selecting a peer organization to
202 evaluate and approve continuing education courses as required by recent statutory changes to
203 the Occupational Therapy Practice Act §454.254(e) during the 85th Legislative Session
204 (Regular).

205

206 New rule §367.4 would add to the Board Rules that if the Board chooses to authorize a license
207 holder peer organization in Texas to evaluate and approve continuing education courses, the
208 Board will conduct a request for proposals and bid process to select an organization and will
209 request bids and proposals at least once every four years.

210

211 Lea Weiss noted that no comments were received regarding the new rules. The Board
212 discussed the proposed new rules.

213
214 **Motion: To adopt new rules §363.3. Negotiated Rulemaking, §363.4. Alternative**
215 **Dispute Resolution, and §367.4. Process for Selecting a Peer Organization**
216 **to Evaluate and Approve Continuing Education Courses with an effective**
217 **date of March 1, 2018 or as soon as possible thereafter**

218 **Made by: DeLana Honaker**

219 **Second by: Todd Novosad**

220 **Motion passed.**

221
222 **8. Discussion and possible action on the OT Coordinator's Report. The**
223 **Coordinator's Report may concern any items listed on the agenda and events that**
224 **have occurred between this meeting and the Board's last meeting.**

225 Lea Weiss discussed recent activities at the Board, updates regarding the licensing system
226 database and website, and information regarding Board licensing statistics. No action was
227 taken on the agenda item.

228
229 **9. Discussion and possible action on the Presiding Officer's Report. The Presiding**
230 **Officer's Report may concern any items listed on the agenda and events that have**
231 **occurred between this meeting and the Board's last meeting.**

232 Stephanie Johnston noted that she would be attending the NBCOT State Leadership Forum in
233 April with Lea Weiss. No action was taken on the agenda item.

234
235 **10. Discussion and possible action on scheduling future Board meeting dates and**
236 **agenda items for future consideration**

237 Stephanie Johnston noted that Board meetings have been scheduled for May 4, 2018;
238 August 3, 2018; November 16 and 17, 2018, as part of the off-site Board conference; and
239 February 1, 2019; with possible Committee meetings to be held May 3 and 4, 2018; August 2
240 and 3, 2018; November 16 and 17, 2018; and January 31 and February 1, 2019.

241
242 Stephanie Johnston noted that possible agenda items for the upcoming meeting may concern
243 OT Practice Act changes from SB 317 of the 85th Regular Legislative Session.

244
245 **11. Adjournment**

246 The Board adjourned at 10:55 AM.

247

248 **Minutes adopted on: May 4, 2018**