

1 **Texas Board of Occupational Therapy Examiners**
2 **BOARD MEETING MINUTES**
3 May 3, 2019
4 333 Guadalupe, Suite #2-510
5 Austin, TX 78701
6 9:00 AM
7

8 **Members Present:** Stephanie Johnston, OTR, OTD, FAOTA, Chair
9 Todd Novosad, OTR, Vice Chair
10 Blanca Cardenas, Public Member
11 Amanda Jean Ellis, Public Member
12 Karen Gardner, OTR
13 Sally Harris King, COTA
14 Pamela D. Nelon, Public Member
15

16 **Members Absent:** Jennifer B. Clark, COTA
17 DeLana Honaker, OTR, PhD, CLT, FAOTA, Secretary
18

19 **Counsel Present:** Kara Holsinger, Assistant Attorney General
20

21 **Staff Present:** John Maline, Executive Director
22 Mark Turek, Chief Investigator
23 Amy Carter, Investigator
24 Michael Briscoe, Licensing Manager
25 Ralph Harper, Senior Accountant
26 Lea Weiss, OT Coordinator
27

28 **Public Attendees:** Judith Joseph, OTR, Executive Director,
29 Texas Occupational Therapy Association
30 Mark King
31

32 **1. Call to Order**

33 The meeting was called to order at 9:04 AM on February 1, 2019, by Stephanie Johnston,
34 Presiding Officer. She called the roll and announced that a quorum existed.
35

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

37 **Motion:** To approve the excuse of Jennifer B. Clark for the absence at the May 3,
38 2019 Board meeting

39 **Made by:** Todd Novosad

40 **Second by:** Sally Harris King

41 **Motion passed.**
42

43 **Motion:** To approve the excuse of DeLana Honaker for the absence at the May 3,
44 2019 Board meeting

45 **Made by:** Karen Gardner

46 **Second by:** Pamela Nelon

47 **Motion passed.**

48

49 **3. Public comment**

50 Judith Joseph commented on improvements the Texas Occupational Therapy Association has
51 made to its continuing education approval program. Mark King commented on the dedication of
52 the Board.

53

54 **4. Approval of Minutes of February 1, 2019**

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

56 **Made by: Sally Harris King**

57 **Second by: Karen Gardner**

58 **Motion passed.**

59

60 **5. Discussion and possible action on the Executive Director's Report concerning**
61 **fiscal and budgetary matters, performance measures, ongoing projects, agency**
62 **personnel matters, Executive Council activity, legislative session, and other**
63 **agency business**

64 John Maline briefed the Board on fiscal and budgetary matters, performance measures, ongoing
65 projects, agency personnel matters, Executive Council activity, and the current legislative
66 session. The Board discussed the agenda item. No action was taken.

67

68 **6. Investigation Committee Report**

69 **A. Review and possible action on Agreed Orders for Case #s: 19-065;**
70 **19-066; 19-067; 19-071; 19-075; 19-076; 19-084; 19-085; 19-089; 19-091 and**
71 **19-101**

72 Mark Turek presented agreed orders for the following case numbers: 19-065; 19-066; 19-067;
73 19-071; 19-075; 19-076; 19-084; 19-091; 19-101; and 19-089.

74

75 The Board reviewed and ratified the agreed orders for case numbers: 19-065; 19-066; 19-067;
76 19-071; 19-075; 19-076; 19-084; 19-091; 19-101; and 19-089.

77

78 The remaining case was not presented to the Board at this time.

79

80 **B. Discussion and possible action on the Investigation Committee meeting of**
81 **April 10, 2019**

82 Mark Turek reported that 54 cases were reviewed at the April 10, 2019 meeting, resulting in the
83 Investigation Committee's issuance of eleven Agreed Orders. No informal conferences were
84 held.

85

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

87 Mark Turek reported on performance measures and on-site investigations since the last Board
88 meeting, in addition to information regarding the implementation of fingerprint-based criminal
89 history background checks of applicants and licensees, which began on January 1, 2019, for
90 renewals and new license issuance.

91

92 The Board recessed at 10:17 AM and reconvened at 10:36 AM.

93

94 **7. Discussion and possible action on adopting changes to proposed §369.2,**
95 **Changes of Name or Address; §372.1, Provision of Services; and §372.2, General**
96 **Purpose Occupation-Based Instruction, and adopting the repeal of §373.3,**
97 **Supervision of an Occupational Therapy Assistant**

98 Lea Weiss noted the following:

99

100 The repeal of §373.3 would remove from the OT Rules the supervision requirements in that
101 section, which concern the supervision of an occupational therapy assistant with a regular
102 license. Such requirements include that an occupational therapy assistant must submit the
103 Supervision of an Occupational Therapy Assistant form with the employer information and name
104 and license number of one of the occupational therapists working for the employer who will be
105 providing supervision. The repeal would also remove from the OT Rules requirements
106 concerning the Supervision Log and requirements that occupational therapy assistants with a
107 regular license receive frequent communication supervision and interactive supervision from
108 occupational therapists.

109

110 Lea Weiss noted, furthermore, that the repeal of §373.3 would not remove all requirements
111 concerning the supervision of an occupational therapy assistant with a regular license from the
112 OT Rules as requirements regarding supervision appear in other rule sections. Section
113 372.1(g), Documentation, requires that in each intervention note, the occupational therapy
114 assistant must include the name of an occupational therapist who is readily available to answer
115 questions about the client's intervention at the time of the provision of services and that the
116 occupational therapy assistant may not provide services unless this requirement is met. Section
117 372.1(f)(10) requires that an occupational therapist may only delegate to an occupational
118 therapy assistant tasks that both agree are within the occupational therapy assistant's
119 competence.

120

121 Lea Weiss noted that the Board received comments regarding adopting the repeal of §373.3
122 from seven individuals.

123

124 Two commenters, one an occupational therapist and the other an occupational therapy
125 assistant, noted the value of the Board's repeal of the supervision requirements in §373.3,
126 including that such could streamline requirements for the supervision of an occupational therapy
127 assistant and would allow increased focus on direct patient care.

128

129 The Board agreed with these comments and made no changes to the repeal based on the
130 comments.

131

132 Five commenters, all occupational therapists, opposed the repeal of §373.3. These
133 commenters noted concerns that the repeal could result in the following: increased demand by
134 employers that occupational therapists supervise a greater number of occupational therapy
135 assistants; an increase in client loads for occupational therapy assistants; a lack of
136 communication between the occupational therapist and occupational therapy assistant; a
137 decrease in collaboration between the occupational therapist and occupational therapy
138 assistant; and/or negative consequences for patient care. Some commenters noted, in addition,

139 concerns regarding the possible effect of the repeal of §373.3 on occupational therapy
140 assistants in schools, in particular that the repeal may result in fewer occupational therapists in
141 the school setting, and demand for occupational therapy assistants to serve more students,
142 resulting in decreased student outcomes.

143

144 The Board disagreed with the comments and declined to withdraw the proposed repeal or make
145 other changes to the rule section in response to the comments. The Board noted that, pursuant
146 to the OT Rules, the occupational therapist is responsible for determining how many
147 occupational therapy assistants s/he can supervise, and the occupational therapist is
148 responsible for the plan of care and all amendments thereto. Also, the supervising occupational
149 therapist may only delegate to an occupational therapy assistant tasks that they both agree are
150 within the competency level of that occupational therapy assistant. The OT Rules require that
151 when providing services, the occupational therapy assistant must have an occupational
152 therapist who is readily available to answer questions about the client's intervention at the time
153 of the provision of services and that the occupational therapy assistant may not provide services
154 unless this requirement is met. Furthermore, occupational therapy practitioners may choose to
155 engage in supervision, communication, and collaboration beyond what the OT Rules require.

156

157 The Board determined that the provisions to be repealed contained unnecessary paperwork
158 requirements that took time away from patient care and unnecessarily limited occupational
159 therapy assistants' practice.

160

161 Lea Weiss noted, with regard to §369.2, that the amendments had been proposed to remove
162 the requirement that an occupational therapy assistant with a regular license notify the Board of
163 supervisor changes and to add language regarding the address of record to the section.

164

165 In the amendments, a provision concerning the requirement that a licensee or applicant notify
166 the Board of changes of supervisor had been revised. In the existing §369.2, licensees and
167 applicants were required to notify the Board of changes of supervisor within 30 days. In the
168 amendments, this was revised to require instead that only applicants and temporary licensees
169 notify the Board of changes of supervisor.

170

171 The amendments also include the addition of a provision concerning the address of record of a
172 licensee or applicant, which is the physical address that will be provided to the public.

173 Information concerning the address of record appeared in other sections of the OT Rules. The
174 provision was added to §369.2 as the section concerns changes to a licensee's or applicant's
175 address information.

176

177 Lea Weiss noted that no comments were received regarding adoption of §369.2.

178

179 Lea Weiss, furthermore, noted that the amendments to §372.1 had been proposed to cleanup
180 and clarify the sections and to add clarifying language to §372.1 regarding the transmission of a
181 medical referral.

182

183 Cleanups and clarifications to §372.1 included changes to provisions regarding an occupational
184 therapist's delegation of the collection of data for an evaluation and the delegation of tasks. In

185 the amendments to such provisions, references to a temporary licensee were removed as the
186 references to an occupational therapy assistant therein already refer to both an occupational
187 therapy assistant with a regular or temporary license.

188
189 The amendments also included language clarifying that when a referral is required for the
190 provision of occupational therapy services, such may be transmitted by an occupational therapy
191 plan of care, developed according to the requirements of the section, that is signed by the
192 licensed referral source.

193
194 The amendments, in addition, included a clarification of a requirement regarding the inclusion of
195 an occupational therapist's name in the intervention note and further cleanups and clarifications.

196
197 The amendments, additionally, included a change to §372.2 to strike a reference to the
198 supervision requirements in §373.3 because the repeal of §373.3, concerning supervision of an
199 occupational therapy assistant, had also been previously proposed.

200
201 Lea Weiss noted that no comments were received regarding adoption of §372.1 and §372.2.

202
203 The Board discussed the proposed rule changes.

204
205 **Motion: To adopt the repeal of §373.3, Supervision of an Occupational Therapy**
206 **Assistant, and adopt amendments to §369.2, Changes of Name or Address;**
207 **§372.1, Provision of Services; and §372.2, General Purpose Occupation-**
208 **Based Instruction, with an effective date of June 1, 2019 or as soon as**
209 **possible thereafter**

210 **Made by: Todd Novosad**

211 **Second by: Karen Gardner**

212 **Motion passed.**

213
214 **8. Discussion and possible action on proposing the repeal of Chapter 376,**
215 **Registration of Facilities, and proposing changes to §362.1, Definitions; §374.1,**
216 **Disciplinary Actions; and §374.2, Detrimental Practice, pursuant to changes made**
217 **to the OT Practice Act by SB 317 from the 85th Regular Legislative Session**
218 **concerning the discontinuation of the registration of occupational therapy**
219 **facilities**

220 Lea Weiss noted that the possible repeal and amendments were pursuant to changes made to
221 the OT Practice Act by SB 317 from the 85th Regular Legislative Session concerning the
222 discontinuation of the registration of occupational therapy facilities and noted the following:

223
224 The repeal of Chapter 376 would discontinue the registration of occupational therapy facilities
225 as mandated by changes to the OT Practice Act pursuant to SB 317. The repeal would remove
226 from the OT Rules requirements to register an occupational therapy facility with the Board and
227 renew the registration annually and the requirement that occupational therapy practitioners may
228 only practice in an occupational facility if that facility is registered or exempt from the registration
229 requirement.

230

231 The amendment to §362.1 would revise the definition of “Investigation Committee” to remove
232 the facilities reference therein in accordance with changes in statute to the OT Practice Act
233 pursuant to SB 317.

234
235 Changes to §374.1 would remove from the section references to facilities in a provision
236 concerning understanding and complying with the OT Practice Act and the OT Rules and a
237 provision concerning the publishing of final disciplinary actions taken by the Board. In addition,
238 the proposal would add to §374.1 that “The board may expunge any record of disciplinary action
239 taken against a license holder before September 1, 2019, for practicing in a facility that failed to
240 meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy
241 Facility Registration), as that section existed on January 1, 2019. The board may not expunge a
242 record under this subsection after September 1, 2021.” The provision may be proposed
243 pursuant to SB 317 and the addition to the OT Practice Act of §454.307, concerning record of
244 disciplinary action and expungement.

245
246 The changes would also eliminate failure to register or renew a facility registration and
247 practicing in an unregistered facility from the list of practices considered detrimental to the public
248 health and welfare in §374.2 and from a schedule of sanctions in §374.1.

249
250 The Board discussed the possible proposed changes.

251
252 **Motion: To propose and publish the repeal of Chapter 376, Registration of**
253 **Facilities, and the amendments to §362.1, Definitions; §374.1, Disciplinary**
254 **Actions; and §374.2, Detrimental Practice**

255 **Made by: Sally Harris King**

256 **Second by: Karen Gardner**

257 **Motion passed.**

258

259 **9. Education Committee Report**

260 **Discussion and possible action on recommendations from the Education**
261 **Committee including the following items:**

- 262 **A. Discussion and possible action on proposing changes to Chapter 367,**
263 **Continuing Education, including concerning the following:**
- 264 **i. the number of required continuing education hours**
 - 265 **ii. whether, and under what circumstances, a licensee may count**
266 **continuing education hours earned outside the two-year renewal**
267 **cycle toward the licensee’s required continuing education hours**
 - 268 **iii. acceptable and unacceptable continuing education**
 - 269 **iv. the definition of continuing education**
 - 270 **v. pre-approved continuing education**
 - 271 **vi. categories of continuing education including in-person and online**
272 **activities, NBCOT Navigator activities, the AOTA Benchmark,**
273 **fieldwork supervision, and research activities**
 - 274 **vii. continuing education documentation**

275 Todd Novosad delivered the Education Committee Report and noted the following:

276

277 The Education Committee discussed suggesting changes to §367.1 to include reducing the
278 number of required continuing education hours per renewal period from thirty to twenty-four
279 hours and to include language that unless otherwise specified in the chapter, one hour of
280 continuing education is equal to one contact hour. Another suggestion included adding that
281 licensees who submit their renewal with all required items prior to the month when their license
282 expires may count CE completed during their license's expiration month for their next renewal
283 period. Additional suggested changes to §367.1 included removing a number of courses from
284 the list of activities not acceptable for continuing education. The suggested amendments also
285 clarified that all continuing education activities that are approved or offered by the American
286 Occupational Therapy Association or the Texas Occupational Therapy Association are pre-
287 approved by the Board.

288
289 The suggested amendments to the section included further cleanups, including removing a
290 provision requiring that those renewing a license more than ninety days late must submit proof
291 of continuing education for the renewal as §370.1, concerning late renewal, already contains a
292 provision addressing the submission of CE documentation for late renewal.

293
294 Suggested changes to §367.2 would revise the categories of continuing education and the
295 requirements therein and include cleanups to the section to use the term "contact hours"
296 consistently and to remove redundant language. Revisions to the categories of continuing
297 education included amendments regarding the CE a licensee may earn for the supervision of
298 fieldwork students. In addition, the category was expanded to allow a licensee to earn credit for
299 the supervision of a student completing a supervised project for the accredited educational
300 program and for the supervision of a student completing a re-entry course through an accredited
301 college or university. The suggested amendments would also revise the continuing education
302 credit a licensee may earn for the completion of NBCOT Navigator activities and would
303 authorize continuing education credit for completion of the AOTA Benchmark. In addition, a
304 provision concerning a request for special consideration for continuing education was revised to
305 add that such must be submitted in writing a minimum of 60, though no more than 270, days
306 prior to expiration of the license.

307
308 Suggested changes to the section included further clarifications, cleanups, and revisions
309 including the removal of language concerning §373.3 of the OT Rules, which concerned
310 supervision of an occupational therapy assistant, as the repeal of that section was adopted.

311
312 Suggested changes to §367.3 concerned cleanups and clarifications and added that
313 documentation of continuing education includes letters of verification and that hours may be
314 listed on continuing education documentation.

315
316 The Board discussed the suggested changes.

317
318 **Motion: To propose and publish the amendments to §367.1, Continuing Education;**
319 **§367.2, Categories of Education; and §367.3, Continuing Education Audit**

320 **Made by: Education Committee**

321 **Second by: None required.**

322 **Motion passed.**

323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368

B. Discussion and possible action on the Board's review of its continuing education approval process and continuation thereof as per §367.1, Continuing Education, including concerning responses submitted by the American Occupational Therapy Association and the Texas Occupational Therapy Association for the review

Todd Novosad noted that the Education Committee discussed the continuing education approval process and the submissions and recommended that the Board continue to accept AOTA and TOTA as pre-approved providers.

Motion: To continue to accept AOTA and TOTA as pre-approved providers
Made by: Education Committee
Second by: None required.
Motion passed.

C. Discussion and possible action on a request for special consideration for continuing education credit from Neneitte Tabani, OT

Todd Novosad noted that the Education Committee discussed the request and granted continuing education credit for certain requested activities and that the Committee requested the Board's feedback for another requested activity. The Board discussed the activity.

D. Discussion and possible action on a request for special consideration for continuing education credit from Emily Briggs, OT

Todd Novosad noted that the Education Committee discussed the request and granted continuing education credit for the requested activities.

E. Discussion and possible action on addressing requests for special consideration for continuing education credit

Todd Novosad noted that the Education Committee discussed the processing of requests for special consideration for continuing education credit.

F. Discussion and possible action on acceptable and unacceptable continuing education and continuing education documentation

Todd Novosad noted that the Education Committee discussed acceptable and unacceptable continuing education and continuing education documentation.

G. Discussion and possible action on questions received by the Texas Board of Occupational Therapy Examiners related to continuing education

Todd Novosad noted that no questions were discussed.

10. Discussion on occupational therapy practice and nutrition

The Board discussed occupational therapy practice and nutrition.

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

369 Lea Weiss discussed recent activities at the Board and information regarding Board licensing
370 statistics.

371

372 **12. Discussion and possible action on the Presiding Officer's Report. The Presiding**
373 **Officer's Report may concern any items listed on the agenda and events that have**
374 **occurred between this meeting and the Board's last meeting.**

375 Stephanie Johnston thanked the public for attending and noted that she and Lea Weiss planned
376 to attend NBCOT's regulatory conference in May.

377

378 **13. Discussion and possible action on scheduling future Board meeting dates and**
379 **agenda items for future consideration**

380 Stephanie Johnston noted that Board meetings have been scheduled for August 2, 2019;
381 November 15, 2019; February 7, 2020; and May 1, 2020 with possible committee meetings to
382 be held August 1 and 2, 2019; November 14 and 15, 2019; February 6 and 7, 2020; and April
383 30 and May 1, 2020. Todd Novosad noted that he did not anticipate that the Education
384 Committee would meet in August, 2019.

385

386 The Board discussed agenda items for future consideration. Stephanie Johnston noted that
387 possible agenda items for the upcoming meeting may include items related to the possible
388 adoption of any proposed rules and any rulemaking required by legislation from the 86th
389 Legislative Session.

390

391 **14. Adjournment**

392 The Board adjourned at 11:45 AM.

393

394 **Minutes adopted on:** August 2, 2019